

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

March 10, 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.
- 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.
- 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.

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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)(B) "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 the 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 "spirit" 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 not include any activity or process for extracting materials. As proposed, 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), which is set forth in the Delegation of Authority. To the extent that any authorities referenced within the Delegation of Authority are vested directly to DEMLR or the Director of DEMLR such that no delegation from the Secretary is required, the Director hereby delegates those authorities as set forth in the Delegation of Authority.

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 decision to utilize 2% simple interest was made for ease of calculation both to bring the costs to “today” values as well as estimating future values depending on the life of the mining operation. This decision, while simplifying the calculation, does incur some inconsistencies when comparing to actual inflation adjusted values provided by the U.S. Bureau of Labor Statistics. As an example, the cost to reclaim the mine excavation when reclaiming to a lake is provided below. If all the values in the table were increased 32 years (1994 to 2026), they would still not be equal to that actual CPI adjusted inflation. However, while the comment is valid that the rules will not be implemented until 2026 (32 years), the Commission’s decision to make its estimate of the increase was made in 2025 (31 years).

	1994 Value	Proposed rule Value	Comment Adjusted Value	CPI Inflation U.S. Bureau of Labor Statistics Jan 1994 – Jan 2026
Mine Excavation (Lake) \$/acre	\$500	\$810	\$820	\$1,112.35

3. The Codifier of Rules does not have the authority to make changes to rules without going through the rulemaking process. Updating the bond table on an annual basis would require that the Mining Commission go through the rulemaking process every year. The intent of including the calculation in the proposed rule is to automatically increase the initial table values on an annual basis without having to change the values in the table itself.
4. Between 2020-2024 (5 years) there were 243 new or modified permits issued. 70 of those permits had bonds of \$1 Million and would not be affected by the proposed increases. The remaining 173 have bond less than \$1 Million and would have seen their reclamation bonds increase if this proposed change were implemented in 2020. The average bond for those 173 revisions is \$86,235 (mean), and the median is \$36,300. There are 51 surety bonds and 122 Cash, ASA, or letters of Credit. Those 122 sites represent 17% of the total 722 permitted sites.

The comment stated that if the operators do not have the means to pay the bond adjustment on their application for either new or modified, that the operators may not pursue a new or modified permit at all. The intent of the bond is to provide the State the assurance that if the operator does not fulfill their reclamation obligation that there are funds available for the State to complete the reclamation. If the operator does not have the means for bonding requirements, there is a higher likelihood that they will not have the means to fulfill their reclamation responsibility which stresses the importance of the bond in the first place.

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~~ 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 compliance action taken by the Department.

(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	\$810	\$2,430	\$2,916	\$3,240	\$2,916	\$810	\$3,240
CS, DS, FS, MI, LI, PF, OL, KY	\$810	\$2,430	\$2,916	\$3,240	\$3,240	\$810	\$4,050
PH	\$1,620	\$4,050	\$4,050	\$8,100	\$8,100	\$3,240	\$8,100
CL	\$1,620	\$4,050	\$4,050	\$8,100	\$8,100	\$3,240	\$5,994
PE, AU, TI, OT	\$1,620	\$4,050	\$4,050	\$4,860	\$5,670	\$3,240	\$8,100

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

(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.*

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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.

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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” 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” 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.

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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 propose 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 that 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 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 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.

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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~~ measures to be taken required to ~~insure~~ ensure against landslides and acid water pollution;
- (9) ~~measures to be taken required~~ measures to be taken required to minimize siltation of streams, lakes, or adjacent properties during the mining operation;
- (10) ~~measures to be taken required~~ 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 chairman 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;
 - ~~(F)~~(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 stream protections requirements would still need to maintain those undisturbed buffers.

Revised Language for Readoption

No revision made to the proposed rule language.

DRAFT

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 statute 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.
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.

DRAFT

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 change 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 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 statute is explicit that the public hearing is limited to new applications or application for a modification adding land to a permit boundary. The additional language proposed in rule will now align with statute. There is no authority in statute to require a public hearing for applications that add lands to the affected area of a permit.
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 officer hearing 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 officer hearing 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 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.

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 Handbook 17th 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.**

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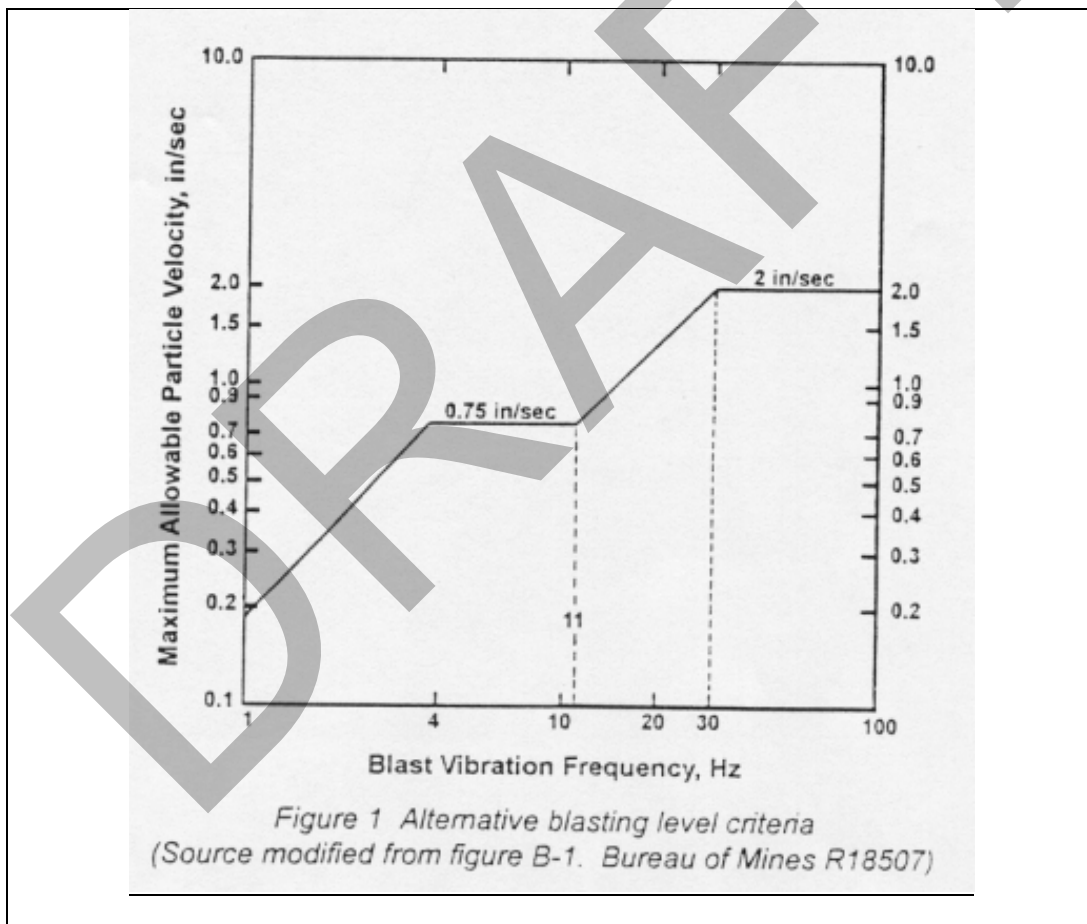
Revised Language for Readoption

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.



(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 Handbook 17th Edition ISBN:1-892396-00-9

BLASTING

$W = \left(\frac{D}{Ds}\right)^2$	$Ds = \frac{D}{\sqrt{W}}$	$V = 160(Ds)^{-1.6}$
<p><u>W</u> = Maximum charge weight of explosives per delay period of 8 milliseconds or more (pounds).</p> <p><u>D</u> = Distance from the blast site to the nearest regularly occupied structure not owned or leased by the mine operator. (feet).</p> <p><u>Ds</u> = Scaled distance factor.</p> <p><u>V</u> = Peak Particle Velocity (inches per second).</p>		
<p>The peak particle velocity of any component shall not exceed 1.0 inch per second, for the purposes of this Paragraph.</p> <p>(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:</p>		
<u>Lower Frequency Limit of Measuring System (Hz)</u>		<u>Max Level (dBL)</u>
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
<p>(e) In the event of seismograph malfunction or other condition that prevents monitoring, blasting shall be conducted in accordance with the following formulas:</p> <p>Formula from ISEE Blasters Handbook 17th Edition ISBN: 1-892396-00-9</p> $P = 1.0 \left(\frac{D}{\sqrt[3]{W}} \right)^{-1.1}$ $dB = 20 \log \left(\frac{P}{2.9 \times 10^{-9}} \right)$		
<p><u>P</u> = Airblast overpressure average burial (pounds per square inch).</p> <p><u>W</u> = Maximum charge weight of explosives per delay period of 8 milliseconds or more (pounds).</p> <p><u>D</u> = Distance from the blast site to the nearest regularly occupied structure not owned or leased by the mine operator (feet).</p> <p><u>dB</u> = Airblast overpressure average burial (decibels).</p> <p><u>A</u> = Air blast or air overpressure for typical quarry situations (decibels).</p> <p>The air blast/overpressure shall not exceed 129 decibels, for the purposes of this Paragraph.</p>		

(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.

DRAFT

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.

DRAFT

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.

DRAFT

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.

DRAFT

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.

DRAFT

**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.

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**PART IV – ATTACHMENTS AND SUPPORTING
DOCUMENTATION**

DRAFT

Notice of Text

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NOTICE OF TEXT

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

OAH USE ONLY

VOLUME:

ISSUE:

CHECK APPROPRIATE BOX:

- Notice **with** a scheduled hearing
- Notice without a scheduled hearing
- Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.**
Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: Mining Commission
2. Link to agency website pursuant to G.S. 150B-19.1(c): https://www.deq.nc.gov/about/boards-and-commissions/nc-mining-commission
3. Proposed Action -- Check the appropriate box(es) and list <u>rule citation(s)</u> beside proposed action: <input checked="" type="checkbox"/> ADOPTION: 15A NCAC 05B .0114 - .0117 <input type="checkbox"/> AMENDMENT: <input type="checkbox"/> REPEAL: <input checked="" type="checkbox"/> READOPTION <u>with</u> substantive changes: 15A NCAC 05A .0202; 05B .0103, .0104, .0105, .0110, .0111, .0112 <input checked="" type="checkbox"/> READOPTION <u>without</u> substantive changes: 15A NCAC 05A .0101; 05B .0113; 05F .0101 - .0106; 05G .0103 - .0105 <input checked="" type="checkbox"/> REPEAL through READOPTION: 15A NCAC 05B .0106; 05F.0111-.0112
4. Proposed effective date: July 1, 2026

5. Is a public hearing planned? Yes No

If yes: Public Hearing date: November 18, 2025

Public Hearing time: 6:00 PM – 9:00 PM

Public Hearing location: Ground Floor Hearing Room, DEQ Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604, or virtually using Cisco WebEx, Digital Hearing Link:

<https://ncgov.webex.com/ncgov/j.php?MTID=md779629b57347ccb38d070620bf41906>

Meeting Password: MRC_1118_Attend (67201119 when dialing from a phone or video system)

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2434 615 3140

If you wish to provide public comments via Webex at the public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 5:00 PM on November 17, 2025. To register, please complete the registration form at the link provided: <https://forms.office.com/g/PQi7PfNmgv>

*For instructions on ways to join the public hearing, please refer to the following link:

<https://www.deq.nc.gov/about/boards-and-commissions/how-attend-webex-meeting-0>

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

7. **Explain Reason For Proposed Rule(s):** § 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.

8. **Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

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

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

Name: Dwain Veach

Address: 1612 Mail Service Center, Raleigh, NC 27699-1612

Phone (optional):


Fax (optional):

E-Mail (optional): dwain.veach@deq.nc.gov (Please type "Mining Rules" in subject line)

10. **Comment Period Ends:** December 15, 2025

11. **Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

<p>12. Rule-making Coordinator: Jennifer Everett</p> <p>Phone: 919-707-8595</p> <p>E-Mail: jennifer.everett@deq.nc.gov</p> <p>Additional agency contact, if any:</p> <p>Phone:</p> <p>E-mail:</p>	<p>13. The Agency formally proposed the text of this rule(s) on Date: July 8, 2025 (rules), and September 17, 2025 (RIA)</p>
	<p>14. Signature of Agency Head* or Rule-making Coordinator:</p> 
	<p>Typed Name: Jennifer Everett Title: Rulemaking Coordinator</p> <p><i>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</i></p>

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NC Register – Volume 40 Issue 08

DRAFT

NORTH CAROLINA REGISTER

VOLUME 40 • ISSUE 08 • Pages 697 – 777

October 15, 2025

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PUBLISHED BY

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Brian Liebman, Codifier of Rules
Julie B. Eddins, Publications Coordinator*

Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

Office of Administrative Hearings

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Rule Review and Legal Issues

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Raleigh, North Carolina 27609

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984-236-1947 FAX

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Travis Wiggs, Commission Counsel

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Christopher S. Miller, Commission Counsel

christopher.miller@oah.nc.gov

984-236-1935

Alexander Burgos, Paralegal

alexander.burgos@oah.nc.gov

984-236-1940

Fiscal Notes & Economic Analysis

Office of State Budget and Management

116 West Jones Street

Raleigh, North Carolina 27603-8005

Contact: Julie Ventaloro, Economic Analyst

osbmruleanalysis@osbm.nc.gov

984-236-0694

Fiscal Research Division

Legislative Office Building

300 N. Salisbury Street, Suites 619 and 400

Raleigh, NC 27603-5925

Contact: Brian Matteson

brian.matteson@ncleg.gov

919-733-4910

NC Association of County Commissioners

919-715-2893

215 North Dawson Street

Raleigh, North Carolina 27603

contact: Amy Bason

amy.bason@ncacc.org

NC League of Municipalities

919-715-2925

424 Fayetteville Street, Suite 1900

Raleigh, North Carolina 27601

contact: Baxter Wells

bwells@nclm.org

Legislative Process Concerning Rulemaking

545 Legislative Office Building

300 North Salisbury Street

Raleigh, North Carolina 27611

919-733-2578

919-715-5460 FAX

Jason Moran-Bates, Staff Attorney

Chris Saunders, Staff Attorney

Aaron McGlothlin, Staff Attorney

NORTH CAROLINA REGISTER
Publication Schedule for January 2025 – December 2025

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	RRC Meeting Date	Earliest Eff. Date of Permanent Rule	270 th day from publication in the Register
39:13	01/02/25	12/06/24	01/17/25	03/03/25	03/20/25	04/24/2025	05/01/25	09/29/25
39:14	01/15/25	12/19/24	01/30/25	03/17/25	03/20/25	04/24/2025	05/01/25	10/12/25
39:15	02/03/25	01/10/25	02/18/25	04/04/25	04/20/25	05/29/2025	06/01/25	10/31/25
39:16	02/17/25	01/27/25	03/04/25	04/21/25	05/20/25	06/26/2025	07/01/25	11/14/25
39:17	03/03/25	02/10/25	03/18/25	05/02/25	05/20/25	06/26/2025	07/01/25	11/28/25
39:18	03/17/25	02/24/25	04/01/25	05/16/25	05/20/25	06/26/2025	07/01/25	12/12/25
39:19	04/01/25	03/11/25	04/16/25	06/02/25	06/20/25	07/30/2025	08/01/25	12/27/25
39:20	04/15/25	03/25/25	04/30/25	06/16/25	06/20/25	07/30/2025	08/01/25	01/10/26
39:21	05/01/25	04/09/25	05/16/25	06/30/25	07/20/25	08/28/2025	09/01/25	01/26/26
39:22	05/15/25	04/24/25	05/30/25	07/14/25	07/20/25	08/28/2025	09/01/25	02/09/26
39:23	06/02/25	05/09/25	06/17/25	08/01/25	08/20/25	09/25/2025	10/01/25	02/27/26
39:24	06/16/25	05/23/25	07/01/25	08/15/25	08/20/25	09/25/2025	10/01/25	03/13/26
40:01	07/01/25	06/10/25	07/16/25	09/02/25	09/20/25	10/30/2025	11/01/25	03/28/26
40:02	07/15/25	06/23/25	07/30/25	09/15/25	09/20/25	10/30/2025	11/01/25	04/11/26
40:03	08/01/25	07/11/25	08/16/25	09/30/25	10/20/25	11/20/2025	12/01/25	04/28/26
40:04	08/15/25	07/25/25	08/30/25	10/14/25	10/20/25	11/20/2025	12/01/25	05/12/26
40:05	09/02/25	08/11/25	09/17/25	11/03/25	11/20/25	12/18/2025	01/01/26	05/30/26
40:06	09/15/25	08/22/25	09/30/25	11/14/25	11/20/25	12/18/2025	01/01/26	06/12/26
40:07	10/01/25	09/10/25	10/16/25	12/01/25	12/20/25	01/29/2026	02/01/26	06/28/26
40:08	10/15/25	09/24/25	10/30/25	12/15/25	12/20/25	01/29/2026	02/01/26	07/12/26
40:09	11/03/25	10/13/25	11/18/25	01/02/26	01/20/26	02/26/2026	03/01/26	07/31/26
40:10	11/17/25	10/24/25	12/02/25	01/16/26	01/20/26	02/26/2026	03/01/26	08/14/26
40:11	12/01/25	11/05/25	12/16/25	01/30/26	02/20/26	03/26/2026	04/01/26	08/28/26
40:12	12/15/25	11/20/25	12/30/25	02/13/26	02/20/26	03/26/2026	04/01/26	09/11/26

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H; and
- (7) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Human Resources Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days but not later than 60 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published.

DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION: The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.



State of North Carolina

JOSH STEIN
GOVERNOR

August 25, 2025

EXECUTIVE ORDER NO. 22

NOTICE OF TERMINATION OF EXECUTIVE ORDER NO. 20

WHEREAS, between August 20-23, 2025, Hurricane Erin impacted the State of North Carolina; and

WHEREAS, Executive Order No. 20, *Declaration of a State of Emergency and Temporary Waiver and Suspension of Motor Vehicle Regulations*, was issued on August 19, 2025; and

WHEREAS, counties impacted by Hurricane Erin have rescinded their states of emergencies and lifted their evacuation orders; and

WHEREAS, this emergency declaration and the associated transportation waivers are no longer needed.

NOW, THEREFORE, by the power vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Pursuant to N.C. Gen. Stat. 166A-19.10(b)(2), Executive Order No. 20 is hereby terminated as of Tuesday, August 26, 2025 at 12:00 p.m.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 25th day of August in the year of our Lord two thousand and twenty-five.

Josh Stein
Governor

ATTEST:

Elaine F. Marshall
Secretary of State





State of North Carolina

JOSH STEIN
GOVERNOR

August 26, 2025

EXECUTIVE ORDER NO. 23

ESTABLISHING THE NORTH CAROLINA ENERGY POLICY TASK FORCE

WHEREAS, Article XIV, Section 5 of the North Carolina Constitution establishes that it is the policy of the state to conserve and protect its lands and waters for the benefit of all its people, that it is a proper function of the state to control and limit the pollution of our air and water, and that in every other appropriate way the state should preserve as a part of the common heritage of this state its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty; and

WHEREAS, in 2021, the General Assembly enacted Session Law 2021-165, "Energy Solutions for North Carolina;" and

WHEREAS, this bipartisan legislation directs the North Carolina Utilities Commission to ensure electric public utilities achieve carbon neutrality by 2050; and

WHEREAS, according to the 2024 North Carolina Greenhouse Gas Inventory, statewide net greenhouse gas emissions in 2020 were nearly 40% below 2005 levels; and

WHEREAS, on October 29, 2018, Governor Roy Cooper issued Executive Order No. 80, which called for North Carolina to transition to a clean energy economy and reduce greenhouse gas emissions and continues to guide state policy; and

WHEREAS, on June 9, 2021, Governor Roy Cooper issued Executive Order No. 218, which set goals for the development of offshore wind energy resources and laid a path for North Carolina's economic and clean energy future with offshore wind; and

WHEREAS, on January 7, 2022, Governor Roy Cooper issued Executive Order No. 246, which further advanced and continues to guide North Carolina's progress towards a clean energy economy; and

WHEREAS, in 2022, 2023, and 2024, Governor Roy Cooper issued Executive Order Nos. 266, 271, 292, and 305, which additionally advanced progress on addressing and responding to climate change; and

WHEREAS, North Carolina has emerged as a hub for the clean energy technology economy, with more than \$24 billion in investment since the second quarter of 2022, and more than 100,000 people now employed in the clean energy technology sector; and

WHEREAS, North Carolina, with its skilled workforce, top business climate, top research universities, excellent community college system, and enviable quality of life, is well-positioned to realize continued economic development success in clean energy technology; and

WHEREAS, to ensure continued economic development success, North Carolina must maintain an adequate, reliable, clean, and affordable electricity supply; and

WHEREAS, the emergence of artificial intelligence and the associated need to power data centers, increased loads from manufacturing and other heavy industry, growing population, and new sources of electricity demand have prompted new questions about how the state should maintain an adequate, reliable, affordable, and clean electricity supply; and

WHEREAS, the costs to power these new loads should not unfairly increase rates for ratepayers or leave North Carolinians responsible for the costs of stranded assets; and

WHEREAS, for the years 2017 through 2023, nearly two-thirds of the rise in electricity rates for most residential customers in North Carolina was due to increases in fuel costs; and

WHEREAS, deployment of additional clean energy and storage resources can reduce fuel costs, reduce the exposure of ratepayers to fuel price volatility, and save money for North Carolina ratepayers; and

WHEREAS, the 2020 North Carolina Climate Science Report found that the adverse impacts of climate change in North Carolina threaten human health, the state's economy, and our quality of life, including through more intense storms and flooding, dangerously high temperatures, droughts, rising sea levels and beach erosion, and harms to ecosystems and wildlife; and

WHEREAS, the 2020 North Carolina Climate Science Report further found that greenhouse gas emissions have caused climate change and that North Carolina's climate will experience significant changes if greenhouse gas concentrations continue to rise; and

WHEREAS, North Carolina has already experienced significant adverse impacts from climate change, including Hurricane Helene, for which the latest science has found that climate change made the massive cumulative amounts of rainfall associated with the storm's catastrophic damages approximately 70% more likely to occur; and

WHEREAS, pursuant to Article III of the North Carolina Constitution and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 147-12, the Governor has the authority and the duty to supervise the official conduct of all executive and ministerial officers.

NOW, THEREFORE, pursuant to the authority vested in the undersigned as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Establishment and Purpose.

The North Carolina Energy Policy Task Force ("Task Force") is hereby established. The mission of the Task Force is to advise the Governor, the General Assembly, and other state policymakers and to develop recommendations for how to manage increasing electricity demand while maintaining adequate reliable, affordable, and clean electricity for North Carolina. The Task Force may advise and develop recommendations on other topics that arise during the conduct of its work that address current and future energy needs and goals or that promote economic development for North Carolina and the state's clean energy economy.

Section 2. Membership.

The Task Force shall include no more than thirty (30) members. All members shall be appointed by the Governor and shall serve at the Governor's pleasure. Task Force members shall serve a term of two (2) years and may be appointed to successive terms. Vacancies shall be filled by the Governor and members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Governor shall appoint the chair or co-chairs from among the members of the Task Force. To the extent practicable, members should represent the geographic, economic, and

demographic diversity of North Carolina and include a range of relevant stakeholders and subject matter experts.

The Task Force members shall include, but not be limited to, representatives from the following:

- a. North Carolina Department of Environmental Quality
- b. North Carolina Department of Commerce
- c. North Carolina Office of the Attorney General
- d. North Carolina General Assembly
- e. North Carolina Utilities Commission
- f. North Carolina Utilities Commission Public Staff
- g. Economic Development Partnership of North Carolina
- h. North Carolina Electric Utilities, Public Power Providers, and Electric Cooperatives
- i. Energy Companies and Independent Power Producers
- j. Large Load Data Center Electricity Customers
- k. Large Load Industrial Electricity Customers
- l. Advocates for North Carolina Electricity Ratepayers
- m. Non-Governmental and Non-Profit Organizations
- n. North Carolina Public and Private Colleges and Universities

Section 3. Duties.

The Task Force shall:

- a. Recommend policies to manage increasing electricity demand while maintaining affordability, reliability, and carbon emissions reductions.
- b. Develop additional recommendations based on the work of each subcommittee, as appropriate.
- c. Provide advice and recommendations on any other matter the Governor refers to the Task Force.

The Task Force shall consult with knowledgeable experts in the conduct of its work, as appropriate.

Section 4. Subcommittees.

To fulfill its Duties, the Task Force shall establish the following subcommittees:

- a. Load Growth Subcommittee, to focus on, as appropriate:
 1. Developing estimates of near term and longer-term load growth forecasts under varying economic outlook scenarios.
 2. Assessing the implications of load growth and new large loads, including as related to existing resource capacity and reliability constraints, new resource needs, and transmission and distribution requirements.
 3. Identifying technological and policy solutions, including load flexibility and demand response strategies, to address the growing energy needs of data centers and heavy industry.
 4. Evaluating strategies for avoiding stranded assets while meeting growing electricity demand.
 5. Identifying recommendations for minimizing residential rate increases and maintaining affordability while managing rising electricity demand.
- b. Technical Advisory Subcommittee, to focus on, as appropriate:
 1. Advising the Office of the Governor on any commissioned modeling of North Carolina's electricity system.
 2. Developing testable hypotheses and questions that can inform state energy policy.
 3. Increasing transparency and public understanding of models used to inform energy policy, including their inputs and outputs, risks, and uncertainties.
 4. Providing quantitative and qualitative assessment results and supporting information to other subcommittees.

The chair(s) shall appoint individuals to subcommittees and designate a chair for each subcommittee. The Task Force may establish additional subcommittees and modify the work of existing subcommittees as necessary to carry out the Task Force’s purpose and duties.

Section 5. Meetings and Deliverables.

The Task Force shall meet quarterly and at the call of the chair(s) or the Governor. A simple majority of the Task Force members shall constitute a quorum to transact business.

Subcommittees shall convene at a regular frequency, to be determined by the subcommittee chair upon the advice of its members, and at the call of the subcommittee chair. A simple majority of the subcommittee members shall constitute a quorum for the subcommittee to transact business.

The Task Force’s meetings shall be governed by the North Carolina Open Meetings Laws, N.C. Gen. Stat. § 143-318.9, *et seq.*

The Task Force shall submit an annual report on or before February 15 describing Task Force activities, findings, and recommendations to the Governor, the General Assembly, the North Carolina Utilities Commission, the North Carolina Rural Electrification Authority, and the public.

Section 6. Administration.

The Task Force shall serve without compensation but may receive per diem allowance and reimbursement for travel and subsistence expenses in accordance with state law and Office of State Budget and Management policies and regulations.

The Task Force shall be staffed by the Office of the Governor and executive branch agencies, as appropriate.

Section 7. Effective Date.

This Executive Order is effective immediately and shall remain in effect until December 31, 2028, pursuant to N.C. Gen. Stat. § 147-16.2, or until repealed, replaced, or rescinded by another applicable Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capital in the City of Raleigh, this 26th day of August in the year of our Lord two thousand and twenty-five.

Josh Stein
Governor



ATTEST:

Elaine F. Marshall
Secretary of State



State of North Carolina

JOSH STEIN
GOVERNOR

September 2, 2025

EXECUTIVE ORDER NO. 24

ADVANCING TRUSTWORTHY ARTIFICIAL INTELLIGENCE THAT BENEFITS ALL NORTH CAROLINIANS

WHEREAS, artificial intelligence (“AI”) is a transformational and rapidly evolving technology impacting countless facets of North Carolina’s economy and communities – presenting extraordinary opportunities and new risks for North Carolinians; and

WHEREAS, the State of North Carolina is committed to better serving all North Carolinians by effectively and responsibly deploying AI; and

WHEREAS, the Governor is committed to ensuring that all North Carolinians benefit from the growth and use of AI; and

WHEREAS, AI presents transformative opportunities to enhance government operations and drive economic growth; and

WHEREAS, North Carolina is committed to fostering innovation, advancing AI-driven industries, and preparing its workforce for the evolving technological landscape and is uniquely positioned to achieve these goals as a top state for business and a national hub for world-class academic and training institutions; and

WHEREAS, the responsible and ethical deployment of AI is essential to ensure transparency, accountability, and the protection of civil liberties in government operations and decision-making; and

WHEREAS, the Governor affirms that the civil rights, privacy, and security of all North Carolinians are paramount as use of AI expands in our economy, schools, health care systems, government, and daily life; and

WHEREAS, the uncertainty around AI systems and their associated energy and water needs is creating new challenges for how North Carolina can maintain an adequate and reliable electricity and water supply while not unfairly raising costs for ratepayers or leaving North Carolinians responsible for the costs of unnecessary or underutilized infrastructure; and

WHEREAS, in August 2024, the North Carolina Department of Information Technology (“NCDIT”) published the North Carolina State Government Responsible Use of Artificial Intelligence Framework, which consists of principles, practices, and guidance to state agencies as they deploy AI while reducing privacy and data protection risks and protecting sensitive data provided to the state by North Carolinians; and

WHEREAS, NCDIT continues to develop robust AI safety and data governance policies that enable leading-edge AI capabilities, ensuring security, transparency, and accountability in all state-supported IT systems, and supports AI literacy for state employees, educators, and communities to build public trust and become a state leader in workforce AI literacy; and

WHEREAS, pursuant to N.C. Gen. Stat. § 143B-1350(j), the NCDIT is authorized to operate an Information Technology Innovation Center to develop and demonstrate technology solutions to benefit the state and its residents; and

WHEREAS, pursuant to Article III of the North Carolina Constitution and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 147-12, the Governor has the authority and the duty to supervise the official conduct of all executive and ministerial officers.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED:**

Section 1: North Carolina AI Leadership Council

A. Establishment and Purpose.

The North Carolina AI Leadership Council (hereinafter “Council”) is hereby established. The purpose of the Council is to advise and support the Governor and state agencies on AI strategy, policy, and training to ensure North Carolina becomes a national leader in AI literacy, governance, and deployment to the benefit of our residents, communities, and economy.

B. Membership.

The Council will consist of twenty-five (25) members (or more, per the Governor’s discretion), appointed by the Governor. Members should represent the diversity of all stakeholders who will be impacted by the changing AI landscape. Council members will serve a term of two (2) years and may be reappointed to successive terms. Vacancies shall be filled by the Governor and members appointed to fill vacancies shall serve for the remainder of the unexpired term. Council members serve at the pleasure of the Governor.

1. The Secretary of the North Carolina Department of Information Technology, who shall serve as Co-Chair of the Council;
2. The Secretary of the North Carolina Department of Commerce or designee, who shall serve as Co-Chair of the Council;
3. Four representatives from the private sector with significant experience in the development or application of artificial intelligence technologies;
4. One representative with expertise in energy or other critical infrastructure systems;
5. The Chief Scientist of the Office of State Budget and Management;
6. Four representatives from institutions of higher education with demonstrated expertise in artificial intelligence (at least one representative from a UNC System institution, one representative from an NC Independent College or University, and one from the North Carolina Community College System);
7. One representative from the North Carolina Department of Justice;
8. One representative from the K–12 education community;
9. One representative from a local workforce development board;
10. One member representing the interests of consumers;
11. One representative from local government;
12. Four members of the North Carolina General Assembly;
13. And any additional members to be added at the Governor’s discretion.

C. Duties.

The Council shall have the following duties, with an initial set of deliverables due by June 30, 2026, and an ongoing responsibility to advise, update, and support thereafter.

1. Create a recommended State AI Strategic Roadmap, ensuring alignment with statewide objectives and emerging AI trends.

2. Recommend additional AI policy, governance, and ethics frameworks that promote safety, transparency, fairness, and privacy.
3. Recommend an AI literacy strategy for the state that will enhance public understanding, skill development, and effective utilization of AI.
4. Champion collaboration and facilitate partnerships across the public sector, private entities, and academic institutions that drive AI research, development, and utilization to continue to make North Carolina an attractive destination for AI businesses.
5. Provide strategic guidance to the AI Accelerator, established in Section 2, to ensure its alignment with objectives identified in the State AI Strategic Roadmap after it is established.
6. Provide guidance on safeguarding public safety and critical infrastructure from AI-related risks, including risk management strategies and protocols to prevent misuse or failure in high-impact systems.
7. Track current and projected labor market impacts due, or potentially due, to AI and provide guidance to workforce development partners to proactively prepare the state's workforce.
8. Provide AI workforce recommendations to the Department of Commerce to consider as AI topics and goals are incorporated into the Strategic Economic Development plan.
9. Provide AI workforce recommendations to the Governor's Council on Workforce and Apprenticeships to consider as AI topics and goals are incorporated into its strategic plan.
10. Provide input to the North Carolina Energy Policy Task Force to help assess the energy and water consumption and environmental impacts of increased use of AI technologies and potential added AI infrastructure in North Carolina.

The Council shall submit an annual AI Strategic Recommendation to the Governor by June 30 of each year, outlining progress, challenges, and strategic recommendations. This report shall incorporate input from public listening sessions, stakeholder engagement, or other community feedback mechanisms to ensure transparency and public trust.

D. Meetings.

The Council shall convene quarterly for in-person meetings. Ad hoc sessions may be called by the Chair or Governor as needed. A simple majority of Council members shall constitute quorum for the purpose of transacting the business of the Council. Recommendations and deliverables shall require a two-thirds majority vote.

The Council may establish subcommittees or work groups to address specific topics such as ethics, workforce development, AI infrastructure, or others as needed; such subcommittees may convene on an ad hoc basis as determined by their respective chairs or the Council.

E. Administration.

NCDIT shall serve as staff and administrative support services for the Leadership Council.

Members shall serve without compensation but may receive necessary travel and subsistence expenses in accordance with State law and policies and regulations of the Office of State Budget and Management.

Section 2: North Carolina AI Accelerator

A. Establishment and Purpose.

The North Carolina AI Accelerator (hereinafter "the Accelerator") is hereby established within NCDIT to serve as the State's centralized hub for AI governance, research, partnership, development, implementation, and training.

B. Duties.

The Accelerator shall promote trustworthy AI use, transparency, data privacy, and responsible AI development through strategic oversight of state AI efforts. This shall include:

- i) The identification and standardization of state-wide definitions for AI and Generative AI.
- ii) The development of an AI Governance Framework outlining principles for responsible AI use, including fairness, accountability, transparency, security, privacy, and the protection of civil liberties, to ensure consistent trustworthy AI use for state government.
- iii) The development of a risk-assessment framework for AI use cases that agencies shall use when submitting use case proposals.

The Accelerator shall also be responsible for accelerating AI implementation within state government operations by reviewing, prioritizing, and piloting potential AI use cases and serving as a collaborative platform for pilot projects, partnerships, and applied research. This shall include:

- i) Monitoring AI activities across state agencies to ensure alignment to statewide strategic priorities and to track AI-related risks across the state use case inventory.
- ii) Developing, implementing, and evaluating pilot projects that apply trustworthy, responsible, and sustainable AI to address state government challenges.
- iii) Serving as the central hub for AI partnerships by facilitating research collaborations and data-sharing agreements among state agencies, institutions of higher education, private sector entities, and nonprofit organizations, in compliance with data classification and security standards.
- iv) Developing and enforcing intellectual property and data protection frameworks to safeguard sensitive information, define ownership of AI-generated outputs, and ensure transparency, accountability, and security in state AI initiatives and partnerships.
- v) Leading the development and implementation of AI literacy training programs for state employees and the public, in alignment with the strategic direction of the AI Leadership Council, to support workforce development, education, and public safety awareness.

C. Administration.

The Accelerator shall be led and staffed by NCDIT. The Accelerator will use input from the Council to guide AI governance and implementation efforts for the state.

D. Reporting and Accountability.

The Accelerator shall submit an annual report to the Governor by June 30th of every year, made available to the public on the Department of Information Technology website, detailing progress on AI initiatives, including but not limited to:

- i) A description and results of AI use cases deployed or implemented by each agency through the Accelerator pursuant to Section 3.
- ii) Training program participation and outcomes for the state workforce.

The Accelerator shall collect high-risk AI use cases and make the inventory information available on the Accelerator website for public review. The AI Accelerator will define what constitutes a high-risk AI use case, ensuring the definition includes applications that involve sensitive or personal data, those deployed in critical sectors such as law enforcement, education, healthcare, and infrastructure, or those that are highly interconnected with other systems. The Accelerator shall work with the Leadership Council to determine what information about high-risk AI use cases is important to provide to the public.

Section 3: Mandate for AI Use Case Proposals for State Agencies

Each Cabinet agency shall establish an Agency AI Oversight Team that will lead AI-related efforts for the state agency. Each Agency AI Oversight Team shall include a minimum of four (4) members and should, to the extent practicable, collectively possess a mix of business, policy, and technical expertise, including artificial intelligence, data management, privacy, and cybersecurity.

Cabinet agencies will submit proposed use cases to the Accelerator for review and prioritization for rapid piloting and potential implementation. Use cases are defined as a specific application of artificial intelligence by a state agency that has the potential to improve efficiency, service delivery, or decision-making processes and aligns with statewide AI governance frameworks. The Accelerator will assess use cases for strategic alignment, potential impact, and risk.

Each Cabinet agency shall identify, document, and propose to the Accelerator at least three AI use case proposals within 180 days of this Executive Order; which the Accelerator will evaluate through its pilot process.

State agencies that are not members of the Governor’s Cabinet are encouraged, but not required, to provide use cases to the Accelerator for piloting.

Section 4: Statewide AI Literacy and Fraud Prevention Training Program

The Council will provide its recommendations on a State AI Literacy strategy to the Accelerator, which will coordinate with state stakeholders, including the Department of Commerce, DIT, the North Carolina Business Committee for Education, the North Carolina Department of Justice, North Carolina Department of Public Instruction, and others, to develop and disseminate AI literacy trainings that are understandable by and accessible to the general public, on topics such as:

- i) Foundational AI concepts and applications;
- ii) Identifying AI-related fraud, scams, and misinformation;
- iii) Ethical considerations in AI use;
- iv) AI safety considerations;
- v) And others.

The AI literacy trainings shall be accessible to the general public and shall foster a well-informed and AI-literate population.

Section 5. Effect and Duration

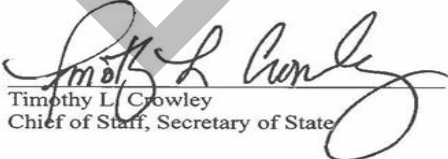
This Executive Order is effective immediately. It shall remain in effect until December 31, 2028, or until rescinded, provided, however, that the Accelerator may continue to operate upon expiration or repeal of this Executive Order.

The Council shall sunset on December 31, 2028, unless extended by the Governor.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 2nd day of September in the year of our Lord two thousand and twenty-five.



 Josh Stein
 Governor

ATTEST:


 Timothy L. Crowley
 Chief of Staff, Secretary of State





State of North Carolina

JOSH STEIN
GOVERNOR

September 10, 2025

EXECUTIVE ORDER NO. 25

**AMENDING AND EXTENDING THE NORTH CAROLINA INTERAGENCY
COUNCIL FOR COORDINATING HOMELESSNESS PROGRAMS**

WHEREAS, the 2024 Annual Homeless Assessment Report to Congress by the U.S. Department of Housing and Urban Development ("HUD") estimated that more than 11,500 people experience homelessness in North Carolina, including 8,396 individuals, 3,230 people in families with children, 524 unaccompanied homeless youth, 688 veterans, and 3,093 chronically homeless individuals, and, among those, approximately 61 percent are sheltered and 40 percent are unsheltered; and

WHEREAS, the 2024 Point in Time Count ("PIT") represents a 19 percent increase in homelessness in the state from the year prior;

WHEREAS, prior to Hurricane Helene, the January 2024 Point in Time Count showed approximately 6,600 people experiencing homelessness in the 39 Helene disaster-declared counties and the devastation of Helene on homes in western North Carolina has further displaced those already experiencing housing insecurity and displaced many families and children who previously had stable housing; and

WHEREAS, racial disparities in homelessness persist in North Carolina, as evidenced by the fact that Black people make up 22 percent of the North Carolina population, according to the 2024 US Census estimates, yet represent nearly 50 percent of people experiencing homelessness, according to the 2024 PIT Count; and

WHEREAS, individuals and families who have unstable housing and are cost burdened by housing are at risk for homelessness, and housing is increasingly unaffordable in North Carolina and nationwide; and

WHEREAS, making system changes to prevent and end homelessness requires a high degree of coordination and cooperation among federal, state, and local governments, as well as private and non-profit sector service providers and advocates, and a statewide coordinating council is an effective tool; and

WHEREAS, Governor Cooper issued Executive Order No. 222, 36 N.C. Reg. 149-151 (Aug. 2, 2021), Reestablishing the North Carolina Interagency Council for Homelessness Programs (the "Interagency Council") on June 30, 2021; and

WHEREAS, Governor Cooper issued Executive Order No. 327, 39 N.C. Reg. 745-747 (Dec. 16, 2024), Amending and Extending the North Carolina Interagency Council for Homelessness Programs on November 26, 2024; and

WHEREAS, the Interagency Council has identified these priorities: (1) increasing access to rental and related housing financial assistance; (2) increasing development of and access to rental units for people experiencing homelessness and those at risk; and (3) increasing the availability and quality of housing-focused services, including housing stabilization case management and housing navigation and placement; and

WHEREAS, the Interagency Council supports the goals related to access to safe, accessible, affordable housing and reduction of homelessness goals in several critical state plans, including the North Carolina Department of Health and Human Services Strategic Housing Plan, the North Carolina Early Childhood Action Plan, North Carolina's Reentry 2030 Strategic Plan, and the All Ages, All Stages: A Roadmap for Aging and Living Well Plan; and the North Carolina Department of Military and Veterans Affairs Strategic Plan; and

WHEREAS, the undersigned charged the Interagency Council with supporting the state's goals to end homelessness, and it has been an important and effective tool in supporting that goal; and

WHEREAS, changes to the structure of the Interagency Council can help optimize its work; and

WHEREAS, pursuant to Article III, § 1 of the North Carolina Constitution and N.C. Gen. Stat. §§ 143A-4 and 143B-4, the Governor is the chief executive officer of the state and is responsible for formulating and administering the policies of the executive branch of state government; and

WHEREAS, pursuant to N.C. Gen. Stat. § 147-12, the Governor has the authority and the duty to supervise the official conduct of all executive and ministerial officers.

NOW, THEREFORE, by the power vested in me as the Governor by the laws and Constitution of the State of North Carolina, **IT IS ORDERED**:

Section 1. Membership.

The Interagency Council shall consist of members appointed by the Governor from the following state agencies and qualifying categories:

- a. The Secretary of the North Carolina Department of Commerce, or a designee;
- b. The Secretary of the North Carolina Department of Administration, or a designee;
- c. The Secretary of the North Carolina Department of Public Safety ("NCDPS"), or a designee;
- d. The Director of North Carolina Emergency Management, or a designee;
- e. The Secretary of the North Carolina Department of Adult Corrections, or a designee;
- f. The Secretary of the North Carolina Department of Health and Human Services ("NCDHHS"), or a designee;
- g. The Deputy Secretary of Medicaid, NCDHHS, or a designee;
- h. The Deputy Secretary for Opportunity and Well-Being, NCDHHS, or a designee;
- i. The Manager of the NCDHHS Strategic Housing Plan;
- j. The Secretary of the North Carolina Department of Military and Veterans Affairs, or a designee;
- k. The State Budget Director of the Office of State Budget and Management ("OSBM"), or a designee;
- l. The Director of the Governor's Recovery Office for Western NC ("GROW NC"), or a designee;
- m. The Executive Director of the North Carolina Housing Finance Agency, or a designee;
- n. One member from the North Carolina Community College System;
- o. One member from the University of North Carolina System;
- p. The Superintendent of the North Carolina Department of Public Instruction, or a designee;
- q. One member who represents homeless Continuums of Care;
- r. One member who represents a hospital or health system;
- s. Two members from local governments;

- t. Three members from non-profit agencies that provide services to people experiencing homelessness or at risk of homelessness and that represent emergency shelters, rapid rehousing agencies, victim service providers, permanent supportive housing providers, and faith-based service providers;
- u. One member from the North Carolina Coalition to End Homelessness;
- v. One member from the North Carolina Housing Coalition;
- w. One member with expertise in services for young children under age six in families experiencing homelessness;
- x. One member with expertise in services for public school students in families experiencing homelessness;
- y. One member from the business community that develops affordable housing;
- z. Two members representing Public Housing Authorities;
- aa. One member representing someone with lived experience of homelessness;
- bb. Any other member or members demonstrating a commitment to reducing homelessness or assisting those at risk of homelessness in North Carolina, or who possess qualifications or background relevant to the work of the Interagency Council;
- cc. Two members from the North Carolina Senate;
- dd. Two members from the North Carolina House of Representatives.

Members of the Interagency Council shall be appointed for a term of two (2) years and serve at the pleasure of the Governor. A vacancy occurring during a term of appointment will be filled by the Governor for the remainder of the unexpired term.

The Governor shall appoint two Co-Chairpersons from among the state agency representatives that serve on the Interagency Council.

Section 2. Meetings.

The Interagency Council shall meet at least twice each year and at other times at the call of the Co-Chairs or Governor. The Chairs may establish sub-committees that meet as directed.

Section 3. Duties.

The duties of the Interagency Council may include the following:

- a. The Interagency Council will advise the Governor, his Cabinet, other state agencies, and partners on issues related to housing stabilization, services for people who are homeless or at risk of homelessness, and strategies to reduce and end homelessness.
- b. The Interagency Council will recommend and promote effective interagency collaboration and system integration, which may include and coordination of state and federal funding. This includes supporting the NCDHHS Strategic Housing Plan's goal for accountability and shared strategy for housing functions across state agencies and key partners and supporting the NC Reentry 2030 Strategic Plan's goal to expand housing opportunities for formerly incarcerated individuals.
- c. The Interagency Council will promote evidence-based practices to address the needs of adults, children, and families who are homeless or at risk of homelessness.
- d. The Interagency Council will review existing programs and policies related to homelessness or those at risk of homelessness and recommend improvements to such programs and policies to ensure that such services are provided efficiently and effectively.
- e. The Interagency Council will provide advice and guidance on any other matter as referred by the Governor.

Section 4. Administration.

The Interagency Council shall serve without compensation but may receive per diem allowance and reimbursement for travel and subsistence expenses in accordance with state law and OSBM policies and regulations.

The Interagency Council shall be staffed by NCDHHS.

Section 5. Effect and Duration

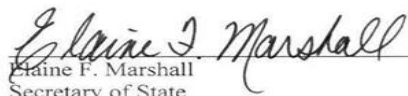
This Executive Order is effective immediately. It supersedes and replaces Executive Order 327, Executive Order No. 258, and Executive Order No. 222. It shall remain in effect until September 10, 2027, or until rescinded or superseded by another applicable Executive Order.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th of September in the year of our Lord two thousand and twenty-five.



Josh Stein
Governor

ATTEST:



Elaine F. Marshall
Secretary of State



DRAFT

North Carolina License and Theft Bureau

PUBLIC NOTICE

This serves as a notice pursuant to G.S. § 20-288 of a license application submission by a manufacturer, factory branch, factory representative, distributor, distributor branch, or distributor representative that has not been previously issued a license by the Division.

Applicant's Name: Life Line Emergency Vehicles Inc

Applicant's Address: 1 Life Line Drive
Sumner, IA 50674

Application Date: September 19, 2025

Names and titles of any individual listed on the application as an owner, partner, member or officer of the applicant:

Randall F Smith, President

Gina Niewoehner, Plant Controller

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept written comments on any proposed rules for at least 60 days from the publication date, or until the date of any public hearing, whichever is longer. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
 Statutory reference: G.S. 150B-21.2.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Public Safety intends to adopt the rules cited as 14B NCAC 03 .0601, and .0602.

Link to agency website pursuant to G.S. 150B-19.1(e):
www.ncdps.gov

Proposed Effective Date: February 1, 2026

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Request a hearing for this rule by contacting the NCDPS rulemaking coordinator by October 30, 2025. Send request to Will Polk, Office of General Counsel, 4201 Mail Service Center, Raleigh, NC 27699-4201. Phone: 919-710-8885. E-mail: will.polk@ncdps.gov*

Reason for Proposed Action: *The purpose of the proposed rules is to clarify the appropriate usage of the U.S. Survey Foot and International Foot. This change is in accordance with the decision by the National Institute of Standards and Technology (NIST) and the National Geodetic Survey (NGS) to phase out the U.S. Survey Foot. It also aligns with recent amendments to North Carolina General Statute 102-1.2, which adopted the International Foot as the state standard. The clarification provided by the proposed rules should reduce confusion arising from having multiple measurement standards, helping to prevent costly errors and improve consistency in project execution.*

Comments may be submitted to: Will Polk, 4201 Mail Service Center, Raleigh, NC 27699-4201; email will.polk@ncdps.gov

Comment period ends: December 15, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

SECTION .0600 – U.S. SURVEY FOOT/INTERNATIONAL FOOT

14B NCAC 03 .0601 PURPOSE

The purpose of this Rule is to provide guidance to government agencies, and the engineering, surveying, construction, agriculture, mapping, and geospatial industries in the State of North Carolina on when to use the United States Survey Foot and the International Foot.

Authority G.S. 102-1; 102-1.1; 102-1.2; 102-1.3; 102-2; 102-8; 102-9.

14B NCAC 03. 0602 REQUIRED FOOT CONVERSION

When state plane coordinates and heights (elevation) are provided in feet, the conversion between the foot and meter shall be based on the coordinate system used for determining the coordinates or height. This requirement applies to horizontal plane and vertical coordinates, and to all values associated with or derived from these coordinates. That includes, but is not limited to, distance, elevation, height, area, and volume, along with values computed from the foot, such as the chain, pole, rod, mile, square mile, and acre. The following foot conversion shall be used:

- (1) The International Foot, 1 foot = 0.3048 meter exactly, when coordinates are based on the North American Terrestrial Reference Frame of 2022 (NATRF2022) as described in 102-1.2 of the North Carolina General Statutes, and for all subsequent coordinate systems adopted by the North Carolina Geodetic Survey or its successor.
- (2) The International Foot, 1 foot = 0.3048 meter exactly, when heights are based on the North American-Pacific Geopotential Datum of 2022 (NAPGD2022), and for all subsequent coordinate systems adopted by the North Carolina Geodetic Survey or its successor.
- (3) The U.S. Survey Foot, 1 foot = 1200/3937 meter exactly or 1 foot = 0.304800609601219 meter approximately, when coordinates are based on the North American Datum of 1983 (NAD 83) or the North American Datum of 1927 (NAD 27) as described in 102-1.1 or 102-

- 1, respectively, of the North Carolina General Statutes.
- (4) The U.S. Survey Foot, 1 foot = 1200/3937 meter exactly or 1 foot = 0.304800609601219 meter approximately, when heights are based on the North American Vertical Datum of 1988 (NAVD 88) or the National Geodetic Vertical Datum of 1929 (NGVD29).

Authority G.S. 102-1; 101-1.1; 102-1.2; 102-1.3; 102-2; 102-8; 102-9.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rules cited as 14B NCAC 16 .0203, .0205, .0703, .0706, .0806-.0809, .0902, .0904, .0910, .0911, .1203, .1306 and .1406.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.ncdps.gov/about-dps/boards-commissions/private-protective-services-board>

Proposed Effective Date: February 1, 2026

Public Hearing:

Date: November 4, 2025

Time: 2:00 p.m.

Location: 3101 Industrial Drive, Suite 104, Raleigh, NC 27609

Reason for Proposed Action: Many of these rule amendments are the result of the Rules Review Commission deciding after 40 years and over 13 reviews of the Board's license and registration application and renewal rules that these rules did not comply with N.C. Gen. Stat. § 150B-2(8a)d. The remainder of the rule amendments are to bring the rules in Subchapter 16 of 14B NCAC into accord with the changes to Chapter 74C of the General Statutes by S.L. 2025-15, including the Board being given the ability to consider expunged criminal charges and convictions of licensees and registrants and recognition of "H.R. 218" status in lieu of the Concealed Handgun Permit training requirement.

Comments may be submitted to: Paul Sherwin, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; fax (919) 715-0370; email paul.sherwin@ncdps.gov

Comment period ends: December 15, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive

letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 16 - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0200 - LICENSES: TRAINEE PERMITS

14B NCAC 16 .0203 RENEWAL OR RE-ISSUE OF LICENSES AND TRAINEE PERMITS

(a) Each applicant for renewal of a license or trainee permit shall submit an online renewal application on the website provided by the Board. The application shall contain:

- (1) name, address, telephone numbers, and social security number;
- (2) gender, race, and military service;
- (3) current employer;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance.

(b) This online application shall be submitted not less than 30 days prior to expiration of the applicant's current license or trainee permit and shall be accompanied by:

- (1) one head and shoulders digital color photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (2) ~~upload online~~ a statement of the result of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 24 ~~months~~; months and disclosure of any expunged convictions;
- (3) the applicant's renewal fee, along with the convenience fee charged by the Board's on-line application vendor and credit card transaction fee;
- (4) for license applicants, proof of liability insurance as set out in G.S. 74C-10(e); and
- (5) proof of having completed continuing education as require by Rule .1202 of this Chapter.

~~(b)~~(c) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-

8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

~~(e)~~(d) If a licensee has maintained a license at least two years and then allows the license to expire, the license may be re-issued if application is made within two years of the expiration date and the following documentation is submitted to the Board:

- (1) an online Application For Reinstatement of an Expired License;
- (2) one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (3) one head and shoulders digital color photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
- (4) ~~upload online~~ a statement of the result of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 60 ~~months~~; months and disclosure of any expunged convictions;
- (5) the applicant's non-refundable application fee, along with the convenience fee charged by the Board's on-line application vendor and credit card transaction fee;
- (6) proof of liability insurance as set out in G.S. 74C-10(e);
- (7) payment to the State Bureau of Investigations to cover the cost of criminal record checks performed by the State Bureau of Investigations, with payment to be paid online through the Board's online application process; and
- (8) proof of having completed continuing education as required by Rule .1202 of this Chapter.

~~(d)~~(e) A member of the armed forces whose license is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the license renewal fee and complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. 74C-5; 74C-8; 74C-8.1; 74C-9; 15A-151(a)(10); 93B-8.1(d).

14B NCAC 16 .0205 COMPANY BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74C-2(a) shall upload on the Board's website an application for a company business license on a form provided by the Board. Only a sole proprietorship that is owned and operated by an individual licensee shall be exempt from this Rule. This application for license shall require the firm, association, or corporation name; the address of its principal office within the

State; any past conviction for criminal offenses of any company director, or officer; information concerning the past revocation, suspension, or denial of a business or professional license to any director or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, an out-of-state corporation shall file with its application for a license, a copy of its certificate of authority to transact business in this State issued by the North Carolina Secretary of State in accordance with G.S. 55-15-01. The corporation shall also file a consent to service of process and pleadings that shall be authenticated by its corporate seal and accompanied by a duly certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute the consent.

(c) After filing a completed application with the Board, the Board shall conduct a background investigation to determine if the qualifying agent is in a management position. A management position means a position which manages established divisions or subdivisions of the firm, association or corporation and directs the work of one or more supervisors, has the authority to hire, reward, discipline or discharge employees, and may also provide suggestions for changes in policy to senior executives with policy-making authority. The Board shall also determine if the directors or officers have the requisite good moral character as defined in G.S. 74C-8(d)(2). For purposes of this Rule, "conviction" means and includes the entry of a plea of guilty or no ~~contest~~ contest, a prayer for judgment continued or adjudication withheld, or a verdict rendered in open court by a judge or ~~jury~~; jury, and may include expunged charges and convictions.

(d) Upon satisfactory completion of the background investigation, a company business license shall be issued. This license shall be conspicuously displayed at the principal place of business within North Carolina.

(e) The company business license shall be issued only to the business entity and shall not be construed to extend to the licensing of its officers and employees.

(f) The issuance of the company business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. The qualifying agent for the firm, association, or corporation which has been issued the company business license shall be responsible for assuring compliance with G.S. 74C.

(g) Dissolution or administrative suspension of corporate status shall result in suspension of the company business license by operation of law and may result in disciplinary action for unlicensed if it is determined that the suspension was due to intentional disregard of the law or inaction.

Authority G.S. 74C-2(a); 74C-5.

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

14B NCAC 16 .0703 MINIMUM STANDARDS FOR UNARMED SECURITY GUARD REGISTRATION

An applicant for registration shall:

- (1) be at least 18 years of age;
- (2) be a citizen of the United States or a resident alien;
- (3) be of good moral character and temperate habits. Any of the following within the last five years shall be prima facie evidence that the applicant does not have good moral character or temperate habits: conviction by any local, state, federal, or military court of any crime involving the illegal use, carrying, or possession of a firearm; conviction of any crime involving the illegal use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage, conviction of a crime involving felonious assault or an act of violence; conviction of a crime involving unlawful breaking and/or entering, burglary, or larceny, or a history of addiction to alcohol or a narcotic drug. For the purposes of this Rule, "conviction" means and includes the entry of a plea of ~~guilty, plea of no contest, guilty or no contest, a prayer for judgment continued or adjudication withheld,~~ or a verdict rendered in open court by a judge or ~~jury; jury, and may include expunged charges and convictions.~~
- (4) not have been judicially declared incompetent or not have been involuntarily committed to an institution for treatment of mental illness. When an individual has been treated and found to have been restored, the Board will consider this evidence and determine whether the applicant meets the requirements of this Rule; and
- (5) not have had a revocation of a registration.

- (2) ~~upload online~~ a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding ~~12 months;~~ months and disclosure of any expunged convictions;
- (3) the applicant's renewal fee, along with the convenience fee charged by the Board's on-line application vendor and credit card transaction fee; and
- (4) ~~upload~~ a completed affidavit form and public notice statement form.

~~(b)(c)~~ If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

~~(e)(d)~~ The employer of each applicant for a registration renewal shall give the applicant a copy of the online application and a copy of the completed affidavit form to serve as a record of application for renewal and shall retain a copy of the application, including affidavit, in the guard's personnel file in the employer's office.

~~(d)(e)~~ Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. 74C-5; 74C-11; 15A-151(a)(10); 93B-8.1(d).

SECTION .0800 - ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

14B NCAC 16 .0806 RENEWAL OF ARMED SECURITY GUARD FIREARM REGISTRATION PERMIT

(a) Each applicant for renewal of an armed security guard firearm registration permit identification card or his or her employer shall complete an online form on the website provided by the Board. The application shall contain:

- (1) name, address, telephone numbers, and social security number;
- (2) gender and race;
- (3) current employer;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance.

(b) This online form shall be submitted not more than 90 days prior to expiration of the applicant's current armed registration and shall be accompanied by:

- (1) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;

Authority G.S. 74C-5; 74C-12(a)(19).

14B NCAC 16 .0706 RENEWAL OF UNARMED SECURITY GUARD REGISTRATION

(a) Each applicant for renewal of a registration identification card or his or her employer shall complete an online form on the website provided by the Board. The application shall contain:

- (1) name, address, telephone numbers, and social security number;
- (2) gender and race;
- (3) current employer;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance.

(b) This online form shall be submitted ~~not fewer less~~ than 90 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;

- (2) upload online a statement of the results of a statewide criminal history search obtained by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 ~~months;~~ months and disclosure of any expunged convictions;
- (3) the applicant's renewal fee, along with the convenience fee charged by the Board's on-line application vendor and credit card transaction fee;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of this Section; and
- (6) a completed affidavit form and public notice statement form.

~~(b)(c)~~ If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

~~(e)(d)~~ The employer of each applicant for a registration renewal shall give the applicant a copy of the online application and a copy of the completed affidavit form to serve as a record of application for renewal and shall retain a copy of the application, including the affidavit in the guard's personnel file in the employer's office.

~~(4)(e)~~ Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

~~(e)(f)~~ A registered armed security guard may utilize a dedicated light system or gun-mounted light for requalification.

~~(f)(g)~~ During a national or State declared state of emergency that restricts or prohibits a registered armed security guard from requalifying, the Board shall, upon written request to the Director by the licensee, extend the deadline for requalification up to 90 days beyond the effective period of the state of emergency. Any registration renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 90th day if requalification requirements have not been met.

Authority G.S. 74C-5; 74C-8.1; 74C-9; 74C-13; 15A-151(a)(10); 93B-8.1(d).

14B NCAC 16 .0807 TRAINING REQUIREMENTS FOR ARMED LICENSEES AND SECURITY GUARD REGISTRANTS

(a) Applicants for an armed security guard firearm registration permit shall first complete the basic unarmed security guard training course set forth in Rule .0707 of this Chapter.

(b) Private investigator, close personal protection, or any other licensees applying for an armed permit shall first complete a training course consisting of the courses set forth in Rule .0707(a)(1) and (2) of this Chapter.

(c) Applicants for an armed security guard firearm registration permit shall complete a basic training course for armed security guards which consists of at least 20 hours of classroom instruction including:

- (1) legal limitations on the use of handguns and on the powers and authority of an armed security guard, including familiarity with rules and regulations relating to armed security guards (minimum of four hours);
- (2) handgun safety, including range firing procedures (minimum of one hour);
- (3) handgun operation and maintenance (minimum of three hours);
- (4) handgun fundamentals (minimum of eight hours); and
- (5) night firing (minimum of four hours).

Subparagraph (c)(2), "operation" under Subparagraph (c)(3), and Subparagraph (c)(4) of this Rule shall be completed prior to the applicant's participation in range ~~firing.~~ firing, and all 20 hours must be completed within 14 consecutive days.

(d) Applicants for either an armed licensee permit or an armed security guard firearm registration permit shall attain a score of at least 80 percent accuracy on a firearms range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office, once in three consecutive attempts. Should a student fail to attain a score of 80 percent accuracy, the student shall be given a second opportunity to qualify once in three consecutive attempts on the course of fire the student did not pass. Failure to qualify after the second series of attempts shall require the student to repeat the entire basic training course for armed security guards. All attempts must take place within 20 days of the completion of the initial 20 hour course. For rifle qualification all shots shall be located on the target.

(e) All training required by this Rule shall be administered by a certified trainer and the training required by Paragraph (c) of this Rule and the initial training for authorization for a rifle or shotgun shall be completed no more than 90 days prior to the date of application for the licensee permit or armed security guard firearm registration permit.

(f) All applicants for an armed security guard firearm registration permit shall obtain training under the provisions of this Section using their duty weapon and their duty ammunition or ballistic equivalent ammunition, to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all firearms.

(g) No more than six new or renewal licensee permit or armed security guard applicants per one instructor shall be placed on the firing line at any one time during firearms range training.

(h) Applicants for re-certification of an armed licensee permit or an armed security guard firearm registration permit shall complete the basic recertification training course for armed security guards that consists of at least four hours of classroom instruction and is a review of the requirements set forth in Subparagraphs (c)(1) through (c)(5) of this Rule. Subparagraph (c)(2), operation under Subparagraph (c)(3), and Subparagraphs (c)(4) and (5) of this Rule shall be reviewed prior to range firing; and however maintenance under Subparagraph (c)(3) may be reviewed after range firing. The recertification course is valid for 180 days after completion of the course. Applicants for recertification of a licensee permit or an armed security guard firearm registration permit shall also complete the requirements of Paragraph (d) of this Rule.

(i) An armed guard registered with one company may be registered with a second company. The registration shall be considered "dual." The registration with the second company shall expire at the same time that the registration expires with the first company. An updated application shall be required to be submitted by the applicant, along with the digital photograph, updated criminal records checks, and a forty dollar (\$40.00) registration fee. If the guard's duty firearm for all companies is the same make, model, and caliber, then no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course.

(j) To be authorized to carry a standard 12 gauge shotgun in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, six hours of classroom training that shall include the following:

- (1) legal limitations on the use of shotgun (minimum of one hour);
- (2) shotgun safety, including range firing procedures (minimum of one hour);
- (3) shotgun operation and maintenance (minimum of one hour);
- (4) shotgun fundamentals (minimum of two hours); and
- (5) night firing (minimum of one hour).

Subparagraph (j)(2), "operation" under Subparagraph (j)(3), and Subparagraph (j)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(k) An armed security guard applicant may take the additional shotgun training at a time after the initial training in this Rule. If the shotgun training is completed at a later time, the shotgun certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraph (j) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a shotgun range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(l) Applicants for shotgun recertification shall complete one hour of classroom training covering the topics set forth in Paragraph (j)

of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(m) To be authorized to carry a rifle in the performance of his or her duties as an armed security guard, an applicant shall complete, in addition to the requirements of Paragraphs (a), (c), and (d) of this Rule, 16 hours of classroom training which shall include the following:

- (1) legal limitations on the use of rifles (minimum of one hour);
- (2) rifle safety, including range firing procedures (minimum of one hour);
- (3) rifle operation and maintenance (minimum of two hours);
- (4) rifle fundamentals (minimum of ten hours); and
- (5) night firing (minimum two hours).

Subparagraph (m)(2), "operation" under Subparagraph (m)(3), and Subparagraph (m)(4) of this Rule shall be completed prior to the applicant's participation in range firing.

(n) The applicant shall pass a skills course that tests each basic rifle skill and the test of each skill shall be completed within three attempts.

(o) An applicant may take the additional rifle training at a time after the initial training in Subsection (c) of this Rule. If the rifle training is completed at a later time, the rifle certification shall run concurrent with the armed registration permit. In addition to the requirements set forth in Paragraphs (m) and (n) of this Rule, applicants shall attain a score of at least 80 percent accuracy on a rifle range qualification course established by the Board and the Secretary of Public Safety, a copy of which is on file in the Director's office.

(p) Applicants for rifle recertification shall complete an additional one hour of classroom training covering the topics set forth in Paragraph (m) of this Rule and shall also complete the requirements of Paragraph (d) of this Rule.

(q) Upon written request, an applicant for an armed licensee permit or an armed security guard firearm registration permit who possesses a current firearms trainer certificate shall be given a licensee permit or registration permit that will run concurrent with the trainer certificate upon completion of an annual qualification with the applicant's duty firearms as set forth in Paragraph (d) of this Rule.

(r) An armed licensee or security guard is required to qualify annually both for day and night firing with his or her duty handgun, shotgun, and rifle, if applicable. If the licensee or security guard fails to qualify on any course of fire, the licensee or security guard shall not carry the firearm until such time as he or she meets the qualification requirements. Upon failure to qualify, the firearm instructor shall notify the licensee or security guard verbally that he or she is no longer authorized to carry the firearm and the firearm instructor shall notify the employer and the Private Protective Services Board staff in writing on the next business day.

(s) A firearm training certificate of an armed security guard remains valid even if the guard leaves the employment of one company for the employment of another. The range qualifications shall remain valid if the guard will be carrying a firearm of the same make, model, and caliber and no additional firearms training shall be required. The licensee shall submit a letter stating the guard will be carrying the same make and model firearm. If the

guard will be carrying a firearm of a different make and model, the licensee shall submit a letter to the Board advising of the make, model, and caliber of the firearm the guard will be carrying and the guard shall be required to qualify at the firing range on both the day and night qualification course. The qualification score is valid for 180 days after completion of the course. However, nothing herein shall extend the period of time the qualification is valid.

Authority G.S. 74C-5; 74C-9; 74C-13.

14B NCAC 16 .0808 CONCEALED HANDGUN

(a) The Board does not have the authority to issue a Concealed Handgun Carry Permit. However, a licensee, licensee, trainee, registrant, or firearms trainer who has complied with all provisions of G.S. 14, Article 54B and applicable rules adopted by the N.C. Criminal Justice Education and Training Standards Commission pursuant thereto and has been issued a current concealed handgun permit by a Sheriff may carry a concealed handgun after complying with the concealed handgun provisions for training and qualifications set forth in Paragraph (b) of this Rule.

(b) A licensee, ~~trainee, registrant, or firearms trainer~~ trainee, or registrant shall comply with each of the following requirements to carry a concealed handgun while engaged in a private protective services business:

- (1) Hold a current Armed Licensee Registration or Armed Security Guard Registration Permit by complying with all requirements for armed registration as prescribed in this Section.
- (2) Complete standards set forth by the N.C. Criminal Justice Education and Training Standards Commission to include knowledge of North Carolina firearms laws including the limitation on concealed handgun possession on specified property and within certain buildings.

(c) Upon application to the Board, a licensee, ~~trainee, registrant, or firearms trainer~~ trainee, or registrant meeting the requirements of this Section shall be issued a concealed handgun endorsement to the current Armed Licensee Registration or Armed Security Guard Registration Permit for the term of the ~~Armed Security Guard Registration Permit~~ without additional permit fees, but any additional training costs necessary to comply with this Section shall be borne directly by the applicant. The endorsement shall be renewed at the time of the Armed Licensee Registration or Armed Security Guard Registration Permit renewal pursuant to this Rule on payment of the ~~armed security guard registration~~ renewal fee and proof of possession of a current Concealed Handgun Permit. A licensee, but not a registrant, who is authorized pursuant to Section 926B or 926C of Title 18 of the United States Code to carry a concealed handgun and is in compliance with the requirements of those Code sections is exempt from the Concealed Handgun Carry Permit requirements of this Rule, but must still obtain the endorsement. There shall be no additional fee for the concealed handgun endorsement renewal.

Authority G.S. 74C-5; 74C-13.

14B NCAC 16 .0809 AUTHORIZED FIREARMS

Armed licensees or registrants are authorized, while in the performance of official duties or traveling directly to and from work, to carry a standard revolver from .32 caliber to .357 caliber, a standard semi-automatic pistol from .354 caliber to .45 caliber, any standard 12 gauge shotgun, or any standard semi-automatic or bolt action ~~.223, .308, 5.56 X 45 mm NATO caliber, .223 to .30~~ caliber or any above handgun caliber rifle as long as the licensee or registrant has been trained pursuant to Rule .0807 of this Section. For purposes of this Section, a "standard" firearm means a firearm that has not been modified or altered from its original manufactured ~~design, design or a custom-built firearm that is assembled exclusively using Original Equipment Manufacturer (OEM) parts.~~

Authority G.S. 74C-5; 74C-13.

SECTION .0900 – TRAINER CERTIFICATE

14B NCAC 16 .0902 APPLICATION FOR FIREARMS TRAINER CERTIFICATE

(a) Each applicant for a firearms trainer certificate shall submit an online application to the ~~Board.~~ Board containing the applicant's:

- (1) name, address, telephone numbers, and social security number;
- (2) gender and race;
- (3) residence history;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance.

(b) The application shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online submission and submitted by uploading online with the application submission;
- (3) a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding ~~60 months;~~ months and disclosure of any expunged convictions;
- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (5) the applicant's non-refundable application fee, along with the convenience fee charged by the

- Board's on-line application vendor and a separate credit card transaction fee;
- (6) evidence of the liability insurance required by G.S. 74C-10(e) if the applicant is not an employee of a licensee;
- (7) a certificate of successful completion of the training required by Rule .0901(a)(3) and (4) of this Section or acceptable certificate of other current certification as set forth in Rule .0901(c) and (d) of this Section; and
- (8) the actual cost charged to the Private Protective Services Board by the North Carolina Justice Academy or other entity to cover the cost of the firearms training course given by the N.C. Justice Academy or other entity and collected as part of the online application process by the Private Protective Services Board.

Authority G.S. 74C-5; 74C-8(d); 74C-8.1(a); 74C-13; 15A-151(a)(10); 93B-8.1(d).

14B NCAC 16 .0904 RENEWAL OF A FIREARMS TRAINER CERTIFICATE

(a) Each applicant for renewal of a firearms trainer certificate shall complete an online renewal form on the website provided by the Board. The application shall contain:

- (1) name, address, telephone numbers, and social security number;
- (2) gender and race;
- (3) current employer;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance.

(b) This ~~form~~ online application shall be submitted online not less than 30 days prior to the expiration of the applicant's current certificate and shall be accompanied by:

- (1) ~~uploaded online~~ a certificate of successful completion of a firearms trainer refresher course approved by the Board and the Secretary of Public Safety consisting of a minimum of eight hours of classroom and practical range training in safety and maintenance of the applicable firearm (i.e. handgun, shotgun, or rifle), range operations, control and safety procedures, and methods of firing. This training shall be completed within 180 days of the submission of the renewal application;
- (2) a statement of the results of a criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding ~~24 months; and~~ months and disclosure of any expunged convictions; and
- (3) the applicant's renewal fee, along with the convenience fee charged by the Board's on-line application vendor and a separate credit card transaction fee.

~~(b)(c)~~ If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

~~(e)(d)~~ Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. The applicant shall furnish the Board a copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue.

~~(d)(e)~~ Any firearms trainer who fails to qualify with the minimum score during the refresher course shall not continue to instruct during the period between the failure to qualify and the expiration of his or her permit.

~~(e)(f)~~ The holder of a firearms trainer certificate may utilize a dedicated light system or gun mounted light for personal requalification.

~~(f)(g)~~ During a national or State declared state of emergency that restricts or prohibits a certified firearms trainer from requalifying, the Board shall, upon written request to the Director by the licensee, extend the deadline for requalification up to 90 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 90th day if requalification requirements have not been met.

Authority G.S. 74C-5; 74C-8.1(a); 74C-9; 74C-13; 93B-15; 15A-151(a)(10); 93B-8.1(d).

14B NCAC 16 .0910 APPLICATION FOR AN UNARMED TRAINER

(a) Each applicant for an unarmed trainer certificate shall submit an online application to the ~~Board.~~ Board containing the applicant's:

- (1) name, address, telephone numbers, and social security number;
- (2) gender and race;
- (3) residence history;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance.

(b) The ~~application~~ online submission shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigations or one set of classifiable fingerprints on an applicant fingerprint card that shall be mailed separately to the Board's office;
- (2) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online submission and submitted by uploading online with the application submission;
- (3) a statement of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G. S. 74C-

8.1(a) for each state where the applicant has resided within the preceding ~~60 months;~~ months and disclosure of any expunged convictions;

- (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
- (5) the applicant's non-refundable application fee, along with the convenience fee charged by the Board's on-line application vendor and a separate credit card transaction fee;
- (6) a certificate of successful completion of the training required by Rule .0909(a)(3) or current certificate of other acceptable certification as set forth in Rule .0909(b) of this Section.
- (7) the actual cost charged to the Private Protective Services Board by Wake Technical Community College, or other entity, to cover the cost of the unarmed guard trainer course and collected as part of the online application process by the Private Protective Services Board.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; 15A-151(a)(10); 93B-8.1(d).

14B NCAC 16 .0911 RENEWAL OF AN UNARMED TRAINER CERTIFICATE

(a) Each applicant for renewal of an unarmed trainer certificate shall complete an online renewal form on the website provided by the Board. The application shall contain:

- (1) name, address, telephone numbers, and social security number;
- (2) gender and race;
- (3) current employer;
- (4) date of birth, birth country, state or province, county or parish, and citizenship;
- (5) driver's license number and state of issuance; and
- (6) firearm type.

(b) This online form shall be submitted ~~online~~ not less than 30 days prior to the expiration of the applicant's current certificate. In addition, the applicant shall include the following:

- (1) the renewal fee set forth in Rule .0903(a)(3) of this Section and collected online as part of the application process;
- (2) a certificate of completion of a minimum of 16 hours of Board developed armed or unarmed instruction performed during the current unarmed trainer certification period;
- (3) a statement verifying the classes taught during the current unarmed trainer certification period on a form provided by the Board as part of the online application process; and
- (4) ~~uploaded online~~ a statement of the results of a criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the

applicant has resided within the preceding 24 ~~months;~~ months and disclosure of any expunged convictions;

~~(b) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.~~

(c) If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

(d) Members of the armed forces whose certification is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return are granted that same extension of time to pay the certification renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue must be furnished to the Board.

(e) During a national or State declared state of emergency that restricts or prohibits an unarmed trainer from performing the instruction required by Subparagraph (b)(2) of this Rule, the Board shall, upon written request to the Director by the licensee, extend the deadline for renewal up to 90 days beyond the effective period of the state of emergency. Any certificate renewed pursuant to this Paragraph shall be issued conditionally and shall automatically expire on the 90th day if instruction requirements have not been met.

Authority G.S. 74C-8; 74C-9; 74C-11; 74C-13; 15A-151(a)(10); 93B-8.1(d).

SECTION .1200 – CONTINUING EDUCATION

14B NCAC 16 .1203 CONTINUING EDUCATION COURSE ACCREDITATION STANDARDS

(a) ~~CE courses~~ Continuing education course instructors may obtain ~~the approval of the Board~~ accreditation of their course by submitting the following information to the Board for consideration:

- (1) the nature and purpose of the course;
- (2) the course objectives or goals;
- (3) the outline of the course, including the number of training hours for each segment; and
- (4) the name of the ~~instructor.~~ instructor; and
- (5) a one hundred dollar (\$100.00) continuing education course evaluation fee, paid online by credit card or electronic funds transfer.

(b) The Board shall complete the following review:

- (1) The matter shall be referred to ~~the Training and Education Committee for the appointment of a sub-committee that shall review the course under consideration. The sub-committee shall consist of at least two industry members of the Training and Education Committee. Other members of the sub-committee may be appointed at the discretion of the Training and Education Committee Chairman.~~ a committee appointed by the Board for review.

- (2) ~~The sub-committee appointed committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.~~
- (3) ~~When the sub-committee completes its review, it shall report to the Training and Education Committee. The Training and Education Committee shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives and goals. The Training and Education Committee The appointed committee shall then report the its findings with a recommendation of acceptance approval or denial to the Private Protective Services Board.~~
- (4) Upon receipt of the appointed committee's report, the Board shall determine by majority vote if the course will be approved for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals.

~~(e) Upon receipt of the Training and Education Committee report, the Private Protective Services Board shall determine by majority vote if the course will be approved for continuing education credits. In making its determination, the Board shall review the course to determine if the course is pertinent to the industry, and if the course meets its stated objectives or goals .~~

~~(d)(c)~~ Each approved course shall remain an approved course for ~~four~~ two years from the date of approval by the Board, unless the course content changes or the course instructor changes.

~~(e)(d)~~ Trainers and instructors shall receive continuing education credit of ~~five~~ four hours for every actual teaching hour with an eight hour cap of continuing education credit every two years.

~~(f)(e)~~ Colleges, universities, trade schools, and other degree granting institutions shall be granted standing approval when the institutions are accredited, certified, or approved by the Department of Public Instruction or by a similar agency in another state and the course is related to law, criminal justice, security profession, finance, ethics, forensics, crime prevention, and investigation. Approval is one credit hour per contact hour up to the maximum 12 credit hours.

Authority G.S. 74C-5; 74C-22.

SECTION .1300 – ARMORED CAR SERVICE GUARD REGISTRATION (UNARMED)

14B NCAC 16 .1306 RENEWAL OR REISSUE OF UNARMED ARMORED CAR SERVICE GUARD REGISTRATION

(a) Each applicant for renewal of an unarmed armored car service guard registration identification card or his or her employer shall complete an online form provided by the Board. The application shall contain:

- (1) name, address, telephone numbers, and social security number;
- (2) gender, race, and military service;

- (3) current employer;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance

(b) This online form shall be submitted not ~~fewer~~ less than 90 days prior to the expiration of the applicant's current registration and shall be accompanied by:

- (1) ~~upload online~~ a statement of the results of a statewide criminal history records search obtained from the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the ~~preceding 12 months;~~ months and disclosure of any expunged convictions;
- (2) the applicant's renewal fee, along with the convenience fee charged by the Board's on-line application vendor and credit card transaction fee.
- (3) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with application submission; and
- (4) a completed affidavit form and public notice statement form.

~~(b)(c)~~ If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

~~(e)(d)~~ The employer of each applicant for a registration renewal or reissue shall give the applicant a copy of the online application, including the completed affidavit form, that shall serve as a record of application for renewal or reissue and shall retain a copy of the online application and affidavit in the guard's personnel file in the employer's office.

~~(d)(e)~~ Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Authority G.S. 74C-3; 74C-5; 78C-8.1(a); 15A-151(a)(10); 93B-8.1(d).

SECTION .1400 - ARMED ARMORED CAR SERVICE GUARDS FIREARM REGISTRATION PERMIT

14B NCAC 16 .1406 RENEWAL OF ARMED ARMORED CAR SERVICE GUARD FIREARM REGISTRATION PERMIT

(a) Each applicant for renewal of an armed armored car service guard firearm registration permit identification card his or her employer or designee shall complete an online form provided by the Board. The application shall contain:

- (1) name, address, telephone numbers, and social security number;
- (2) gender, race, and military service;
- (3) current employer;
- (4) date of birth, birth country, state or province, county or parish, and citizenship; and
- (5) driver's license number and state of issuance.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Alarm Systems Licensing Board intends to amend the rules cited as 14B NCAC 17 .0103, .0105, .0108, .0201, .0202, .0209, .0210, .0301, and .0305.

- (b) This online form shall be accompanied by:
 - (1) one head and shoulders color digital photograph of the applicant in JPG, JPEG, or PNG format of sufficient quality for identification, taken within six months prior to online application and submitted by uploading the photograph online with the application submission;
 - (2) ~~upload online~~ a statement of the result of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74C-8.1(a) for each state where the applicant has resided within the preceding 12 ~~months~~; months and disclosure of any expunged convictions;
 - (3) the applicant's renewal fee, along with the convenience fee charged by the Board's on-line application vendor and credit card transaction fee;
 - (4) the actual cost charged to the Private Protective Services Board by the State Bureau of Investigation to cover the cost of criminal record checks performed by the State Bureau of Investigation, collected online by the Private Protective Services Board;
 - (5) a statement signed by a certified trainer that the applicant has successfully completed the training requirements of Rule .0807 of the Section; and
 - (6) a completed affidavit form and public notice statement form.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncdps.gov/about-dps/boards-and-commissions/alarm-systems-licensing-board>

Proposed Effective Date: February 1, 2026

Public Hearing:

Date: November 4, 2025

Time: 2:00 p.m.

Location: Conference Room, ASLB Office, 3101 Industrial Drive, Suite 104 Raleigh, NC 27609

Reason for Proposed Action: *A recent enactment of the General Assembly, S.L. 2025-51, changed the name of the Board from "Alarm Systems Licensing" to "Security Systems Licensing", thereby necessitating changing numerous references from "alarm" to "security." Additionally, this legislation gender neutralized words such as "Chairman" and changes are being made accordingly. The Board was also given the ability to consider expunged criminal charges and convictions of licensees and registrants.*

Comments may be submitted to: Paul Sherwin, 3101 Industrial Drive, Suite 104, Raleigh, NC 27609; phone (919) 788-5320; email paul.sherwin@ncdps.gov

Comment period ends: December 15, 2025

~~(b)(c)~~ If there is a criminal charge pending against the applicant for renewal that constitutes a deniable offense under G.S. 74C-8(d)(2), consideration of the application shall be deferred until the criminal charge is adjudicated.

~~(c)(d)~~ The employer of each applicant for a registration renewal shall give the applicant a copy of the online application and completed application, including the completed affidavit form, to serve as a record of application for renewal and shall retain a copy of the online application and affidavit in the guard's personnel file in the employer's office.

~~(d)(e)~~ Members of the armed forces whose registration is in good standing and to whom G.S. 105-249.2 grants an extension of time to file a tax return shall receive that same extension of time to pay the registration renewal fee and to complete any continuing education requirements prescribed by the Board. A copy of the military order or the extension approval by the Internal Revenue Service or by the North Carolina Department of Revenue shall be furnished to the Board.

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM

Authority G.S. 74C-3; 74C-5; 74C-8.1(a); 74C-13; 15A-151(a)(10); 93B-8.1(d).

No fiscal note required

CHAPTER 17 - ALARM SYSTEMS LICENSING BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

14B NCAC 17 .0103 DEFINITIONS

In addition to the definitions under G.S. Chapter 74D, the following definitions shall apply throughout this Chapter:

- (1) "Agency Head" means the ~~Chairman~~ Chair of the ~~Alarm Security~~ Alarm Security Systems Licensing Board.
- (2) "Applicant" means any person, firm, or corporation applying to the Board for a license or registration.
- (3) "Board" means the ~~Alarm Security~~ Alarm Security Systems Licensing Board established by G.S. Chapter 74D.
- (4) "Branch Manager or Operator" means the licensee endowed with the responsibility and liability for a branch office.
- (5) "Branch Office" means a separate but dependent part of a central organization. The establishment of a telephone number or mailing address in the company name constitutes prima facie evidence of a branch office.
- (6) "Chairman" or "Chair" means the ~~Chairman~~ Chair of the ~~Alarm Security~~ Alarm Security Systems Licensing Board.
- (7) "Employee" means:
 - (a) a person who has an agreement with a licensee to perform ~~alarm security~~ alarm security systems business activities under the direct supervision and control of the licensee, for whose services any charges are determined imposed and collected by the licensee, and for whose ~~alarm security~~ alarm security systems business activities the licensee is legally liable; or
 - (b) a person who solicits customers at a residential or commercial location whose services are compensated by payment of a referral fee or commission by a licensee.
- (8) "Installs" means placing ~~an alarm a security~~ an alarm a security device in a residential or commercial location and includes demonstrating the use of ~~an alarm a security~~ an alarm a security system device for a specific location and function within the protected premises and, with such knowledge of the ~~alarm security~~ alarm security system operation, delivering that device to the owner or operator of the protected premises.
- (9) "Knowledge of Specific Applications" means obtaining specific information about the premises which is protected or is to be protected, gained during an on-site visit. Conducting a survey shall be prima facie evidence of knowledge of specific applications.

- (10) "Licensee" means any person licensed pursuant to G.S. Chapter 74D.
- (11) "Monitors" means receiving a signal from a protected premises or contracting with a person, firm or corporation to provide accessible equipment and personnel to receive a signal from ~~an alarm a security~~ an alarm a security device in a protected premises and take action in response.
- (12) "Qualifying Agent" means any person who meets the requirements of G.S. 74D-2(c), provided that no licensee may act as qualifying agent for more than one ~~alarm security~~ alarm security systems business without prior authorization of the Board.
- (13) "Responds" means receiving a monitored ~~alarm security~~ alarm security signal that indicates the existence of an unauthorized intrusion or taking from a protected premises of a customer and being required by contract to take action upon receipt of that ~~alarm security system~~ alarm security system signal.
- (14) "Services" means inspecting, testing, repairing or replacing ~~an alarm a security~~ an alarm a security system device within protected premises.

Authority G.S. 74D-2; 74D-5.

14B NCAC 17 .0105 PROHIBITED ACTS

In addition to the prohibited acts set forth elsewhere in this Subchapter and in Chapter 74D of the General Statutes, an applicant, licensee, or registrant who does any of the following shall have his or her application denied or his or her license or registration revoked or suspended:

- (1) displays, causes or permits to be displayed, or has in his or her possession any cancelled, revoked, suspended, fictitious, fraudulently-altered license or registration identification card, or any document simulating a license or registration identification card or purporting to be or to have been issued as a license or registration identification card;
- (2) lends his or her license or registration identification card to another person or allows the use thereof by another;
- (3) displays or represents any license or registration identification card not issued to him or her as being his or her license or registration identification card;
- (4) includes in any advertisement a statement that implies an official State-authorized certification or approval other than this statement: "Licensed by the ~~Alarm Security~~ Alarm Security Systems Licensing Board of the State of North Carolina." Licensees may include their license number;
- (5) includes in the company name the word "police" or other law enforcement designation that implies that the ~~alarm security system~~ alarm security system company is affiliated with a local, state, or federal law enforcement agency; or

- (6) makes any false statement or gives any false information to a third party provider in connection with any criminal history record check provided to the Board.

Authority G.S. 74D-5; 74D-6; 74D-10.

14B NCAC 17 .0108 CONSUMER CONTRACT AND DISCLOSURE REQUIREMENTS FOR ALARM SECURITY SERVICES

(a) Every person, firm, association or corporation licensed to engage in the ~~alarm security~~ systems business in North Carolina who sells, installs, services, responds to or monitors electrical, electronic or mechanical alarm systems shall execute with the consumer a written contract in all transactions that consists of the following:

- (1) A description of the sales and services in brief, simple terminology; and
- (2) The company's name, address and telephone number, the North Carolina ~~Alarm Security~~ Systems License Number, and the North Carolina ~~Alarm Security~~ Systems Licensing Board's address and telephone number.

(b) Any person, firm, association or corporation licensed to engage in the ~~alarm security~~ systems business in North Carolina by providing sales, installation, service, response, or monitoring to a consumer and who unilaterally terminates, causes to be terminated, or reasonably knows of the termination of the monitoring, response or service to that consumer shall provide notification to that consumer by verified personal service or certified mail at least 10 days prior to cessation of the services. This provision shall not apply to consumer-initiated action to terminate or upon consumer relocation.

(c) Any person, firm, association or corporation licensed to engage in the ~~alarm security~~ systems business in North Carolina by providing sales, installation, service, response, or monitoring to a consumer and who changes or causes to be changed the monitoring, response or service to that consumer shall provide written notification to that consumer of the change, the effective date, and the name, address and telephone number of the new provider.

Authority G.S. 74D-2(a); 74D-5; Eff. July 1, 1995.

SECTION .0200 – PROVISIONS FOR LICENSEES

14B NCAC 17 .0201 APPLICATION FOR LICENSE

(a) Each applicant for a license shall submit an online application on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on an F.B.I. fingerprint card provided by the Board and mailed separately to the Board's office;
- (2) one head and shoulders digital photograph of the applicant in JPG format of sufficient quality

for identification, taken within six months prior to the online submission;

- (3) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceding 60 months; months and disclosure of any expunged convictions;
- (4) a minimum of three letters attesting to the good character and reputation of the applicant using the online character letter submission process; and
- (5) the applicant's application fee, along with the convenience fee charged by the Board's on-line application vendor and the credit card transaction fee charged by the applicant's credit card provider and collected online.

(b) Each applicant shall upload evidence of high school graduation either by diploma, G.E.D. certificate, or other equivalent documentation.

(c) Each applicant for a license shall meet personally with either a Board investigator, the Screening Committee, the Director, or a Board representative designated by the Director prior to being issued a license. The applicant shall discuss the provisions of G.S. 74D and the administrative rules in this Chapter during the personal meeting. The applicant shall sign a form provided by the Board stating that the applicant has reviewed the information with the Board's representative and that the applicant understands G.S. 74D and the administrative rules in this Chapter. During a national or State declared state of emergency that restricts or prohibits travel, the personal meeting requirement may be waived if requested by the applicant in favor of alternative means of communication.

(d) Each applicant for a branch office license shall submit an online application on the website provided by the Board containing the physical address and telephone number of the branch office, the Qualifying Agent responsible for the branch office, the proposed branch manager, the parameters or scope of duties of the branch office, and the anticipated number of employees. This online application shall be accompanied by the branch office application fee.

(e) All photographs, record checks, proof of insurance, explanations of criminal charges, explanations of credit history, or requested documents shall be submitted online through the Board's website by any applicant for a permit, license, registration, or certificate within 60 days of the Board's receipt of the application form or a request from Board staff, whichever is later. Any failure to submit required or requested documents to complete the application process within this 60-day period shall void the application and require re-application.

Authority G.S. 74D-2; 74D-2.1; 74D-3; 74D-5; 74D-7; 74D-8; 15A-151(a)(10); 93B-8.1(d).

14B NCAC 17 .0202 EXPERIENCE OR TRAINING REQUIREMENTS FOR LICENSE

(a) Applicants for ~~an alarm a security systems system business~~ license shall meet the following requirements, which are in addition to those specified in G.S. 74D:

- (1) establish two year's experience within the past five years in alarm or security systems installation or service, or alarm or security systems business management; or
- (2) no longer than one year prior to the application date, successfully complete the Certified Alarm Technician Level I Course offered by the Electronic Security Association (ESA) or equivalent. Equivalency shall be determined by the Board's Training and Education Committee by comparing each segment of the training to ensure that the alternative course encompasses all segments of the ESA course.

(b) Applicants for a remote monitoring license pursuant to G.S. 74D-2(h) shall meet the following requirements:

- (1) hold a security guard and patrol business license issued pursuant to G.S. 74C-2; and
- (2) the Qualifying Agent for the license shall have completed a central station monitoring operator course offered by The Monitoring Association (TMA) or equivalent. Equivalency shall be determined by the Board's Training and Education Committee by comparing each segment of the training to ensure that the alternative course encompasses all segments of the TMA course.

Authority G.S. 74D-5.

14B NCAC 17 .0209 COMPANY BUSINESS LICENSE

(a) Any firm, association, or corporation required to be licensed pursuant to G.S. 74D-2(a) shall upload an application for a company business license on a form on the website provided by the Board. A sole proprietorship that is owned and operated by an individual holding a current ~~alarm~~ security systems business license shall be exempt from this Rule. This application form shall include such information as the firm, association, or corporation name; the address of its principal office within the State; all past convictions for criminal offenses of any company director or officer; information concerning the past revocation, suspension, or denial of a business or professional license to any director or officer; a list of all directors and officers of the firm, association, or corporation; a list of all persons, firms, associations, corporations, or other entities owning 10 percent or more of the outstanding shares of any class of stock; and the name and address of the qualifying agent.

(b) In addition to the items required in Paragraph (a) of this Rule, an out-of-state company shall file with its license application form a copy of its certificate of authority to transact business in this state issued by the North Carolina Secretary of State, in accordance with G.S. 55-15-01, and a consent to service of process and pleadings that is authenticated by its company seal and accompanied by a duly-certified copy of the resolution of the board of directors authorizing the proper officer or officers to execute this consent.

(c) After filing a completed online application with the Board, the Board shall conduct a background investigation to ascertain if the qualifying agent is in a management position. The Board shall also determine if the directors or officers have the requisite good

moral character as defined in G.S. 74D-6(3). It shall be prima facie evidence of good moral character if a director or officer has not been convicted by any local, State, federal, or military court of any crime involving the use, carrying, or possession of a firearm; conviction of any crime involving the use, possession, sale, manufacture, distribution, or transportation of a controlled substance, drug, narcotic, or alcoholic beverage; conviction of a crime involving assault or an act of violence; conviction of a crime involving breaking or entering, burglary, larceny, or any offense involving moral turpitude; or does not have a history of addiction to alcohol or a narcotic drug. For the purposes of this Section, "conviction" means and includes the entry of a plea of guilty, no contest, prayer for judgment continued, adjudication withheld, or a verdict rendered in open court by a judge or jury.

(d) Upon completion of the background investigation, a company business license shall be issued if all requirements of this Rule are met. A company business license issued by the Board shall be displayed at the principal place of business within North Carolina.

(e) The company business license shall be issued only to a corporation and shall not be construed to extend to a licensing of its directors, officers, or employees.

(f) The issuance of the company business license is issued to the firm, association, or corporation in addition to the license issued to the qualifying agent. The qualifying agent for the firm, association, or corporation that has been issued the company business license shall be responsible for assuring compliance with G.S. 74D.

(g) Within 90 days of the death of a licensee, the existing qualifying agent or a newly designated replacement qualifying agent for the company may submit a written request to the Board, asking that the deceased licensee's license number remain on company advertisements. The Board shall permit the use of the deceased licensee's license number only if the current qualifying agent's license number is printed adjacent to and in the same size print as the deceased licensee's license number.

Authority G.S. 74D-2(a); 74D-5.

14B NCAC 17 .0210 ELECTRICAL CONTRACTING LICENSE REQUIREMENTS

(a) Each firm, association, corporation, department, division, or branch office required to be licensed pursuant to G.S. 74D-2(a) shall employ on a full-time basis a licensee or registered employee who holds a license for either a SP-LV, limited, intermediate or unlimited examination as administered by the North Carolina Board of Examiners of Electrical Contractors. Pursuant to Rule .0206 of this Section, each firm, association, corporation, department, division, or branch office shall maintain in its records a copy of the licensee's or registered employee's Electrical Contractors License.

(b) In the event the licensee holding the electrical contractor's license ceases to perform his duties, the business entity shall notify the Board in writing within 10 working days. The business entity shall employ a substitute electrical contractor licensee within 30 days after the original electrical licensee ceases to serve.

(c) If a company provides only ~~alarm~~ security systems monitoring services and submits a written request to the Board certifying that they provide only monitoring services and do not sell, install, service, or respond to ~~burglar~~ security alarms, the Board shall

exempt the company from compliance with this rule. If the company later elects to sell, install, service, or respond to ~~burglar~~ security alarms, then the company shall be required to fulfill the requirements of this rule.

Authority G.S. 74D-2(a); 74D-5.

SECTION .0300 – PROVISIONS FOR REGISTRANTS

14B NCAC 17 .0301 APPLICATION FOR REGISTRATION

(a) Each licensee or qualifying agent shall submit an online application for the registration of his or her employee on the website provided by the Board. When this online application is submitted, it shall be accompanied by:

- (1) electronic submission of fingerprints from a Live Scan or similar system approved by the State Bureau of Investigation or one set of classifiable fingerprints on a standard F.B.I. fingerprint card mailed separately to the Board's office;
- (2) one original signed S.B.I. release of information form uploaded online and the original mailed separately to the Board's office;
- (3) one head and shoulders digital photograph of the applicant of sufficient quality for identification, taken within six months prior to online submission, and uploaded with the application submission;
- (4) statements of the results of a statewide criminal history records search by the reporting service designated by the Board pursuant to G.S. 74D-2.1(a) for any state where the applicant has resided within the preceding ~~60 months~~; months and disclosure of any expunged convictions;
- (5) the registration fee required by Rule .0302 of this Section, along with the convenience fee charged by the Board's on-line application vendor and the credit card transaction fee charged by the applicant's credit card provider and collected online; and
- (6) a completed affidavit form attesting to the truth of the information provided and public notice statement form.

(b) The employer of an applicant who is currently registered with another alarm business shall complete an online application form provided by the Board. This form shall be accompanied by the applicant's multiple registration fee along with the convenience fee charged by the Board's on-line application vendor and the credit card transaction fee charged by the applicant's credit card provider and collected online. This online application shall be accompanied by a completed affidavit form and public notice statement form.

(c) The employer of each applicant for registration shall print and retain a copy of the applicant's online application in the individual applicant's personnel file in the employer's office.

Authority G.S. 74D-2.1; 74D-5; 74D-8; 15A-151(a)(10); 93B-8.1(a).

14B NCAC 17 .0305 REGISTRATION IDENTIFICATION CARDS

(a) The registration identification card shall be carried by the registrant when performing the duties of ~~an alarm~~ a security systems employee.

(b) The registration identification card shall be exhibited upon the request of any law enforcement officer or any other authorized representative of the Board.

(c) Registration identification card holders shall immediately notify the Board upon receipt of information relating to the holder's ineligibility to continue holding such a card.

(d) Upon revocation or suspension by the Board, a holder shall return the registration identification card to the ~~administrator~~ Director within 10 days of the date of the revocation or suspension.

Authority G.S. 74D-8.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to amend the rules cited as 15A NCAC 02B .0206; and 02H .0107. This is a republication of text as published in Volume 40 Issue 06.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission/emc-proposed-rules>

Proposed Effective Date: March 1, 2026

Public Hearing:

Date: November 5, 2025

Time: 3:30 p.m., Speaker registration and sign-in will begin at 3:00 p.m.

Location: Archdale Building, Ground Floor Hearing Room - 512 North Salisbury Street, Raleigh, NC 27604

Reason for Proposed Action: *The Environmental Management Commission (EMC) and Department of Environmental Quality (DEQ), Division of Water Resources (DWR), have the responsibility to implement and enforce provisions of the federal Clean Water Act and have delegated permitting authority to implement the National Pollutant Discharge Elimination System (NPDES) Program. The rule amendments are outlined in Session Law 2024-44 (s. 5.1) to allow domestic wastewater discharges to zero flow streams, which will align North Carolina with neighboring states. By providing an additional permitting option, this may provide additional opportunities for growth in these areas where the cost of piping to a higher flowing stream farther away was prohibitive. The Session Law also requires the EMC to adopt rules incorporating the amendments.*

EMC is extending the comment period for the proposed amendments to 15A NCAC 02B .0206 and 15A NCAC 02H .0107 until December 15, 2025. The comment period is extended due to

the passage of Session Law (SL) 2025-94 s. 23.(a), which modified SL 2024-44 s. 5.1.(d). The modifications made to SL 2024-44 s. 5.1.(d) include:

- *SL 2024-44 s. 5.1.(d) required DEQ and the EMC to develop and submit to the U.S. Environmental Protection Agency (EPA) a draft rule for approval no later than August 1, 2024. SL 2025-94 s. 23.(a) changes this requirement to require EPA input instead of approval.*
- *SL 2024-44 s. 5.1.(d) required the EMC to initiate rulemaking within 20 days of receiving EPA approval on the draft rule. SL 2025-94 s. 23.(a) changes this requirement to 60 days from when EPA notifies the State that rules must be adopted prior to submitting for EPA approval.*
- *SL 2024-44 s. 5.1.(d) outlines the language for the draft rule to be submitted to EPA. SL 2025-94 s. 23.(a) revised some of the text in the draft rule that was required to be submitted to EPA by August 1, 2024.*

The proposed rule amendments are included in this notice. No changes have been made to the proposed rule amendments or the Regulatory Impact Analysis from what was previously published in the NC Register on September 15, 2025 (Volume 40, Issue 06, Pages 561-565).

The public hearing scheduled for November 5, 2025, at 3:30 p.m. will proceed as scheduled. Additional information can be found at the EMC's proposed rules webpage at: <https://www.deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission/emc-proposed-rules>

Comments may be submitted to: *Karen Higgins, DEQ-DWR Planning Section, 1611 Mail Service Center, Raleigh, NC 27699-1611; email publiccomments@deq.nc.gov*

Comment period ends: *December 15, 2025*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0206 FLOW DESIGN CRITERIA FOR EFFLUENT LIMITATIONS

(a) For purposes of this Rule, the following definitions shall apply:

- (1) "1Q10" means the minimum average flow for a period of one day that has an average recurrence of once in ten years;
- (2) "7Q10" means the minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years;
- (3) "30Q2" means the minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years;
- (4) "Mean annual flow" means the same as "annual mean flow" as defined in 40 CFR 125.83.
- (5) The "Rational Method" estimates peak flow for a storm of interest as a function of a composite runoff coefficient, rainfall intensity for the storm of interest, and drainage area.

(a)(b) Water quality based effluent limitations shall be developed to allow appropriate frequency and duration of deviations from water quality standards so that the designated uses of receiving streams and downstream waters are protected. There are water quality standards for a number of categories of pollutants and to protect a range of water uses. For this reason, the appropriate frequency and duration of deviations from water quality standards shall not be the same for all pollutants. A flow design criterion shall be used in the development of water quality based effluent limitations as a simplified means of estimating the acceptable frequency and duration of deviations. More complex modeling techniques that the Director has determined on a case-by-case basis will protect the designated uses of receiving streams and downstream waters may be used to set effluent limitations based on frequency and duration criteria published by the U.S. Environmental Protection Agency and incorporated by reference, including subsequent amendments and editions. Frequency and duration criteria published by the U.S. Environmental Protection Agency is available free of charge at: <http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm>.

(c) ~~Effluent~~ Water quality based effluent limitations shall be developed using the following flow design criteria:

- (1) ~~All standards except~~ Except for toxic substances and ~~aesthetics~~ aesthetics, all water

quality standards shall be protected using the 7Q10 flow, minimum average flow for a period of seven consecutive days that has an average recurrence of once in ten years (7Q10 flow). Other governing flow strategies, such as varying discharges with the receiving stream's or downstream water's ~~waters~~ ability to assimilate wastes, may be designated by the ~~Commission or its designee~~ Director on a case-by-case basis if the discharger or permit applicant provides evidence that establishes that the alternative flow strategies will give equal or better protection ~~for the of~~ water quality standards ~~standards~~. "Better protection for the water quality standards" means that such that deviations from the standard would be expected at the same or less frequently frequency than provided by using the 7Q10 flow.

- (2) Toxic substances shall be protected as follows:
 - (A) Toxic substance standards to protect aquatic life from chronic toxicity shall be protected using the 7Q10 flow, flow;
 - ~~(B)~~ (B) Toxic substance standards to protect aquatic life from acute toxicity shall be protected using the 1Q10 flow, flow;
 - (4) Toxic substance standards to protect human health shall be the following:
 - ~~(A)~~ (C) Toxic substance ~~The 7Q10 flow for~~ standards to protect human health through the consumption of water, fish, and shellfish from noncarcinogens; noncarcinogens shall be protected using the 7Q10 flow; and
 - ~~(B)~~ (D) The mean annual flow ~~Toxic substance standards~~ to protect human health from carcinogens through the consumption of water, fish, and shellfish from carcinogens shall be protected using the mean annual flow, unless site specific fish contamination concerns necessitate the use of an alternative design ~~flow;~~ flow.
 - ~~(5)~~ (3) Aesthetic quality shall be protected using the 30Q2 flow, minimum average flow for a period of 30 consecutive days that has an average recurrence of once in two years (30Q2 flow).

~~More complex modeling techniques may also be used to set effluent limitations directly based on frequency and duration criteria published by the U.S. Environmental Protection Agency, available free of charge at <http://water.epa.gov/scitech/swguidance/standards/criteria/current/index.cfm> and incorporated by reference, including subsequent amendments and editions, and the Commission or its designee has determined, on a case by case basis, that the techniques will protect the designated uses of receiving waters.~~

~~(b)~~ (d) If the stream flow is regulated, a minimum daily low flow may be used as a substitute for the 7Q10 flow, except in cases

where there are acute toxicity concerns for aquatic life. ~~In the cases~~ For streams where there are acute toxicity concerns, an alternative low flow, such as the instantaneous minimum release, shall be ~~approved~~ used if the Director determines, on a case-by-case basis, that the designated uses of receiving streams and downstream waters are protected.

~~(e)~~ (e) Flow design criteria shall be used to develop water quality based effluent limitations and in the design of wastewater treatment facilities. Deviations from a specific water quality standard resulting from discharges that are demonstrated to be in compliance with water quality based effluent limitations for that water quality standard shall not be a violation pursuant to G.S. ~~143-215.6~~ 143-215.6A when the actual stream flow is less than the design flow.

~~(d)~~ (f) If the 7Q10 flow of the receiving stream is estimated to be ~~zero, zero~~ and the 30Q2 flow of the receiving stream is estimated to be greater than zero, then water quality based effluent limitations shall be assigned as follows:

(1) ~~If the 30Q2 flow is estimated to be greater than zero,~~ effluent limitations for new ~~New or expanded (additional) discharges of oxygen consuming waste shall be set at BOD₅= 5 mg/l, NH₃-N = 2 mg/l and DO = 6 mg/l, unless it is determined by the Director through modeling or other analysis that these limitations will not protect water quality standards. Requirements for existing discharges shall be determined on a case by case basis by the Director.~~ More stringent limits shall be applied if violations of water quality standards are predicted to occur for a new or expanded discharge with the limits set pursuant to this Rule or if existing limits are determined to be inadequate to protect water quality standards.

(2) ~~If the 30Q2 and 7Q10 flows are both estimated to be zero, no new or expanded discharge of oxygen consuming waste shall be allowed. Requirements for existing discharges to streams where the 30Q2 and 7Q10 flows are both estimated to be zero shall be determined on a case by case basis.~~

~~(3)~~ (2) Other water quality standards shall be protected by requiring the discharge to meet the water quality standards set forth in this Subchapter, unless the Director determines that alternative limitations protect the designated uses of receiving streams and downstream waters, classified water uses.

(3) Requirements for existing discharges shall be determined on a case-by-case basis by the Director.

(g) If the 7Q10 flow and the 30Q2 flow of the receiving streams are both estimated to be zero, then the following shall apply to new or expanded domestic wastewater discharges of oxygen consuming waste:

(1) The proposed permitted flow for the wastewater discharge shall be lesser of:

(A) No more than one-tenth of the flow generated by the one-year, 24-hour

storm event based on the drainage area of the receiving stream at the discharge location and calculated using the Rational Method. The Rational Method shall be used to calculate the peak runoff for the one-year, 24-hour precipitation event in cubic feet per second. The peak runoff shall then be divided by 10 and multiplied by 646,272 to convert the result to gallons per day of allowable discharge at the point studied; or

- (B) No more than two million gallons per day.
- (2) All wastewater discharges shall be directed to a system that utilizes low-energy methodologies prior to discharging to receiving streams at non-erosive velocities, such as:
 - (A) An infiltration system, which may include engineered materials to achieve higher rates of infiltration. Engineered materials shall have an ASTM gradation of fine to coarse grain sand and shall be angular to maintain structural integrity of the slope;
 - (B) Constructed free-surface wetland with a hydraulic residence time of at least 14 days; or
 - (C) Other technologies that meet the standard of practice for NC Licensed Professional Engineers for such devices that provide a hydraulic residence time of at least 14 days.
- (3) Wastewater discharges to the receiving stream shall not exceed one cubic foot per second based on the average daily flow of the discharge. Wastewater discharges from multiple outfalls shall be at least 50 linear feet apart along the receiving streams.
- (4) No wastewater discharges shall be allowed to Class SA, SB, SC, WS-I, WS-II, WS-III, WS-IV, WS-V, ORW or HQW waters.
- (5) For wastewater discharges to NSW waters, the Director may require additional modeling by the applicant. Additional allocation of flow shall be at the discretion of the Director.
- (6) In addition to any other effluent limits for any other parameters to ensure the permit does not violate any EPA-approved NC water quality standards, the following effluent limits shall apply:
 - (A) Biological oxygen demand (BOD5) shall not exceed 5.0 mg/l monthly average;
 - (B) NH3, 0.5 mg/l monthly average, 1.0 mg/l daily maximum;
 - (C) Total nitrogen shall not exceed 4.0 mg/l monthly average;

- (D) Total phosphorus, 1.0 mg/l monthly average, 2.0 mg/l daily maximum;
- (E) Fecal coliforms, 14 colonies/100ml or less;
- (F) Dissolved oxygen, 7.0 mg/l or greater;
- (G) Total suspended solids, 5.0 mg/l monthly average, 8mg/l daily maximum; and
- (H) Nitrate, 1.0 mg/l monthly average, 2.0 mg/l daily maximum.

The Director may impose different effluent limits than those set forth in Parts (A) through (H) in Subparagraph (g)(6) of this Rule to ensure that the permit does not violate any EPA-approved NC water quality standards.

- (7) The applicant shall demonstrate:
 - (A) The proposed discharge meets the requirements in Subparagraphs (g)(1), (2), (3), and (4) of this Rule;
 - (B) The proposed discharge is a domestic wastewater discharge as defined in Rule .0202 of this Subchapter;
 - (C) When the receiving stream has naturally occurring low dissolved oxygen levels, the proposed discharge complies with G.S. 143-215.1(c7);
 - (D) When the receiving stream does not have naturally occurring low dissolved oxygen levels, the proposed discharge does not reduce the dissolved oxygen levels of the receiving stream more than 0.1 mg/l below the approved modeled in-stream dissolved oxygen level for the receiving stream at total permitted capacity for all discharges to such receiving stream. The applicant shall use a model utilized elsewhere in USEPA Region 4, such as the Streeter-Phelps model used in the State of Alabama, and the selected model shall be approved by the Director as suitable for the particular discharge and receiving stream.
- (8) If an applicant requests less stringent effluent limits than those set forth in Subparagraph (g)(6) of this Rule, then the applicant shall conduct more complex modeling. The applicant shall use a model accepted elsewhere in USEPA Region 4 that is approved by the Director as suitable for the particular discharge and receiving stream. The modeling must demonstrate the requirement in Part (g)(7)(B) or (g)(7)(C) of this Rule, whichever is applicable, is met, and all EPA-approved NC water quality standards are protected.
- (9) Applicants shall provide either:
 - (A) Mapping data from USGS; or

(B) Mapping data prepared by an engineer of record licensed in the state of NC utilizing either USGS mapping data or other maps approved for use by the Director.

(h) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then new or expanded discharges of oxygen consuming waste that do not meet the criteria in Paragraph (g) of this Rule shall not be allowed.

(i) If the 7Q10 flow and the 30Q2 flow of the receiving stream are both estimated to be zero, then the requirements for existing discharges shall be determined on a case-by-case basis by the Director.

~~(e)(j)~~ Receiving water flow statistics shall be estimated through consultation with the U.S. Geological Survey. Estimates for any given location may be based on actual flow data, modeling analyses, or other methods determined to be appropriate by the ~~Commission or its designee.~~ Director.

Authority G.S. 143-214.1; 143-215.1(c7); 143-215.3(a)(1); SL 2024-44 s. 5.1.

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0107 STAFF REVIEW AND EVALUATION

(a) The Director is authorized to accept applications for the Commission and shall refer all applications to the staff for review and evaluation. Additionally, the Director shall refer NPDES Permit applications for the discharge of waste into waters classified as sources of public water supply (WS classification) and shellfish waters classified SA to the Public Water Supply Section, Division of Water Resources, and the Shellfish Sanitation Program, Division of Marine Fisheries, respectively, both of the Department of Environmental Quality, and shall not take final action on such applications until receiving written confirmation that the proposed discharge is acceptable.

(b) The Director shall acknowledge receipt of an NPDES or Authorization to Construct permit application upon verifying that the application is administratively complete, that is, includes the completed and signed application forms specified in Rule .0105(a) of this Section, any necessary supplemental information, and any associated fees, in accordance with Rules .0105 and .0106 of this Section.

(1) If an application is not administratively complete, the Director shall either return the application to the applicant as incomplete or request the additional information required. If additional information is requested, the applicant shall be given up to 60 days to provide the information to make the application complete.

(2) If technical review of the application reveals that additional information is necessary for staff to evaluate the proposed discharge, the Director

shall notify the applicant of the additional information required. The applicant may be given up to 60 days to provide the information to make the application complete.

(3) If an application is submitted in accordance with 15A NCAC 02B .0206 (g), then the following shall also apply:

(A) Within 30 days of the filing of an application for a wastewater discharge subject to 15A NCAC 02B .0206 (g), the Director shall determine whether or not the application is complete and notify the applicant accordingly.

(B) If the Director determines an application is incomplete, the Director shall specify all such deficiencies in the notice to the applicant.

(C) The applicant may file an amended application or supplemental information within 60 days to cure the deficiencies identified by the Director for the Director's review.

(c) The staff shall review the application, supplemental information, and other pertinent information, such as monitoring data, compliance records, special studies, and water quality management plans, and shall make a tentative determination to issue, reissue, deny, modify, revoke, rescind, or deny the permit.

(1) The staff shall conduct a site investigation of each facility prior to making its tentative determination regarding the NPDES permit. On-site investigations shall not be necessary for Authorization to Construct permits, activities covered under general permits, and renewal of individual permits when renewal does not require significant reevaluation of permit conditions such as to address expansion of treatment plant capacity, modification of the wastewater treatment process, or changes in the nature or source of wastewaters to be treated.

(2) If the staff's tentative determination in Subparagraph (1) of this Paragraph is to issue the permit, it shall if necessary make the following additional determinations in writing:

(A) proposed effluent limitations for those pollutants proposed to be limited;

(B) a proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations; and

(C) a description of any other special conditions proposed in the draft permit.

(3) The staff shall organize the determinations made pursuant to Subparagraphs (1) and (2) of this Paragraph into a draft permit.

(d) In the case of permits for which Notice of Intent is given in accordance with Rules .0105 and .0127 of this Section, a Certificate of Coverage under a general permit may be issued directly to the applicant in lieu of any other acknowledgment. If

the discharge is not eligible for coverage under the general permit, or if the Notice of Intent is not complete and accompanied by the required application fee, the Notice of Intent shall be returned to the applicant with an explanation of the inadequacies.

Authority G.S. 130-161; 143-215.3(a)(1); 143-215.3(a)(4); 143-215.1(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02Q .0114, and amend the rules cited as 15A NCAC 02Q .0501, and .0507.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.deq.nc.gov/about/divisions/water-resources/water-resources-commissions/environmental-management-commission/emc-proposed-rules>

Proposed Effective Date: Pending on the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency has approved the amended rule into the North Carolina State Implementation Plan, pursuant to S.L. 2023-134, Section 12.11, as amended by S.L. 2024-1, Section 4.13.

Public Hearing:

Date: December 2, 2025

Time: 6:00 p.m.

Location: 1st Floor Training Room (#1210), DEQ Green Square Office Building, 217 West Jones St., Raleigh, NC 27603 or virtually using Cisco WebEx, Digital Hearing Link: <https://tinyurl.com/Pre-PermittingConstruction>

Event password: NCDAQ

Audio conference: To receive a call back, provide your phone number when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2437 902 8679

If you wish to speak at the digital public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 4:00 PM on December 2, 2025. To register, please click the following link: <https://forms.office.com/g/ZUPPSLbhCF>

*For instructions on ways to join the public hearing, please refer to the following link:

<https://files.nc.gov/ncdeq/Air%20Quality/rules/hearing/instructions-on-ways-to-join-webex.pdf>

<https://www.webex.com/test-meeting.html>

*If you have technical difficulties, the following automated voicemail has been set up to receive your verbal comments: 919-707-8430

Reason for Proposed Action: To receive comments on the proposed adoption of 15A NCAC 02Q .0114, Activities Allowed Prior to Permit Issuance, and amendments to 15A NCAC 02Q .0501, Purpose of Section and Requirement for a Permit, and .0507, Application, and the accompanying regulatory impact analysis (RIA). 15A NCAC 02Q .0114 is proposed for adoption and 15A NCAC 02Q .0501 and .0507 are proposed for amendment in response to changes in the pre-permitting construction provisions reflected in Session Law (S.L.) 2023-134, Section 12.11(e)-(g). This law was part of the 2023 Appropriations Act for North Carolina passed in October 2023 and amended with technical corrections in S.L. 2024-1, Section 4.13. S.L. 2023-134 modifies air permitting provisions in North Carolina General Statute (G.S.) 143-215.108A, Control of sources of air pollution; construction of new facilities; alteration or expansion of existing facilities. This statute applies to construction of any new facility and construction associated with the modification of a permit for an existing facility. S.L. 2023-134, Section 12.11(e) changes North Carolina's air permitting procedures by revising G.S. 143-215.108A to allow the construction, but not operation, of sources prior to receipt of an air permit, upon determination that an administratively complete application has been submitted to the Division of Air Quality (DAQ). As specified in the provisions of S.L. 2023-134, Section 12.11(f) and (g), the new pre-permitting construction provisions do not become effective until the first day of a month that is 60 days after the Secretary of the Department of Environmental Quality (DEQ) certifies to the Revisor of Statutes that the U.S. Environmental Protection Agency (EPA) has approved an amendment based on the statutory revisions into the North Carolina State Implementation Plan (SIP). On July 10, 2025, the Environmental Management Commission approved proceeding to public comment on the proposed adoption of 15A NCAC 02Q .0114 and amendments to 15A NCAC 02Q .0501 and .0507 and the accompanying RIA. The text of the rules and RIA are available on the DAQ website: <http://deq.nc.gov/about/divisions/air-quality/air-quality-rules/rules-hearing-process>

Comments may be submitted to: Katherine Quinlan, 217 West Jones St., 1641 Mail Service Center, Raleigh, NC 27699-1641; phone (919) 707-8702; email deq.publiccomments@deq.nc.gov (Please type "Pre-permitting Construction Rules" in subject line)

Comment period ends: December 15, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions

concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02Q - AIR QUALITY PERMITS PROCEDURES

15A NCAC 02Q .0114 ACTIVITIES ALLOWED PRIOR TO PERMIT ISSUANCE

Upon determination that an application for a permit or permit modification contains all information required by statute, regulation, and application form, consistent with G.S. 143-213, the construction, but not operation, of a new air contaminant source, equipment, or associated air cleaning or emission control devices may commence prior to permit issuance if the emissions source is not subject to:

- (1) permit limits set pursuant to programs for prevention of significant deterioration pursuant to 15A NCAC 02D .0530 and for the attainment of air quality standards in nonattainment areas pursuant to 15A NCAC 02D .0531;
- (2) a residual risk-based hazardous air pollutant standard pursuant to 15A NCAC 02D .1111; or
- (3) a case-by-case maximum achievable control technology (MACT) permit requirement issued by the Division pursuant to 15A NCAC 02D .1109 and Rule .0526 of this Subchapter.

The undertaking of pre-permitting activities pursuant to this Rule shall not entitle the applicant to operate any air contaminant source, equipment, or associated air cleaning or emissions control devices prior to permit issuance.

Authority G.S. 143-212; 143-213; 143-215.3(a)(1); 143-215.108A.

SECTION .0500 - TITLE V PROCEDURES

15A NCAC 02Q .0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT

- (a) The purpose of this Section is to establish an air quality permitting program as required pursuant to Title V of the Clean Air Act and 40 CFR Part 70.
- (b) With the exception in Paragraph (c) of this ~~Rule~~, Rule and the provisions of 15A NCAC 02Q .0114, the owner or operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications pursuant to 15A NCAC 02Q .0515), including significant modifications that would not contravene or conflict with a condition in the existing permit, shall not begin construction without first obtaining:

- (1) a construction and operation permit following the procedures set forth in this Section (except for 15A NCAC 02Q .0504); or
- (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504 and filing a complete application within 12 months after commencing operation to modify the construction and operation permit to meet the requirements of this Section.

(c) With the exception provided in the provisions of 15A NCAC 02Q .0114, if ~~if~~ the owner or operator proposes to make a significant modification pursuant to 15A NCAC 02Q .0516 that would contravene or conflict with a condition in the existing permit, the owner or operator shall not begin construction or make the modification until the owner or operator has obtained:

- (1) a construction and operation permit following the procedures set forth in this Section (except for 15A NCAC 02Q .0504); or
- (2) a construction and operation permit following the procedures set forth in 15A NCAC 02Q .0504 and, before beginning operation, files an application and obtains a permit modifying the construction and operation permit to meet the requirements of this Section (except for 15A NCAC 02Q .0504).

(d) All facilities subject to this Section shall have a permit to operate that assures compliance with 40 CFR Part 70 and all applicable federal and State requirements.

(e) Except as allowed pursuant to 15A NCAC 02Q .0515(f) (minor modifications), no facility subject to the requirements of this Section may operate after the time that it is required to submit a timely and complete application pursuant to this Section except in compliance with a permit issued pursuant to this Section. This Paragraph does not apply to ~~to~~ permit renewals pursuant to 15A NCAC 02Q .0513.

(f) If the conditions of 15A NCAC 02Q .0512(b) (application shield) are met, the facility's failure to have a permit pursuant to this Section shall not be a violation of operating without a permit.

(g) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision to his permit before receiving the initial permit pursuant to this Section, the application for the revision shall be processed pursuant to 15A NCAC 02Q .0300.

(h) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the toxic air pollutant procedures set forth in 15A NCAC 2Q .0700.

(i) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject to the procedures pursuant to 15A NCAC 02Q .0400.

(j) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance with the requirements of 15A NCAC 02Q .0200.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A.

15A NCAC 02Q .0507 APPLICATION

- (a) Except for:

- (1) minor permit modifications covered pursuant to 15A NCAC 02Q .0515;
- (2) significant modifications covered pursuant to 15A NCAC 02Q .0516(c); or
- (3) renewals submitted pursuant to 15A NCAC 02Q .0513;

the owner or operator of a new or existing source shall have 12 months after the facility or source becomes subject to the Title V operating permit program pursuant to 15A NCAC 02Q .0500 to file a complete application for a permit or permit revision. However, except as provided in 15A NCAC 02Q .0114, the owner or operator of a source shall not begin construction or operation of a source until he or she has obtained a construction and operation permit pursuant to 15A NCAC 02Q .0501(b) or (c) and 15A NCAC 02Q .0504.

(b) An application shall include the information described in 40 CFR 70.3(d) and 70.5(c), including a list of insignificant activities because of size or production rate but not including insignificant activities because of category. An application shall be certified by a responsible official for truth, accuracy, and completeness. In an application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to 15A NCAC 02Q .0400 or 15A NCAC 02D .0530 or .0531 if the information in those applications contains information required in this Section and is current, accurate, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with 15A NCAC 02Q .0104 on forms of the Division and shall include plans and specifications with complete data and information as required by this Rule. If the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director shall request that the applicant provide other information necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government; or
 - (B) consists of a letter from the local government indicating that zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or an expansion of an existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required pursuant to 15A NCAC 02Q .0113; and
- (3) if required by the Director, information showing that:
 - (A) the applicant is financially qualified to carry out the permitted activities; or
 - (B) the applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged and has been

in substantial compliance with federal and State environmental laws and rules.

(e) An applicant who fails to submit relevant facts or submits incorrect information in a permit application shall, upon becoming aware of the failure or incorrect submittal, submit supplementary facts or corrected information to resolve the deficiency. In addition, an applicant shall provide additional information to address requirements to which the source becomes subject after the date the applicant filed a complete application but prior to release of a draft permit.

(f) The submittal of a complete permit application shall not affect the requirement that a facility have a permit pursuant to 15A NCAC 02D .0530, .0531, or .0532 or pursuant to 15A NCAC 02Q .0400.

(g) The Director shall give priority to permit applications containing early reduction demonstrations pursuant to Section 112(i)(5) of the federal Clean Air Act. The Director shall take final action on these permit applications after receipt of the complete permit application.

(h) Except as specified in 15A NCAC 02Q .0203(i), a non-refundable permit application processing fee, defined in 15A NCAC 02Q .0200, shall accompany the application. The permit application shall be deemed incomplete until the permit application processing fee is received.

(i) The applicant shall retain during the permit term one complete copy of the application package and the information submitted in support of the application package.

Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; 143-215.108A.

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Mining Commission intends to adopt the rules cited as 15A NCAC 05B .0114-.0117, readopt with substantive changes the rules cited as 15A NCAC 05A .0202; 05B .0103-.0105, .0110-.0112, readopt without substantive changes the rules cited as 15A NCAC 05A .0101; 05B .0113; 05F .0101-.0103, .0105, .0106; 05G .0103-.0105, repeal through readoption the rules cited as 15A NCAC 05B .0106; 05F .0111, and .0112.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.deq.nc.gov/about/boards-and-commissions/nc-mining-commission>

Proposed Effective Date: July 1, 2026

Public Hearing:

Date: November 18, 2025

Time: 6:00 p.m.-9:00 p.m.

Location: Ground Floor Hearing Room, DEQ Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604, or virtually using Cisco WebEx, Digital Hearing Link: <https://ncgov.webex.com/ncgov/j.php?MTID=md779629b57347ccb38d070620bf41906> Meeting Password: MRC_1118_Attend (67201119 when dialing from a phone or video system) Audio conference: To receive a call back, provide your phone number

when you join the event, or call the number below and enter the access code. US TOLL +1-415-655-0003, Access code: 2434 615 3140

If you wish to provide public comments via Webex at the public hearing, you must register, provide the required information, and follow instructions on ways to join the public hearing. Registration must be completed by 5:00 PM on November 17, 2025. To register, please complete the registration form at the link provided: <https://forms.office.com/g/PQi7Pfnmgv>

*For instructions on ways to join the public hearing, please refer to the following link: <https://www.deq.nc.gov/about/boards-and-commissions/how-attend-webex-meeting-0>

Reason for Proposed Action: § 150B-21.3A requires a periodic review and re-adoption 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 re-adoption 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.

Comments may be submitted to: Dwain Veach, 1612 Mail Service Center, Raleigh, NC 27699-1612; email dwain.veach@deq.nc.gov (Please type "Mining Rules" in subject line)

Comment period ends: December 15, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM

No fiscal note required

CHAPTER 05 - MINING - MINERAL RESOURCES

SUBCHAPTER 05A - ORGANIZATION AND ADMINISTRATION

SECTION .0100 - MINING AND ENERGY COMMISSION

This Chapter, 15A NCAC 05, MINING: MINERAL RESOURCES; was transferred and recodified from 15 NCAC 05 effective November 1, 1989. The recodification was pursuant to G.S. 143B-279.1.

15A NCAC 05A .0101 NAME AND ADDRESS

The name of this agency shall be the North Carolina Mining and Energy Commission. Its address is Department of Environmental Quality, Environment, Health, and Natural Resources, P.O. Box 27687, 1612 Mail Service Center, Raleigh, North Carolina 27611-27699-1612.

Authority G.S. 143B-290.

SECTION .0200 - ADMINISTRATION

15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS

(a) The Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality, ~~Department of Environment, Health, and Natural Resources~~, shall have the following powers and duties with regard to necessary to administer the administration of the Mining Act of 1974: 1971, including:

- (1) the issuance, denial, modification, ~~renewal, suspension~~ suspension, transfer, and revocation of permits;
- (2) the approval of reclamation plans;
- (3) the initiation of forfeiture proceedings;
- (4) the giving of notices, setting of hearings and taking of action upon findings of violations; and
- (5) the institution of all criminal and civil actions.

(b) The Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality, ~~Department of Environment, Health, and Natural Resources~~ shall have the following powers and duties necessary to administer with regard to the administration of the Control of Exploration for Uranium in North Carolina Act of 1983: 1983, including:

- (1) the issuance, denial, modification, renewal, ~~suspension~~ suspension, transfer, and revocation of permits;
- (2) the review of the plans for the initiation and approval of the abandonment of affected land;
- (3) the inspection and approval of the abandonment of affected land;
- (4) the giving of notices, setting of hearings, and taking of action upon findings of violations; and
- (5) the institution of all criminal and civil actions.

(c) The following definitions apply to Subchapters 05A, 05B, 05F and 05G of Chapter 5 of Title 15A of the North Carolina Administrative Code:

- (1) "Administrative Change" means any change initiated by the Department or requested by the applicant to correct errors including grammatical errors, typographical errors, and map inaccuracies, that do not substantively change the permit.
- (2) "Affected land", as defined in G.S. 74-49(1) shall not include an unrelated use that does not meet the definition of mining that occurs within the permit boundaries, including activities pertaining to agriculture and silviculture including timber harvesting, where an erosion and sedimentation plan is approved pursuant to G.S. 113A, Article 4, when required, and the unrelated use area is shown on the mine map.
- (3) "Contaminants" shall be defined as set forth in 42 USC 9601(33) "Pollutants or Contaminants", which is hereby incorporated by reference, including any amendments or subsequent editions. Copies may be accessed at <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/html/USCODE-2023-title42-chap103-subchapI-sec9601.htm> at no charge.
- (4) "Director" means 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.
- (5) "Division" means the Division of Energy, Mineral, and Land Resources.
- (6) "Filed" or "Filing", as applicable to G.S. 74-51(b), shall be deemed to occur at the start of the following business day, when an application is submitted electronically outside of business hours.
- (7) "Mining Buffer" means an unexcavated, undisturbed, or vegetative area managed to

protect adjacent land owners or areas of special concern.

- (A) "Unexcavated" means no mine excavation shall occur. Unexcavated buffers may be used for roadways, berms and erosion and sedimentation control or stabilization. Excavation may be allowed for sediment basins or erosion and sedimentation control when shown on the mine map.
- (B) "Undisturbed" means no disturbance shall occur.
- (C) "Vegetative Buffer" means an unexcavated buffer that may be managed through landscaping or additional plantings.
- (8) "Non-public roads" means any private road that is not maintained by the State or had maintenance requirements delegated to a municipality. Temporary access roads utilized for exploratory purposes shall not be considered non-public roads when they comply with any requirements for approvals pursuant to G.S. 113A, Article 4.
- (9) "Notice", as applicable to G.S. 74-50(b3), includes written or electronic correspondence.
- (10) "On-site Construction" means development of a site where the primary purpose is to construct, develop, or erect, structures, infrastructure, or waste facilities, and the removal, but not sale, of any extracted material off-site is incidental to the primary purpose and time limited.
- (11) "Transfer Material" means material brought into the mine permit boundary for the purpose of blending, recycling, or upgrading of onsite materials for the purpose of resale.

Authority G.S. 74-50 through 74-53; 74-56 to 74-59; 74- 77 75 through 74-85; 74-87.

SUBCHAPTER 05B - PERMITTING AND REPORTING

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

~~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 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;

PROPOSED RULES

- (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.

Authority G.S. 74-51; 74-54; 143B-290.

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;~~ North Carolina Cooperative Extension County agricultural extension chairmen County Director in a county listed 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;
- (C) North Carolina licensed landscape architects; Landscape Architect pursuant to G.S. 89A;
- (D) 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;~~ 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 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 and approved by the ~~department~~ 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 chief administrative ~~officer officers~~ of the county ~~or~~ and municipality 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.

Authority G.S. 74-63; 74-51; 74-53; 74-56.

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

To assure ensure that the mining operation will comply fully fully complies with the requirements and objectives of the Mining Act of 1971, the director Director may approve an application or reclamation plan subject to certain conditions. Such conditions of application approval may include: require that a permit or reclamation plan contain conditions including:

- (1) additional erosion control measures to be installed during the mining operation; operation as specified in G.S. 74-51;
- (2) a natural vegetated buffer to be left between any stream and the affected land. land when specified in State or local stream protection requirements.
- (3) visual screening such as existing natural vegetation, vegetated earthen berms, and tree plantings at staggered spacing spacing, etc. to be installed and maintained as feasible between any affected land and any adjoining property containing occupied buildings or public access within view of the affected land; any screening conditions shall take into consideration the

mining operation activities that are being screened and the current usage of the neighboring property.

- (4) erosion control measures to be taken during the construction and operation of all haul roads or access roads to minimize offsite damage from sediment; sediment.
- (5) other conditions necessary to safeguard the adjacent surface resources or wildlife.
- (6) hydrogeological analysis to assess potential influences of mine dewatering on water supply wells and measures to mitigate potential adverse impacts.

Authority G.S. 74-63; 74-51.

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

An application for a mining permit including new permits, modified permits and renewal permits, may be denied when the operation will have an unduly adverse effect on wildlife or fisheries by:

- (1) substantial siltation of streams or lake beds, increasing the average water temperature of adjacent waterways to a temperature detrimental to the pre-existing aquatic wildlife; or
- (2) other conditions designated by the North Carolina Wildlife Resources Commission as being unduly detrimental to wildlife.

Authority G.S. 74-51; 74-58; 74-63.

15A NCAC 05B .0110 MINING RECLAMATION REPORTS

The mine operator shall, by February 1 of each year during the life of the permitted operation, and within 30 days of completion or termination of mining on an area under permit, file with the department a mining reclamation report on a form prescribed by the department.

- (a) Upon completion of reclamation of an area of land, the operator shall notify the Department and complete a release request that includes the details found on the reclamation report as required to be filed by G.S. 74-55.
- (b) If the Department receives a release request on or before September 30, the Department may waive the annual fee for the permit year. Where a site is determined to not be eligible for release pursuant to G.S. 74-56, the Department may revoke the waiver prior to December 31.

Authority G.S. 74-55; 143B-290.

15A NCAC 05B .0111 PUBLIC HEARINGS

(a) If the department Department determines that there exists a significant public interest in an application for a new mining permit, or for a modification that adds land to the existing permit, the director Director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no sooner than 20 or later than 60 days 90 days of from the filing of the

application and before the ~~department~~ Department makes its final decision regarding the application.

(b) At least ~~10~~ 20 days prior to the public hearing, the ~~department~~ Department shall ~~publish~~ provide notice thereof in a newspaper ~~of or other media platform with general coverage~~ in the county(s) in which the proposed mine is located. ~~The department may also give notice to the public by other means.~~ In addition, the ~~department~~ Department shall cause written notice of the hearing to be sent by certified or registered mail to the applicant and to the known owners of all adjoining ~~land.~~ land as specified in G.S. 74-50.

(c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose ~~reasonable~~ limitations on the length of time that any person may speak and may summarize comments rather than recording them in full. The hearing officer may allow additional written comments to be submitted for up to ten days after the hearing ~~hearing~~ after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application. ~~within a~~

~~period of time he deems appropriate which shall not exceed ten days.~~

(d) Within ten days after the hearing or time for additional comment, the hearing officer shall prepare a written report summarizing the comments that were submitted regarding the application. The report shall include copies of all written comments submitted. Copies of the report shall be made available to the applicant or members of the public upon request. The ~~department~~ Department shall give full consideration to all comments contained in the hearing record in making its final determination on the application.

(e) In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of the application after which the public comment period will be considered closed and no other public comments will be considered in the final determination of the application.

Authority G.S. 74-51; 74-63; 74-86.

15A NCAC 05B .0112 PERMIT APPLICATION PROCESSING FEES

(a) A nonrefundable permit application processing fee, in the amounts stated in G.S. 74-54.1, Paragraphs (b), (c) and (d) of this Rule, shall be paid when an application for a new mining ~~permit~~ permit or a permit modification, ~~or a renewal permit or transfer~~ is filed in accordance with G.S. 74-51 or G.S. 74-52 and ~~15A NCAC 5B .0003, .0004, and .0005.~~ the rules of this Subchapter.

- (1) The acreage for a new permit application shall include the total acreage contained within the permitted area.
- (2) The acreage for a permit modification shall be limited to the increase in proposed acreage of affected land internal to the existing permitted area plus any new acreage proposed to be added to the permitted area beyond the existing permit boundary.
- (3) The fee for a permit transfer shall remain a flat fee regardless of acreage.
- (4) For purposes of calculations pursuant to G.S. 74-54.1, the referenced acreage ranges shall include anything less than 26 acres as "0-25 acres" and anything equal to or greater than 26 acres as "26+ acres".

(b) ~~No fee is required for administrative changes initiated by the Director.~~

~~(b) A non-refundable fifty dollar (\$50.00) permit application processing fee is required for minor permit modifications. Minor permit modifications include administrative changes such as ownership transfers, name changes, and bond substitutions. A minor permit modification also includes lands added to a permitted area, outside of the minimum permit buffer zone requirements, where no plans for mining related disturbance of the added lands have been approved. All other changes to the permit are major modifications. No fee is required for administrative changes initiated by the Director to correct processing errors, to change permit standards or to implement new standards.~~

~~(c) A non-refundable fifty dollar (\$50.00) permit application processing fee is required for permit renewal of an inactive site, provided that any previously disturbed areas have been reclaimed in a manner acceptable to the Department. Once renewed, prior to initiating any mining related disturbance, an application for a major modification and a processing fee shall be submitted to and approved by the Department. For purposes of this Paragraph, and notwithstanding Paragraph (d) of this Rule, the acreage for a major modification shall be the total acreage at the site. All other modifications to the renewed permit shall be governed by Paragraphs (b) and (d) of this Rule.~~

~~(d) (c) For the purposes of this Rule, acres for new permits and renewal permits means the total acreage at the site; and acres for major modification of permits means that area of land affected by the modification within the permitted mine area, or any additional land that is to be disturbed and added to an existing permitted area, or both. Each permit application shall be deemed incomplete until the permit application processing fee is paid. Schedule of Fees:~~

TYPE	ACRES	MAJOR		
		NEW PERMIT	MODIFICATION	RENEWAL
CLAY	1 but less than 25	\$ 500	\$ 250	\$ 250
	25 but less than 50	1000	500	500
	50 or more	1500	500	500
SAND & GRAVEL,	1 but less than 5	150	100	100

PROPOSED RULES

GEMSTONE AND BORROW PITS	5 but less than 25	250	400	400
QUARRY, INDUSTRIAL MINERALS, DIMENSION STONE	25 but less than 50	500	250	500
	50 or more	1000	500	500
PEAT & 1 or more PHOSPHATE GOLD (HEAP LEACH), TITANIUM & OTHERS	1 but less than 10	250	400	400
	10 but less than 25	1000	250	500
	25 but less than 50	1500	500	500
	50 or more	2500	500	500

(e) ~~Payment of the permit application processing fee shall be by check or money order made payable to the "N.C. Department of Environment, Health, and Natural Resources". The payment shall refer to the new permit, permit modification or permit renewal.~~

(f) ~~In order to comply with the limit on fees set forth in G.S. 143B-290(4)b, the Director shall, in the first half of each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.~~

(c) Any new permit issued between September 1 and December 31 shall not be required to pay the annual operating fee or submit the annual reclamation report for that same calendar year.

Authority G.S. 143B-290.

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

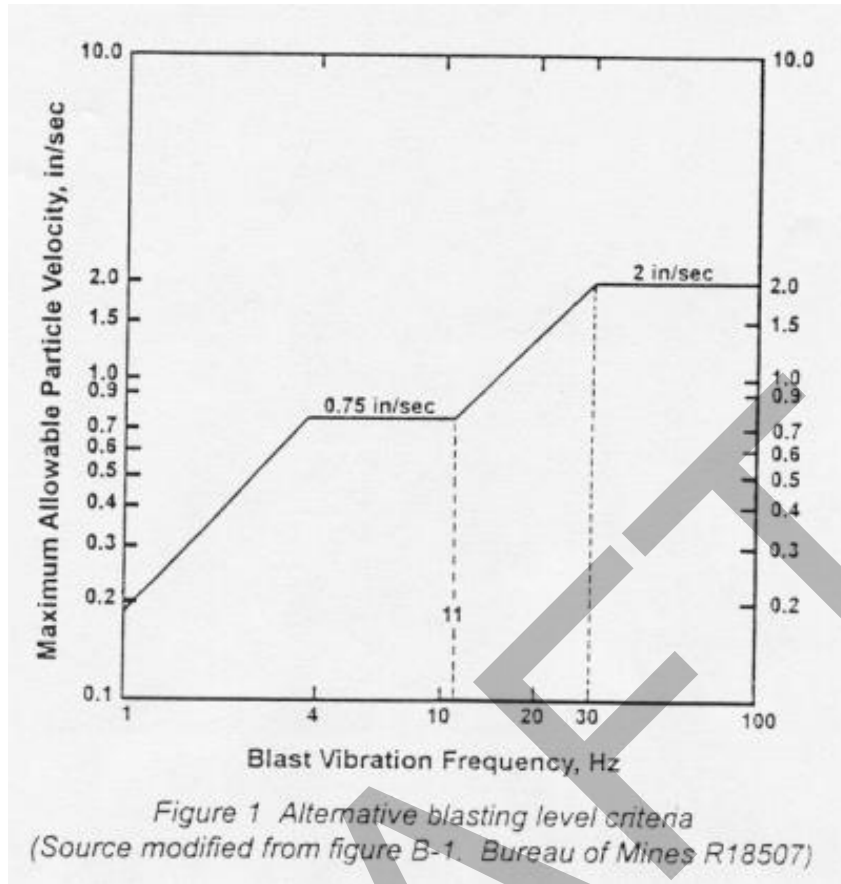
An applicant or permittee shall submit to the Department supplemental information regarding an application for a new ~~permit or modified, permit, or permit renewal or permit transfer~~ within 180 days after the date of receipt of the Department's written ~~request(s) request~~ for such information. 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.~~

Authority G.S. 74-51; 74-52; 74-63; 143B-290.

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 building outside of the permitted area such as a dwelling house, church, school, or public, commercial, or institutional building.



(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:

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

- $W \equiv$ Maximum charge weight of explosives per delay period of 8 milliseconds or more (pounds).
- $D \equiv$ Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator. (feet).
- $Ds \equiv$ Scaled distance factor.
- $V \equiv$ 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 building 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 Handbook 17th Edition ISBN:1-892396-00-9

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

$$dB = 20 \log \left(\frac{P}{2.9 \times 10^{-9}} \right)$$

- $P \equiv$ Airblast overpressure average burial (pounds per square inch).
- $W \equiv$ Maximum charge weight of explosives per delay period of 8 milliseconds or more (pounds).

PROPOSED RULES

- D = Distance from the blast site to the nearest inhabited building 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.

Authority G.S. 74-51; 74-63.

15A NCAC 05B .0115 MINING PERMIT TRANSFERS

(a) Pursuant to G.S. 74-51(i), a permit may be transferred from one operator to another, if both operators have complied with the requirements of the Act. The sale or lease of the operation alone does not constitute an approved transfer of the permit. Until a permit has been transferred by the Department to the successor operator, the existing operator shall be held responsible for any activities at the site, including liability for any documented violations at the site. Liability shall remain with the existing operator until such violations have been addressed to the satisfaction of the Department and the Department has transferred the permit in its entirety to the successor operator.

(b) A valid permit may be transferred from one operator to another provided the following information has been submitted on a form furnished by the Department:

- (1) A signed statement from the existing operator requesting that the permit be transferred to the successor operator. The existing mine name and permit number shall be identified in the statement.
- (2) A non-refundable permit transfer processing fee pursuant to G.S. 74-54.1(a).
- (3) A signed statement from the successor operator identifying the existing mine name and permit number, requesting that the permit be transferred in its entirety, and accepting all responsibilities and liabilities for the site with respect to the Article.

(4) A mine map showing the successor operator's name and contact information, current mining permit boundary, acreage table, and reference to current permit number and conditions.

(5) The information required in Rule .0104(a)(1) through (a)(4) and (a)(12) through (15) of this Section.

(6) 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.

(7) An acceptable security in the amount determined in Rule .0103 of this Section and using the forms established in Rule .0103 of this Section covering the site. The security shall be issued in the same successor operator name used in the permit transfer application.

(c) The permit transfer application shall be submitted to the Department no later than 60 days from the execution of any purchase or lease agreement associated with a change in the responsibility for operation of the permitted site.

(d) Any pit expansion or other land disturbing activity anticipated within the permitted area not previously approved by the Department shall require a permit modification. Expansion of

permit boundaries to include additional land under the permit shall require a permit modification.

(e) Upon approval of the permit transfer, responsibility for the full extent of the existing permitted area shall be transferred to the successor operator unless the Department has authorized the release of a portion of the permitted area from reclamation liability.

(f) Upon approval of the permit transfer, the Department shall send the new permit document to the successor operator. Such permit may include updated operating and reclamation conditions to ensure compliance with the Article.

(g) The prior operator shall be notified by the Department of the completed permit transfer and that the prior operator has been released from further liability with respect to the permit for the site. The security posted by the prior operator to cover reclamation obligations at the site shall be returned by the Department to the prior operator provided the security is no longer needed to cover other permitted sites under the prior operator's name.

(h) Permit transfers due to corporate name changes shall comply with Rule .0116 of this Section.

Authority G.S. 74-51; 74-54.1; 74-63.

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

(a) In the event that the corporate name of the operator holding the permit changes, the operator shall submit a permit transfer application as follows to the Department within 60 calendar days of the effective date of the corporate name change:

- (1) A letter identifying the existing and new corporate names, the effective date of the new corporate name, any changes in company officers and associated contact information, and each mining permit number and mine name impacted by the corporate name change.
- (2) The Secretary of State corporate filing certificate or other legal paperwork verifying the new corporate name is registered in North Carolina.
- (3) A non-refundable permit transfer processing fee for each permit affected by the corporate name change pursuant to G.S. 74-54.1(a).
- (4) An updated or new security in the new corporate name, including any associated contact information. The updated or new security shall be in the same amount as the prior security covering the reclamation obligations at the site.
- (5) 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.

(b) Upon approval of the corporate name change, the Department shall send a letter with the updated pages of the relevant permits to the operator to attach to the existing relevant permits.

Authority G.S. 74-50; 74-51; 74-54.1; 74-63.

15A NCAC 05B .0117 DRAFT PERMITS

Upon approval of an application prior to receipt of any performance bond or security, new or updated, any operating permit generated by the Department shall be considered a preliminary draft and shall not be considered issued or binding, regardless of whether the draft is shared with the applicant. Where a new or modified performance bond or other security is required pursuant to G.S. 74-54, timely approval of an application, pursuant to G.S. 74-51(h), shall satisfy the requirement to grant a permit within the deadlines included in G.S. 74-51(b).

Authority G.S. 74-51; 74-63.

SUBCHAPTER 05F - CIVIL PENALTIES

15A NCAC 05F .0101 PURPOSE AND SCOPE

These rules set forth the procedures and standards to be followed by the ~~director~~ Director in assessing civil penalties. Penalties and by the Mining and Energy Commission in hearing appeals from the assessment of such penalties.

Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10.

15A NCAC 05F .0103 WHO MAY ASSESS

Civil penalties may be assessed by the ~~director~~ Director.

Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10.

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

(a) Prior to the assessment of any civil penalty for mining without a permit, the alleged violator shall be given notice by registered or certified mail, return receipt requested. ~~requested, signed by the Regional engineer in the region in which the violation occurred.~~ The notice shall describe the ~~violation with reasonable particularity,~~ violation, order the violator ~~immediately~~ to cease mining until a valid operating permit has been obtained, and specify a time period ~~reasonably~~ calculated to permit the restoration of any disturbed ~~area, area as deemed necessary by the regional engineer.~~ The notice shall also state that a civil penalty may be assessed for any violation.

(b) In determining whether to assess a civil penalty for any violation committed prior or subsequent to receipt of the notice of violation, the ~~director~~ Director shall consider whether the violator ceased mining, restored the affected area, or otherwise complied with the requirements of the notice of violation. ~~Violation and shall also consider the various criteria in Rule 5F-.0007.~~ The civil penalty assessment shall specify ~~with reasonable particularity~~ the violation(s) for which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return receipt requested.

Authority G.S. 74-60; 74-61; 74-63; 74-64; 143-B-10.

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

(a) ~~Prior to the assessment of a civil penalty against a permitted operator for violating any provisions of the Mining Act of 1971, or any rules promulgated thereunder, or any conditions of his mining permit, the alleged violator or his agent shall be given notice by registered or certified mail, return receipt requested, signed by the director. The notice shall describe the violation with reasonable particularity and specify a time period reasonably calculated to permit the violator to correct the violation. The notice shall also state that civil penalties may be assessed against the alleged violator if he fails to correct the violation within the specified time.~~

(b) If the violator does not comply with the requirements of the notice of violation within the time period specified in the notice, the ~~director~~ Director may assess a civil penalty for any violation(s) committed after the date of receipt of the notice of violation. The civil penalty assessment shall specify ~~with reasonable particularity~~ the violation(s) for which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return receipt requested.

Authority G.S. 74-60; 74-61; ~~74-62~~; 74-63; 74-64; 143B-10.

15A NCAC 05F .0111 REFERRAL TO ATTORNEY GENERAL

(a) ~~If the person against whom a civil penalty is assessed, fails to respond within 60 days as provided in Rule .0008, the director shall refer the matter to the Attorney General to recover the amount of the civil penalty.~~

(b) ~~If payment of any civil penalty assessed pursuant to the rules of this Subchapter is not received by the director within 30 days following denial of any appeal pursuant to G.S. 74-61 and G.S. 74-62 the director shall refer the matter to the Attorney General to recover the amount of the civil penalty.~~

Authority G.S. 74-61; ~~74-62~~ 74-63; 74-64; 143B-10.

15A NCAC 05F .0112 FURTHER REMEDIES

~~No provision of this Subchapter shall be construed to restrict or impair the right of the director or the Mining and Energy to pursue any other remedy provided by law for violations of the Mining Act of 1971 or the rules of this Chapter.~~

Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10.

SUBCHAPTER 05G - URANIUM EXPLORATION REGULATIONS

15A NCAC 05G .0103 PROCEDURES FOR OBTAINING PERMITS

The application for and issuance of exploration permits is governed by the procedures in this Subchapter.

Authority G.S. 74-77 through 74-89.

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

(a) After reviewing an application, the ~~department~~ Department shall determine whether it should be approved and notify the applicant of its determination. No application shall be approved unless it contains an abandonment plan acceptable to the ~~department~~ Department. If the application is approved, the ~~department~~ Department shall ~~will~~ determine the amount of the performance bond that ~~is~~ will be required and issue to the applicant a bond form to be used in securing the bond. A person shall not engage in exploration activity for the discovery of uranium until a bond in the required amount has been filed with the ~~department~~ Department and an exploration permit has been issued.

(b) The required amount of the bond shall ~~that will be required is to be~~ determined as follows:

- (1) The applicant shall provide the ~~department~~ Department with an estimate of the total length of the vehicular access roads ~~that~~ which will involve the cutting of vegetation and/or grading and of the number of exploratory drill holes and test pits;
- (2) The minimum amount of any bond shall be five thousand dollars (\$5,000.00). In addition to the minimum bond amount of five thousand dollars (\$5,000.00), an additional bond amount shall be required at the rate of two dollars (\$2.00) per each linear foot of vehicular access road and of two hundred dollars (\$200.00) per each exploratory drill hole or test pit; and
- (3) If the ~~department~~ Department determines that the amount of the bond required under Subparagraph (b)(2) of this Rule is ~~either excessive or inadequate to complete the required abandonment, due to specific site conditions,~~ the ~~department~~ Department may negotiate a different bond amount that ~~shall~~ will assure adequate abandonment in the event of bond forfeiture.

(c) A permittee shall be in violation of its permit if the length of the vehicular access roads or the number of exploratory drill holes or test pits exceeds the length or number authorized by the amount of its bond.

Authority G.S. 74-78; 74-79; 74-86.

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

The methods and procedures utilized in drilling, casing, testing and abandonment shall be in accordance with the requirements ~~of Title 15A NCAC Subchapter 2C, of 15A NCAC 02C~~ Section .0100, Criteria and Standards Applicable to Water Supply and Certain Other Type Wells, and is hereby incorporated by reference, including subsequent amendments.

Authority G.S. 74-78; 74-86; 143B-290.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 34 - FUNERAL SERVICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Funeral Service intends to adopt the rules cited as 21 NCAC 34B .0807, .0808; 34D .0305, amend the rules cited as 21 NCAC 34A .0201; 34B .0103, .0105- .0107, .0120, .0211, .0310, .0313, .0408, .0502, .0608, .0610, .0616, .0617, .0801-.0803, and repeal the rules cited as 21 NCAC 34A .0122; 34B .0618; and 34C .0101.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://ncbfs.org/>

Proposed Effective Date: March 1, 2026

Public Hearing:

Date: November 19, 2025

Time: 10:00 a.m.

Location: 1033 Wade Ave, Ste 108, Raleigh, NC 27605

Reason for Proposed Action:

- 21 NCAC 34A .0122 – G.S. 90-210.26 repealed per SL 2025-76 (approved July 9, 2025) (repealed)
- 21 NCAC 34A .0201 – New credentials for which fees are authorized were created by SL 2025-76 (approved July 9, 2025) and this rule must be amended to reflect the amount of the fees to be assessed for the new credential type.
- 21 NCAC 34B .0103 – supervisors only need one year of practice, per change in SL 2025-76 (approved July 9, 2025) and the application process must be amended to reflect this statutory change.
- 21 NCAC 34B .0105 – supervisors only need one year of practice, per change in SL 2025-76 (approved July 9, 2025) and the application process must be amended to reflect this statutory change.
- 21 NCAC 34B .0106 – supervisors only need one year of practice, per change in SL 2025-76 (approved July 9, 2025) and the application process must be amended to reflect this statutory change.
- 21 NCAC 34B .0107 – supervisors only need one year of practice, per change in SL 2025-76 (approved July 9, 2025) and the application process must be amended to reflect this statutory change.
- 21 NCAC 34B .0120 – SL 2025-76 (approved July 9, 2025) now requires an affidavit attesting to a resident trainee’s competencies upon certification of traineeship and the rule is amended to reflect the requirements of this affidavit.
- 21 NCAC 34B .0211 – SL 2025-76 (approved July 9, 2025) increased the amount of time for which NBE are valid and the rule must be amended to reflect this statutory change.

- 21 NCAC 34B .0310 – SL 2025-76 (approved July 9, 2025) modified requirements to hold unaffiliated permit and the application process must be amended to reflect this statutory change
- 21 NCAC 34B .0313 – SL 2025-76 (approved July 9, 2025) eliminates supervision requirements for provisional licensees and the application process must be amended to reflect this statutory change.
- 21 NCAC 34B .0408 – SL 2025-76 (approved July 9, 2025) provided authority as to an amount of fees to assess for Board-sponsored CE program and classes are ongoing through the Fall of 2025.
- 21 NCAC 34B .0502 – SL 2025-61 (approved July 3, 2025) provides new pathway for licensure for individuals licensed in neighboring states and the application process is amended to reflect this alternative licensure pathway. SL 2025-76 also modifies the eligibility requirements for reciprocal licensure, for which the application process must be amended.
- 21 NCAC 34B .0608 – SL 2025-76 (approved July 9, 2025) creates new licensure status for branch establishments, and the application process must be codified.
- 21 NCAC 34B .0610 – SL 2025-76 (approved July 9, 2025) creates new licensure status for branch establishments and renewal applications will be promulgated to the regulated public by December 1, 2025.
- 21 NCAC 34B .0616 - SL 2025-76 (approved July 9, 2025) modified the manner in which body tags are applied to dead human bodies
- 21 NCAC 34B .0617 – SL 2025-76 (approved July 9, 2025) expands waiver period and renders existing rule contrary to statute as currently written
- 21 NCAC 34B .0618 – SL 2025-76 (approved July 9, 2025) expands waiver period and renders existing rule contrary to statute as currently written (repeal)
- 21 NCAC 34B .0801 – SL 2025-76 (approved July 9, 2025) requires new license type for Transportation Services and new definitions must be added to existing rule to distinguish Transportation Services permit from existing Transporter permit.
- 21 NCAC 34B .0802 – SL 2025-76 (approved July 9, 2025) requires new license type for Transportation Services and amendment is necessary to distinguish existing Transporter permit renewal application process from Transportation Services permit renewal application process.
- 21 NCAC 34B .0803 – SL 2025-76 (approved July 9, 2025) requires new license type for Transportation Services and amendment is necessary to distinguish existing Transporter permit renewal application process from Transportation Services permit renewal application process.
- 21 NCAC 34B .0807 – SL 2025-76 (approved July 9, 2025) requires new license type for Transportation Services and the application process must be codified
- 21 NCAC 34B .0808 – SL 2025-76 (approved July 9, 2025) requires new license type for Transportation Services and renewal application process must be codified before renewal applications are made available to the regulated public by December 1, 2025.
- 21 NCAC 34C .0101 – SL 2025-76 (approved July 9, 2025) repeals G.S. 90-210.122 (Crematory Authority), effective October 1, 2025. (repeal)

PROPOSED RULES

- 21 NCAC 34D .0305 – SL 2025-76 (approved July 9, 2025) now permits this type of transfer of preneed funds

Comments may be submitted to: Amy Acord, 1033 Wade Ave, Ste 108, Raleigh, NC 27605; phone (919) 733-9380; email aacord@ncbfs.org

Comment period ends: December 31, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

SUBCHAPTER 34A - BOARD FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 34A .0122 CHARACTER AFFIDAVIT FORM

Authority G.S. 90-210.23(a); 90-210.26.

SECTION .0200 - FEES AND OTHER PAYMENTS

21 NCAC 34A .0201 FEES AND OTHER PAYMENTS

(a) Fees for funeral service shall be as follows:

<u>Funeral Establishment</u> permit	<u>Establishment</u> and <u>Branch</u>	<u>Funeral</u>
Application		\$250.00
Annual renewal		\$200.00
Late renewal fee		\$100.00
Establishment and embalming facility reinspection fee		\$100.00
Courtesy card		
Application		\$ 75.00
Annual renewal		\$ 50.00
Out-of-state licensee		

Application	\$200.00
Embalmer, funeral director, funeral service Application, North Carolina resident	\$150.00
Application, non-resident	\$200.00
Annual renewal	
Embalmer	\$ 75.00
Funeral Director	\$ 75.00
Total fee, embalmer and funeral director, when both are held by same person	\$ 100.00
Funeral service	\$ 100.00
Inactive status	\$ 30.00
Reinstatement fee	\$ 50.00
Resident trainee permit	
Application	\$ 50.00
Voluntary change in supervisor	\$ 50.00
Annual renewal	\$ 35.00
Late renewal	\$ 25.00
Duplicate License certificate	\$ 25.00
Chapel registration	
Application	\$150.00
Annual renewal	\$100.00
Late renewal	\$ 75.00

(b) Fees for crematory and hydrolysis licensees shall be as follows:

License	
Application	\$400.00
Annual renewal	\$150.00
Late renewal fee	\$ 75.00
Crematory or hydrolysis reinspection fee	\$100.00
Per-cremation or hydrolysis fee	\$ 10.00
Late filing or payment fee for each cremation or hydrolysis	\$ 10.00
Late filing fee for cremation or hydrolysis report, per month	\$ 75.00
Crematory or Hydrolysis Manager Permit	
Application	\$150.00
Annual renewal	\$ 40.00

(c) Fees for preneed funeral contract regulation shall be as follows:

Preneed funeral establishment license	
Application	\$150.00
Annual renewal	\$150.00
Late renewal fee	\$100.00
Reinspection fee	\$100.00
Preneed sales license	
Application	\$ 20.00
Annual renewal	\$ 20.00
Late renewal fee	\$ 25.00
Preneed contract filings	
Filing fee for each contract	\$ 20.00
Late filing or payment fee for each contract	\$ 25.00
Late filing fee for each certificate of performance	\$ 25.00
Late filing fee for annual report	\$150.00

(d) Fees for Removal and Transportation Permits shall be as follows:

<u>Individual Transporter Permit Application</u>	\$125.00
<u>Annual renewal</u>	\$ 75.00
<u>Late fee</u>	\$ 50.00
<u>Transportation Service Permit Application</u>	\$200.00
<u>Annual renewal for Individual Transporter or Transportation Service Permit</u>	\$ 75.00
<u>Late fee</u>	\$ 50.00

(e) ~~All fees remitted to the Board are non-refundable. Registration fee for Board-sponsored continuing education shall be \$50.00.~~

(f) All fees remitted to the Board are non-refundable.

Authority G.S. 90-210.23(a); 90-210.25(c); 90-210.28; 90-210.67(b),(c),(d),(d1); 90-210.68(a); 90-210.132.

SUBCHAPTER 34B - FUNERAL SERVICE

SECTION .0100 - RESIDENT TRAINEES

21 NCAC 34B .0103 AUTHORIZED PRACTICE: SUPERVISION

(a) Duly certified resident trainees in training for funeral service, duly certified resident trainees in training for funeral directing and duly certified resident trainees in training for embalming, while participating in learning experiences and while supervised by a person licensed by the Board as a funeral service licensee, funeral director or embalmer, respectively, may assist in the practice of funeral service, funeral directing or embalming respectively, as limited by this Rule.

(b) A licensee wishing to supervise a trainee shall meet the following requirements:

- (1) The licensee shall have either practiced continuously in North Carolina for a minimum of ~~five years~~ one year before the date of the ~~application, or shall have taken a trainee supervisor certification course provided by the Board;~~ application; and
- (2) The licensee shall not have any disciplinary action taken by the Board or the licensing board of any other jurisdiction to suspend or revoke his or her license during the five years preceding the application.

(c) Duly certified resident trainees in training for funeral service or for funeral directing, while participating in learning experiences and while supervised by a person licensed by the Board as a preneed sales licensee, may also assist in the preneed funeral planning activities described in 21 NCAC 34D .0202(b)(1), (2), (4), and (5).

(d) No credit shall be given for the resident trainee's work that is unsupervised or performed under the supervision of a person not registered with the Board as the resident trainee's supervisor. If the registered supervisor does not supervise the resident trainee for a continuous period of more than two weeks, the traineeship under that supervisor shall terminate, requiring a new traineeship application. When a resident trainee assists in funeral service, funeral directing, embalming or preneed funeral planning on the funeral home premises, a licensed supervisor shall be on the funeral home premises where and while such activities are performed; provided that a licensed supervisor shall be present in

the same room whenever a resident trainee accepts any initial payment or negotiates any contract for funeral services either at-need or pre-need with the public. When a resident trainee assists in funeral service, funeral directing, embalming or any funeral planning off the funeral home premises, such activities shall be performed only in the presence of a licensed supervisor employed with the establishment with which the resident trainee is registered.

(e) A licensed supervisor shall review with the purchaser any contract negotiated by a resident trainee, and then the licensed supervisor shall obtain the purchaser's signature on the contract in the licensed supervisor's presence.

(f) The resident trainee's license certificate for indicating the trainee's authority to assist in the activities described and authorized in this Rule and in 21 NCAC 34D .0202(b) is the resident trainee pocket certificate.

Authority G.S. 90-210.23(a),(f); 90-210.25(a)(4),(5)d.; 90-210.67(a); 90-210.69(a).

21 NCAC 34B .0105 FUNERAL DIRECTOR TRAINEE APPLICATION FORM

Applications for a funeral director resident trainee shall be made on forms ~~provided by the Board. The applicant shall furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.~~ available on the Board's website at ncbsf.org. Applications not completed within 30 days following submission to the Board shall be denied. All applications for registration as a funeral director resident trainee shall contain the following:

- (1) The applicant's full name, date of birth, place of birth, and social security number;
- (2) The applicant's email address, residential address, and phone number(s);
- (3) The high school from which the applicant graduated and the date of graduation and a copy of an original certified transcript attesting to the applicant's graduation from high school;
- (4) Whether the applicant attended a funeral director program at a mortuary science college and, if so, the name of the mortuary science college, dates of attendance, date of graduation if any, and how many semester hours the applicant completed;
- (5) Whether the applicant has taken the National Board Examination – Arts and, if so, the date on which the examination was taken and whether the applicant passed the examination;
- (6) Whether the applicant has taken the National Board Examination – Sciences and, if so, the date on which the examination was taken and whether the applicant passed the examination;
- (7) The name, address, licensed manager, mailing address, email address, telephone number, and facsimile number of the funeral establishment

- at which the applicant's traineeship will be performed;
- (8) The applicant's employment history over the preceding five years, to include the name and address of the employer, the dates of employment, and the nature of the work performed;
- (9) Whether the applicant ever has been certified, licensed, or registered to practice funeral service by the Board or by another occupational licensing board and, if so, the type of credential, the jurisdiction of issuance, the issuance date, the expiration date, and any examinations taken to obtain the credential;
- (10) Whether the applicant ever has been denied a credential in another state and, if so, the jurisdiction and the reason for the denial of the credential;
- (11) Whether the applicant has been convicted of a felony or misdemeanor crime and, if so, a statement providing the jurisdiction, charge, date of disposition, and sentence imposed of each conviction;
- (12) Whether the applicant has any criminal charges currently pending and, if so, the nature of the charge and the jurisdiction in which the charge is pending;
- (13) Whether the applicant has had an occupational or business license suspended or revoked by any local, state, or federal agency and, if so, a statement providing the reason for the action and the date, location, and circumstances of any violation that led to action against the license;
- (14) Whether any court, board, agency, or professional organization has found applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal and the date of the finding;
- (15) Whether the applicant has any charges pending before any court, board, agency, or professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal in which the charge is pending;
- (16) The applicant's notarized signature to certify that:
 - (A) he or she has prepared the application and has read the answers;
 - (B) the information provided in the application is true;
 - (C) he or she understands that the Board may make inquiries about the applicant, including criminal record checks, and any of the information given in support of the application; and
 - (D) he or she understands that any credential issued shall be governed by

the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board.

- (17) The proposed supervisor's attestation that:
 - (A) he or she is a duly licensed funeral director or funeral service licensee in North Carolina;
 - (B) he or she is employed by the establishment at which the traineeship will occur;
 - (C) he or she has been licensed for at least one year and has not had any disciplinary action taken against his or her credential to practice funeral service within the previous five years; and
 - (D) he or she will notify the Board when the applicant ceases training under the proposed supervisor;
- (18) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid; and
- (19) A photograph of the applicant that is two inches by two inches in size, depicting the applicant facing the camera and without digital alteration.

Authority G.S. 90-210.23(a); 90-210.25(a)(4).

21 NCAC 34B .0106 EMBALMER TRAINEE APPLICATION FORM

Applications for registration as an embalmer resident trainee shall be made on forms provided by the Board. ~~The applicant shall furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application.~~ Applications not completed within 30 days following submission to the Board shall be denied. All applications for registration as a funeral service resident trainee shall contain the following:

- (1) The applicant's full name, date of birth, place of birth, and social security number;
- (2) The applicant's email address, residential address, and phone number(s);
- (3) The high school from which the applicant graduated and the date of graduation and a copy of an original certified transcript attesting to the applicant's graduation from high school;
- (4) Whether the applicant attended a mortuary science college and, if so, the name of the mortuary science college, dates of attendance, date of graduation if any, and how many semester hours the applicant completed;

- (5) Whether the applicant has taken the National Board Examination – Arts and, if so, the date on which the examination was taken and whether the applicant passed the examination;
- (6) Whether the applicant has taken the National Board Examination – Sciences and, if so, the date on which the examination was taken and whether the applicant passed the examination;
- (7) The name, address, licensed manager, mailing address, email address, telephone number, and facsimile number of the funeral establishment at which the applicant's traineeship will be performed;
- (8) The applicant's employment history over the preceding five years, to include the name and address of the employer, the dates of employment, and the nature of the work performed;
- (9) Whether the applicant has ever been certified, licensed, or registered to practice funeral service by the Board or by another occupational licensing board and, if so, the type of credential, the jurisdiction of issuance, the issuance date, the expiration date, and any examinations taken to obtain the credential;
- (10) Whether the applicant ever has been denied a credential in another state and, if so, the jurisdiction and the reason for the denial of the credential;
- (11) Whether the applicant has been convicted of a felony or misdemeanor crime and, if so, a statement providing the jurisdiction, charge, date of disposition, and sentence imposed of each conviction;
- (12) Whether the applicant has any criminal charges currently pending and, if so, the nature of the charge and the jurisdiction in which the charge is pending;
- (13) Whether the applicant has had an occupational or business license suspended or revoked by any local, state, or federal agency and, if so, a statement providing the reason for the action and the date, location, and circumstances of any violation that led to action against the license;
- (14) Whether any court, board, agency, or professional organization has found applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal and the date of the finding;
- (15) Whether the applicant has any charges pending before any court, board, agency, or professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal in which the charge is pending;
- (16) The applicant's notarized signature to certify that:
 - (A) he or she has prepared the application and has read the answers;
 - (B) the information provided in the application is true;
 - (C) he or she understands that the Board may make inquiries about the applicant, including criminal record checks, and any of the information given in support of the application; and
 - (D) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board.
- (17) The proposed supervisor's attestation that:
 - (A) he or she is a duly licensed funeral service licensee in North Carolina;
 - (B) he or she is employed by the establishment at which the traineeship will occur;
 - (C) he or she has been licensed for at least one year and has not had any disciplinary action taken against his or her credential to practice funeral service within the previous five years; and
 - (D) he or she will notify the Board when the applicant ceases training under the proposed supervisor;
- (18) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid; and
- (19) A photograph of the applicant that is two inches by two inches in size, depicting the applicant facing the camera and without digital alteration.

Authority G.S. 90-210.23(a); 90-210.25(a)(4).

21 NCAC 34B .0107 FUNERAL SERVICE TRAINEE APPLICATION FORM

Applications for registration as a funeral service resident trainee shall be made on forms ~~applications provided by the Board. The form shall require the applicant to furnish the applicant's photograph, name, address and biographical data; education; employment history; criminal convictions; verification by the applicant; an affidavit of a licensee that the trainee is serving under him or her; and any other information the Board deems necessary as required by law. A transcript of the applicant's high school record must accompany the application. available on the Board's website at ncdfs.org. Applications not completed within 30 days following submission to the Board shall be denied. All applications for registration as an funeral service resident trainee shall contain the following:~~

- (1) The applicant's full name, date of birth, place of birth, and social security number;
- (2) The applicant's email address, residential address, and phone number(s);
- (3) The high school from which the applicant graduated and the date of graduation and a copy of an original certified transcript attesting to the applicant's graduation from high school;
- (4) Whether the applicant attended a mortuary science college and, if so, the name of the mortuary science college, dates of attendance, date of graduation if any, and how many semester hours the applicant completed;
- (5) Whether the applicant has taken the National Board Examination – Arts and, if so, the date on which the examination was taken and whether the applicant passed the examination;
- (6) Whether the applicant has taken the National Board Examination – Sciences and, if so, the date on which the examination was taken and whether the applicant passed the examination;
- (7) The name, address, licensed manager, mailing address, email address, telephone number, and facsimile number of the funeral establishment at which the applicant's traineeship will be performed;
- (8) The applicant's employment history over the preceding five years, to include the name and address of the employer, the dates of employment, and the nature of the work performed;
- (9) Whether the applicant has ever been certified, licensed, or registered to practice funeral service by the Board or by another occupational licensing board and, if so, the type of credential, the jurisdiction of issuance, the issuance date, the expiration date, and any examinations taken to obtain the credential;
- (10) Whether the applicant ever has been denied a credential in another state and, if so, the jurisdiction and the reason for the denial of the credential;
- (11) Whether the applicant has been convicted of a felony or misdemeanor crime and, if so, a statement providing the jurisdiction, charge, date of disposition, and sentence imposed of each conviction;
- (12) Whether the applicant has any criminal charges currently pending and, if so, the nature of the charge and the jurisdiction in which the charge is pending;
- (13) Whether the applicant has had an occupational or business license suspended or revoked by any local, state, or federal agency and, if so, a statement providing the reason for the action and the date, location, and circumstances of any violation that led to action against the license;
- (14) Whether any court, board, agency, or professional organization has found applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal and the date of the finding;
- (15) Whether the applicant has any charges pending before any court, board, agency, or professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal in which the charge is pending;
- (16) The applicant's notarized signature to certify that:
 - (A) he or she has prepared the application and has read the answers;
 - (B) the information provided in the application is true;
 - (C) he or she understands that the Board may make inquiries about the applicant, including criminal record checks, and any of the information given in support of the application; and
 - (D) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board.
- (17) The proposed supervisor's attestation that:
 - (A) he or she is a duly licensed funeral service licensee in North Carolina;
 - (B) he or she is employed by the establishment at which the traineeship will occur;
 - (C) he or she has been licensed for at least one year and has not had any disciplinary action taken against his or her credential to practice funeral service within the previous five years; and
 - (D) he or she will notify the Board when the applicant ceases training under the proposed supervisor;
- (18) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid; and
- (19) A photograph of the applicant that is two inches by two inches in size, depicting the applicant facing the camera and without digital alteration.

Authority G.S. 90-210.23(a); 90-210.25(a)(4).

21 NCAC 34B .0120 TRAINEE FINAL AFFIDAVIT FORM AFFIDAVITS

Upon (a) Within 30 days following the conclusion of a resident traineeship with a licensed supervisor, the supervisor shall submit

to the Board an affidavit to certify that the trainee has served and performed certain work under him as required by G.S. 90-210.25(a)(4). The affidavit shall be submitted ~~within 30 days~~ on forms provided by the Board and ~~require the affiant to furnish the names of the licensee and the trainee; dates and place of service; the number of funerals, preneed funeral contracts and embalmings that the trainee has assisted in during traineeship; and any other information the Board deems necessary as required by law.~~ shall provide the supervisor's license number and notarized attestation to the following information:

- (1) the name of the trainee and the dates during which the trainee worked under the supervisor's supervision;
- (2) whether the trainee has completed the minimum number of funeral service activities during his or her traineeship required by G.S. 90-210.25(a)(4)(f) and, if not, the number of funeral service activities that the trainee completed; and
- (3) whether the trainee has completed the minimum number of hours as a resident trainee in the practice of funeral service required by 21 NCAC 34B .0102 and, if not, the number of hours completed during the resident traineeship.

(b) Within 30 days following the conclusion of a resident traineeship with a licensed supervisor, the supervisor shall submit to the Board an affidavit on a form prescribed by the Board, attesting to his or her opinion regarding the trainee's ability to competently perform the tasks related to the practice of funeral service set forth in Rule .0126 of this Section.

(c) The supervisor shall provide the trainee with a copy of the affidavits set forth in Paragraphs (a) and (b) of this Rule within five days of their submission to the Board.

Authority G.S. 90-210.23(a),(d),(f); 90-210.25(a)(4)f.; 90-210.67(a); 90-210.69(a).

SECTION .0200 - EXAMINATIONS

21 NCAC 34B .0211 NATIONAL BOARD CERTIFICATE

(a) Pursuant to G.S. 90-210.25(a)(5), a National Board Certificate for Arts, certifying the successful completion of the National Board Examination for Arts of the International Conference of Funeral Service Examining Boards Inc., is the equivalent of the Board's entry-level examination in funeral ~~directing.~~ directing, as defined by G.S. 90-210.20(11).

(b) Pursuant to G.S. 90-210.25(a)(5), a National Board Certificate for Sciences, certifying the successful completion of the National Board Examination for Sciences of the International Conference of Funeral Service Examining Boards Inc., is the equivalent of that portion of the Board's examination on the topics of embalming, restorative arts, chemistry, pathology, microbiology, and anatomy.

(c) National Board Certificates shall be accepted for ~~three~~ five years from the date of issue for eligibility toward licenses issued under G.S. 90-210.25(a)(1), (2), or (3).

Authority G.S. 90-210.20(11); 90-210.23(a); 90-210.25(a)(5).

SECTION .0300 – LICENSING

21 NCAC 34B .0310 PRACTICE OF FUNERAL SERVICE OR FUNERAL DIRECTING NOT AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED FUNERAL ESTABLISHMENT

(a) A funeral director or funeral service licensee registered to practice under G.S. 90-210.25(a2) shall not use its business office required by G.S. 90-210.25(a2)(2)a. to conduct the practice of funeral service or funeral directing. A funeral director or funeral service licensee shall not hold out to the public that its business office is a funeral establishment and shall not use a business name that misleads the public to believe that its business office is a funeral establishment or operates or maintains a facility that is a funeral establishment.

(b) An applicant to practice under the provisions of G.S. 90-210.25(a2) shall submit a form provided by the Board with an application ~~fee.~~ fee of two hundred fifty dollars (\$250.00). ~~The applicant shall furnish the name, address, telephone number, and county of location for the applicant and any business organization operating under the laws of North Carolina, the license number of the applicant, the location where the applicant shall shelter remains, the location where the applicant uses as an embalming facility, the name and license numbers of any other embalmers retained by a funeral director to embalm, and any other information the Board deems necessary as required by law.~~ The applicant shall complete a verification before a notary public. Applications that are not completed within 90 days following submission to the Board shall be denied.

(c) Applications for an unaffiliated practice permit shall be made on applications available on the Board's website at ncbfs.org. Applications not completed within 90 days following submission to the Board shall be denied. All applications for an unaffiliated practice permit shall contain the following:

- (1) The applicant's full name and license number;
- (2) The applicant's email address, residential address, mailing address, and phone number(s);
- (3) The name of the individual or entity that owns the unaffiliated practice;
- (4) Whether the entity or individual owning the unaffiliated practice is a sole proprietorship, partnership, corporation, or limited liability company;
- (5) If owned by a sole proprietor, the legal name of the sole proprietor;
- (6) If owned by a partnership, a copy of the applicant's partnership agreement;
- (7) If owned by a corporation, a copy of the applicant's Articles of Incorporation;
- (8) If owned by a limited liability company, a copy of the applicant's Articles of Organization;
- (9) If the applicant will conduct business in a different name than that of its owning entity, a copy of the applicant's Certificate of Assumed Name;

- (10) The names and respective ownership interest percentages of each sole proprietor, partner, LLC members, or corporate officers;
- (11) The name and address of the funeral establishment or embalming facility where embalming will occur;
- (12) The address of the location at which unaffiliated practice records will be held;
- (13) The name and address of the location where sheltering of remains will occur prior to moving remains to the location at which funeral services will be held;
- (14) The names, license type and license number of each funeral director, funeral service licensee, and embalmer working for the unaffiliated practice and whether said licensee is working on a full-time, part-time, or per case basis;
- (15) A copy of the General Price List, Casket Price List, Outer Burial Container Price List, and Statement of Funeral Goods and Services Selected intended for use by the applicant, as required by the FTC Funeral Rule, 16 C.F.R. Part 453;
- (16) Proof of the applicant's professional liability insurance with a minimum coverage amount of one million dollars (\$1,000,000.00);
- (17) Whether the applicant currently is in good standing with the North Carolina Secretary of State and, if so, documentation to establish proof of the same;
- (18) Whether, within the preceding two years, the applicant has been the subject of any investigation for employee misclassification and, if so, the results of the investigation;
- (19) The licensed manager's notarized signature to certify that:
 - (A) he or she has prepared the application and has read the answers;
 - (B) the information provided in the application is true;
 - (C) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding two year period, as prescribed by G.S. 143-789;
 - (D) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board; and
 - (E) the applicant owns, or was employed by, a funeral establishment directly damaged or destroyed by Hurricane Helene, to include the name of said funeral establishment and the type of

damage or destruction that said funeral establishment suffered.

- (20) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid.

(d) Renewal applications for an unaffiliated practice permit shall be made on applications available on the Board's website at ncbfs.org. All renewal applications for an unaffiliated practice permit shall contain all information required by Paragraph (c)(1)-(4), (c)(9)-(20) of this Rule.

Authority G.S. 90-210.20(h); 90-210.23(a); 90-210.25(a2)(2)a., b.; 90-210.27A(a), (i).

21 NCAC 34B .0313 PROCEDURES FOR PROVISIONAL LICENSURE

(a) Definitions. As used in this Rule:

- (1) ~~"Applicant" shall mean the person submitting an Application for Provisional License on a form made available by the Board on its website at ncbfs.org and providing: his or her contact information; social security number; date and place of birth; sex; education and employment experience; the location where provisional work will be done; whether the applicant currently or has ever been licensed to practice funeral service, funeral directing, or embalming in another jurisdiction; whether the applicant ever has had any occupational or business license denied, suspended, or revoked; whether the applicant ever has been convicted of any felony or misdemeanor crime other than traffic infractions; whether the applicant has been subject of any investigation for employee misclassification in the preceding two years; and payment of a non refundable fee pursuant to G.S. 90-210.25(a)(3a)a. ncbfs.org. Applicants shall provide the following information on the Application for Provisional License:~~

- (A) The applicant's full name, date of birth, place of birth, sex, and social security number;
- (B) The applicant's email address, residential address, mailing address, and phone number(s);
- (C) The name and address of the applicant's current employer and past employers over the five years preceding the application, to include the dates of employment and nature of the work performed by the applicant;
- (D) The name, address, phone number and email address of the funeral establishment at which the applicant's provisional funeral directing will be

- (E) performed, as well as the establishment's licensed manager;
name of each college or university attended by the application, the dates of attendance, and the graduation date and degree(s) obtained, if any;
- (F) A certified transcript from each college or university at which the applicant attended courses toward his or her attainment of the educational degree required by G.S. 90-210.25(a)(1), (2), (3);
- (G) Whether the applicant has completed an unexpired certified resident traineeship with the Board or is eligible for certification of a resident traineeship with the Board;
- (H) Whether the applicant has ever been certified, licensed, or registered to practice funeral service by the Board or by another occupational licensing board and, if so, the type of credential, the jurisdiction of issuance, the issuance date, the expiration date, and any examinations taken to obtain the credential;
- (I) Whether the applicant ever has been denied a credential in another state and, if so, the jurisdiction and the reason for the denial of the credential;
- (J) Whether the applicant has been convicted of a felony or misdemeanor crime and, if so, a statement providing the jurisdiction, charge, date of disposition, and sentence imposed of each conviction;
- (K) Whether the applicant has any criminal charges currently pending and, if so, the nature of the charge and the jurisdiction in which the charge is pending;
- (L) Whether the applicant has had an occupational or business license suspended or revoked by any local, state, or federal agency and, if so, a statement providing the reason for the action and the date, location, and circumstances of any violation that led to action against the license;
- (M) Whether any court, board, agency, or professional organization has found applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal and the date of the finding;
- (N) Whether the applicant has any charges pending before any court, board, agency, or professional organization

for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal in which the charge is pending;

(O) Whether, within the preceding two years, the applicant has been the subject of any investigation for employee misclassification and, if so, the results of the investigation;

(P) The applicant's notarized signature to certify that he or she has prepared the application and has read the answers, the information provided in the application is true, the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding two year period, as prescribed by G.S. 143-789, and he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board; and

(Q) The application fee, as prescribed by G.S. 90-210.25(a)(3a). If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid.

(2) "Entry-Level Examination" shall mean an examination that is equivalent to the State Board Examination Arts in Funeral Directing to assess competency in funeral arranging and directing; funeral service marketing and merchandising; funeral service counseling; legal and regulatory compliance; and cemetery and crematory operations pursuant to G.S. 90-210.25(a)(1)(e)(1). The National Board Examination Arts that is administered by the International Conference of Funeral Service Examining Boards is equivalent to the State Board Examination Arts in Funeral Directing, as defined by G.S. 90-210.20(11) and as recognized by the Board in 21 NCAC 34B .0211.

(3) "Laws and Rules Examination" shall mean an examination prepared by the Board of funeral practice and related laws of North Carolina, the federal Funeral Rule as expressed in the standards set forth in Funeral Industry Practices, 16 C.F. R. 453 (1984), pursuant to its most recent version, and the administrative rules governing the practice or professional

funeral service as expressed in the NC Administrative Code.

(4) "Professional Experience" shall mean work providing knowledge, skill, and proficiency resulting from the performance of funeral-related duties and responsibilities; work requiring knowledge attained through academic education beyond high school; work that is intellectual in nature; and work requiring the exercise of independent discretion and judgment.

(5) "Provisional Licensee" shall mean any individual satisfying the provisional licensure requirements pursuant to ~~G.S. 90-210.25(a)(3a)~~ and who engages in the practice of professional funeral service under the supervision of a funeral director or funeral service licensee in good standing with the Board for a period not to exceed three years. G.S. 90-210.25(a)(3a).

(6) ~~"Supervision" shall mean oversight and direction from a licensee in funeral directing or funeral service, who is in good standing with the Board, and who has practiced professional funeral service as his or her primary occupation more than 30 hours per week for at least five years.~~

(b) The following provisions shall apply to provisional license applicants and licensees only:

(1) Applicants shall submit with their application for provisional licensure proof of satisfying the education requirements pursuant to G.S. 90-210.25(a)(3a)(d). Such proof shall include certified transcripts from an accredited post-secondary institution, or, if applicable, a certified transcript from a funeral director program accredited by the American Board of Funeral Service Education (ABFSE) or a funeral director program offered at a post-secondary institution that is accredited by ABFSE. Certified transcripts shall come from the educational institution directly to the Board.

(2) Applicants not otherwise qualified as a certified trainee or eligible for a certified traineeship shall submit with their application for provisional licensure an employment history on a form provided by the Board on its website at ncbfs.org, which shall supplement the provisional license application and requires a listing of funeral-related work including name and contact information of employer, dates of employment, and duties and responsibilities performed.

(3) Prior to licensure as a Funeral Director, provisional licensees shall have attained a passing score of 75 percent on the Entry-Level Examination. Applicants shall have attained a passing score of 75 percent on the Laws and Rules Examination.

(4) Applicants shall be subject to a criminal history background check pursuant to the requirements of ~~the North Carolina State Bureau of Investigation G.S. 90-210.25(a)(5)(h)~~ and may be approved for licensure in the absence of any disqualifying conditions pursuant to G.S. 90-210.25(e)(1)(a) and G.S. 93B-8.1. ~~Applicants shall complete forms provided by the Board on its website at ncbfs.org for the electronic submission of fingerprints if North Carolina residents; non residents shall complete a fingerprint card and application information through a local law enforcement agency.~~

(5) Provisional licensees shall be subject to the same license renewal requirements as licensees in funeral directing, including completion of a renewal application as set forth in Rule .0309 of this Section by December 31st of each year but not later than February 1st of the year immediately following the expiration of the license and submission of a non-refundable renewal fee of two hundred fifty dollars (\$250.00).

(6) Provisional licensees shall be subject to the same requirements for continuing education as for licensees in funeral directing including a minimum of five continuing education credits ~~annually and not exceeding two hours annually through online instruction.~~ annually. All continuing education credits shall be awarded only for Board-approved courses of instruction provided through an accredited sponsor or other approved provider, as set forth in Section .0400 of this Subchapter.

Authority G.S. 90-210.25(a)(3a).

SECTION .0400 – CONTINUING EDUCATION

21 NCAC 34B .0408 CONTINUING EDUCATION PROGRAM

(a) For licensees required to complete continuing education ("CE") as a prerequisite to annual license renewal, the five hours of approved CE shall meet the following requirements:

(1) CE courses taken at the direction of the Board as memorialized in a consent order, final agency decision, or taken voluntarily by the licensee to resolve a pending disciplinary matter, shall not be credited toward CE hours needed for annual licensure renewal. If the Board requires licensees to take a particular required course or courses, the Board shall notify licensees no later than October 1 of the year preceding the calendar year in which the course(s) will be required.

(2) Licensees shall not receive credit toward completed CE hours for taking the same CE course within two years.

(b) A person who has received his or her license within the past 12 months and who currently holds an active license shall receive CE credit toward annual licensure renewal for any CE hours earned after that licensee's mortuary science college graduation provided that the CE hours were earned within the preceding 12 months.

(c) Licensees desiring to attend a Board-sponsored CE course taught by a member of Board staff shall pay to the Board a non-refundable registration fee of fifty dollars (\$50.00) in advance of the CE course.

Authority G.S. 90-210.23(a); 90-210.25(a)(5); 150B-41(c).

SECTION .0500 - OUT-OF-STATE LICENSEES

21 NCAC 34B .0502 APPLICATION FORM AND EQUIVALENT EXAMINATIONS FOR RECIPROCAL LICENSE

(a) Applications by an out-of-state licensee for a North Carolina license pursuant to G.S. 90-210.25(b)(1) shall be made on forms provided by the Board on its website at ncbfs.org. ~~The form shall require the applicant to furnish the applicant's name, address, phone number, email address, social security number, date and place of birth, and sex; name and address of present employer; whether the applicant has military training or experience in the practice of funeral service; whether the applicant is a military spouse; whether the applicant has had recent experience in the practice of the type of reciprocal license sought for at least two of the five years preceding the date of the application; whether the applicant has any pending complaints against his or her license in any jurisdiction in which he or she is licensed to practice funeral service; educational history; license applied for; name of the jurisdiction where licensed and the kinds of licenses held; whether the applicant ever has had any occupational or business license denied, suspended or revoked; whether the applicant ever has been convicted of any felony or misdemeanor crime other than traffic infractions; whether the applicant has been subject to any investigation for employee misclassification in the preceding two years; and the notarized signature of the applicant. Applications for licensure as a funeral service licensee, embalmer, or funeral director by individuals licensed in other jurisdictions shall be made on applications available on the Board's website at ncbfs.org. Applications not completed within 90 days following submission to the Board shall be denied. All applications for such licensure shall contain the following:~~

- (1) The applicant's full name, date of birth, place of birth, sex, and social security number;
- (2) The applicant's email address, residential address, mailing address, and phone number(s);
- (3) The name and address of the applicant's current employer and past employers over the three years preceding the application, to include the dates of employment and nature of the work performed by the applicant;
- (4) Whether the applicant is applying for a funeral service license, a funeral director license, or embalmer license;
- (5) The name of each college or university attended by the application, the dates of attendance, and

the graduation date and degree(s) obtained, if any;

- (6) A certified transcript from each college or university at which the applicant attended courses toward his or her attainment of the educational degree required by G.S. 90-210.25(a)(1), (2), (3);
- (7) Whether the applicant currently holds a funeral service license, funeral director license, or embalmer license in any jurisdiction outside of North Carolina and if so, the name of the jurisdiction, the date that the license was issued, the license number, and the expiration date of the license;
- (8) Whether the applicant has any military training or military experience in the practice of funeral service and, if so, for how many years the applicant has practiced funeral service in the five years preceding the application;
- (9) Whether the applicant is a spouse of a military servicemember and, if so, for how many years the applicant has practiced funeral service in the five years preceding the application;
- (10) Whether the applicant ever has been denied a credential in another state and, if so, the jurisdiction and the reason for the denial of the credential;
- (11) Whether the applicant has been convicted of a felony or misdemeanor crime and, if so, a statement providing the jurisdiction, charge, date of disposition, and sentence imposed of each conviction;
- (12) Whether the applicant has any criminal charges currently pending and, if so, the nature of the charge and the jurisdiction in which the charge is pending;
- (13) Whether the applicant has had an occupational or business license suspended or revoked by any local, state, or federal agency and, if so, a statement providing the reason for the action and the date, location, and circumstances of any violation that led to action against the license;
- (14) Whether any court, board, agency, or professional organization has found applicant guilty of misconduct, unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal and the date of the finding;
- (15) Whether the applicant has any charges pending before any court, board, agency, or professional organization for unprofessional conduct, dishonest or fraudulent practice, or incompetent practice and, if so, the tribunal in which the charge is pending;
- (16) Whether, within the preceding two years, the applicant has been the subject of any investigation for employee misclassification and, if so, the results of the investigation;

- (17) The applicant's notarized signature to certify that:
 - (A) he or she has prepared the application and has read the answers;
 - (B) the information provided in the application is true;
 - (C) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding two year period, as prescribed by G.S. 143-789; and
 - (D) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board.

(18) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid.

(b) The form shall require the licensing board of the other jurisdiction(s) to certify that the applicant is licensed and in good standing in that jurisdiction and to furnish the Board with the name of the applicant, licenses held and dates granted, and the name and address of the Board in such other jurisdiction.

(c) The applicant shall provide an employment history to show at least three consecutive years of professional practice performed in the other jurisdiction(s); jurisdictions to demonstrate professional competency.

(d) ~~Funeral director applicants~~ Applicants for reciprocal licensure pursuant to G.S. 90-210.25(b)(1) or G.S. 93B-15.3 shall be deemed to have satisfied the examination requirements for reciprocal licensure if they have completed with passing scores the Entry Level Examination defined in 21 NCAC 34B .0313(a)(2) as a requirement for licensure in the other jurisdiction and the Laws and Rules Examination defined in 21 NCAC 34B .0313(a)(3).

(e) ~~Funeral service applicants shall be deemed to have satisfied the examination requirements for reciprocal licensure if they have completed the National Board Examinations as administered through The International Conference of Funeral Service Examining Boards, or equivalent examinations, as a requirement for licensure in the other jurisdiction and the Laws and Rules Examination defined in 21 NCAC 34B .0313(a)(3).~~

Authority G.S. 90-210.23(a); 90-210.25(b)(1); 93B-15.1; 93B-15.3.

SECTION .0600 - FUNERAL ESTABLISHMENTS

21 NCAC 34B .0608 APPLICATION FORM FOR FUNERAL ESTABLISHMENT PERMIT AND BRANCH ESTABLISHMENT PERMIT

(a) Applications for a new funeral establishment permit shall be made on forms provided by the Board. ~~The applicant shall furnish the name and address of the establishment; the name or names of the owner or owners; the ownership of the stock if it is owned by a corporation; a description of the preparation room; size of the reposing room; names and license numbers of all part time and full time licensees employed by the establishment; the name and license number of the manager; verification by the manager; and any other information the Board deems necessary as required by law.~~ Board that are made available on the Board's website, ncbfs.org. Applications for a new funeral establishment permit not completed within 90 days following submission to the Board shall be denied. All applications for a new funeral establishment permit shall contain the following:

- (1) The legal name of the individual or entity that owns the funeral establishment;
- (2) The email address, physical address, mailing address, phone number(s), and facsimile number of the funeral establishment;
- (3) Other names under which the funeral establishment conducts business;
- (4) Whether the entity or individual owning the unaffiliated practice is a sole proprietorship, partnership, corporation, or limited liability company;
- (5) If owned by a sole proprietor, the legal name of the sole proprietor;
- (6) If owned by a partnership, a copy of the applicant's partnership agreement, the name of each partner and his or her respective ownership interests;
- (7) If owned by a corporation, a copy of the applicant's Articles of Incorporation, the name of each corporate officer, his or her position, and the respective ownership interests of each person or entity holding an ownership interest in the corporation;
- (8) If owned by a limited liability company, a copy of the applicant's Articles of Organization and the name of each member and his or her respective percentage of ownership;
- (9) If the applicant will conduct business in a different name than that of its owning entity, a copy of the applicant's Certificate of Assumed Name;
- (10) The name and address of any funeral establishment, crematory, cemetery, mutual burial association, or embalming facility under common ownership of the funeral establishment;
- (11) whether the preparation room within the funeral establishment complies with the requirements of G.S. 90-210.27A(a);
- (12) Whether embalming will be performed in an embalming facility located outside of the funeral establishment and, if so, the name and

- address of the location at which embalming will be performed;
- (13) The name and license number of the individual who will serve as the licensed location manager for the funeral establishment in accordance with G.S. 90-210.25(d)(1);
- (14) The facility at which refrigeration of unembalmed human remains on behalf of the funeral establishment will occur, if refrigeration will be performed in an off-site facility;
- (15) The names, license type and license number of each funeral director, funeral service licensee, and embalmer working for the establishment and whether said licensee is working on a full-time, part-time, or per case basis;
- (16) A copy of the General Price List, Casket Price List, Outer Burial Container Price List, and Statement of Funeral Goods and Services Selected intended for use by the applicant, as required by the FTC Funeral Rule, 16 C.F.R. Part 453;
- (17) Proof of the applicant's right of occupancy for the premises at which the funeral establishment will be located;
- (18) Whether the applicant currently is in good standing with the North Carolina Secretary of State and, if so, documentation to establish proof of the same;
- (19) Whether, within the preceding two years, the applicant has been the subject of any investigation for employee misclassification and, if so, the results of the investigation;
- (20) The licensed manager's notarized signature to certify that:
 - (A) he or she has prepared the application and has read the answers;
 - (B) the information provided in the application is true;
 - (C) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding two year period, as prescribed by G.S. 143-789; and
 - (D) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board;
- (21) The signature of each owner, partner, manager, member, operator, and officer of the business entity applying for licensure, consenting to the Board's ability to conduct a background check on his or her criminal history; and

(22) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid.

(b) Upon receipt of an application as set forth in this Rule, the Board shall provide to the individuals identified in Paragraph (a)(19) of this Rule instructions on how to submit his or her fingerprints for a criminal background check, in accordance with G.S. 90-210.25(a)(5)(h). The individuals shall sign and return to the Board a form provided by the Board, consenting to the check of the criminal records and to the use of his or her fingerprints and other identifying information required by the State or national repositories. If the background check is performed by the State Bureau of Investigation, the individuals shall remit payment to the Board in the form of an official check, money order, or cashier's check, made payable to the State Bureau of Investigation, the actual costs charged by the Department of Public Safety for performing the criminal background check. If the background check is performed by another vendor, the individuals shall remit payment to the Board payment of actual costs charged by the vendor for performing the criminal background check.

(c) Applications for a new funeral branch establishment permit shall be made on forms provided by the Board that are made available on the Board's website, ncbfs.org. Applications for a new funeral branch establishment permit not completed within 90 days following submission to the Board shall be denied. All applications for a new funeral branch establishment permit shall contain the same information required in Paragraph (a) of this Rule. No branch establishment to which a permit is issued by the Board shall engage in the practice of embalming unless the branch establishment contains a preparation room that is compliant with G.S. 90-210.27A(a).

Authority G.S. 90-210.23(a),(d),(e); 90-210.25(d); 90-210.27A.

21 NCAC 34B .0610 FUNERAL ESTABLISHMENT PERMIT AND BRANCH ESTABLISHMENT RENEWAL FORM

~~All funeral establishments and branch establishments holding a funeral establishment permit shall annually submit a renewal application on forms provided by the Board. The applicant shall furnish the name and address of the establishment; ownership of the establishment; license numbers of any owner, partner, officers of the business entity owning establishment; licensees employed by the funeral establishment; name and license number of the manager of the funeral establishment; and any other information the Board deems necessary as required by law. The form must be filed no later than February 1 of each year. Board that are available on the Board's website, ncbfs.org. All renewal applications for a funeral establishment or a branch establishment permit shall contain the following:~~

- (1) The legal name of the individual or entity that owns the funeral establishment;
- (2) The email address, physical address, mailing address, phone number(s), and facsimile number of the funeral establishment;

- (3) Other names under which the funeral establishment conducts business;
- (4) Whether the entity or individual owning the unaffiliated practice is a sole proprietorship, partnership, corporation, or limited liability company;
- (5) If owned by a sole proprietor, the legal name of the sole proprietor;
- (6) If owned by a partnership, the name of each partner and his or her respective ownership interests;
- (7) If owned by a corporation, the name of each corporate officer and his or her position and his or her respective ownership interest;
- (8) If owned by a limited liability company, the name of each member and his or her respective percentage of ownership;
- (9) Whether the establishment has continuously held a funeral establishment permit since January 1, 1988;
- (10) Whether more than fifty percent of the ownership interest has changed at any time since last year's renewal;
- (11) whether the preparation room within the funeral establishment complies with the requirements of G.S. 90-210.27A(a) and whether any changes have been made to the preparation room since the previous renewal application;
- (12) Whether embalming will be performed in an embalming facility located outside of the funeral establishment and, if so, the name and address of the location at which embalming will be performed;
- (13) The name and license number of the individual who will serve as the licensed location manager for the funeral establishment in accordance with G.S. 90-210.25(d)(1);
- (14) The facility at which refrigeration of unembalmed human remains on behalf of the funeral establishment will occur, if refrigeration will be performed in an off-site facility;
- (15) The names, license type and license number of each funeral director, funeral service licensee, and embalmer working for the establishment and whether said licensee is working on a full-time, part-time, or per case basis;
- (16) Whether the applicant currently is in good standing with the North Carolina Secretary of State and, if so, documentation to establish proof of the same;
- (17) Whether, since the previous renewal application, the applicant has been the subject of any investigation for employee misclassification and, if so, the results of the investigation;
- (18) The licensed manager's notarized signature to certify that:

- (a) he or she has prepared the application and has read the answers;
- (b) the information provided in the application is true;
- (c) the applicant has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, since the last renewal application, as prescribed by G.S. 143-789; and
- (d) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board.

(19) If requested by the Board, the signature of each owner, partner, manager, member, operator, and officer of the business entity applying for renewal of licensure, consenting to the Board's ability to conduct a background check on his or her criminal history; and

(20) The application fee, as prescribed by G.S. 90-210.28 and 21 NCAC 34A .0201. If the application fee is dishonored by the licensee's drawee bank for any reason, the Board shall suspend the license until the renewal fees and non-sufficient fund charges are paid.

Authority G.S. 90-210.23(a); 90-210.25(d)(3).

21 NCAC 34B .0616 BODY IDENTIFICATION TAGS
A funeral establishment immediately shall place a body identification tag as set forth in G.S. 90-21.29A on a dead human body entering the funeral establishment's physical premises. Unused body identification tags shall be kept on the premises of each funeral establishment at all times and are subject to inspection by the Board and its authorized agents.

Authority G.S. 90-210.23(a),(e); 90-210.27A(a)(10); 90-210.29A.

21 NCAC 34B .0617 PRACTICING DURING DISASTERS
~~(a) Upon the declaration of a state of emergency, as provided in G.S. 166A-19.20, the Board may waive, for a period not to exceed 120 days following the rescission of the declaration of a state of emergency, any requirement of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706. Only those funeral establishments impacted by and located in a county in which the state of emergency has been declared shall be eligible for a waiver. A funeral establishment that is destroyed by fire, weather event, or other natural disaster is eligible to request a waiver pursuant to G.S. 90-210.27A(a1) of the statutory requirements set forth in G.S. 90-210.27A(a) and (c).~~
 (b) Any funeral establishment seeking a waiver pursuant to this Rule shall request the same on a form prescribed by the Board, to

~~include which is available on the Board's website at ncbfs.org, and shall contain~~ the following:

- (1) name and permit number of the funeral establishment making the waiver request;
- (2) a description of the circumstances giving rise to the request;
- (3) a plan for correcting any violations of G.S. 90-210.27A and 21 NCAC 34B .0702-.0706 caused by the emergency; ~~and~~
- (4) the location at which the licensee's business records shall be maintained and available for inspection by the Board; and
- ~~(4)~~(5) the anticipated time frame that the funeral establishment will return to full compliance with G.S. 90-210.27A and 21 NCAC 34B .0702-.0706.

~~(e) A funeral establishment seeking to extend a waiver in excess of 120 days shall provide a written request and explanation to the Board for its consideration. It shall be within the discretion of the Board to grant or deny an extension request, based on the following criteria:~~

- ~~(1) the degree of risk of harm, if any, that the continued non-compliance poses to the general public;~~
- ~~(2) the efforts undertaken by the funeral establishment towards compliance with the plan submitted to the Board at the time of its initial waiver request; and~~
- ~~(3) the circumstances surrounding the funeral establishment's request for additional time.~~

Authority G.S. 90-210.23(d),(e); 90-210.25(d); 90-210.27A.

21 NCAC 34B .0618 PRACTICING DURING EMERGENCIES

Authority G.S. 90-210.23(d),(e); 90-210.25(d); 90-210.27A.

SECTION .0800 – TRANSPORTATION OF DEAD HUMAN BODIES

21 NCAC 34B .0801 DEFINITIONS

For purposes of Section .0800, the following definitions shall apply:

- (1) "Decedent" shall mean any dead human body or remains believed to be human.
- (2) "Disinfect" shall mean a process that eliminates pathogenic microorganisms on inanimate objects using liquid chemicals or wet pasteurization.
- (3) "Impervious" shall mean constructed from material that does not allow another substance to pass through or to penetrate the material.
- (4) "Licensee" shall mean an individual or entity holding any type of licensure from the Board that allows the individual or entity to engage in the removal or transportation of a dead human body. As used in this section, "licensee" shall include employees or authorized

representatives of any person or entity exempt from obtaining a transporter permit pursuant to G.S. 90-210.25(c)(5).

- (5) "Location of origin" shall mean the location from which the licensee is authorized to transport or remove a dead human body.
- (6) "ME" shall mean a local Medical Examiner appointed by the Office of the Chief Medical Examiner, pursuant to G.S. 130A-382.
- (7) "NC OSH" shall mean the North Carolina Occupational Safety and Health Division, North Carolina Department of Labor.
- (8) "OCME" shall mean the Office of the Chief Medical Examiner.
- (9) "OSHA" shall mean the federal Occupational Safety and Health Administration.
- (10) "Permit holder" shall mean an individual who holds a permit issued by the Board to engage in the removal or transportation of a dead human body, as defined in G.S. 90-210.25(c)(3).
- (11) "Removal vehicle" shall mean a vehicle of a size, dimensions, and specifications capable of removing and transporting, in accordance with G.S. 90-210.25(c)(9), at least one adult human body measuring up to seven feet in length and three hundred pounds in weight.
- (12) "State" shall mean the State of North Carolina.
- (13) "Removal or Transportation" shall mean the removal or transportation of a dead human body, or part thereof.
- (14) "Transporter Permit" shall mean a permit issued to an individual by the Board pursuant to Rule .0802 of this Section to engage in the removal or transportation of a dead human body, as defined in G.S. 90-210.25(c)(3).
- (15) "Transportation Service" shall mean any business that employs or contracts with individuals to engage in the removal or transportation of a dead human body unless otherwise exempt pursuant to G.S. 90-210.25(c)(5) and (6).
- (16) "Transportation Service Permit" shall mean a permit issued to a Transportation Service pursuant to Rule .0807 of this Section that conducts, maintains, manages, or operates a business engaged in Removal or Transportation.

Authority G.S. 90-210.23(a); 90-210.25(c)(10).

21 NCAC 34B .0802 INITIAL TRANSPORTER PERMIT APPLICATION FORM

(a) Pursuant to G.S. 90-210.25(c)(7), any person desiring to obtain a Transporter Permit from the Board shall make application to the Board. Applications not completed within 90 days of submission to the Board shall be denied. Application forms and instructions may be found on the Board's website at <https://ncbfs.org>.

(b) All applications for a Transporter Permit shall contain the following:

- (1) The applicant's full name;
- (2) The applicant's physical and mailing address of residence;
- (3) The name, address, and permit number ~~name and address~~ of the Transportation Service ~~Service, if any~~, for which the applicant will work;
- (4) The applicant's work phone number, home phone number, and cell phone number;
- (5) The applicant's social security number and sex;
- (6) The applicant's date and place of birth;
- (7) The applicant's email address;
- (8) A copy of the applicant's valid driver's license issued by the State;
- (9) The make, model, year, and license plate number of the removal vehicle to be used by the applicant;
- (10) A copy of all liability insurance required for the registration of the removal vehicle to be used by the applicant;
- (11) A copy of professional liability insurance covering the applicant's acts and omissions while engaging in the removal or transportation, with liability limits not less than required by G.S. 90-210.25(c)(7);
- (12) Whether the applicant has been convicted of any felony or misdemeanor crimes and, if so, a statement providing the jurisdiction, charge, and disposition of each conviction;
- (13) Whether the applicant has had an occupational or business license denied, suspended, or revoked by any local, state, or federal agency and, if so, a statement providing the reason for the denial and the date, location, and circumstances of any violation that led to action against the applicant, the terms of any discipline imposed by the licensing authority, and whether said terms have been satisfied;
- (14) Whether OCME ever has terminated the applicant's ability to provide removal or transportation services on behalf of OCME and, if so, the reasons for said termination, if known;
- (15) Whether the applicant has been subject to any investigation for employee misclassification as defined by G.S. 143-786(a)(5) in the preceding two years;
- (16) The applicant's signature to certify under oath that he or she has prepared the application and has read the answers; that the information provided in the application is true; and that he or she has read the NC Industrial Commission Public Notice Statement;
- (17) The applicant's signature to certify under oath that he or she has read and understands the statutes and rules relating to the removal or transportation, as well as the standards of

OSHA for universal precautions and blood-borne pathogens, 29 C.F.R. 1910.1030; and

- (18) The application fee, as prescribed by G.S. 90-210.25(c)(8) and 21 NCAC 34A .0201.

(c) Upon receipt of an applicant's application for a Transporter Permit, the Board shall provide to the applicant instructions on how to submit his or her fingerprints for a criminal background check, in accordance with G.S. 90-210.25(a)(5)(h). The applicant shall sign and return to the Board a form provided by the Board, consenting to the check of the criminal records and to the use of his or her fingerprints and other identifying information required by the State or national repositories. The applicant shall remit payment to the Board in the form of an official check, money order, or cashier's check, made payable to the State Bureau of Investigation, the actual costs charged by the Department of Public Safety for performing the criminal background check.

Authority G.S. 90-210.23(a); 90-210.25(a)(5)(h); 90-210.25(c)(7) and (10).

21 NCAC 34B .0803 TRANSPORTER PERMIT RENEWAL APPLICATION FORM

(a) To renew a Transporter Permit, the permit holder shall complete and submit to the Board a renewal application on or before February 1 of each calendar year.

(b) The renewal application shall contain the following:

- (1) The permit holder's full name;
- (2) The permit holder's physical and mailing address of residence;
- (3) The name, address, and permit number ~~name and address~~ of the Transportation Service ~~Service, if any~~, for which the permit holder works;
- (4) The permit holder's work phone number, home phone number, and cell phone number;
- (5) The permit holder's email address;
- (6) A copy of the permit holder's valid driver's license issued by the State;
- (7) A copy of all liability insurance required for the registration of the removal vehicle to be used by the permit holder;
- (8) A copy of professional liability insurance covering the permit holder's acts and omissions while engaging in the removal or transportation, with liability limits not less than required by G.S. 90-210.25(c)(7);
- (9) Whether the make, model, year, and license plate number of the permit holder's removal vehicle has changed since the previous renewal year and, if so, the make, model, year, and license plate number of the removal vehicle currently used by the applicant;
- (10) Whether the permit holder has been convicted of any felony or misdemeanor crimes since the previous renewal application was submitted and, if so, a statement providing the jurisdiction, charge, and disposition of each conviction;
- (11) Whether the permit holder has had an occupational or business license denied,

- suspended, or revoked by any local, state, or federal agency since the previous renewal application was submitted and, if so, a statement providing the reason for the denial and the date, location, and circumstances of any violation that led to action against the permit holder, the terms of any discipline imposed by the licensing authority, and whether said terms have been satisfied;
- (12) Whether OCME ever has terminated the permit holder's ability to provide removal or transportation services on behalf of OCME and, if so, the reasons for said termination, if known;
- (13) Whether the permit holder has been subject to any investigation for employee misclassification as defined by G.S. 143-786(a)(5) since the previous renewal application was submitted;
- (14) The permit holder's signature to certify that he or she has prepared the application and has read the answers; that the information provided in the application is true; and that he or she has read the NC Industrial Commission Public Notice Statement;
- (15) The permit holder's signature to certify under oath that he or she has read and understands the statutes and rules relating to the removal or transportation, as well as the standards of OSHA for universal precautions and blood-borne pathogens, 29 C.F.R. 1910.1030;
- (16) The permit holder's consent to a check of the permit holder's criminal background by the Board; and
- (17) The application fee, as prescribed by G.S. 90-210.25(c)(8) and 21 NCAC 34A .0201. If the application fee is dishonored by the drawee bank for any reason, the Board shall suspend the Transporter Permit until the renewal fees and non-sufficient fund charges are paid.

Authority G.S. 90-210.23(a); 90-210.25(a)(5)(h); 90-210.25(c)(8) and (10).

21 NCAC 34B .0807 INITIAL TRANSPORTATION SERVICE PERMIT APPLICATION FORM

(a) Pursuant to G.S. 90-210.25(c)(7), any business desiring to obtain a Transportation Service Permit from the Board shall make application to the Board. Applications not completed within 90 days of submission to the Board shall be denied. Application forms and instructions may be found on the Board's website at <https://ncbfs.org>.

(b) All applications for a Transportation Service Permit shall contain the following:

- (1) The applicant's full name and Transporter Permit number, if one exists;
- (2) The applicant's email address, physical address, mailing address, and phone number(s);
- (3) The name of the individual or entity that owns the Transportation Service;

- (4) Whether the entity or individual owning the unaffiliated practice is a sole proprietorship, partnership, corporation, or limited liability company;
- (5) If owned by a sole proprietor, the legal name of the sole proprietor;
- (6) If owned by a partnership, a copy of the applicant's partnership agreement;
- (7) If owned by a corporation, a copy of the applicant's Articles of Incorporation;
- (8) If owned by a limited liability company, a copy of the applicant's Articles of Organization;
- (9) If the applicant will conduct business in a different name than that of its owning entity, a copy of the applicant's Certificate of Assumed Name;
- (10) The names and respective ownership interest percentages of each sole proprietor, partner, LLC members, or corporate officers;
- (11) A copy of valid driver's licenses issued by the State for all Licensees who will be working for the Transportation Service;
- (12) The address of the location at which Transportation Service business records will be held;
- (13) The make, model, year, and license plate number of all removal vehicles to be used by the Transportation Service and a copy of all liability insurance required for the registration of the removal vehicles to be used by the Transportation Service;
- (14) The names, license or permit type, and license or permit number of each Licensee working for the Transportation Service and whether said Licensee is working on a full-time, part-time, or per case basis;
- (15) A copy of the professional liability insurance covering the acts and omissions of all Licensees engaged in Removal or Transportation on behalf of the Transportation Service, with liability limits not less than required by G.S. 90-210.25(c)(7);
- (16) Whether the applicant currently is in good standing with the North Carolina Secretary of State and, if so, documentation to establish proof of the same;
- (17) Whether the owner, partner, manager, member, operator, or officer of the Transportation Service has been convicted of any felony or misdemeanor crimes and, if so, a statement providing the jurisdiction, charge, and disposition of each conviction;
- (18) Whether the Transportation Service or any of its owners, partners, managers, members, operators, or officers has had an occupational or business license denied, suspended, or revoked by any local, state, or federal agency and, if so, a statement providing the reason for the denial and the date, location, and circumstances of any

violation that led to action against the applicant, the terms of any discipline imposed by the licensing authority, and whether said terms have been satisfied;

(19) Whether OCME ever has terminated the ability of the Transportation Service or any of its owners, partners, managers, members, operators, or officers to provide removal or transportation services on behalf of OCME and, if so, the reasons for said termination, if known;

(20) Whether, within the preceding two years, the applicant has been the subject of any investigation for employee misclassification and, if so, the results of the investigation;

(21) The notarized signature of the majority owner of the Transportation Service to certify that:

(A) he or she has prepared the application and has read the answers;

(B) the information provided in the application is true;

(C) he or she has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, over the preceding two year period, as prescribed by G.S. 143-789;

(D) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board; and

(E) he or she has read and understands the statutes and rules relating to the removal or transportation, as well as the standards of OSHA for universal precautions and blood-borne pathogens, 29 C.F.R. 1910.1030.

(22) The signature of each owner, partner, manager, member, operator, and officer of the business entity applying for the Transportation Service Permit, consenting to the Board's ability to conduct a background check on his or her criminal history; and

(23) The application fee, as prescribed by G.S. 90-210.25(c)(8) and 21 NCAC 34A .0201.

(c) Upon receipt of an application for a Transportation Service Permit, the Board shall provide to the individuals identified in Paragraph (b)(22) of this Rule instructions on how to submit his or her fingerprints for a criminal background check, in accordance with G.S. 90-210.25(a)(5)(h). The individuals shall sign and return to the Board a form provided by the Board, consenting to the check of the criminal records and to the use of his or her fingerprints and other identifying information required by the State or national repositories. If the background check is performed by the State Bureau of Investigation, the individuals shall remit payment to the Board in the form of an official check,

money order, or cashier's check, made payable to the State Bureau of Investigation, the actual costs charged by the Department of Public Safety for performing the criminal background check. If the background check is performed by another vendor, the individuals shall remit payment to the Board payment of actual costs charged by the vendor for performing the criminal background check.

Authority G.S. 90-210.23(a); 90-210.25(a)(5)(h); 90-210.25(c)(7) and (10).

21 NCAC 34B .0808 TRANSPORTATION SERVICE PERMIT RENEWAL APPLICATION FORM

(a) To renew a Transportation Service Permit, the permit holder shall complete and submit to the Board a renewal application on or before February 1 of each calendar year.

(b) The renewal application shall contain the following:

(1) The applicant's full name and Transporter Permit number, if one exists;

(2) The applicant's email address, physical address, mailing address, and phone number(s);

(3) The name of the individual or entity that owns the Transportation Service;

(4) Whether the entity or individual owning the unaffiliated practice is a sole proprietorship, partnership, corporation, or limited liability company;

(5) If the applicant will conduct business in a different name than that of its owning entity, a copy of the applicant's Certificate of Assumed Name;

(6) The names and respective ownership interest percentages of each sole proprietor, partner, LLC members, or corporate officers;

(7) A copy of valid driver's licenses issued by the State for all Licensees who will be working for the Transportation Service and not previously provided to the Board by the Transportation Service;

(8) The address of the location at which Transportation Service business records will be held;

(9) The make, model, year, and license plate number of all removal vehicles to be used by the Transportation Service and a copy of all liability insurance required for the registration of the removal vehicles to be used by the Transportation Service;

(10) The names, license or permit type, and license or permit number of each Licensee working for the Transportation Service and whether said Licensee is working on a full-time, part-time, or per case basis;

(11) A copy of the professional liability insurance covering the acts and omissions of all Licensees engaged in Removal or Transportation on behalf of the Transportation Service, with liability limits not less than required by G.S. 90-210.25(c)(7);

- (12) Whether the applicant currently is in good standing with the North Carolina Secretary of State and, if so, documentation to establish proof of the same;
- (13) Whether the owner, partner, manager, member, operator, or officer of the Transportation Service has been convicted of any felony or misdemeanor crimes since the last year's renewal application and, if so, a statement providing the jurisdiction, charge, and disposition of each conviction;
- (14) Whether the Transportation Service or any of its owners, partners, managers, members, operators, or officers has had an occupational or business license denied, suspended, or revoked by any local, state, or federal agency since the last year's renewal and, if so, a statement providing the reason for the denial and the date, location, and circumstances of any violation that led to action against the applicant, the terms of any discipline imposed by the licensing authority, and whether said terms have been satisfied;
- (15) Whether OCME ever has terminated the ability of the Transportation Service or any of its owners, partners, managers, members, operators, or officers to provide removal or transportation services on behalf of OCME since the last year's renewal application and, if so, the reasons for said termination, if known;
- (16) Whether, within the last year's renewal application, the applicant has been the subject of any investigation for employee misclassification and, if so, the results of the investigation;
- (17) The notarized signature of the majority owner of the Transportation Service to certify that:
 - (A) he or she has prepared the application and has read the answers;
 - (B) the information provided in the application is true;
 - (C) he or she has read and understands the public notice statement on employee misclassification that is set forth in the application and has disclosed any investigations for employee misclassification, and its results, since the last year's renewal application, as prescribed by G.S. 143-789;
 - (D) he or she understands that any credential issued shall be governed by the provisions of Article 13A, Chapter 90 of the North Carolina General Statutes and the rules promulgated by the Board; and
 - (E) he or she has read and understands the statutes and rules relating to the removal or transportation, as well as the standards of OSHA for universal

precautions and blood-borne pathogens, 29 C.F.R. 1910.1030.

- (18) The signature of each owner, partner, manager, member, operator, and officer of the business entity applying to renew the Transportation Service Permit, consenting to the Board's ability to conduct a background check on his or her criminal history; and

- (19) The application fee, as prescribed by G.S. 90-210.25(c)(8) and 21 NCAC 34A .0201. If the application fee is dishonored by the drawee bank for any reason, the Board shall suspend the Transportation Service Permit until the renewal fees and non-sufficient fund charges are paid.

Authority G.S. 90-210.23(a); 90-210.25(a)(5)(h); 90-210.25(c)(8) and (10).

SUBCHAPTER 34C - CREMATORIES

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 34C .0101 ELECTION TO CREMATORY AUTHORITY

Authority G.S. 90-210.122(c); 90-210.134(a).

SUBCHAPTER 34D - PRENEED FUNERAL CONTRACTS

SECTION .0300 - OPERATIONS

21 NCAC 34D .0305 TRANSFER OF TRUST FUNDS TO INSURANCE FUNDED PRODUCT

(a) When, pursuant to G.S. 90-210.61(d), a preneed licensee withdraws preneed funeral funds from an irrevocable preneed funeral trust to purchase an insurance funded product that is irrevocably assigned to the contracting preneed funeral establishment, the preneed licensee shall direct the financial institution that is a party to the preneed funeral contract to make the transfer directly and solely to the substitute insurance company and not mediately to the preneed licensee. The preneed licensee shall obtain the preneed contract purchaser's consent for the conversion on a form prescribed by the Board, which shall contain the following information:

- (1) The name, address, and license number of the preneed establishment serving as trustee for the preneed contract, along with the preneed contract identification number prescribed by the Board;
- (2) The name and address of the financial institution, along with the account number in which the preneed funds are held;
- (3) The name and address of the successor insurance company, to which the preneed funds will be transferred for the purchase of an irrevocably assigned insurance product;
- (4) The name of the preneed contract beneficiary and preneed contract purchaser;

- (5) The dated signature of the preneed contract purchaser or, if the purchaser, is deceased, the preneed contract beneficiary's legal representative, attesting to their consent for the conversion of the irrevocable preneed trust to an irrevocably assigned insurance product; and
- (6) The dated signature of the representative of the financial institution attesting to its payment of the preneed funds to the successor insurance company and the amount of preneed funds so transferred.

(b) The preneed licensee shall file said form with the Board within 10 days following withdrawal of the preneed funeral funds from trust.

Authority G.S. 90-210.69(a); 90-210.68(b).

CHAPTER 46 - PHARMACY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Pharmacy intends to amend the rule cited as 21 NCAC 46 .1418.

Link to agency website pursuant to G.S. 150B-19.1(c):
<https://www.ncbop.org/rulemakings.htm>

Proposed Effective Date: May 1, 2026

Public Hearing:

Date: December 1, 2025

Time: 10:00 a.m.

Location: North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517.

Reason for Proposed Action: *The Board of Pharmacy proposes amending this rule to expand health care facilities' discretion in employing their pharmacy technicians in several ways. These proposed amendments are the culmination of a two-year process of a Board working group that included representatives of a wide variety of health care facility pharmacies, including hospitals, long-term care facilities, hospice and others.*

The rule currently sets out certain functions that can be performed in hospitals by "validating technicians," which was the defined term that the Board used to describe technicians that the Board determined had the knowledge to perform those specific tasks.

First, the industry experts recommended expansion of the tasks that validating technicians may perform under the oversight of a health care facility pharmacist. The amendment proposes to increase the ability of those technicians to confirm that automated devices have functioned as intended in dispensing or preparing drugs, given that the technology has an extremely high accuracy rate, and that the drugs still must be reviewed by a pharmacist as safe and effective for the patient. The amendment further proposes to allow technicians to validate the preparation and packaging of large-batch, low-risk, non-patient-specific products.

Second, the proposed amendment would increase the number of technicians who can serve as validating technicians. At the time of the initial rule, an associate's degree in pharmacy technology was the only available credential with adequate assurances that technicians could perform the tasks set out in the rule. However, the Pharmacy Technician Certification Board has since created certification programs for a variety of technician competencies and tasks. The working group carefully considered the components of those programs and whether (and which of) those programs are adequate preparation for certain tasks. The proposed amendment reflects that judgment. Furthermore, the Pharmacy Technician Certification Board programs are accessible to any technician, rather than only those technicians who have the ability to attend an associate's degree program. North Carolina already leads the country in the number of technicians holding these certifications, and the proposed amendment would recognize their qualifications to perform these tasks.

Third, the current rule is limited to hospital pharmacies and technicians. The proposed amendment would expand to include all health care facilities that are addressed in the relevant section and defined in 21 NCAC 46 .1317. The original rule was limited, as it arose out of a pilot program involving three hospitals. With over fourteen years of experience under the rule, the working group recommended that there were no relevant differences among any of the types of health care facilities.

Comments may be submitted to: Jay Campbell, North Carolina Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC 27517; email ncboprulemaking@ncbop.org

Comment period ends: December 15, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

SECTION .1400 - HOSPITALS: OTHER HEALTH FACILITIES

21 NCAC 46 .1418 HEALTH CARE FACILITY PHARMACY TECHNICIANS SUPERVISION OF UNIT DOSE MEDICATION SYSTEMS

(a) ~~The purpose of this Section is to set out requirements in the event that pharmacists elect to supervise designated pharmacy technicians' validation of stocking and prepackaging functions in acute care hospital pharmacy practice settings as a means of facilitating pharmacists' delivery of clinical services.~~

~~(b) A Hospital's pharmacist manager is responsible for the oversight of all validation of floor stock and unit dose distribution systems, and that responsibility may not be delegated pursuant to 21 NCAC 46 .1411. In the event that the Hospital's pharmacist manager elects to utilize Validating Technicians in the filling of floor stock and unit dose distribution systems, the pharmacist manager shall develop written policies and procedures that:~~

- ~~(1) permit a Validating Technician to validate only the following functions of other registered pharmacy technicians in filling floor stock and unit dose distribution systems for inpatients in a Hospital:

 - ~~(A) stocking of patient care unit medication inventories;~~
 - ~~(B) stocking of ancillary drug cabinet inventories;~~
 - ~~(C) stocking of automated dispensing or drug supply devices;~~
 - ~~(D) stocking of emergency kits; and~~
 - ~~(E) prepackaging of prescription drugs within the Hospital pharmacy;~~~~
- ~~(2) establish the parameters for pharmacist supervision of pharmacy technician validation functions;~~
- ~~(3) establish facility specific training for pharmacy technician validation functions;~~
- ~~(4) establish an ongoing evaluation and assessment program to ensure that pharmacy technician validation functions are performed safely and accurately; and~~
- ~~(5) establish a recordkeeping system that shall permit the identification of the Validating Technician who performs activities authorized by this Rule. Readily retrievable records generated by this system shall be maintained for the period of time specified in 21 NCAC 46 .1414(j)(1) and (2).~~

~~(c) With respect to compounded or admixed prescription drugs (whether sterile or non-sterile), a Validating Technician may validate the filling of floor stock and unit dose distribution systems only after a pharmacist has verified that the compounded or admixed prescription drugs have been prepared correctly.~~

~~(d) This Rule does not authorize a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.~~

~~(e) Validating Technician. For the purposes of this Rule, a "Validating Technician" shall be a pharmacy technician who:~~

- ~~(1) is registered with the Board and trained as specified in G.S. 90-85.15A;~~
- ~~(2) is a certified technician;~~
- ~~(3) is employed by a Health Care Facility pharmacy; and~~
- ~~(4) holds either:~~

- ~~(A) holds an associate's degree in pharmacy technology conferred by one of the following: either

 - ~~(i) an institution within the North Carolina Community College System or University System;~~
 - ~~(ii) (B) an associate's degree in pharmacy technology conferred by an institution accredited by one of the regional accrediting agencies recognized by the United States Department of Education; or~~
 - ~~(iii) (C) an associate's degree in pharmacy technology conferred by a program accredited by the American Society of Health System Pharmacists; and or~~~~

~~(B) holds a current Advanced Certified Pharmacy Technician (CPhT-Adv) credential from the Pharmacy Technician Certification Board (PTCB), and also holds a current Technician Product Verification Certificate either as part of or in addition to the CPhT-Adv credential. The Subparagraphs in this Rule may require other specific certifications for functions described in those Subparagraphs.~~

- ~~(4) assists pharmacists with the preparation, dispensing and distribution of prescription medications that will be administered by a licensed health care provider to an inpatient in a Hospital under this Rule.~~

(b) A Health Care Facility may utilize Validating Technicians to validate the following functions for a Health Care Facility pharmacy:

- (1) stocking of patient care unit medication inventories;
- (2) stocking of ancillary drug cabinet inventories;
- (3) stocking of automated dispensing or drug supply devices;
- (4) stocking of emergency kits;
- (5) prepackaging of prescription drugs within the Health Care Facility pharmacy;
- (6) selection of the correct dose by an automated medication system that has been stocked and restocked in compliance with 21 NCAC 46 .3404, only in the following circumstances:

- (A) If a pharmacist has performed a Drug Regimen Review to ensure that dispensing the order is safe and effective for the patient, and that the requirements of 21 NCAC 46. 1414 have been met; and
- (B) If the order has not changed following the Drug Regimen Review and review for compliance with 21 NCAC 46 .1414;
- (7) preparation of a product by an automated compounding device, only in the following circumstances:
 - (A) If the technician qualifies as a Validating Technician by virtue of holding the certifications set out in Paragraph (a)(4)(B) of this Rule, in addition to those qualifications, the Validating Technician must hold a current Certified Compounded Sterile Preparation Technician credential from the PTCB. If the technician qualifies as a Validating Technician by virtue of the educational requirements set out in Paragraph (a)(4)(A) of this Rule, the technician is not required to hold this credential;
 - (B) A Health Care Facility pharmacist must prepare the automated compounding device to compound the appropriate compounded product; and
 - (C) The automated compounding device must automatically measure and compound the components for the compounded product, and must keep and maintain records of all steps in the compounding process; or
- (8) validating the preparation and repackaging by other registered pharmacy technicians of non-sterile low-risk products that are compounded in multi-patient volume and whose composition does not vary by patient. If the technician qualifies as a Validating Technician by virtue of holding the certifications set out in Paragraph (a)(4)(B) of this Rule, in addition to those qualifications, the Validating Technician must hold a current Nonsterile Compounding Certificate from the PTCB, either as part of or in addition to the CPhT-Adv credential. If the technician qualifies as a Validating Technician by virtue of the educational requirements set out in Paragraph (a)(4)(A) of this Rule, the technician is not required to hold this credential.
- (c) If the Health Care Facility elects to utilize Validating Technicians for functions described in this Rule, the pharmacist-manager shall develop written policies and procedures that:
 - (1) establish the parameters for pharmacist supervision of pharmacy technician validation functions;

- (2) establish facility-specific training for pharmacy technician validation functions;
- (3) establish an ongoing evaluation and assessment program to ensure that pharmacy technician validation functions are performed safely and accurately; and
- (4) establish a recordkeeping system that shall permit the identification of the Validating Technician who performs activities authorized by this Rule. Readily retrievable records generated by this system shall be maintained for the period of time specified in 21 NCAC 46 .1414(j)(1) and (2).
- (d) A Health Care Facility's pharmacist-manager is responsible for the oversight of all validation functions, and that responsibility may not be delegated pursuant to 21 NCAC 46 .1411. This Rule does not permit a pharmacy technician to perform any act requiring the exercise of professional judgment by a pharmacist.
- (f) ~~Hospital. For the purposes of this Rule, a Hospital is either:~~
 - (1) ~~a hospital licensed by the North Carolina Medical Care Commission; or~~
 - (2) ~~a psychiatric hospital operated by the Secretary of the Department of Health and Human Services.~~
- (~~g~~)e) Pursuant to G.S. 90-85.15A(c), the Board approves a pharmacist's supervision of more than two pharmacy technicians where the additional technicians are Validating Technicians. This Rule does not relieve the pharmacist-manager of the obligation to request and receive written Board approval for a pharmacist's supervision of more than two pharmacy technicians where the additional technicians are certified pharmacy technicians but are not Validating Technicians.
- (h) ~~A pharmacy technician performing validation functions described in this Rule as part of a Board approved 21 NCAC 46 .2510 pilot project at Broughton State Hospital or Wake Forest University Baptist Medical Center may continue to perform such functions for a period of three years from this Rule's original effective date, after which time the pharmacy technician must meet all of the requirements specified in Paragraph (e) of this Rule to continue performing such functions.~~

Authority G.S. 90-85.6; 90-85.15A; 90-85.21; 90-85.26; 90-85.32; 90-85.33; 90-85.34.

TITLE 25 – OFFICE OF STATE HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to repeal the rule cited as 25 NCAC 01H .0635.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://oshr.nc.gov/hr-governance/state-human-resources-commission/proposed-rulemaking>

Proposed Effective Date: February 1, 2026

Public Hearing:

Date: October 30, 2025

Time: 9 a

Location:

<https://ncgov.webex.com/ncgov/j.php?MTID=m743c0aafcecca749e0872ee5ee5d0ba0>

Reason for Proposed Action: Some portions of this rule are inconsistent with the changes in law made by Session Law 2025-34. Specifically, subsections .0635(a) and (c) discuss agencies being able to add additional minimum qualifications to the vacancy announcement. Subsection .0635(a) also specifies that the applicant must meet any additional minimum qualifications added by the agency in this way. This is now inconsistent with Session Law 2025-34, which specifies that the minimum qualifications are set in the class specification, and "Any additional qualifications, knowledge, skills, and abilities listed in the specific vacancy announcement shall be interpreted as management preferences rather than as mandatory minimum qualifications that must be met." N.C.G.S. § 126-14.2(b), as amended by Section 3 of Session Law 2025-34. This inconsistent rule text needs to be repealed.

The remaining text of the rule is unnecessary; subsections (b) and (d) are covered by the Recruitment and Posting of Vacancies Policy.

Repealing Rule .0635 would leave in place the substantive requirements that applicants be selected based on their minimum qualifications. This is because the Recruitment & Posting of Vacancies Policy and the Selection of Applicants Policy cover the same ground, and Section 11 of Session Law 2025-34 provides a rulemaking exception that clearly allows requirements of this type to be stated in policy rather than in rule.

Comments may be submitted to: Denise Mazza, 333 Fayetteville St, Raleigh, NC, 27601, Raleigh, NC 27603; phone (984) 236-0823; email denise.mazza@nc.gov

Comment period ends: December 15, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission,

please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 01H - RECRUITMENT AND SELECTION

SECTION .0600 - GENERAL PROVISIONS

25 NCAC 01H .0635 MINIMUM QUALIFICATIONS

Authority G.S. 126-4(4).

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Human Resources Commission intends to repeal the rule cited as 25 NCAC 01O .0107-.0115, .0207-.0211.

Pursuant to G.S. 150B-21.17, the Codifier has determined it impractical to publish the text of rules proposed for repeal unless the agency requests otherwise. The text of the rule(s) are available on the OAH website at <http://reports.oah.state.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://oshr.nc.gov/hr-governance/state-human-resources-commission/proposed-rulemaking>

Proposed Effective Date: February 1, 2026

Public Hearing:

Date: October 30, 2025

Time: 10:00 a.m.

Location:

<https://ncgov.webex.com/ncgov/j.php?MTID=m743c0aafcecca749e0872ee5ee5d0ba0>

Reason for Proposed Action: Section 8 of Session Law 2025-34 provides that the current Administrative Code rules on performance management are repealed. These rules are in Subchapter 01O of Title 25 of the North Carolina Administrative Code. This will allow policies that can be more rapidly changed on the same subject, and the Performance Management Policy will remain in effect. Interim changes to the Performance Management Policy are expected to go before the HR Commission at the December meeting.

Comments may be submitted to: Denise Holton Mazza, 333 Fayetteville St, Raleigh, NC, 27601, Raleigh, NC 27603; phone (984) 236-0823; email denise.mazza@nc.gov

Comment period ends: December 15, 2025

Procedure for Subjecting a Proposed Rule to Legislative Review:

If an objection is not resolved prior to the adoption of the rule, a person may also submit a written objection to the Rules Review Commission. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (>= \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 01 - OFFICE OF STATE HUMAN RESOURCES

SUBCHAPTER 010 - PERFORMANCE MANAGEMENT SYSTEM

SECTION .0100 - GENERAL PROVISIONS

25 NCAC 010 .0107 PERFORMANCE MANAGEMENT POLICY

Authority G.S. 126-4.

25 NCAC 010 .0108 PERFORMANCE MANAGEMENT COVERED EMPLOYEES

Authority G.S. 126-4.

25 NCAC 010 .0109 PERFORMANCE MANAGEMENT DEFINITIONS

Authority G.S. 126-4.

25 NCAC 010 .0110 PERFORMANCE CYCLE

Authority G.S. 126-4.

25 NCAC 010 .0111 DOCUMENTATION OF PERFORMANCE

Authority G.S. 126-4.

25 NCAC 010 .0112 PERFORMANCE MANAGEMENT RESOURCES AND TRAINING

Authority G.S. 126-4.

25 NCAC 010 .0113 CONFIDENTIALITY AND RECORDS RETENTION

Authority G.S. 126-4.

25 NCAC 010 .0114 PERFORMANCE MANAGEMENT COMPLIANCE

Authority G.S. 126-4.

25 NCAC 010 .0115 PERFORMANCE RATING DISPUTE

Authority G.S. 126-4.

25 NCAC 010 .0207 FREQUENCY OF PERFORMANCE REVIEWS

Authority G.S. 126-4.

25 NCAC 010 .0208 PERFORMANCE PLANNING

Authority G.S. 126-4.

25 NCAC 010 .0209 PERFORMANCE FEEDBACK

Authority G.S. 126-4.

25 NCAC 010 .0210 ADDRESSING UNSATISFACTORY JOB PERFORMANCE

Authority G.S. 126-4.

25 NCAC 010 .0211 ANNUAL PERFORMANCE EVALUATION

Authority G.S. 126-4.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on October 30, 2025 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comments on any proposed permanent rule before the Commission should submit those comments pursuant to 26 NCAC 05 .0103. Anyone wishing to submit written comments on any proposed permanent rule before the Commission should submit those comments pursuant to 26 NCAC 05 .0104. Anyone wishing to address the Commission should comply with 26 NCAC 05 .0105 and .0106.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Bill Nelson (2nd Vice-Chair)
Jeanette Doran
John Hahn
Jeff Hyde
Wyatt Dixon, III

Appointed by House

Jake Parker (Chair)
Paul Powell (1st Vice-Chair)
Wayne R. Boyles, III
Christopher Loutit
Randy Overton

COMMISSION COUNSEL

Seth M. Ascher 984-236-1934
Travis Wiggs 984-236-1929
Christopher S. Miller 984-236-1935

RULES REVIEW COMMISSION MEETING DATES

October 30, 2025 December 18, 2025
November 20, 2025 January 29, 2026

AGENDA

RULES REVIEW COMMISSION

Thursday, October 30, 2025, 10:00 A.M.

1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 1. Commission for Public Health -10A NCAC 43D .0201, .0202, .0203, .0204, .0205, .0207, .0304, .0410, .0411, .0501, .0702, .0707, .0708, .0709, .0804, .0902, .0904, .0905, .0906, .0907, .0908, .0909, .0911 (Ascher)
 2. Criminal Justice Education and Training Standards Commission – 12 NCAC 09G .0209 (Wiggs)
 3. Private Protective Services Board - 14B NCAC 16 .0701, .0801, .1301, .1401 (Ascher)
 4. Board of Dental Examiners - 21 NCAC 16A .0101; 16F .0111; 16V .0103(Wiggs)
- IV. Review of Log of Filings (Permanent Rules) for rules filed August 21, 2025 through September 20, 2025
 1. Commission for Mental Health/DD/SAS (Wiggs)
 2. Environmental Management Commission (Ascher)
 3. Coastal Resources Commission (Ascher)
 4. Onsite Wastewater Contractors and Inspectors Certification Board (Miller)
 5. State Human Resources Commission (Wiggs)
- V. Log of Filings (Temporary Rules) for any rule filed within 15 business days before the RRC Meeting
 1. State Board of Education – 16 NCAC 06C .0110 (Wiggs)
- VI. Existing Rules Review
 - Review of Reports
 1. 06 NCAC 01, 02, 04 - Council of State (Ascher)
 2. 10A NCAC 13B, 13C, 13K – Medical Care Commission (Wiggs)
 3. 10A NCAC 47 - Commission for Public Health (Ascher)
 4. 11 NCAC 11, 11 NCAC 19 - Department of Insurance (Wiggs)
 5. 11 NCAC 11F - Commissioner of Insurance (Wiggs)
 6. 25 NCAC 01D - State Human Resources Commission (Ascher)

- Readoptions
 1. 09 NCAC 06C - 911 Board (Ascher)
 2. 10A NCAC 13L, 13M, 13O (Medical Care Commission (Wiggs))
 3. 10A NCAC 97 - Social Services Commission (Ascher)
 4. 15A NCAC 18D - Water Treatment Facility Operators Certification Board (Ascher)
 5. 21 NCAC 61 - Respiratory Care Board (Wiggs)

VII. Commission Business

- Closed session, to consult with attorneys regarding CRC v. RRC and CJETS v. RRC
 - Next meeting: Thursday, November 20, 2025
-

Commission Review
Log of Permanent Rule Filings
August 21, 2025 through September 20, 2025

MENTAL HEALTH/DD/SAS, COMMISSION FOR

The rules in Chapter 26 are general mental health rules. The rules in Subchapter 26E concern the manufacture, distribution, and dispensing of controlled substances including general provisions and registration (.0100); labeling, packaging, and record keeping (.0200); prescriptions (.0300); some miscellaneous provisions (.0400); administrative functions, practices, and procedures (.0500); and controlled substance reporting system (.0600); and intractable epilepsy alternative treatment pilot study (.0700).

Disposal of Unused Controlled Substances from Nursing Home
Amend*

10A NCAC 26E .0406

The rules in Chapter 27 concern mental health community facilities and services. The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); facility licensing procedures (.0400); area program requirements (.0500); area authority or county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse

disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); consultation and education services (.6900); local management entity response to complaints (.7000); and target population (.7100).

Medication Units and Mobile Units 10A NCAC 27G .3605
 Adopt*

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

Fresh Surface Water Quality Standards for Class B Waters 15A NCAC 02B .0219
 Amend*

Exemptions From Surface Water Quality Standards 15A NCAC 02B .0226
 Amend*

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission or the Department of Environment and Natural Resources. The rules in Subchapter 2L cover groundwater classifications and standards including general considerations (.0100); classifications and groundwater quality standards (.0200); the assignments of underground water classifications (.0300); risk-based assessment and corrective action for petroleum underground storage tanks (.0400); and risk-based assessment and correction action for non-UST petroleum releases (.0500).

Groundwater Quality Standards 15A NCAC 02L .0202
 Amend*

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); general permit to construct boat ramps along estuarine and public trust shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); general permit to allow for temporary structures within the estuarine and ocean AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); emergency general permit, to be initiated at the discretion of the Secretary of the Department of Environment and Natural Resources for replacement of structures; the reconstruction of primary or frontal dune systems; and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms, provided all replacement, reconstruction and maintenance excavation activities conform to all current standards (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Coastal Shorelines</u> Amend*	15A	NCAC	07H	.0209
<u>Use Standards for Ocean Hazard Areas: Exceptions</u> Amend*	15A	NCAC	07H	.0309
<u>Jockey's Ridge Area of Environmental Concern</u> Amend*	15A	NCAC	07H	.0508

ONSITE WASTEWATER CONTRACTORS AND INSPECTORS CERTIFICATION BOARD

The rules in Chapter 39 are from the Onsite Wastewater Contractors and Inspectors Certification Board and include duties and definitions (.0100); certification of onsite wastewater contractors, inspectors, or authorized on-site wastewater evaluators (.0200); onsite wastewater contractor, inspector, or evaluator fees (.0300); certification by examination (.0400); certification renewal (.0500); continuing education requirements (.0600); procedures for disciplinary actions (.0700); onsite wastewater contractor, inspector, evaluator code of ethics (.0800); rulemaking procedures (.0900); NC on-site wastewater inspector standards of practice (.1000); and NC on-site wastewater evaluator standards of practice (.1100).

<u>Definitions</u> Readopt with Changes*	21	NCAC	39	.0101
<u>Types of Certification</u> Readopt with Changes*	21	NCAC	39	.0102
<u>Annual Reports</u> Readopt without Changes*	21	NCAC	39	.0103
<u>Application Requirements for Certification</u> Readopt with Changes*	21	NCAC	39	.0201
<u>Business Succession</u> Readopt with Changes*	21	NCAC	39	.0202
<u>Schedule of Certification Fees</u> Readopt with Changes*	21	NCAC	39	.0301
<u>On-site Wastewater Contractor, Inspector, or Evaluator...</u> Readopt with Changes*	21	NCAC	39	.0401
<u>Time and Place of Examination</u> Readopt with Changes*	21	NCAC	39	.0402
<u>Conducting and Grading Examinations</u> Readopt with Changes*	21	NCAC	39	.0403
<u>Issuance of Certificates</u> Readopt with Changes*	21	NCAC	39	.0404
<u>Licensure for Military-Trained Applicant; Licensure for...</u> Readopt without Changes*	21	NCAC	39	.0405
<u>Conditions and Limitations for Renewal of Certification</u> Readopt without Changes*	21	NCAC	39	.0501
<u>Requirements</u> Readopt with Changes*	21	NCAC	39	.0601
<u>Approval of Continuing Education Courses</u> Readopt with Changes*	21	NCAC	39	.0602
<u>Recordkeeping</u> Readopt with Changes*	21	NCAC	39	.0604
<u>Extension of Time</u> Readopt with Changes*	21	NCAC	39	.0605
<u>Revocation, or Suspension of Certification</u> Readopt with Changes*	21	NCAC	39	.0701
<u>Certification Following Revocation or Voluntary Surrender...</u> Readopt without Changes*	21	NCAC	39	.0702

RULES REVIEW COMMISSION

<u>Penalties</u>	21	NCAC	39	.0703
Readopt without Changes*				
<u>Code of Ethics</u>	21	NCAC	39	.0801
Readopt with Changes*				
<u>Cooperation with Board Inquiry</u>	21	NCAC	39	.0802
Readopt without Changes*				
<u>Delegating to Third-Party Service Providers</u>	21	NCAC	39	.0803
Readopt without Changes*				
<u>Petition for Rule-Making</u>	21	NCAC	39	.0901
Readopt without Changes*				
<u>Request for Declaratory Ruling</u>	21	NCAC	39	.0902
Readopt without Changes*				
<u>Refusal to Issue Declaratory Ruling</u>	21	NCAC	39	.0903
Readopt without Changes*				
<u>Waiver or Extension</u>	21	NCAC	39	.0904
Readopt without Changes*				
<u>Definitions</u>	21	NCAC	39	.1001
Readopt without Changes*				
<u>General Requirements for Contractors and Inspectors</u>	21	NCAC	39	.1002
Readopt with Changes*				
<u>General Exclusions of an Inspection</u>	21	NCAC	39	.1004
Readopt with Changes*				
<u>On-Site Wastewater System Components</u>	21	NCAC	39	.1005
Readopt with Changes*				
<u>Minimum On-Site Wastewater System Inspection</u>	21	NCAC	39	.1006
Readopt with Changes*				
<u>Definitions</u>	21	NCAC	39	.1101
Readopt without Changes*				
<u>General Requirements for Evaluators</u>	21	NCAC	39	.1102
Readopt without Changes*				
<u>General Exclusions for Evaluators</u>	21	NCAC	39	.1103
Readopt without Changes*				
<u>Required Documents for Evaluators</u>	21	NCAC	39	.1104
Readopt without Changes*				

STATE HUMAN RESOURCES COMMISSION

The rules in Subchapter 1I concern service to local government including local government employment policies (.1700); general provisions (.1800); recruitment and selection (.1900); appointment and separation (.2000); compensation (.2100); hours of work and overtime compensation (.2200); disciplinary action, suspension, dismissal and appeals (.2300); and basic requirements for a substantially equivalent personnel system (.2400).

<u>Salary Rates</u>	25	NCAC	011	.2103
Amend*				

Commission Review
Log of Temporary Rule Filings
October 01, 2025 through October 30, 2025

* Approval Recommended, ** Objection Recommended, *** Other

EDUCATION, STATE BOARD OF

The rules in Chapter 6 concern elementary and secondary education. The rules in Subchapter 6C concern personnel including general provisions (.0100); teacher education (.0200); licensure and educator Preparation Programs (EPPS) (.0300); annuities and pensions (.0400); performance appraisal system (.0500); standards of professional conduct and educator discipline (.0600); and educator employment (.0700).

Qualifications of School Nurses
Adopt*

16 NCAC 06C .0110

DRAFT

Regulatory Impact Analysis

DRAFT



Energy, Mineral
and Land Resources
ENVIRONMENTAL QUALITY

REGULATORY IMPACT ANALYSIS for

Proposed Readoption and Amendments to 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-21.3A requires 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 DEMLR staff 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, amendment, adoption, or repeal. These proposals include new rules, codification of existing practices, incorporation of material by reference, additions from other rules, minor language changes, or readoptions without 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 averaged issuance of 25 new permits each year, 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 for roughly the same amount, 25 per year. As of August 2025, there are 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: Minor.

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 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.

Expected Regulatory Impact: Minor.

This update does not represent a change in practice but rather a codification of a current practice to ensure consistency and clarity in permitting. The rule includes examples of conditions that could be included in permits if the site-specific conditions require, but they 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. Hydrogeological 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 an in-depth hydrogeological study that would have been equivalent to the \$170,000 estimate.

- 6. Proposal to repeal rule 05B .0106, “Standards for Denying an Application.”**

Expected Regulatory Impact: None.

The rule, as written, is repetitive and does not provide clarity to the denial criteria listed in GS 74-51(d). Denial criteria (2) states that an application may be denied if “the operation will have unduly adverse effects on potable groundwater supplies, wildlife, or fresh water or estuarine, or marine fisheries.” The Department is required by statute to request comments from the North Carolina Wildlife Resources Commission as part of the application process, which may state whether the operation as proposed will pose an unduly adverse effect to wildlife. Denial criteria (6) states that an application may be denied if “the operation will result in substantial deposits of sediment in stream beds or lakes.” Since these two denial criteria are already in statute, this rule is repetitive and repealing this rule will not change the current process.

- 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. 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.
- 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: Minor.

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 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.

Expected Regulatory Impact: Minor.

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 rule 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. Incorporating this language into a rule provides clarity and consistency in permitting procedures, helping to ensure that all stakeholders have a clear understanding of the requirements and processes.

- 12. 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.

Expected Regulatory Impact: Minor.

There will be no changes to the current process because of this rule. The proposed rule is incorporating the requirements from an existing checklist that is currently used by the permittees. All requirements added are a subset of the new and modification requirements. Incorporating this language into a rule provides clarity and consistency in permit transfer procedures, helping to ensure that all stakeholders have a clear understanding of the requirements and processes.

- 13. 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.

Expected Regulatory Impact: Minor.

There will be no changes to the current process because of this rule. The proposed rule is incorporating the requirements from an existing checklist that is currently used by the permittees. All requirements added are a subset of the new and modification requirements. Incorporating this language into a rule provides clarity and consistency in permit transfer procedures, helping to ensure that all stakeholders have a clear understanding of the requirements and processes.

14. 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.

Expected Regulatory Impact: Minor.

The Department regularly circulates draft versions of the permit to the permittee upon application approval. This proposed rule aims to clarify that any circulated copies of draft working versions of the permit are not binding until issuance. Clarifying the status of draft permits will inform the public, the regulated community, and the Department about when a permit is binding, thus helping to avoid premature compliance efforts. It will also improve administrative efficiency by reducing misunderstandings and disputes regarding permit status.

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, amendments, adoptions, 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.

1 **CHAPTER 05 - MINING: MINERAL RESOURCES**

2 This Chapter, 15A NCAC 05, MINING: MINERAL RESOURCES; was transferred and recodified from 15 NCAC
3 05 effective November 1, 1989. The recodification was pursuant to G.S. 143B-279.1

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5 **SUBCHAPTER 05A - ORGANIZATION AND ADMINISTRATION**

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7 **SECTION .0100 – MINING AND ENERGY COMMISSION**

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9 **15A NCAC 05A .0101 NAME AND ADDRESS**

10 The name of this agency shall be the North Carolina Mining ~~and Energy~~ Commission. Its address is Department of
11 Environmental Quality, Environment, Health, and Natural Resources, P.O. Box 27687, 1612 Mail Service Center,
12 Raleigh, North Carolina 27611-27699.

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14 *History Note: Authority G.S. 143B-290;*
15 *Eff. February 1, 1976;*
16 *Amended Eff. January 31, 1979;*
17 *Readopted Eff. August 1, 1982;*
18 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d)); April 1, 1990.*

19
20 **15A NCAC 05A .0102 GENERAL PURPOSES**

21 *History Note: Authority G.S. 74-38; 74-61; 74-84; 74-86; 143B-290;*
22 *Eff. February 1, 1976;*
23 *Readopted Eff. August 1, 1982;*
24 *Amended Eff. November 1, 1984; December 1, 1983;*
25 *Repealed Eff. August 1, 1988.*

26
27 **15A NCAC 05A .0103 STRUCTURE**

28 *History Note: Authority G.S. 143B-291;*
29 *Eff. February 1, 1976;*
30 *Readopted Eff. August 1, 1982;*
31 *Repealed Eff. November 1, 1984.*

32
33 **SECTION .0200 - ADMINISTRATION**

34 **15A NCAC 05A .0201 DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY**
35 **DEVELOPMENT**

36 *History Note: Authority G.S. 74-50 through 74-60; 74-64; 74-68; 74-77 through 74-85; 74-87;*
37 *Eff. February 1, 1976;*
38 *Readopted Eff. August 1, 1982;*
39 *Amended Eff. December 1, 1983;*
40 *Repealed Eff. November 1, 1984.*

Strikethroughs are words proposed for removal.
Underlines are words proposed for insertion.

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15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS

(a) The Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality, ~~Department of Environment, Health, and Natural Resources~~, shall have the following powers and duties ~~with regard to necessary to administer the administration~~ of the Mining Act of ~~1974-1971~~, including:

- (1) the issuance, denial, modification, ~~renewal, suspension~~ suspension, transfer, and revocation of permits;
- (2) the approval of reclamation plans;
- (3) the initiation of forfeiture proceedings;
- (4) the giving of notices, setting of hearings and taking of action upon findings of violations; and
- (5) the institution of all criminal and civil actions.

(b) The Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality, ~~Department of Environment, Health, and Natural Resources~~ shall have the following powers and duties necessary to administer with regard to the administration of the Control of Exploration for Uranium in North Carolina Act of ~~1983-1983~~, including:

- (1) the issuance, denial, modification, renewal, ~~suspension~~ suspension, transfer, and revocation of permits;
- (2) the review of the plans for the initiation and approval of the abandonment of affected land;
- (3) the inspection and approval of the abandonment of affected land;
- (4) the giving of notices, setting of hearings, and taking of action upon findings of violations; and
- (5) the institution of all criminal and civil actions.

(c) The following definitions apply to Subchapters 05A, 05B, 05F and 05G of Chapter 5 of title 15A of the North Carolina Administrative Code:

- (1) “Administrative Change” means any change initiated by the Department or requested by the applicant to correct errors including, grammatical errors, typographical errors, and map inaccuracies, that do not substantively change the permit.
- (2) “Affected land”, as defined in G.S. 74-49(1) shall not include an unrelated use that does not meet the definition of mining that occurs within the permit boundaries, including activities pertaining to agriculture and silviculture including timber harvesting, where an erosion and sedimentation plan is approved under G.S. 113A, Article 4, when required, and the unrelated use area is shown on the mine map.
- (3) "Contaminants" shall be defined as set forth in 42 USC § 9601(33) "Pollutants or Contaminants", which is hereby incorporated by reference, including any amendments or subsequent editions. Copies may be accessed at <https://www.govinfo.gov/content/pkg/USCODE-2023-title42/html/USCODE-2023-title42-chap103-subchapI-sec9601.htm> at no charge.

~~Strikethroughs~~ are words proposed for removal.
Underlines are words proposed for insertion.

1 (4) "Director" means the Director of the Division of Energy, Mineral and Land Resources of the
2 Department of Environmental Quality, or any position to which the Director has delegated their
3 authority.

4 (5) "Division" means the Division of Energy, Mineral, and Land Resources.

5 (6) "Filed" or "Filing", as applicable to G.S. §74-51(b), shall be deemed to occur at the start of the
6 following business day, when an application is submitted electronically outside of business hours.

7 (7) "Mining Buffer" means an unexcavated, undisturbed, or vegetative area managed to protect adjacent
8 land owners or areas of special concern.

9 (A) "Unexcavated" means no mine excavation shall occur. Unexcavated buffers may be used for
10 roadways, berms and erosion and sedimentation control or stabilization. Excavation may be allowed
11 for sediment basins or erosion and sedimentation control when shown on the mine map.

12 (B) "Undisturbed" means no disturbance shall occur.

13 (C) "Vegetative Buffer" means an unexcavated buffer that may be managed through landscaping or
14 additional plantings.

15 (8) "Non-public roads" means any private road that is not maintained by the State or had maintenance
16 requirements delegated to a municipality. Temporary access roads utilized for exploratory purposes
17 shall not be considered non-public roads when they comply with any requirements for approvals
18 pursuant to G.S. 113A, Article 4.

19 (9) "Notice", as applicable to G.S. 74-50(b3), includes written or electronic correspondence.

20 (10) "On-site Construction" means development of a site where the primary purpose is to construct,
21 develop, or erect, structures, infrastructure, or waste facilities, and the removal, but not sale, of any
22 extracted material off-site is incidental to the primary purpose and time limited.

23 (11) "Transfer Material" means material brought into the mine permit boundary for the purpose of
24 blending, recycling, or upgrading of onsite materials for the purpose of resale.

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26 *History Note:* Authority G.S. 74-50 through 74--53; 74--56 to 74---59; 74-~~77~~75 through 74-85; 74---87;
27 143B--290;

28 Eff. February 1, 1976;

29 Amended Eff. January 31, 1979; September 3, 1976;

30 Readopted Eff. August 1, 1982;

31 Amended Eff. ~~Xxxx~~, 2023; August 1, 2012 (see S.L. 2012-143, s.1.(f)); April 1, 1990; December 1,
32 1983.

33 **SUBCHAPTER 5B - PERMITTING AND REPORTING**

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35 **15A NCAC 05B .0101 PURPOSE**

36 **15A NCAC 05B .0102 ACTIVITIES REQUIRING PERMITS**

37 *History Note:* Authority G.S. 74-50; 74-63; 74-67; 143B-290(1)(d);
38

1 *Eff. February 1, 1976;*
2 *Amended Eff. January 31, 1979;*
3 *Repealed Eff. November 1, 1984.*

4
5 **15A NCAC 05B .0103 BONDING REQUIREMENTS**

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

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

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

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

28 (e) The initial bond calculation amount shall be based upon the criteria included in the table in Subparagraph (1) below
29 and applied per acre of land approved by the Department to be affected. The criteria in subparagraph 1 below does
30 not apply to existing bonds already on file with the Department, until action is required to change the bond including
31 new, transfer, modified mining permits on file with the Department or compliance action taken by the Department.

32 (1) Table of Mining Reclamation Factors.
33

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

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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	\$810	\$2,430	\$2,916	\$3,240	\$,2916	\$810	\$3,240
CS, DS, FS, MI, LI, PF, OL, KY	\$810	\$2,430	\$2,916	\$3,240	\$3,240	\$810	\$4,050
PH	\$1,620	\$4,050	\$4,050	\$8,100	\$8,100	\$3,240	\$8,100
CL	\$1,620	\$4,050	\$4,050	\$8,100	\$8,100	\$3,240	\$5,994
PE, AU, TI, OT	\$1,620	\$4,050	\$4,050	\$4,860	\$5,670	\$3,240	\$8,100

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

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(f) The final bond amount shall be calculated by increasing the initial bond calculation from Paragraph (e), 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)).

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(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 bonds. 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):

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(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

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(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,

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~~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.~~

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~~If the Director finds that the applicant or permittee does not have a good operating record, that the five hundred~~

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~~Strikethroughs~~ are words proposed for removal.
Underlines are words proposed for insertion.

~~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 his 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;

- 1 (C) Name, address and account information for the bank holding assigned account;
- 2 (D) Sum of assigned amount required under this Rule;
- 3 (E) Statement that, in consideration of the promises contained in the agreement and the
4 Department accepting the assignment of the savings account in question, the Assignor sells,
5 assigns, transfers and sets over to the Department the sum in item (j)(2)(D) of this Rule and
6 directly authorizes the bank holding the assigned account to pay over to the Department
7 the sum in item (j)(2)(D) of this Rule upon request;
- 8 (F) Conditioned that if the Assignor conducts the mining operations faithfully, honestly, and
9 lawfully and in compliance with the requirements of the Mining Act of 1971 and applicable
10 Rules and Regulations adopted pursuant thereto, then the assignment shall be null and void;
11 otherwise it shall remain in full force and effect and that compliance with the requirement
12 of the Mining Act of 1971 and applicable Rules and Regulations shall be determined by
13 the Department;
- 14 (G) Specification that the assignment is made and held by the Department as collateral security
15 in lieu of a surety bond in accordance with "The Mining Act of 1971" (G.S. 74-46 through
16 74-68) to assure compliance and reclamation of the permitted operation and for all direct
17 or indirect liabilities of the assignor Operator to the assignee Department that may arise by
18 reason of the Mining Act 1971, Article 7, Chapter 74 of the General Statutes of North
19 Carolina;
- 20 (H) Signature, Name and Title of an officer of the Assignor;
- 21 (I) Notarization of the Assignor's signature;
- 22 (J) Signature, Name and Title of an officer of the bank holding the assigned account
23 acknowledging the assignment and committing that the funds assigned shall not be
24 disbursed except to the Department so long as the assignment remains in effect; and
- 25 (K) Notarization of the Bank's signature.
- 26 (3) Irrevocable Standby Letter of Credit (ILOC)
- 27 (A) Name, address and type of business entity of Operator exactly matching name of Permittee;
- 28 (B) Name, address and type of business entity of Issuing Institution;
- 29 (C) The State of North Carolina, Department of Environmental Quality, Department of
30 Environmental Quality 1612 Mail Service Center Raleigh, North Carolina 27699-1612 as
31 the Beneficiary;
- 32 (D) Effective Date of the ILOC;
- 33 (E) Automatic renewal clause, such that the ILOC is continuous in nature, subject to at least
34 60 days notice via certified mail, return receipt requested, to the Permittee and the
35 Department prior to nonrenewal;
- 36 (F) Sum of the ILOC required under this Rule;
- 37 (G) That the sum of the ILOC is available by the Department drafts on sight;

- 1 ~~(H) Instructions for drafts by the Department;~~
- 2 ~~(I) Non-transferability clause;~~
- 3 ~~(J) Choice of Law provisions specifying North Carolina venue for all disputes~~
- 4 ~~(K) Statement that the Issuing Institution agrees with the drawers, endorsers, and bona fide~~
- 5 ~~holders that all drafts drawn under and in compliance with the terms of the ILOC will be~~
- 6 ~~duly honored upon presentation to the Issuing Institution.~~
- 7 ~~(L) Statement that the ILOC is being issued in lieu of a surety bond in accordance with "The~~
- 8 ~~Mining Act of 1971" (G.S. 74-46 through 74-68) to assure compliance and reclamation of~~
- 9 ~~the permitted operation;~~
- 10 ~~(M) Signature, Name and Title of an officer of the Issuing Institution; and~~
- 11 ~~(N) Notarization of the Issuing Institution officer's signature.~~
- 12 (4) Bank Guaranty
- 13 ~~(A) Name, address and type of business entity of Operator exactly matching name of Permittee;~~
- 14 ~~(B) Name, address and type of business entity of Issuing Institution;~~
- 15 ~~(C) The State of North Carolina, Department of Environmental Quality, Department of~~
- 16 ~~Environmental Quality 1612 Mail Service Center Raleigh, North Carolina 27699-1612 as~~
- 17 ~~the Beneficiary;~~
- 18 ~~(D) Effective Date of the guaranty;~~
- 19 ~~(E) Automatic renewal clause, such that the guaranty is continuous in nature, subject to at least~~
- 20 ~~60 days notice via certified mail, return receipt requested, to the Permittee and the~~
- 21 ~~Department prior to nonrenewal;~~
- 22 ~~(F) Sum of the guaranty required under this Rule;~~
- 23 ~~(G) That the sum of the guaranty is available by the Department drafts on sight;~~
- 24 ~~(H) Instructions for drafts by the Department;~~
- 25 ~~(I) Non-transferability clause;~~
- 26 ~~(J) Choice of Law provisions specifying North Carolina venue for all disputes~~
- 27 ~~(K) Statement that the Issuing Institution agrees with the drawers, endorsers, and bona fide~~
- 28 ~~holders that all drafts drawn under and in compliance with the terms of the guaranty will~~
- 29 ~~be duly honored upon presentation to the Issuing Institution.~~
- 30 ~~(L) Statement that the guaranty is being issued in lieu of a surety bond in accordance with "The~~
- 31 ~~Mining Act of 1971" (G.S. 74-46 through 74-68) to assure compliance and reclamation of~~
- 32 ~~the permitted operation;~~
- 33 ~~(M) Signature, Name and Title of an officer of the Issuing Institution; and~~
- 34 ~~(N) Notarization of the Issuing Institution officer's signature.~~
- 35 (5) Cash Deposit:
- 36 ~~(A) Cash in the form of a cashiers or certified check in the sum required under this Rule; and~~

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

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4 *History Note: Authority G.S. 7451; 7454; 143B-290;*

5 *Eff. February 1, 1976;*

6 *Amended Eff. January 1, 1994; April 1, 1990; November 1, 1985; November 1, 1984.*

7
8 **15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION**

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

- 12 (1) materials to be mined;
- 13 (2) method of mining;
- 14 (3) expected depth of mine;
- 15 (4) size of the mine, including:
- 16 (A) acreage for tailings ponds,
- 17 (B) acreage for stockpiles,
- 18 (C) acreage for waste piles,
- 19 (D) acreage for processing plants,
- 20 (E) acreage for mine excavation,
- 21 (F) acreage for annual disturbance;
- 22 (5) anticipated effect on wildlife, freshwater, estuarine or marine fisheries;
- 23 (6) ~~whether or not the mining operation will have a waste water wastewater discharge or air contaminant~~
24 ~~emission which that will require a permit from the division of environmental management;~~
25 Division of Water Resources, an air contaminant emission that will require a permit from the
26 Division of Air Quality, or will have a stormwater discharge that will require a permit from the
27 Division of Energy, Mineral, and Land Resources;
- 28 (7) methods to prevent physical hazard to any neighboring dwelling house, school, church, hospital,
29 commercial or industrial building, or public road if the mining excavation will come within 300 feet
30 thereof;
- 31 (8) ~~measures to be taken required to insure~~ ensure against landslides and acid water pollution;
- 32 (9) ~~measures to be taken required~~ to minimize siltation of streams, lakes, or adjacent properties during
33 the mining operation;
- 34 (10) ~~measures to be taken required~~ to screen the mining operation from public view.
- 35 (11) Name of Mine and Location
- 36 (12) Responsible Officer Contact Information
- 37 (13) Site Contact Information
- 38 (14) Statement of Authority as provided in Paragraph (f), when necessary.

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

- 2 (1) intended plan for overall mine reclamation, subsequent land use and the ~~general~~ methods to be used
3 in reclaiming the affected land;
- 4 (2) intended practices ~~to be taken required~~ to protect adjacent surface resources;
- 5 (3) intended methods to prevent or eliminate conditions hazardous to animal or fish life in or adjacent
6 to the affected areas;
- 7 (4) intended methods of rehabilitation of settling ponds;
- 8 (5) intended methods of restoration or establishment of stream channels and stream beds to a condition
9 minimizing erosion, siltation and other pollution;
- 10 (6) intended measures to stabilize slopes;
- 11 (7) intended measures to provide for safety to persons and adjoining property in excavation in rock;
- 12 (8) intended measures of disposal of mining refuse and control of contaminants;
- 13 (9) provisions to prevent collection of noxious, odious or foul water in mined areas; and
- 14 (10) plan for revegetation and reforestation or other surface treatment of the affected areas which plan
15 ~~shall must~~ be approved in writing by one of the following prior to submission of the application:
- 16 (A) Authorized ~~representatives~~ representative of the local soil and water conservation district
17 having jurisdiction over lands in question;
- 18 (B) Authorized ~~representatives~~ representative of the ~~division of forest resources, Department~~
19 ~~of Environment, Health, and Natural Resources; North Carolina Forest Service within the~~
20 Department of Agriculture and Consumer Services;
- 21 (C) North Carolina Cooperative Extension County agricultural extension chairmen County
22 Director in a county listed in the county(s) where the site is located or research and
23 extension personnel headquartered at North Carolina State University in the ~~school of~~
24 agriculture and life sciences School of Agriculture and Life Sciences;
- 25 (D) North Carolina licensed ~~landscape architects;~~ Landscape Architect pursuant to G.S. 89A;
- 26 (E) North Carolina licensed Professional Engineer pursuant to G.S.89C;
- 27 (F) Private consulting ~~foresters~~ forester referred by the ~~division of forest resources,~~
28 ~~Department of Environment, Health, and Natural Resources; North Carolina Forest Service~~
29 within the Department of Agriculture and Consumer Services; or
- 30 (G) Others as may be approved by the ~~department;~~ Department; Provided that areas expected
31 to be in use beyond the maximum permissible permit period, such as processing plants or
32 stockpiles, do not require a specific revegetation plan;
- 33 (11) In lieu of the written approval required by Subparagraph (10) a plan for revegetation and
34 reforestation developed utilizing one of the following:
- 35 (A) North Carolina Erosion and Sedimentation Control Planning and Design Manual; or
- 36 (B) North Carolina Surface Mining Manual: A Guide for Permitting, Operation and
37 Reclamation.

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

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

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

10 (2) outline of pits;

11 (3) outline of stockpile areas;

12 (4) outline of overburden disposal areas;

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

15 (6) location and name of streams and lakes;

16 (7) outline of settling ponds;

17 (8) location of access roads;

18 (9) mine permit boundaries;

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

20 (11) map legend, including:

21 (A) name of company,

22 (B) name of mine,

23 (C) north arrow,

24 (D) county,

25 (E) scale,

26 (F) date prepared,

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

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

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

32 (14) Vicinity map showing the mining operation in relation to the general area at a minimum scale of
33 1:24,000.

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

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

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

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

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

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

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

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

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

19 (3) Pursuant to G.S. 74-50, Proof ~~proof~~ satisfactory to the department Department that the applicant has
20 made ~~a reasonable~~ the required effort to notify all owners of record of all adjoining land and the
21 chief administrative ~~officer~~ officers of the county ~~or~~ and municipality of the pending application.
22 Proof satisfactory to the ~~department~~ Department shall include an affidavit by the applicant ~~that he~~
23 ~~has caused stating that~~ a notice of the pending application ~~to be~~ has been sent by certified or
24 registered mail to all known adjoining owners and to the chief administrative ~~officer~~ officers of the
25 county or municipality. Other means of notice shall be satisfactory if approved in advance by the
26 ~~department~~ Department.

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

30 (5) Any application submitted to the Department for approval of mining activities pursuant to G.S. 74-
31 50 shall include proof of ownership or the portion of valid and unexpired Memorandum Of Lease
32 or option from the property owner allowing mining activities for all lands to be included in the
33 permitted area as defined in G.S. 74-50(b)(3).

34 (e) An application for a mining permit shall not be deemed filed under G.S. 74-51(b) until the nonrefundable permit
35 application processing fee required under G.S. 74-54.1 is received by the Department. If the necessary fee is not
36 received within 30 days of initial receipt of the application, the application shall be denied and required to be
37 resubmitted in its entirety.

1 (f) Permit applications shall be signed as follows:

- 2 (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or
3 his authorized representative;
4 (2) in the case of a partnership or limited partnership, by a general partner;
5 (3) in the case of a sole proprietorship, by the proprietor;
6 (4) in the case of a municipal, state or other public entity by either a principal executive officer, ranking
7 official or other duly authorized employee.
8 (5) in the case of a limited liability company, by a managing member.

9 The signature of the consulting engineer or other agent shall be accepted on the application only if
10 accompanied by a letter of authorization from one of the individuals mentioned in Subparagraphs 1
11 through 5 of this Paragraph.

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

17 **15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT**

18 To ~~assure~~ ensure that the mining operation ~~will comply fully~~ fully complies with the requirements and objectives of
19 the Mining Act of 1971, the ~~director~~ Director may ~~approve an application or reclamation plan subject to certain~~
20 ~~conditions. Such conditions of application approval may include:~~ require that a permit or reclamation plan contain
21 conditions including:

- 22
23 (1) additional erosion control measures to be installed during the mining ~~operation;~~ operation as
24 specified in G.S. 74-51;
25 (2) a ~~natural vegetated~~ buffer to be left between any stream and the affected ~~land;~~ land when specified
26 in State or local stream protection requirements.
27 (3) visual screening such as existing ~~natural vegetation,~~ vegetated earthen berms, and tree plantings at
28 staggered ~~spacing~~ spacing, etc. to be installed and maintained as feasible between any affected land
29 and any adjoining property containing occupied buildings or public access within view of the
30 affected land; any screening conditions shall take into consideration the mining operation activities
31 that are being screened and the current usage of the neighboring property.
32 (4) erosion control measures to be taken during the construction and operation of all haul roads or access
33 roads to minimize offsite damage from ~~sediment;~~ sediment.
34 (5) other conditions necessary to safeguard the adjacent surface resources or wildlife.
35 (6) Hydrogeological analysis to assess potential influences of mine dewatering on water supply wells
36 and measures to mitigate potential adverse impacts.

37
38 *History Note: Authority G.S. 74-63; 74---51;*
39 *Eff. February 1, 1976;*

1 *Amended Eff. May 1, 1992; November 1, 1984.*

2
3 **15A NCAC 05B .0106 STANDARDS FOR DENYING AN APPLICATION**

4 An application for a mining permit including new permits, modified permits and renewal permits, may be denied
5 when the operation will have an unduly adverse effect on wildlife or fisheries by:

- 6 (1) ~~substantial siltation of streams or lake beds, increasing the average water temperature of adjacent~~
7 ~~waterways to a temperature detrimental to the pre-existing aquatic wildlife; or~~
8 (2) ~~other conditions designated by the North Carolina Wildlife Resources Commission as being~~
9 ~~unduly detrimental to wildlife.~~

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11 *History Note: Authority G.S. 74-51; 74--58; 74---63;*
12 *Eff. February 1, 1976;*
13 *Amended Eff. November 1, 1984.*

14
15 **15A NCAC 05B .0107 MODIFICATION OF MINING PERMIT**

16 **15A NCAC 05B .0108 RENEWAL OF MINING PERMIT**

17 **15A NCAC 05B .0109 STANDARDS FOR SUSPENDING OR REVOKING A MINING PERMIT**

18
19 *History Note: Authority G.S. 74-52; 74--57; 74---58;*
20 *Eff. February 1, 1976;*
21 *Repealed Eff. November 1, 1984.*

22
23 **15A NCAC 05B .0110 MINING RECLAMATION REPORTS**

24 ~~The mine operator shall, by February 1 of each year during the life of the permitted operation, and within 30 days of~~
25 ~~completion or termination of mining on an area under permit, file with the department a mining reclamation report on~~
26 ~~a form prescribed by the department.~~

27 (a) Upon completion of reclamation of an area of land, the operator shall notify the Department and complete a release
28 request that includes the details found on the reclamation report as required to be filed by G.S. 74-55.

29 (b) If the Department receives a release request on or before September 30, the Department may waive the annual fee
30 for the permit year. Where a site is determined to not be eligible for release under G.S. 74-56, the Department may
31 revoke the waiver prior to December 31.

32
33 *History Note: Authority G.S. 74-55; 143B---290;*
34 *Eff. March 30, 1978;*
35 *Amended Eff. November 1, 1984.*

36
37 **15A NCAC 05B .0111 PUBLIC HEARINGS**

38 (a) If the ~~department~~ Department determines that there exists a significant public interest in an application for a new
39 mining permit, or for a modification that adds land to the existing permit, the ~~director~~ Director shall appoint a hearing

1 officer to conduct a public hearing on the application which shall be held no ~~sooner than 20 or later than 60 days~~ 90
2 ~~days or from~~ the filing of the application and before the ~~department~~ Department makes its final decision regarding the
3 application.

4 (b) At least ~~40~~ 20 days prior to the public hearing, the ~~department~~ Department shall ~~publish~~ provide notice ~~thereof~~ in
5 a newspaper ~~or other media platform with~~ general coverage in the county(s) in which the proposed mine is located.
6 ~~The department may also give notice to the public by other means.~~ In addition, the ~~department~~ Department shall cause
7 written notice of the hearing to be sent by certified or registered mail to the applicant and to the known owners of all
8 adjoining ~~land.~~ land as specified in G.S. 74-50.

9 (c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The
10 hearing officer may impose ~~reasonable~~ limitations on the length of time that any person may speak and may summarize
11 comments rather than recording them in full. The hearing officer may allow additional written comments to be
12 submitted ~~for up to ten days after the hearing~~ hearing after which the public comment period will be considered closed
13 and no other public comments can be considered in the final determination of the application. ~~within a period of time~~
14 ~~he deems appropriate which shall not exceed ten days.~~

15 (d) Within ten days after the hearing or time for additional comment, the hearing officer shall prepare a written report
16 summarizing the comments that were submitted regarding the application. The report shall include copies of all written
17 comments submitted. Copies of the report shall be made available to the applicant or members of the public upon
18 request. The ~~department~~ Department shall give full consideration to all comments contained in the hearing record in
19 making its final determination on the application.

20 (e) ~~In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of~~
21 the application after which the public comment period will be considered closed and no other public comments will
22 be considered in the final determination of the application.

23
24 *History Note: Authority G.S. 74-51; 74-63; 74-86;*
25 *Eff. May 1, 1982.*

26 **15A NCAC 05B .0112 PERMIT APPLICATION PROCESSING FEES**

27 (a) A nonrefundable permit application processing fee, in the amounts stated in G.S. 74-54.1, ~~Paragraphs (b), (c) and~~
28 ~~(d) of this Rule,~~ shall be paid when an application for a new mining ~~permit~~ permit or a permit modification, ~~or a~~
29 ~~renewal permit~~ or transfer is filed in accordance with G.S. 74-51 or G.S. 74-52 and ~~15A NCAC 5B .0003, .0004, and~~
30 ~~.0005,~~ the rules of this Subchapter.

31 (1) The acreage for a new permit application shall include the total acreage contained within the
32 permitted area.

33 (2) The acreage for a permit modification shall be limited to the increase in proposed acreage of affected
34 land internal to the existing permitted area plus any new acreage proposed to be added to the
35 permitted area beyond the existing permit boundary.

36 (3) The fee for a permit transfer shall remain a flat fee regardless of acreage.
37

(4) For purposes of calculations under G.S. 74-54.1, the referenced acreage ranges shall include anything less than 26 acres as “0-25 acres” and anything equal to or greater than 26 acres as “26+ acres”.

(b) No fee is required for administrative changes initiated by the Director.

~~(b) A non refundable fifty dollar (\$50.00) permit application processing fee is required for minor permit modifications. Minor permit modifications include administrative changes such as ownership transfers, name changes, and bond substitutions. A minor permit modification also includes lands added to a permitted area, outside of the minimum permit buffer zone requirements, where no plans for mining related disturbance of the added lands have been approved. All other changes to the permit are major modifications. No fee is required for administrative changes initiated by the Director to correct processing errors, to change permit standards or to implement new standards.~~

~~(c) A non refundable fifty dollar (\$50.00) permit application processing fee is required for permit renewal of an inactive site, provided that any previously disturbed areas have been reclaimed in a manner acceptable to the Department. Once renewed, prior to initiating any mining related disturbance, an application for a major modification and a processing fee shall be submitted to and approved by the Department. For purposes of this Paragraph, and notwithstanding Paragraph (d) of this Rule, the acreage for a major modification shall be the total acreage at the site. All other modifications to the renewed permit shall be governed by Paragraphs (b) and (d) of this Rule.~~

~~(d) c)For the purposes of this Rule, acres for new permits and renewal permits means the total acreage at the site; and acres for major modification of permits means that area of land affected by the modification within the permitted mine area, or any additional land that is to be disturbed and added to an existing permitted area, or both. Each permit application shall be deemed incomplete until the permit application processing fee is paid. Schedule of Fees:~~

—MAJOR					
TYPE	ACRES	NEW PERMIT	MODIFICATION	RENEWAL	
CLAY	1 but less than 25	\$ 500		\$ 250	\$ 250
	25 but less than 50	1000	500	500	
	50 or more	1500	500	500	
SAND & GRAVEL, GEMSTONE AND BORROW PITS	1 but less than 5	150		100	100
	5 but less than 25	250		100	100
	25 but less than 50	500		250	500
QUARRY, INDUSTRIAL MINERALS, DIMENSION STONE	50 or more	1000	500	500	
	1 but less than 10	250		100	100
	10 but less than 25	1000		250	500
STONE	25 but less than 50	1500		500	500
	50 or more	2500	500	500	
PEAT &	1 or more	2500		500	500

~~Strikethroughs~~ are words proposed for removal.
Underlines are words proposed for insertion.

1	PHOSPHATE				
2	GOLD (HEAP	1 or more	2500	500	500
3	LEACH),				
4	TITANIUM &				
5	OTHERS				
6					

7 ~~(e) Payment of the permit application processing fee shall be by check or money order made payable to the "N.C.~~
8 ~~Department of Environment, Health, and Natural Resources". The payment shall refer to the new permit, permit~~
9 ~~modification or permit renewal.~~

10 ~~(f) In order to comply with the limit on fees set forth in G.S. 143B-290(4)b, the Director shall, in the first half of~~
11 ~~each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection~~
12 ~~shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for~~
13 ~~the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.~~

14 (c) Any new permit issued between September 1 and December 31 shall not be required to pay the annual operating
15 fee or submit the annual reclamation report for that same calendar year.

16
17 *History Note: Filed as a Temporary Rule Eff. November 1, 1990, for a Period of 180 Days to Expire on April 29,*
18 *1991;*
19 *Authority G.S. 143B--290;*
20 *ARRC Objection Lodged November 14, 1990;*
21 *ARRC Objection Removed December 20, 1990;*
22 *Eff. January 1, 1991;*
23 *Amended Eff. December 1, 1991.*

24
25 **15A NCAC 05B .0113 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)**

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

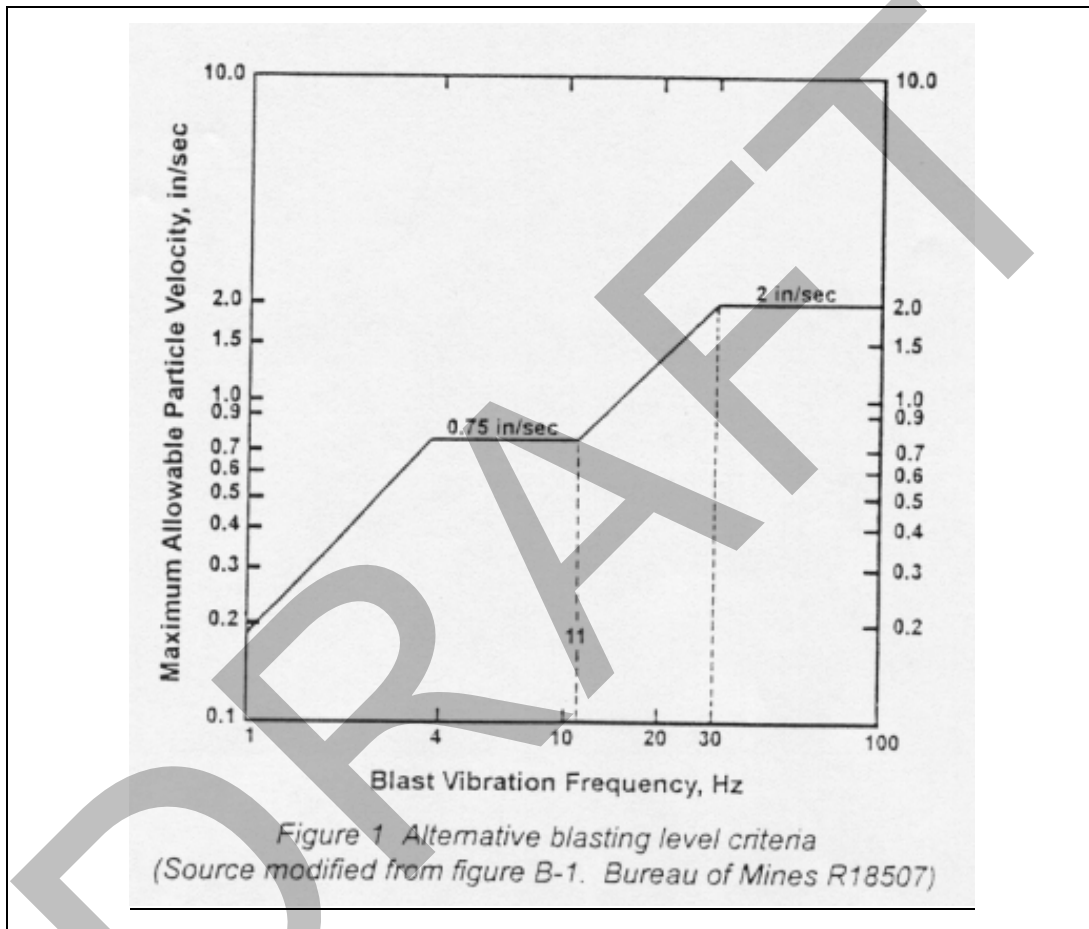
32
33 *History Note: Authority G.S. 74-51; 74--52; 74--63; 143B---290; Note:*
34 *RRC Objection Eff. September 15, 1994 due to lack of statutory authority;*
35 *Eff. November 1, 1994;*
36 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d))*

37
38 **15A NCAC 05B .0114 BLASTING**

Strikethroughs are words proposed for removal.
Underlines are words proposed for insertion.

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

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



8
 9 (c) In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted
 10 in accordance with the following scaled distance formulas:

11
$$W = \left(\frac{D}{Ds}\right)^2 \qquad Ds = \frac{D}{\sqrt{W}} \qquad V = 160(Ds)^{-1.6}$$

- 12 W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or
 13 more (pounds).
 14 D = Distance from the blast site to the nearest inhabited building not owned or leased
 15 by the mine operator. (feet).
 16 Ds = Scaled distance factor.
 17 V = Peak Particle Velocity (inches per second).

~~Strikethroughs~~ are words proposed for removal.
Underlines are words proposed for insertion.

1 The peak particle velocity of any component shall not exceed 1.0 inch per second, for the purposes of this Paragraph.
 2 (d) Air blast overpressure resulting from surface blasting shall not exceed 129 decibels linear (dBL) as measured at
 3 the nearest regularly occupied building not owned or leased by the operator outside of the permitted area such as a
 4 dwelling house, church, school, or public, commercial, or institutional building, unless an alternate level based on the
 5 sensitivity of the seismograph microphone as specified below is being used:

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

6
 7 (e) In the event of seismograph malfunction or other condition which prevents monitoring, blasting shall be conducted
 8 in accordance with the following formulas:

9 Formula from ISEE Blasters Handbook 17th Edition ISBN:1-892396-00-9

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

$$dB = 20 \log \left(\frac{P}{2.9 \times 10^{-9}} \right)$$

- 12
 13 P = Airblast overpressure average burial (pounds per square inch).
 14 W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or
 15 more (pounds).
 16 D = Distance from the blast site to the nearest inhabited building not owned or leased
 17 by the mine operator (feet).
 18 dB = Airblast overpressure average burial (decibels).
 19 A = Air blast or air overpressure for typical quarry situations (decibels).

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

21 (f) For the purposes of calculating Scale Distance, when using electronic detonators, the maximum charge weight of
 22 explosives per delay shall be calculated using actual delay of separation, a minimum 1 milliseconds. When using non-
 23 electric detonators, the maximum charge weight shall be calculated on a delay of 8.0 milliseconds

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

- 25 (1) Name of Company or contractor
 26 (2) date, and time of the blast.
 27 (3) Type of material blasted
 28 (4) the total number of holes.
 29 (5) pattern of holes and delay of intervals.
 30 (6) depth and size of holes.

~~Strikethroughs~~ are words proposed for removal.
Underlines are words proposed for insertion.

- 1 (7) type and total pounds of explosives.
2 (8) maximum pounds per 8ms delay interval.
3 (9) amount of stemming and burden for each hole.
4 (10) blast location.
5 (11) distance from blast to closest offsite regularly occupied structure.
6 (12) weather conditions at the time of the blast.
7 (13) Whether mats or other protections were used.

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

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

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

15
16 *History Note:* Authority G.S. 74-51; 74-63

17 Eff. XXXX X, XXXX;
18

19 **15A NCAC 05B .0115 MINING PERMIT TRANSFERS**

20 (a) Pursuant G.S. 74-51(i), a permit may be transferred from one operator to another, if both operators have complied
21 with the requirements of the Act. The sale or lease of the operation alone does not constitute an approved transfer of
22 the permit. Until a permit has been transferred by the Department to the successor operator, the existing operator shall
23 be held responsible for any activities at the site, including liability for any documented violations at the site. Liability
24 shall remain with the existing operator until such violations have been addressed to the satisfaction of the Department
25 and the Department has transferred the permit in its entirety to the successor operator.

26 (b) A valid permit may be transferred from one operator to another provided the following information has been
27 submitted on a form furnished by the Department:

28 (1) A signed statement from the existing operator requesting that the permit be transferred to the successor
29 operator. The existing mine name and permit number shall be identified in the statement.

30 (2) A non-refundable permit transfer processing fee per G.S. 74-54.1(a).

31 (3) A signed statement from the successor operator identifying the existing mine name and permit number,
32 requesting that the permit be transferred in its entirety, and accepting all responsibilities and liabilities for
33 the site with respect to the Article.

34 (4) A mine map showing the successor operator's name and contact information, current mining permit
35 boundary, acreage table, and reference to current permit number and conditions.

36 (5) The information required in Rule .0104(a)(1) through (a)(4) and (a)(12) through (15) of this Section

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

4 (7) An acceptable security in the amount determined in Rule .0103 of this Subchapter and using the forms
5 established pursuant to in Rule .0103 of this Subchapter covering the site. The security shall be issued in
6 the same successor operator name used in the permit transfer application.

7 (c) The permit transfer application shall be submitted to the Department no later than 60 days from the execution of
8 any purchase or lease agreement associated with a change in the responsibility for operation of the permitted site.

9 (d) Any pit expansion or other land disturbing activity anticipated within the permitted area not previously approved
10 by the Department shall require a permit modification. Expansion of permit boundaries to include additional land
11 under the permit shall require a permit modification.

12 (e) Upon approval of the permit transfer, responsibility for the full extent of the existing permitted area shall be
13 transferred to the successor operator unless the Department has authorized the release of a portion of the permitted
14 area from reclamation liability.

15 (f) Upon approval of the permit transfer, the Department shall send the new permit document to the successor operator.
16 Such permit may include updated operating and reclamation conditions to ensure compliance with the Article.

17 (g) The prior operator shall be notified by the Department of the completed permit transfer and that the prior operator
18 has been released from further liability with respect to the permit for the site. The security posted by the prior operator
19 to cover reclamation obligations at the site shall be returned by the Department to the prior operator provided the
20 security is no longer needed to cover other permitted sites under the prior operator's name.

21 (h) Permit transfers due to corporate name changes shall comply with Rule .0116 of this Subchapter.

22 *History Note: Authority G.S. 74-51; 74-54.1; 74-63*

23 *Eff. XXXX X, XXXX;*

24
25
26
27 **15A NCAC 05B .0116 PERMIT TRANSFERS DUE TO CORPORATE NAME CHANGES**

28 (a) In the event that the corporate name of the operator holding the permit changes, the operator shall submit a permit
29 transfer application as follows to the Department within 60 calendar days of the effective date of the corporate name
30 change:

31 (1) A letter identifying the existing and new corporate names, the effective date of the new corporate name,
32 any changes in company officers and associated contact information, and each mining permit number and
33 mine name impacted by the corporate name change.

34 (2) The Secretary of State corporate filing certificate or other legal paperwork verifying the new corporate
35 name is registered in North Carolina.

36 (3) A non-refundable permit transfer processing fee for each permit affected by the corporate name change
37 pursuant G.S. 74-54.1(a).

1 (4) An updated or new security in the new corporate name, including any associated contact information. The
2 updated or new security shall be in the same amount as the prior security covering the reclamation
3 obligations at the site.

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

7 (b) Upon approval of the corporate name change, the Department shall send a letter with the updated pages of the
8 relevant permits to the operator to attach to the existing relevant permits.

9
10 History Note: Authority G.S. 74-50; 74-51; 74-54.1; 74-63

11 Eff. XXXX X, XXXX;

12
13
14 **15A NCAC 05B .0117 DRAFT PERMITS**

15 Upon approval of an application prior to receipt of any performance bond or security, new or updated, any operating
16 permit generated by the Department shall be considered a preliminary draft and shall not be considered issued or
17 binding, regardless of whether the draft is shared with the applicant. Where a new or modified performance bond or
18 other security is required pursuant to G.S. 74-54, timely approval of an application, pursuant G.S. 74-51(h), shall
19 satisfy the requirement to grant a permit within the deadlines included in G.S. 74-51(b).

20
21 History Note: Authority G.S. 74-51; 74-63

22 Eff. XXXX X, XXXX;

23
24 **SUBCHAPTER 05F - CIVIL PENALTIES**

25
26 **15A NCAC 05F .0101 PURPOSE AND SCOPE**

27 These rules set forth the procedures and standards to be followed by the ~~director~~ Director in assessing civil penalties.
28 Penalties and by the Mining and Energy Commission in hearing appeals from the assessment of such penalties.

29
30 History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;

31 Eff. May 1, 1982;

32 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d)); November 1, 1984.

33
34 **~~15A NCAC 05F .0102~~ DEFINITIONS**

35 The terms used herein shall be as defined in G.S. 74-49 as follows:

36 (1) "Director" means the Director, Division of Energy, Mineral, and Land Resources;

37 (2) "Regional Engineer", means any regional engineer of the Land Quality Section, Division of Energy, Mineral,
38 and Land Resources;

1 ~~(3) "Mining and Energy Commission", means that body created by N.C.G.S. 143B-290.~~

2
3 *History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;*

4 *Eff. May 1, 1982;*

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

6 *Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.*

7
8 **15A NCAC 05F .0103 WHO MAY ASSESS**

9 Civil penalties may be assessed by the ~~director.~~ Director.

10
11 *History Note: Authority G.S. 74-61; ~~74-62;~~ 74-63; 74-64; 143B-10;*

12 *Eff. May 1, 1982.*

13
14 **15A NCAC 05F .0105 CIVIL PENALTY FOR MINING WITHOUT A PERMIT**

15 (a) Prior to the assessment of any civil penalty for mining without a permit, the alleged violator shall be given notice
16 by registered or certified mail, return receipt requested. ~~requested, signed by the Regional engineer in the region in~~
17 ~~which the violation occurred.~~ The notice shall describe the ~~violation with reasonable particularity;~~ violation, order the
18 violator ~~immediately~~ to cease mining until a valid operating permit has been obtained, and specify a time period
19 ~~reasonably~~ calculated to permit the restoration of any disturbed area. ~~area as deemed necessary by the regional~~
20 ~~engineer.~~ The notice shall also state that a civil penalty may be assessed for any violation.

21 (b) In determining whether to assess a civil penalty for any violation committed prior or subsequent to receipt of the
22 notice of violation, the ~~director~~ Director shall consider whether the violator ceased mining, restored the affected area,
23 or otherwise complied with the requirements of the notice of violation. ~~Violation and shall also consider the various~~
24 ~~criteria in Rule 5F-0007.~~ The civil penalty assessment shall specify ~~with reasonable particularity~~ the violation(s) for
25 which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return
26 receipt requested.

27 *History Note: Authority G.S. 74-60; 74--61; 74--63; 74--64; 143--B-10;*

28 *Eff. May 1, 1982;*

29 *Amended Eff. December 1, 1988; November 1, 1984.*

30
31 **15A NCAC 05F .0106 CIVIL PENALTY FOR VIOLATING OPERATING PERMIT**

32 (a) ~~Prior to the assessment of a civil penalty against a permitted operator for violating any provisions of the Mining~~
33 ~~Act of 1971, or any rules promulgated thereunder, or any conditions of his mining permit, the alleged violator or his~~
34 ~~agent shall be given notice by registered or certified mail, return receipt requested, signed by the director. The notice~~
35 ~~shall describe the violation with reasonable particularity and specify a time period reasonably calculated to permit the~~
36 ~~violator to correct the violation. The notice shall also state that civil penalties may be assessed against the alleged~~
37 ~~violator if he fails to correct the violation within the specified time.~~

38 (b) If the violator does not comply with the requirements of the notice of violation within the time period specified in
39 the notice, the ~~director~~ Director may assess a civil penalty for any violation(s) committed after the date of receipt of

1 the notice of violation. The civil penalty assessment shall specify ~~with reasonable particularity~~ the violation(s) for
2 which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return
3 receipt requested.

4 *History Note:* Authority G.S. 74-60; 74-61; ~~74-62~~; 74-63; 74-64; 143B-10;
5 *Eff. May 1, 1982;*
6 *Amended Eff. November 1, 1984.*

10 **15A NCAC 05F .0107 CRITERIA FOR DETERMINING AMOUNT OF PENALTY**

11 ~~In determining the amount of a civil penalty assessment, the director shall consider the following criteria insofar as~~
12 ~~they are appropriate to the violation:~~

- 13 (1) ~~nature of the violation;~~
- 14 (2) ~~degree and extent of the harm, including off site damage;~~
- 15 (3) ~~duration of the violation;~~
- 16 (4) ~~cause of the violation;~~
- 17 (5) ~~cost of compliance and rectifying any harm or damage;~~
- 18 (6) ~~violator's previous record of compliance with the Mining Act, or any rules promulgated thereunder,~~
19 ~~or any mining permit issued to the violator;~~
- 20 (7) ~~staff investigative costs ; and~~
- 21 (8) ~~effectiveness of any action taken by the operator .~~

22
23 *History Note:* Authority G.S. 74-61; ~~74-62~~; 74-63; 74-64; 143B-10;
24 *Eff. May 1, 1982.*
25 *Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.*

27 **15A NCAC 05F .0108 ADMINISTRATIVE REMEDIES**

28 ~~Within 60 days after receipt of notification of any civil penalty assessment, the person against whom the civil penalty~~
29 ~~is assessed may contest the decision of the department by filing a petition as described in G.S. 74-61 and G.S. 150B-~~
30 ~~23.~~

31
32 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
33 *Eff. May 1, 1982;*
34 *Amended Eff. August 1, 1988.*

35 **15A NCAC 05F .0109 HEARING PROCEDURES**

37 ~~(a) The final decision for purposes of judicial review under G.S. 74-61 shall be made by a majority vote of a quorum~~
38 ~~of the Mining and Energy Commission.~~

39 ~~(b) All hearings shall be conducted in accordance with the departmental hearing procedures in 15A NCAC 1B .0200~~
40 ~~et seq., and Chapter 150B of the General Statutes.~~

1
2 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 143B-10; 150B-23;
3 *Eff. May 1, 1982;*
4 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d)); August 1, 1988.*
5 ***Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.***

6
7 **15A NCAC 05F .0110 TENDERS OF PAYMENT**

8 ~~The director shall accept and acknowledge all tenders of payment.~~

9
10 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
11 *Eff. May 1, 1982.*
12 ***Expired Eff. March 1, 2024 pursuant to G.S. 150B-21.3A.***

13
14 **~~15A NCAC 05F .0111 REFERRAL TO ATTORNEY GENERAL~~**

15 ~~(a) If the person against whom a civil penalty is assessed, fails to respond within 60 days as provided in Rule .0008,~~
16 ~~the director shall refer the matter to the Attorney General to recover the amount of the civil penalty.~~

17 ~~(b) If payment of any civil penalty assessed pursuant to the rules of this Subchapter is not received by the director~~
18 ~~within 30 days following denial of any appeal pursuant to G.S. 74-61 and G.S. 74-62 the director shall refer the matter~~
19 ~~to the Attorney General to recover the amount of the civil penalty.~~

20
21 *History Note:* Authority G.S. 74-61; ~~74-62~~ 74-63; 74-64; 143B-10;
22 *Eff. May 1, 1982.*

23
24 **15A NCAC 05F .0112 FURTHER REMEDIES**

25 ~~No provision of this Subchapter shall be construed to restrict or impair the right of the director or the Mining and~~
26 ~~Energy to pursue any other remedy provided by law for violations of the Mining Act of 1971 or the rules of this~~
27 ~~Chapter.~~

28
29 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
30 *Eff. May 1, 1982;*
31 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d)).*

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38
39 **SUBCHAPTER 5G - URANIUM EXPLORATION REGULATIONS**

40
41 **15A NCAC 05G .0101 PURPOSE**

1 *History Note:* Authority G.S. 143B-290(1)(e); 74--75 through 74---89;
2 *Eff. December 1, 1983;*
3 *Repealed Eff. August 1, 1988.*

4
5 **15A NCAC 05G .0102 ACTIVITIES REQUIRING PERMITS**

6
7 *History Note:* Authority G.S. 74-76; 74---77;
8 *Eff. December 1, 1983;*
9 *Repealed Eff. November 1, 1984.*

10
11 **15A NCAC 05G .0103 PROCEDURES FOR OBTAINING PERMITS**

12 The application for and issuance of exploration permits is governed by the procedures in this Subchapter.

13
14 *History Note:* Authority G.S. 74-77 through 74---89;
15 *Eff. December 1, 1983.*

16
17 **15A NCAC 05G .0104 ABANDONMENT PLAN: BONDING REQUIREMENTS**

18 (a) After reviewing an application, the ~~department~~ Department shall determine whether it should be approved and
19 notify the applicant of its determination. No application shall be approved unless it contains an abandonment plan
20 acceptable to the ~~department~~ Department. If the application is approved, the ~~department~~ Department ~~shall~~ will
21 determine the amount of the performance bond that ~~is~~ will be required and issue to the applicant a bond form to be
22 used in securing the bond. A person shall not engage in exploration activity for the discovery of uranium until a bond
23 in the required amount has been filed with the ~~department~~ Department and an exploration permit has been issued.

24 (b) The required amount of the bond shall ~~that will be required is to be~~ determined as follows:

25 (1) The applicant shall provide the ~~department~~ Department with an estimate of the total length of the
26 vehicular access roads ~~that which will~~ involve the cutting of vegetation and/or grading and of the
27 number of exploratory drill holes and test pits;

28 (2) The minimum amount of any bond shall be five thousand dollars (\$5,000.00). In addition to the
29 minimum bond amount of five thousand dollars (\$5,000.00), an additional bond amount shall be
30 required at the rate of two dollars (\$2.00) per each linear foot of vehicular access road and of two
31 hundred dollars (\$200.00) per each exploratory drill hole or test pit; and

32 (3) If the ~~department~~ Department determines that the amount of the bond required under Subparagraph
33 (b)(2) of this Rule is ~~either excessive or inadequate to complete the required abandonment, due to~~
34 ~~specific site conditions,~~ the ~~department~~ Department may negotiate a different bond amount that shall
35 ~~will~~ assure adequate abandonment in the event of bond forfeiture.

36 (c) A permittee shall be in violation of its permit if the length of the vehicular access roads or the number of
37 exploratory drill holes or test pits exceeds the length or number authorized by the amount of its bond.

38
39 *History Note:* Authority G.S. 74-78; 74--79; 74---86;

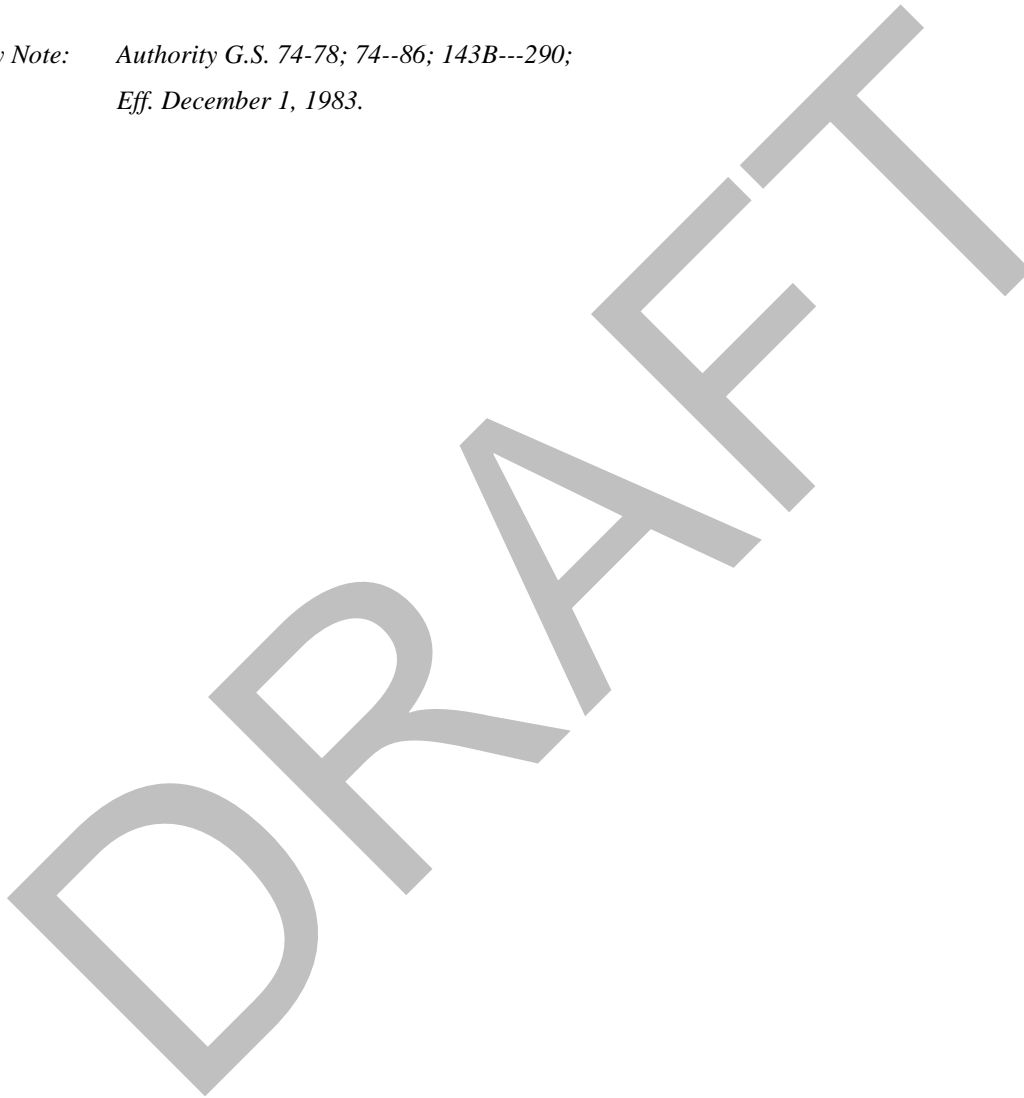
1 *Eff. December 1, 1983.*

2
3 **15A NCAC 05G .0105 DRILLING: CASING: TESTING AND ABANDONMENT**

4 The methods and procedures utilized in drilling, casing, testing and abandonment shall be in accordance with the
5 requirements of ~~Title 15A NCAC Subchapter 2C~~, of 15A NCAC 02C Section .0100, Criteria and Standards Applicable
6 to Water Supply and Certain Other Type Wells, and is hereby incorporated by reference, including subsequent
7 amendments.

8
9 *History Note: Authority G.S. 74-78; 74--86; 143B---290;*

10 *Eff. December 1, 1983.*

11


Hearing Officer Speech

DRAFT

PUBLIC HEARING

**Public Hearing on proposed readoption of 15A NCAC 05A, 05B, 05F, and 05G
(Mining Rules) ruleset.
18 November 2025, 6:00 p.m.**

I. Call to Order:

This hearing will now come to order.

Good evening, my name is Dwain Veach, State Geologist with the North Carolina Geological Survey and Commissioner on the Mining Commission and I am the hearing officer for this public hearing. My role as hearing officer is to receive comments on the proposed rule actions, then report those comments and recommend action to the N.C. Mining Commission.

II. State the Purpose for Hearing:

During the public hearing this evening, we will be receiving oral comments on the proposed readoption of the **15A NCAC 05A, 05B, 05F, and 05G (Mining Rules) ruleset**. If you signed up to speak, your name will be called, and we will ask that you proceed to the front of the room to give your oral comment once we conclude a brief presentation.

III. Explanation of the Public Hearing:

This hearing is being held under the authority of North Carolina General Statutes, Chapter 150B. 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 Department of Environmental Quality published a notice of the hearing in a newspaper of general circulation. We will

add the public notice and the proposed rules into the hearing record without reading them at this time.

IV. Rules Presentation:

Now I would like to defer to Adam Parr, Deputy Director, with the Division of Energy, Mineral, and Land Resources, who will provide a brief overview of the rules proposed for adoption.

[presentation]

V. Comment Procedure:

We will now take comments on adoption of 15A NCAC 05A .0101-.0202, .05B .0103 - .0117, 05F .0101 - .0112, and 05G .0103-.0105 (Mining Rules) ruleset. I will call the name of each of the registered speakers in order.

When your name is called, please come up to the microphone and clearly state your name and any affiliation with an organization you may be representing. If you have written copies of your comments, we would appreciate receiving a copy of them. I ask that you limit your comments to 3 minutes to allow everyone an opportunity to be heard. Cross-examination of speakers will not be allowed; however, I may ask questions for clarification. I ask that everyone respect the right of others to speak without interruption.

After all registered speakers have had an opportunity to comment, I will allow comments from additional speakers if time permits. Staff can be contacted after the hearing to address any additional questions or comments that you may have.

I will now call on the first speaker.

[begin calling on speakers]

[placeholder to circle back on any registered names that did not respond when their names were called earlier]

[placeholder to solicit any more comments from non-registered speakers]

That concludes our time to receive oral comments.

If you did not choose to speak tonight, but still want to provide comments on the proposed rulemaking, you may provide written comments until the end of the comment period on **December 15, 2025, at 11:59 p.m.** Anyone may provide written comments, by either:

Email, to dwain.veach@deq.nc.gov with “Mining Rules” in the subject line

OR

Mail, to Dwain Veach, North Carolina Geological Survey, 1612 Mail Service Center, Raleigh, NC 27699-1612.

Thank you all for your participation in this public hearing and your interest in the public hearing process.

This hearing is adjourned.

Mining Rules Presentation

DRAFT

NC MINING COMMISSION PRESENTATION

I. Introduction:

As Dwain Veach mentioned, my name is Adam Parr. My title is Deputy Director of the Division of Energy, Mineral, and Land Resources, with the Department of Environmental Quality, and staff to the North Carolina Mining Commission.

I would like to take a moment and briefly review a specific area of the NCGS §143B-290.

Pursuant to NCGS § 143B-290. North Carolina Mining Commission – creation; powers and duties.

There is hereby created the North Carolina Mining Commission of the Department of Environmental Quality with the power and duty to promulgate rules for the enhancement of the mining resources of the State.

- (1) *The North Carolina Mining Commission shall have the following powers and duties:*
 - d. *To promulgate rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.*
 - e. *To promulgate rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.*
- (3) *The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environmental Quality.*

II. Purpose of 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 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.

III. Necessity for Rule Changes:

NCGS § 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.

The specifics of the proposed rules can be found in the notice in Volume 40, Issue 08 of the North Carolina Register and the Dept. of Environmental Quality's rules website.

Public Hearing Attendance

DRAFT

ATTENDANCE REGISTRATION SHEET
 NC DEPARTMENT OF ENVIRONMENTAL QUALITY
 PUBLIC HEARING FOR PROPOSED READOPTION OF MINING RULES SET
 NOVEMBER 18, 2025

Name	Email Address	Mailing Address	Do you wish to speak?
Jean Spooner	umsteadCoalition@gmail.com Jean Spooner	2401 Trinity Farms Rd RALFIEH NC 27607	Y
Natalie Lew	NLEW@MINDSPRING.COM	PO BOX 80035 Raleigh 27623	Y
E. Murawski	emurawski@kleinfelder.com	1907 N US Hwy 301 SA 100 Tampa FL 33619	N
ANDREW WILFEL	AWILFEL@KLEINFELDER.COM	200 REGENCY FOREST DRIVE, SUITE 220 CARY NC	NO

ATTENDANCE REGISTRATION SHEET
NC DEPARTMENT OF ENVIRONMENTAL QUALITY
PUBLIC HEARING FOR PROPOSED READOPTION OF MINING RULES SET
NOVEMBER 18, 2025

Name	Email Address	Mailing Address	Do you wish to speak?
Jay Stem	jay@ncapss.org		N
Kylie Wallace	kyliewallace@yahoo.com	—	N
Janice Richard	jdricha5@ncsu.edu	—	N
Javier Roman Martinez	jaromanm@ncsu.edu	—	N

ONLINE

Davan
Tracy Davis
Brian North
D.E.
Jean

DRAFT

Written Comments

DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, November 18, 2025 1:24:09 PM
Attachments: [image001.png](#)
[image002.png](#)

Corey and Kelly – Adam is aware of the message below from Mr. Wald. I forgot to forward this one onto you all as well. I have a couple more emailed comments since yesterday that I'll be forwarding to the three of you shortly.

These are comments to collect related to this evening's public hearing.

Thanks.

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
Office: 919.707.9205
Email: dwain.veach@deq.nc.gov
Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Veach, Dwain M
Sent: Monday, November 17, 2025 10:25 AM
To: Jeff Wald <jeffwald@rocketmail.com>
Subject: RE: [External] Mining Rules

Mr. Wald,

Thank you for reaching out and sharing your perspective. Your comments are noted and will become part of the record of comments related to tomorrow's public hearing.

Regards,

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](http://www.ncdeq.gov)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
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Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Jeff Wald <jeffwald@rocketmail.com>
Sent: Sunday, November 16, 2025 7:39 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from jeffwald@rocketmail.com. [Learn why this is important](#)

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It is deeply concerning that there is a proposal to, across the board, gut the administrative rules and regulations about NC mines to keep North Carolina residents safe and healthy.

I am a neighbor of the Wake Quarry/Umstead State Park mine. My house shakes and my dishes rattle when they blast, and it is over one mile away. Just today, I submitted a complaint because of the huge dust clouds emanating from the quarry and blowing into Umstead State Park.

Who is looking out for NC residents if not you? Rigid health and safety guidelines must be upheld to protect you, me, and our children. Whether a mine is in "the middle of nowhere" or in the middle of one of the fastest growing cities in America, people's lives, health, and quality of life are at stake. Please, please enter my plea for common sense and not only maintain current regulations, but strengthen them to protect North Carolinians.

Sincerely,
Jeff Wald

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DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, November 18, 2025 1:29:39 PM
Attachments: [image001.png](#)
[image002.png](#)

Please see the message below as public comment related to this evening's public hearing. I thanked them for their comments and mentioned these would be included as part of the public record.

Thanks.

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
Office: 919.707.9205
Email: dwain.veach@deq.nc.gov
Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Genie Safriet <soaronfoot@mindspring.com>
Sent: Monday, November 17, 2025 4:11 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from soaronfoot@mindspring.com. [Learn why this is important](#)

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Hello Dwain,

I am very concerned about the proposed rule changes to Subchapters 05A, 05B, 05F and 05G of the Mining Act Rules, codified in 15A NCAC Chapter 05. I live next to

Umstead State Park and the impact of these changes is will be seen for years to come, in a bad way.

Please consider making the following changes to the Draft rules:

- Public and agency comments on a mining application should NOT be limited to a few days after the first version of the mining application submittal, but rather allowed throughout the evaluation – especially after changes to the permit application are submitted to DEQ.
- Logging in preparation for mining NOT be exempted and must continue to be considered a part of “mining operation”
- “Unexcavated buffers” should not be allowed as a type of protective buffer – they allow so much bad – roads, trucks, stockpiling, crushing, conveyor belts, etc. This is NOT what the public considers as a “buffer” and ‘undisturbed” buffers should not be allowed to be converted to ‘unexcavated’ buffers – remember, the public only has the opportunity to provide public comment when a mining permit application is submitted – sequent ‘modifications’ are essentially between the mining operator and DEQ. Loopholes and abuse could abound.
- DEQ should NOT be the determining agency of WHO owns the land – another loophole being ‘slipped in.’ The land owner is on the deeds or stated by law or the court – NOT to be arbitrarily made up by the Mining operator or DEQ.
- Stream protective buffers should NOT be limited by whatever law is or is not on the books. Rather, stream protective buffers for water quality, dust, noise, visuals should not be eliminated or gutted if they are insufficient per other regulations for other purposes.
- Blasting records should record the GPS coordinates and elevation.

Please seriously consider my request.

Thank you,
Genie Safriet
2412 Trinity Farms Road
Raleigh, NC 27607

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, November 18, 2025 1:33:48 PM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
Office: 919.707.9205
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Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Robin Davis <1jaxmom@gmail.com>
Sent: Tuesday, November 18, 2025 9:47 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Cc: Robin Davis <robin@maxieb.com>
Subject: [External] Mining Rules

You don't often get email from 1jaxmom@gmail.com. [Learn why this is important](#)

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Hello,

I am writing to express my concern over a proposed rule change to mining rules, specifically Subchapters 05A, 05B, 05F and 05G. I do not support weakening of the existing rules. Citizens of this state hold our officials responsible for protecting the natural resources of the state of NC for all who call this state home. We all have a moral responsibility to both defend and restore the natural world, not make it easier for corporations to degrade it and profit from that.

Further, it is imperative that both public and agency review comments be cultivated and supported, not limited or prohibited. Transparency is a must. Public and agency comments must NOT be limited to a few days after the first version of the mining applications submittal, but rather allowed throughout the evaluation, especially AFTER changes to the permit application are submitted to DEQ.

Streams absolutely must be have generous buffer protections to protect our water quality in the state for all. These stream buffers are to protect from dust, noise and visuals as well. More buffer is always better as well all well know.

There should be no exemptions for the deforestation that results from “preparation” logging to a mining site. Rather, logging in preparation for mining must not be exempted and must be considered a part of “mining operation.”

DEQ should not be the determining agency of who owns the land. The landowner is on the deed, not to be arbitrarily made up by the mining operator or DEQ.

Sincere regards,

Robin Davis
ljaxmom@gmail.com

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**Mining Commission Rule Changes Public Hearing
18/Nov/2025**

The NC Mining Act is written to provide a framework for gaining access to natural resources that lie beneath the ground, while also protecting NC's environment, our on the ground natural resources. Two goals.

What happens when these two goals collide? Who decides which natural resource is more important? Who is allowed to participate in the decision process and for how long? Do the desires of the mining industry trump those of all other State agencies and the public?

The proposed changes to the Mining Rules clearly give the mining industry a **major** advantage over all other State agencies and the public; they are written such that a mining permit will be issued even if other State agencies have deemed the surface land as a critical State resource.

The Mining Rules as re-written must NOT be accepted. The Mining Rules need to be amended such that they reflect that there are times when above the ground natural resources are more important than below the ground resources especially since, as stated in the Mining Act, "the very character of certain surface mining operations precludes complete restoration of the land to its original condition."

State Agency and public comments must NOT be limited to 10 days after a hearing. This essentially eliminates public comment and minimizes other agency input. At the time of the public hearing, the mining application is NOT complete or final. In order to avoid comments on some issues, a mining company could easily not include relevant information in an application and then 10 days after the public hearing, then could make drastic changes. State agencies and the public must be allowed to comment on any new or changing information that arises after a public hearing.

LOGGING MUST REMAIN A MINING ACTIVITY.

**Mining Commission Rule Changes Public Hearing
18/Nov/2025**

BUFFERS MUST REMAIN AS UNDISTURBED OR VEGETATIVE AND NOT UNEXCAVATED. A buffer is a protective area between an industrial site and neighboring properties. Undisturbed or vegetative buffers offer protection. An “unexcavated” buffer offers zero protection as it allows for the removal of all trees and for the area to be used for roadways and the like, resulting in a drastic change in character of the area. “Unexcavated” buffers essentially eliminate all buffers.

BUFFERS must not be limited to existing law. Existing law should be the minimum. Additional buffer space must be required so as to not drastically change the character of neighboring properties.

In the application, the following should be documented: owners of record AND deeded owners (to give a clear picture of ownership); anticipated size AND life of mine (to give a clear pictures of what eventually will happen and for about how long).

Measures to screen the mining operation from public view must be consistent with the current and intended use of the neighboring land.

This information is needed for honest evaluation of the permit.

Reclamation must be limited to a set period such as 2 years. Vague language allows the process to continue indefinitely.

There are more changes that highly favor the mining industry at the expense of other State Agencies and the public. These will be submitted in writing.

The proposed rules make a mockery of the State Law. They are an example of nepotism and must not be accepted as re-written.

**Mining Commission Rule Changes Public Hearing
18/Nov/2025**

The NC Mining Act is written to provide a framework for gaining access to natural resources that lie beneath the ground, while also protecting NC's environment, our on the ground natural resources. Two goals.

What happens when these two goals collide? Who decides which natural resource is more important? Who is allowed to participate in the decision process and for how long? Do the desires of the mining industry trump those of all other State agencies and the public?

The proposed changes to the Mining Rules clearly give the mining industry a **major** advantage over all other State agencies and the public; they are written such that a mining permit will be issued even if other State agencies have deemed the surface land as a critical State resource [e.g., *The State of NC deemed the Odd Fellows tract as critical for Umstead State Park in the early 1970's. The land is legally zoned R-40. Yet Wake Stone was granted a permit to create a new mine pit on this land. Wake Stone lied in court to get this permit. Among many things, they claimed that people are prohibited from using Umstead State Park in the area by Odd Fellows so the mine pit should not matter. This operation is now within feet of a highly used public corridor. Wake Stone was also able skirt assessment of some major changes by making such changes then adding land.*]

The Mining Rules as re-written must NOT be accepted. The Mining Rules need to be amended such that they reflect that there are times when above the ground natural resources are more important than below the ground resources especially since, as stated in the Mining Act, "the very character of certain surface mining operations precludes complete restoration of the land to its original condition."

15A NCAC 05B.0111, PUBLIC HEARINGS, (c): State Agency and public comments must NOT be limited to 10 days after a hearing. This essentially eliminates public comment and minimizes other agency input. At the time of the public hearing, the mining application is NOT complete or final. In order to avoid comments on some issues, a mining company could easily not include relevant information in an application and then 10 days after the public hearing, then could make drastic changes. *State agencies and the public must be allowed to comment on any new or changing information that arises after a public hearing.*

15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS, (c)(2): LOGGING [aka timber harvesting] MUST REMAIN A MINING ACTIVITY.

15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS, (c)(7): BUFFERS MUST REMAIN AS UNDISTURBED OR VEGETATIVE AND NOT UNEXCAVATED. A buffer is a protective area between an industrial site and neighboring properties. Undisturbed or vegetative buffers offer protection. An "unexcavated" buffer offers zero protection as it allows for the removal of all trees and for the area to be used for roadways and the like, resulting in a drastic change in character of the area. *"Unexcavated" buffers essentially eliminate all buffers.*

**Mining Commission Rule Changes Public Hearing
18/Nov/2025**

15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT, (2): BUFFERS must not be limited to existing law. Existing law should be the minimum. Additional buffer space must be required so as to not drastically change the character of neighboring properties. [Note, while this part of the rule is about stream buffers, *this comment applies to ALL buffers.*]

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION (a) and (b): In the application, the following should be documented: owners of record AND deeded owners (to give a clear picture of ownership); anticipated size AND life of mine (to give a clear pictures of what eventually will happen and for about how long).

Measures to screen the mining operation from public view must be consistent with the current and intended use of the neighboring land.

This information is needed for honest evaluation of the permit *[and to ensure the mining company is forthright with information and not intentionally hiding information].*

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION (b)(12): Reclamation must be limited to a set period such as 2 years. Vague language allows the process to continue indefinitely.

There are more changes that highly favor the mining industry at the expense of other State Agencies and the public. These will be submitted in writing.

The proposed rules make a mockery of the State Law. They are an example of nepotism and must not be accepted as re-written.

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, November 18, 2025 1:30:11 PM
Attachments: [image001.png](#)
[image002.png](#)

Please see the message below as public comment related to this evening's public hearing. I thanked them for their comments and mentioned these would be included as part of the public record.

Thanks.

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
Office: 919.707.9205
Email: dwain.veach@deq.nc.gov
Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Vicki Parry <vlparry@verizon.net>
Sent: Tuesday, November 18, 2025 1:13 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from vlparry@verizon.net. [Learn why this is important](#)

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I oppose the changes to Subchapters 05A, 05B, 05F and 05G of the Mining Act Rules, codified in 15A NCAC Chapter 05. Each mining permit should allow citizens the right to public address the proposed permits.

Sincerely,
Vicki Parry

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DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, November 18, 2025 5:45:48 PM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
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Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Bri Wy <lighthouse0424@gmail.com>
Sent: Tuesday, November 18, 2025 5:32 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from lighthouse0424@gmail.com. [Learn why this is important](#)

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Here is what should happen with the mining rules -

*Public and agency comments on a mining application should NOT be limited to a few days after the first version of the mining application submittal, but rather allowed throughout the evaluation – especially after changes to the permit application are submitted to DEQ.

* Logging in preparation for mining NOT be exempted and must continue to be considered

a part of “mining operation”

*“Unexcavated buffers” should not be allowed as a type of protective buffer – they allow so much bad – roads, trucks, stockpiling, crushing, conveyor belts, etc. This is NOT what the public considers as a “buffer” and ‘undisturbed” buffers should not be allowed to be converted to ‘unexcavated’ buffers – remember, the public only has the opportunity to provide public comment when a mining permit application is submitted – sequent ‘modifications’ are essentially between the mining operator and DEQ. Loopholes and abuse could abound.

*DEQ should NOT be the determining agency of WHO owns the land – another loophole being ‘slipped in.’ The land owner is on the deeds or stated by law or the court – NOT to be arbitrarily made up by the Mining operator or DEQ.

*Stream protective buffers should NOT be limited by whatever law is or is not on the books. Rather, stream protective buffers for water quality, dust, noise, visuals should not be eliminated or gutted if they are insufficient per other regulations for other purposes.

*Blasting records should record the GPS coordinates

Thank you.

Bridget Way

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**Mining Commission Rule Changes Public Hearing
18/Nov/2025**

The NC Mining Act is written to provide a framework for gaining access to natural resources that lie beneath the ground, while also protecting NC's environment, our on the ground natural resources. Two goals.

What happens when these two goals collide? Who decides which natural resource is more important? Who is allowed to participate in the decision process and for how long? Do the desires of the mining industry trump those of all other State agencies and the public?

The proposed changes to the Mining Rules clearly give the mining industry a **major** advantage over all other State agencies and the public; they are written such that a mining permit will be issued even if other State agencies have deemed the surface land as a critical State resource [e.g., *The State of NC deemed the Odd Fellows tract as critical for Umstead State Park in the early 1970's. The land is legally zoned R-40. Yet Wake Stone was granted a permit to create a new mine pit on this land. Wake Stone lied in court to get this permit. Among many things, they claimed that people are prohibited from using Umstead State Park in the area by Odd Fellows so the mine pit should not matter. This operation is now within feet of a highly used public corridor. Wake Stone was also able skirt assessment of some major changes by making such changes then adding land.*]

The Mining Rules as re-written must NOT be accepted. The Mining Rules need to be amended such that they reflect that there are times when above the ground natural resources are more important than below the ground resources especially since, as stated in the Mining Act, "the very character of certain surface mining operations precludes complete restoration of the land to its original condition."

15A NCAC 05B.0111, PUBLIC HEARINGS, (c): State Agency and public comments must NOT be limited to 10 days after a hearing. This essentially eliminates public comment and minimizes other agency input. At the time of the public hearing, the mining application is NOT complete or final. In order to avoid comments on some issues, a mining company could easily not include relevant information in an application and then 10 days after the public hearing, then could make drastic changes. *State agencies and the public must be allowed to comment on any new or changing information that arises after a public hearing.*

15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS, (c)(2): LOGGING [aka timber harvesting] MUST REMAIN A MINING ACTIVITY.

15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS, (c)(7): BUFFERS MUST REMAIN AS UNDISTURBED OR VEGETATIVE AND NOT UNEXCAVATED. A buffer is a protective area between an industrial site and neighboring properties. Undisturbed or vegetative buffers offer protection. An "unexcavated" buffer offers zero protection as it allows for the removal of all trees and for the area to be used for roadways and the like, resulting in a drastic change in character of the area. *"Unexcavated" buffers essentially eliminate all buffers.*

**Mining Commission Rule Changes Public Hearing
18/Nov/2025**

15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT, (2): BUFFERS must not be limited to existing law. Existing law should be the minimum. Additional buffer space must be required so as to not drastically change the character of neighboring properties. [Note, while this part of the rule is about stream buffers, *this comment applies to ALL buffers.*]

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION (a) and (b): In the application, the following should be documented: owners of record AND deeded owners (to give a clear picture of ownership); anticipated size AND life of mine (to give a clear pictures of what eventually will happen and for about how long).

Measures to screen the mining operation from public view must be consistent with the current and intended use of the neighboring land.

This information is needed for honest evaluation of the permit *[and to ensure the mining company is forthright with information and not intentionally hiding information]*.

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION (b)(12): Reclamation must be limited to a set period such as 2 years. Vague language allows the process to continue indefinitely.

There are more changes that highly favor the mining industry at the expense of other State Agencies and the public. These will be submitted in writing.

The proposed rules make a mockery of the State Law. They are an example of nepotism and must not be accepted as re-written.

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, November 25, 2025 8:43:39 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
Office: 919.707.9205
Email: dwain.veach@deq.nc.gov
Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Sergio Amoni <sergioamoni2003@yahoo.com>
Sent: Tuesday, November 25, 2025 8:34 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from sergioamoni2003@yahoo.com. [Learn why this is important](#)

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Dear Mr Dwain,

I am not against mines, but there are clearly times when the surface natural resource must take precedent. The State of NC deemed the Odd Fellows tract of land as critical for the Park in the early 1970's. The land was legally zoned R-40 in 1982 in order to protect it from commercial development. This land is also adjacent to a highly used greenway now classified as a State Park Trail. Even with this, Wake Stone wanted to create a new mine pit on this land. This land is across Crabtree Creek from the current Wake Stone Triangle Quarry site, established in 1981 with conditions established to

protect Umstead State Park: a 50-year sunset clause, permanent natural buffers, and an agreement to return the land in a condition suitable for forested recreation and wildlife.

Over the years, Wake Stone removed these conditions. In order to avoid a public hearing on even more significant mining permit changes, Wake Stone amended their current Triangle Quarry permit just BEFORE adding additional land into their permit. In court, Wake Stone claimed that a mine operation on this site should not matter because people are prohibited from using Umstead State Park in the area by Odd Fellows. This is not true; NC State Law says nothing of the sort. Even though the Odd Fellows land was deemed critical to the State Park and is in a highly used public corridor, Wake Stone was granted a permit to create a new mine pit on this land. This operation is now within feet of a highly used public corridor and there is an ugly 16' concrete wall on the border of two State Parks.

How is this a good use of our State's natural resources? Who benefits the most from this mine operation? Wake Stone does – at the expense of both the public and a critical surface public resource.

Thank you for listening, Sergio Amoni

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From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] regarding proposed rule changes to the Rules used to implement the NC Mining Ac
Date: Tuesday, November 25, 2025 1:38:39 PM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

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From: Gerry Means <gerryfm@bellsouth.net>
Sent: Monday, November 24, 2025 6:16 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] regarding proposed rule changes to the Rules used to implement the NC Mining Ac

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Memo To: Mr. Dwain Veach
NC Department of Environmental Quality
RE: Proposed changes to buffer requirements for RDU quarry/mining concerns

Dear Mr. Veach;

I would not consider myself a vocal environmental advocate, but I have been closely monitoring the proposed changes to buffer rules that specifically alter the makeup of the mining operational borders at RDU. I am **totally opposed** to the proposed changes to expand the rock mining footprint as it will negatively impact one of the most beloved and utilized natural areas in Wake County. I am a frequent visitor to the area currently utilized by the park at Crabtree Lake and it provides a wonderful and easily

accessed natural space to explore and enjoy. There are thousands of other residents like me who utilize the park's natural areas and it saddens me that we would destroy it purely for rock mining!

I am retired so I am often afforded the opportunity to get to Crabtree Park during the day. I have never not seen dozens of people on the trails or exploring the park. The Town of Cary's addition of the rest area at the crosswalk to Umstead Park makes the area even more desirable and accessible and I cannot imagine having to now compete with mining trucks to access the park.

I also believe that use of the land for commercial retail enterprises linked to the Airport are also short sighted. There is a plethora of undeveloped property on the RDU footprint (specifically just north of I-40) that to me seems more realistic for visitors to RDU to use since they would not have to leave the airport property to patronize such services.

Lastly, I have not seen in any of the documentation on how this expansion of mining activity in the area would impact traffic on Aviation Parkway. As you may know, most of Aviation Pkwy is two lanes including the section across Lake Crabtree. The traffic situation is difficult enough without the addition of massive rock hauling trucks competing for access to I-40 from Aviation or via Old Reedy Creek Rd!

Please consider the citizenry here and the quarry expansions negative impact on one of the most beloved areas in the Triangle.

Respectfully,

Gerry Means
Cary, NC

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From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules, written public comment
Date: Wednesday, December 3, 2025 9:58:51 AM
Attachments: [Mining Commission Proposed Rule Changes comments by NEL_2025_12_02.pdf](#)
[image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief

[North Carolina Geological Survey](#)

Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality

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From: nlew@mindspring.com <nlew@mindspring.com>
Sent: Tuesday, December 2, 2025 7:38 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules, written public comment

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See attached.

The general public is not against mines, but there are clearly times when the surface natural resource must take precedent over the below the ground resources and the Mining Law and Mining Rules must reflect this especially since, as stated in the Mining Act, "the very character of certain surface mining operations precludes complete restoration of the land to its original condition."

The Rules need to be stated clearly so as to avoid allowing manipulation of Rules and Law.

Having attended many hearings regarding Wake Stone's new mine pit on public land that has been on the Umstead State Park critical acquisition list since the 1930's, I have seen firsthand how some mining companies and their attorneys will twist words and manipulate the system (because of unclearly worded rules and law) to get their way no matter what, not caring at all if the mine pit is directly adjacent to major and highly used public recreation areas, etc.

The proposed rule changes must not be accepted as they make a mockery of our State Law and clearly give the mining industry a **major** advantage over all other State and County agencies and the public; they are written such that a mining permit will be issued no matter what and permit conditions can be hidden from the public and other agencies until the last minute.

-Natalie

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Comments on the Mining Commission's Proposed Rule Changes

Proposed changes significantly favor mining industry over other State agencies and the public

The NC Mining Act is supposedly written to provide a framework for gaining access to natural resources that lie beneath the ground, **while also** protecting NC's environment, our on the ground natural resources. Two goals. What happens when these two goals collide? What if the surface land has already been deemed a critical State resource? Who decides which natural resource is more important? Who is allowed to participate in the decision process and for how long? Why is it that a mining company can make significant permit changes without the knowledge of other State agencies and/or the public? Do the desires of the mining industry trump those of all other State agencies and the public? The Mining Rules are written to implement the Mining Law and they dictate if there is a level playing field or if the mining industry desires outweigh the goals and needs of other State agencies and the public.

Comments on the Regulatory Impact Analysis section

The Impact Summary section of the Regulatory Impact Analysis indicates that there are only Minor impacts to State and Local government. This is not true. NC has one of the weakest Mining Laws in the country and the current mining rules favor the mining industry. But other agencies and the public at least have a fighting chance. The re-written rules remove that fighting chance as they significantly favor the mining industry over other State agencies (especially State Parks), Local governments (e.g., counties), and the public. The rules have been re-written such that a mining permit will be issued no matter what. (Having attending some of the meetings, I witnessed mining industry representatives make arguments that clearly had this intent.) The surface land could have been deemed a **critical** State resource, but the mining industry will get their permit.

The Summary section of the Regulatory Impact Analysis is misleading as it minimizes the significant nature of many of the changes, minimizes that mining industry heavily influenced these changes (e.g., they are the "stakeholders"), incorrectly claims to "modernize" rules, etc.

The Mining Rules as re-written must NOT be accepted; the mining industry and mining rules have essentially deemed in all cases that below the ground resources will always take precedent over surface resources and the established plans of other State and County agencies and the public. *The Mining Rules need to be amended such that they reflect that there are times when above the ground natural resources are more important than below the ground resources especially since, as stated in the Mining Act, "the very character of certain surface mining operations precludes complete restoration of the land to its original condition."*

The general public is not against mines, but there are clearly times when the surface natural resource must take precedent and the Mining Law and Mining Rules must reflect this.

Note: The following pages contain my comments on some of the proposed mining rule changes. I did not make comments on the Bonding or Blasting sections, but that does not mean there are not issues.

Comments on the Mining Commission's Proposed Rule Changes

Proposed changes significantly favor mining industry over other State agencies and the public

Comments on Rule 15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS

Section C of this part of the rules is an entirely new section. Care must be taken in approving this language so that it does not cater to the mining industry.

The Regulatory Impact Analysis document indicates that this is a minor regulatory impact and that the "Added definitions will result in improved rule clarity. This improved clarity is expected to provide negligible benefits to applicants and permittees." This is not true. Several changes create additional vagueness and provide significant benefits to the mining applicants and permittees at the expense of other State agencies and the public and at the expense of surface natural resources, including those surface natural resources that have already been deemed critical.

(c)(1):

Proposed: "Administrative Change" means any change initiated by the Department or requested by the applicant to correct errors including, grammatical errors, typographical errors, and map inaccuracies, that do not substantively change the permit.

Comment: The term "substantial change" must be defined and it must be defined in a manner that protects the State, local governments, and public, e.g., a substantial change includes, but is not limited to, changes to anticipated life of the mining operation, changes to the type of buffer (e.g., undisturbed to unexcavated), any change affecting the Reclamation Plan (as that is not supposed to change at all), any change that is not consistent with the initial intent of the original permit, etc. Substantial changes to a permit must only be done via the permit modification process.

Comment: "Typographical errors" needs to be defined. Per an internet search " ... a typographical error (typo) refers to a mistake in typed or printed text, such as a misspelled word or incorrect character." Changing an entire word is NOT a typographical error (e.g., changing the word "sooner" to the word "later." In the case of the Wake Stone Triangle Quarry permit, Wake Stone claimed this was a typographical error and had minimal impact to the permit. Wake Stone presented incomplete information to the State and this change resulted in the life of the operation being change from limited to 50 years to going on indefinitely.)

Comment: "Map inaccuracies" needs to be defined. There needs to be proof of why something on a map is considered inaccurate as someone could subtly change a permit requirement by adding or changing a word, by moving a line, changing a dimension, etc. For example, changing the labeling on the map of a buffer from undisturbed to unexcavated without reasons is not a "map inaccuracy"; it is a significant change in the character of the buffer.

(c)(2): BAD CHANGES

Proposed: "Affected land", as defined in G.S. 74-49(1) shall not include an unrelated use that does not meet the definition of mining that occurs within the permit boundaries, including activities pertaining to agriculture and silviculture including timber harvesting, where an erosion and sedimentation plan is approved pursuant to G.S. 113A, Article 4, when required, and the unrelated use area is shown on the mine map.

G.S. 74-49(1): "Affected land" means the surface area of land that is mined, the surface area of land associated with a mining activity so that soil is exposed to accelerated erosion, the surface

Comments on the Mining Commission's Proposed Rule Changes

Proposed changes significantly favor mining industry over other State agencies and the public

area of land on which overburden and waste is deposited, and the surface area of land used for processing or treatment plant, stockpiles, nonpublic roads, and settling ponds.

Comment: This item must be deleted in its entirety. This item seems to be a re-write of the law. TIMBER HARVESTING, aka LOGGING, must REMAIN as a mining activity as this land is "the surface area of land associated with a mining activity..." which is part of the law. Excluding timber harvesting gives too much power to the mining company, especially when you consider that land deemed critical by the State and/or important/critical buffers can be destroyed beyond repair so quickly and that the NC Mining Act was written to meet not one, but two goals: 1) to provide a framework for gaining access to natural resources that lie beneath the ground, 2) **while also protecting NC's environment, our on the ground natural resources.**

Comment: Silviculture is the growing and cultivation of trees. Given these rules are to be read by the general public, lay language should be used or the definition of silviculture should be documented in the rule for clarity. (However, per the first comment, this entire item needs to be deleted.)

(c)(4):

Proposed: "Director" means 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.

Comment: The phrase "or any position to which the Director has delegated their authority." Must be deleted. This phrasing allows for too broad and too easy delegation of power to make critical decisions. This phrasing easily leads to an abuse of power.

(c)(7): VERY BAD CHANGES

Proposed: "Mining Buffer" means an unexcavated, undisturbed, or vegetative area managed to protect adjacent land owners or areas of special concern. (A) "Unexcavated" means no mine excavation shall occur. Unexcavated buffers may be used for roadways, berms and erosion and sedimentation control or stabilization. Excavation may be allowed for sediment basins or erosion and sedimentation control when shown on the mine map. (B) "Undisturbed" means no disturbance shall occur. (C) "Vegetative Buffer" means an unexcavated buffer that may be managed through landscaping or additional plantings.

Comment: Per an internet search, a buffer is an area on a property that is left undeveloped, not covered by buildings, pavement, or other structures, and is intended to serve as a protective area between an industrial site and neighboring properties by providing screening and separation; buffers typically consist of natural vegetation, such as trees and shrubs, which should remain undisturbed. The goal of a buffer is such that the character of the neighboring properties is NOT drastically changed, that there is a transition area from the industrial site to the neighboring property.

Comment: BUFFERS (for mining sites) MUST REMAIN AS UNDISTURBED OR VEGETATIVE [as long as vegetative is clarified] AND NOT UNEXCAVATED. Undisturbed buffers offer protection. An "unexcavated" buffer offers zero protection as it allows for the removal of all trees and for the area

Comments on the Mining Commission's Proposed Rule Changes

Proposed changes significantly favor mining industry over other State agencies and the public

to be used for roadways and the like, resulting in a drastic change in character of the area.

"Unexcavated" buffers essentially eliminate all buffers.

Comment: "Vegetative Buffer" needs to be eliminated or more clearly defined. What is landscaping? If landscaping simply means putting down mulch, then this essentially allows for the destruction of the buffer. If the vegetation is sparse or disturbed, additional plantings must be added to maintain the buffer's effectiveness (as per the definition/goals of buffers stated earlier). Essentially, a "vegetative buffer" should result in the same effectiveness as the "undisturbed" buffer.

(c)(10):

Proposed: "On-site Construction" means development of a site where the primary purpose is to construct, develop, or erect, structures, infrastructure, or waste facilities, and the removal, but not sale, of any extracted material off-site is incidental to the primary purpose and time limited.

Comment: The phrase "but not sale" needs to be eliminated so as to avoid "on-site construction" being used to avoid restrictions on the sale of materials, etc.

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

The Regulatory Impact Analysis document indicates that the changes to this section result in minor regulatory impacts. This is not true. The changes to some of the rules are significant and provide significant benefits to the mining applicants and permittees at the expense of other State agencies and the public. Also, Item B (Necessity for Rule Changes) of the Regulatory Impact Analysis document indicates that the proposed rule changes are designed "...to revise requirements in line with current practices and technological advancements ..." yet they call on outdated documents such as the "North Carolina Surface Mining Manual: A Guide for Permitting, Operation and Reclamation," a document dated Feb/1996 which contains unclear and contradictory information that favors the mining industry at the expense of surface natural resources, including those deemed critical by other State agencies.

(a)

This part of the rule starts with the statement "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."

Comment: Given this statement contains the phrase "affected land," the term "affected land" needs to include "agriculture and silviculture including timber harvesting" (e.g., not exclude these activities as proposed in Rule 15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS, (c)(2)).

(a)(3)

Comment: In addition to documenting the "expected depth of mine," the initial permit application must specify the anticipated life of the mining operation. Both depth and life of mine are needed so as to allow for full transparency and to give a clear picture of what eventually will happen and

Comments on the Mining Commission's Proposed Rule Changes

Proposed changes significantly favor mining industry over other State agencies and the public

for about how long, which subsequently facilitates an honest and open evaluation of the negative effects of the mining operation.

(a)(4)(A-F)

Comment: The "acreage for mine excavation" needs to include BOTH the initial pit AND the final size of the pit. The and the acreage for the other operations also needs to include the initial and final size. The initial and final size (acreage area) of the pit and the initial and final size of the adjacent operations (ponds, stockpiles, waste piles, processing plants, etc.) are needed so as to allow for full transparency and to give a clear picture of what eventually will happen, which subsequently facilitates an honest and open evaluation of the negative effects of the mining operation. For an example, see Wake Stone's initial Triangle Quarry application. What the proposal was in the early 1980's is extraordinarily different from what the reality is today.

(a)(6)

Proposed: "whether ~~or not~~ the mining operation will have a waste water wastewater discharge..."

Comment: The word "mining" should not be added. Anything done on the site of the mine, whether it be mining related or not, should be subject to wastewater discharge rules.

(a)(8, 9, 10)

Proposed: "measures ~~to be taken~~ required to..."

Comment: What is the intent of changing "to be taken" to "required"? Who determines what is "required"? The mining company must not be given the power to determine what is "required" as that gives them power over the State and the public.

(a)(10)

Proposed: "measures ~~to be taken~~ required to screen the mining operation from public view."

Comment: It must be stated that the measures taken to screen the mining operation from public view must be consistent with the current and intended use of the neighboring land and not change the nature/character of the neighboring land, e.g., a concrete wall is not consistent with a park or residential lot.

Comment: The word "mining" should not be added. Anything done on the site of the mine, whether it be mining related or not, should be subject to screening from public view, especially if the operation is adjacent to public use areas (e.g., parks, greenways) or residential land.

(b)

This part of the rule starts with the proposed statement "Information required in the reclamation plan shall include methods and construction details for:

Comment: The phrase "methods and construction details for" needs to be deleted or the phrase "at minimum" needs to be added (e.g., "Information required in the reclamation plan shall include, AT MINIMUM, methods and construction details for:"

(b)(2)

Comments on the Mining Commission's Proposed Rule Changes

Proposed changes significantly favor mining industry over other State agencies and the public

Proposed: "intended practices ~~to be taken~~ required to protect adjacent surface resources"

Comment: What is the intent of changing "to be taken" to "required"? Who determines what is "required"? The mining company must not be given the power to determine what is "required" as that gives them power over the State and the public.

(b)(10)

This part of the rule starts with the proposed statement "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:"

Comment: The list should also include State Parks if the proposed mine is adjacent to a current or future State Park.

(b)(11) BAD CHANGES

This entire item is new and starts with "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:"

Comment: This entire item should NOT be added to the rules as it is just a way to bypass all of (b)(10), the prior item.

In addition, this item allows for a revegetation and reforestation to be developed based off of the "North Carolina Surface Mining Manual: A Guide for Permitting, Operation and Reclamation." This document was written from the perspective of the mining industry, so it is biased. The most current version of this document is dated Feb/1996, so it will be 30 years old in a few months. This document is outdated and has some very unclear information.

For example, NC law states that "The Department may deny the permit upon finding (#5) that the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area." Noise clearly harms the purposes of a public forest and many public parks.

However, under "Public Hearings, "page 3-7 says "Note: Comments must be relevant to the seven criteria listed in G.S. 74-51 of The Mining Act of 1971. The Mining Act does not address truck traffic, **noise**, property values, or aesthetics."

Wake Stone used the unclearly written "North Carolina Surface Mining Manual" to argue that noise should not ever be used as a criteria to evaluate their Triangle Mining Permit adjacent to Umstead State Park. It is absurd to think that noise cannot be used as a criteria to assess harm to an expected quiet area like a park. Totally absurd. This is a clear example of how some people in the mining industry either want to keep rules unclear to their benefit or to make rules that clearly are in their favor.

North Carolina Surface Mining Manual: A Guide for Permitting, Operation and Reclamation
<https://www.deq.nc.gov/documents/files/nc-surface-mining-manual/download>

Comments on the Mining Commission's Proposed Rule Changes
Proposed changes significantly favor mining industry over other State agencies and the public

NC Mining Act:

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_74/GS_74-51.pdf

(b)(12) BAD CHANGES

Proposed: "...time schedule of reclamation [be] completed within two years unless a longer period is specifically permitted by the Department."

Comment: The phrase "unless a longer period is specifically permitted by the Department" should NOT be added. Reclamation must be limited to a set period such as 2 years. Vague language allows the process to continue indefinitely and allows for misuse of the system.

(c)

This part of the rule starts with the proposed statement "An application shall include ... 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: ..."

Comment: Per an internet search, "The Supreme Court of the United States ruled that "shall" really means "may."" "Shall" is ambiguous. Use "must" not "shall" to impose requirements."

Thus, as worded, the map requirements in the Mining Rules are not strong enough, especially if the map is used to document permit criteria. As an example, Wake Stone buried changes to their mining permit by attempting to delete written criteria from the mining permit and putting a reference to "see map." In this day and age, maps have so much detail that it is easy to bury and obscure critical information. As another example, Wake Stone tied to change the nature of the buffer by changing the description of the buffer in the map instead of in the actual permit.

<https://thisvsthat.io/must-vs-shall>

A better wording for this part of the rule: The application must include a mine map. The mine map must be consistent with the reclamation plan. The mine map must be accurate. The mine map must include the following: ..."

(c)(2)

Comment: Outline of pits: add "initial and final size"

(c)(12)

Comment: The names of the owners of records AND the deeded owners, if different from the owners of record, must be included. This ensure transparency. For example, some remote land deemed critical for Umstead State Park is managed by the Raleigh-Durham Airport, BUT it is deeded to the Counties of Wake and Durham and the Cities of Raleigh and Durham. This land is very remote to RDU and is EXTERIOR to all of RDU's noise corridors (e.g., the land is minimally affected by RDU noise). Yet, in 1979-1981, Wake Stone argued based on the labeling of this land as owned by RDU that the sound of a blast would be muffled by the sound of a plane. The labeling created a false representation of the location of the land.

Comments on the Mining Commission's Proposed Rule Changes
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(c)(17)

After this item there are a few lines of text. In the "Proposed Rules" document, this text is not lined through. However, in the "Fiscal Note" document, it is lined through. The text says "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."

Comment: The word "should" needs to be "must."

(d)(1)

Proposed: An application for a mining permit shall include: 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 and approved by the ~~department~~ Department. The proposed mining site means all land to be included within the proposed permitted area;

Comment: The Department should not be approving method to identify land owners. That is not their area of expertise. They could easily / accidentally approve a method that does not result in a thorough search of records.

Comments: The application must include both the owners of record and deeded owners of all adjoining land.

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

While these items are very good additions to a mining permit, given they are under the "may be included in a permit" section, they hold little weight. These types of conditions can easily be put into a permit to placate other State agencies and the public. Then, little by little, because they are not required, they can be removed without concern for effects on the neighboring properties. As an example, in order to get a mining permit in 1981, Wake Stone promised the State to return the Triangle Quarry site in a condition suitable for forested recreation and wildlife and to have large buffers, so these conditions were put into their permit. But over the past several decades, Wake Stone was able to slowly get these conditions eliminated from the Triangle Quarry permit. The conditions agreed upon to get the permit basically no longer exist. |

(2) Buffer conditions must NOT be limited to State or local stream protection requirements, especially given the extreme destruction of the land and the extreme change of character of an area that results from mining operations. It could be in some cases that MORE buffer is needed than required by a separate law, such as when the mining operation is adjoined to a park, a residential area, or other area sensitive to visual, noise, scent, air, etc. impacts. Also, while this part of the rule is about stream buffers, **this comment applies to ALL buffers**. While this is a very good addition, given it is under the "may be included in a permit" section, it holds little weight. This condition for buffers must be required in the mining permit and the buffers must remain. Buffers must account for the character of an area.

Comments on the Mining Commission's Proposed Rule Changes
Proposed changes significantly favor mining industry over other State agencies and the public

(3) This item addresses visual screening and the proposed change adds the phrase “any screening conditions shall take into consideration the mining operation activities that are being screened and the current usage of the neighboring property” While this is a very good addition to a permit, given it is under the “may be included in a permit” section, it holds little weight. The condition of protecting the current usage and the character of the neighboring area must be required in the mining permit.

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

The proposed rule changes suggest to delete this section. It should be kept. It is not redundant. This section must be amended to include State Parks for times when the mining operation is adjacent to a State Park and it must be stated that noise harms the purposes of some parks, be they State, county, or local parks.

Comments on Rule 15A NCAC 05B .0111 PUBLIC HEARINGS

*The Regulatory Impact Analysis document states “The impacts on the public or the state agency should be minimal or nonexistent.” This is not true. **These changes are major!!** The NC Mining Law is already weak in that it favors the mining industry over other State agencies and the public. The proposed changes to this section essentially eliminate State or Local agencies and the public by cutting off the comment period long before an application is final and well before draft permit conditions are even known. These rule changes provide significant benefits to the mining applicants and permittees at the expense of other State agencies, the public, and surface natural resources, including those surface natural resources that have already been deemed critical for our State. The rule changes to this section are essentially a green light for the mining industry to do what they want as all they have to do is wait until the comment period is closed to disclose controversial information.*

(a)

Proposed: If the ~~department~~ Department determines that there exists a significant public interest in an application for a new mining permit, or for a modification that adds land to the existing permit, the ~~director~~ Director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no ~~sooner than 20 or later than 60 days~~ 90 days ~~of~~ from the filing of the application and before the ~~department~~ Department makes its final decision regarding the application.

Comment: A hearing must be held for substantial permit modifications such as but not limited to changing the life of the mine pit from limited to unlimited, changing the nature of buffers (e.g., undisturbed to unexcavated), changing the reclamation plan, any change not consistent with the intent of the original permit, etc. The mining company must not be permitted to make significant/substantial changes and then add land as this is a way to avoid transparency in their intent and actions.

Comments on the Mining Commission's Proposed Rule Changes

Proposed changes significantly favor mining industry over other State agencies and the public

(c)

Proposed #1: Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose ~~reasonable~~ limitations on the length of time that any person may speak and may summarize comments rather than recording them in full.

Comment: The word "reasonable" must not be deleted.

Proposed #2: **VERY, VERY BAD CHANGES!**

The hearing officer may allow additional written comments to be submitted for up to ten days after the ~~hearing~~ hearing after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application. ~~within a period of time he deems appropriate which shall not exceed ten days.~~

Comment: At the time of the public hearing, the application is NOT complete and NOT final. Subsequent to the public hearing, DEQ asks for Additional Information (ADI) from the mining company and the mining company has a specified time period to respond. From this, changes, some substantial, can be made to the application and/or draft mining permit. Closing public comments 10 days after the initial public hearing and saying that no other public comments can be considered in the final determination of the application eliminates the public's ability to comment on new and revised application information. It also allows for the mining company to hide intent. In order to avoid public comment on some issues, a mining company could easily not include relevant information in an application so as to not allow the public to know to comment on it at the public hearing. Then, the mining company could make drastic changes after the public hearing, knowing there will be no chance for public input. This is not a fair or transparent process. The public must be allowed to comment on any new or changing information that arises after a public hearing either by keeping the public comment period open for the length of the permit application process or by having a reasonable public comment period (e.g., 60 days) after DEQ receives each ADI response. The only way that the public should be limited to a 10-day comment deadline after the initial public hearing is if there can be absolutely no changes whatsoever to the mining permit application once the hearing has been completed AND a draft permit is available for public review as of the public hearing.

(d)

Proposed: The ~~department~~ Department shall give full consideration to all comments contained in the hearing record in making its final determination on the application.

Comment: The Department and/or mining company should show via documentation that they have given "full consideration to all comments contained in the hearing record in making its final determination." Yes, some comments can be summarized and grouped together, but some stand on their own. The latter should be addressed in order to show full transparency. Otherwise, this vague language of "full consideration" allows for important agency and public comments to be ignored.

(e) **VERY, VERY BAD CHANGES!**

Proposed, this is an entirely new rule: (e) In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of the application after which the

From: [Veach, Dwain M](#)
To: [Jonas, Kelly B](#); [Clayton, Corey](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Wednesday, December 10, 2025 11:36:43 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
Office: 919.707.9205
Email: dwain.veach@deq.nc.gov
Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: charles mceachern <charles.mceachern@gmail.com>
Sent: Tuesday, December 9, 2025 1:20 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from charles.mceachern@gmail.com. [Learn why this is important](#)

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Dear Dwain Veach, following are my comments on the new proposed mining rule. My background includes 27.5 years working at the DAQ Raleigh Regional Office during which I participated in many public hearings representing my office. I find parts of proposed Rule 15A NCAC 05B .0111 Public Hearings deeply concerning.

Proposed Rule 05B .0111(c) and (e) both include the following language, "...the public comment period will be considered closed and no other public comments will be considered in the final determination of the application." This is entirely wrong thinking! It appears to disallow the State from considering even valid concerns raised after an arbitrary timeline. To

prohibit the Department from being able to consider such comment unfairly denies the public a voice prior to the submission of all the application material needed by the State to make a decision, and unnecessarily hobbles the Department's ability to consider all relevant factors in making a final permit determination. I have been responsible for producing the Hearing Officer's Report and understand the necessity of closing the public comment period and that the Department must be able to proceed with processing and issuing the permit application as described by the rule; however, if relevant information is received by the Department it must be considered whenever it is received.

In addition to the above comment, 05B .0111(e) limits the receipt of public comments (when a public hearing is not held) to 60 days following the receipt of the application. I disagree with this requirement since the application is very likely not complete as of the receipt date - the public cannot comment on what they don't know, so it is incumbent of the Department to ensure commenters have the complete application on which to base their comments.

Thank you for your consideration of my comments.

Sincerely,

Charles McEachern

2014 Ward St, Durham, NC 27707

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P. O. Box 30603, Raleigh, NC 27622
Representing Producers and Suppliers in the Aggregates Industry

December 10, 2025

Mr. Dwain Veach, PG
1612 Mail Service Center
Raleigh, NC 27699

Subject: Mining Rules

Dear Mr. Veach:

On behalf of the North Carolina Aggregates Association (NCAA), I am submitting the following comments in response to the proposed Mining Rules (Title 15A, Chapter 05 of the NC Administrative Code) that were published in the NC Register on October 15, 2025.

NCAA is a trade association that represents crushed stone, sand, and gravel producers and the manufacturing and service providers that serve our industry. Our producer members operate over 100 surface mines in North Carolina.

In response to the proposed rule, NCAA offers the following comments:

1. Page 735 .0202 (c) (2) - Affected Land
 - Need to revise language concerning “timber harvesting, where an erosion and sedimentation plan is approved pursuant to...” as timber harvesting is exempt from the erosion and sedimentation control plan requirements and falls under the NC Forest Service best practices guidelines.
 - *RECOMMENDED LANGUAGE: “...pertaining to agriculture and silviculture, including timbering harvesting, where an erosion and sedimentation control plan is approved conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality as adopted by the Department of Agriculture and Consumer Services. Otherwise, an erosion and sedimentation control plan approval must be provided pursuant to G.S. 113A, Article 4, when required, and the unrelated use area is shown on the mine map.”*
2. Page 736 .0103 (e) – Bonding Requirements
 - Clarify that applications filed for new, transferred or modified permits are the actions that are intended to subject operators to the new bonding amounts listed in the Table of Mining Reclamation Factors.
 - *RECOMMENDED LANGUAGE: “(e) The initial bond calculation amount shall be based..., until action is required to change the bond, including **applications filed with the Department for new, transfer transferred, and modified mining permits on file with the Department** or compliance action is taken by the Department.” (bold used to highlight changes)*

3. Page 736 .0103 (e) (1) – Bonding Requirements

- The dollar amounts in the current table in this rule are based upon 1994 bond amounts that have been adjusted by 2% over 31 years, which are 2025 values
- As the rule will not be adopted until 7/2026, the dollar amounts in the current table need to be updated to 2026 values (using 32 years in the adjustment equation)
- *RECOMMENDED ACTION: Update ALL VALUES currently listed in this rule to 2026 values using the 1994 bond amount x .02 x 32 years then added to the 1994 bond amount - example: \$500 in 1994 would be \$820 in 2026*

4. Page 736 .0103 (e) new (3) – Bonding Requirements

- If the dollar amounts are to be revised every year, the rule needs to clarify the methods to be used by the Department to notify permit holders and the public, as well as how the dollar amounts will be adjusted in the NC Administrative Code annually without additional rulemaking - by doing so as a technical correction.
- *RECOMMENDED LANGUAGE: new (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. 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.*

5. Page 736 .0103 (e) (1) – Bonding Requirements

- The **Regulatory Impact Analysis (RIA)** for the increased reclamation bonding requirements is listed as minor. For the companies that purchase a surety bond and pay an insurance premium, the relative increase in premium may be minor. However, for the small mines that have a cash bond or letter of credit, this increase will be a major cost for these mine operators. Accounting for inflation over a 32-year period since the last bond adjustment in 1994 in one step per this rule, the proposed bond amount will increase by over 60%. This is not a minor cost for these small operations. Additionally, if the bond increase is significant and mine operators do not have the means to pay the bond adjustment all at once, some operators may not pursue a new or modified mining permit and attempt to mine without a permit until caught by the Department. This would result in a negative impact on the reputation of both the Department and those Industry members that are compliant.
- *RECOMMENDED ACTION: The RIA needs to be revised to reflect that the cost to industry will be "major" and that the Department should consider phasing in this 32-year bond amount deficit over time to lessen the financial burden on industry and make it easier for operators to comply with the rules.*

6. Page 739 .0104 (b) (10) – Information Required In Permit Application

- Grammatical correction needed
- *RECOMMENDED LANGUAGE: 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:*

7. Page 739 .0104 (b) (10) (C) – Information Required In Permit Application

- Grammatical correction needed
- *RECOMMENDED LANGUAGE: "(C) North Carolina Cooperative Extension County agricultural extension chairmen County Director in a county listed in the county(s) where the site is located or research..."*

Page 3 – Mining Rules

8. Page 740 .0104 (c) (10) – Information Required In Permit Application

- (10) existing and proposed contours showing all drainages areas;
- **RECOMMENDED ACTION:** *Need clarification for the proposed contours. Is this for the Pit, Roads, Plant, etc.? What contour intervals are being requested?*

9. Page 740 .0104 (c) (12) – (17) – Information Required In Permit Application

- The end of (12) and all of (13) – (17) consist of new language added to the rules that should be underlined so the public is aware of these are recent changes to the existing rules
- **RECOMMENDED LANGUAGE:** *Underline the new text added in the following subparagraphs:*

~~(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.

10. Page 740 .0104 (d) (1) – Information Required In Permit Application

- Grammatical correction needed
- **RECOMMENDED LANGUAGE:** *“(1) ...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 and approved by the department Department. The proposed...”*

11. Page 740 .0104 (d) (3) – Information Required In Permit Application

- Grammatical correction needed
- **RECOMMENDED ACTION:** *Section (d)(2) uses county, city, and town. Section (d)(3) uses county and municipality. Need to be consistent.*

12. Page 740 .0104 (d) (4) – Information Required In Permit Application

- Question the reasoning for the requirement for recording the right of entry agreement (Land Entry Agreement in the application form) on the deed(s) when the LEA itself with both the landowner’s and permittee’s signatures has been enforced/upheld by the courts in the past in allowing both the Department and its contractors to access the property for mine reclamation purposes.
- This new requirement to record all LEAs is both costly and cumbersome when large, permitted areas involve multiple tracts and landowners/LEAs.
- **RECOMMENDED LANGUAGE:** *“(4) A copy of the recorded right of entry agreement that run that runs with the land,...” ****this same change needs to be made in all other sections of the rules that require a recorded right of entry agreement=.0115 (b)(6); .0116 (a)(5)***

13. Page 743 .0113 – Response Deadline To Department’s Request(s)

- Grammatical correction needed

- *RECOMMENDED LANGUAGE: “An applicant or permittee shall submit to the Department supplemental information regarding an application for a new, ~~permit or~~ modified, ~~permit, or permit renewal or transferred permit transfer~~ within 180 days...”*

14. Page 744 .0114(c) - Blasting

- A technical reference citation needs to be added to this subsection noting where the formulas listed in rule were pulled from.
- *RECOMMENDED ACTION: Use a similar technical reference citation format under (c) as used in the technical reference citation format used under (e).*

15. Page 743 / 744 / 745

- .0114 (a) – Blasting
 - *At any site where blasting occurs, the operator shall monitor each blast with a seismograph located at a distance no farther than the closest offsite 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.*
- .0114 (c) – Blasting
 - D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator. (feet).
- .0114 (e) & (g)(11) – Blasting
 - D = Distance from the blast site to the nearest inhabited building not owned or leased by the mine operator (feet).
 - (11) distance from blast to closest offsite regularly occupied structure;
- *RECOMMENDED ACTION: The language used is inconsistent; it switches from “regularly occupied structure” to “inhabited building”. Recommend that “regularly occupied structure” be used throughout.*

16. Page 747 05F.0106 (a) – Civil Penalty For Violating Operating Permit

- The provisions for giving notice to a violator prior to assessing a civil penalty for violations of the Mining Act, rules, or any conditions of a mining permit have been stricken from the existing rules.
- Just like the prior rule section for unpermitted violations, the Department must give a violator notice of mining permit violations prior to assessing a civil penalty.
- *RECOMMENDED LANGUAGE: Reinstate the entire existing subparagraph (a) language below outlining the notice provisions for violations of the mining permit:*

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

~~(a) Prior to the assessment of a civil penalty against a permitted operator for violating any provisions of the Mining Act of 1971, or any rules promulgated thereunder, or any conditions of his mining permit, the alleged violator or his agent shall be given notice by registered or certified mail, return receipt requested, signed by the director. The notice shall describe the violation with reasonable particularity and specify a time period reasonably calculated to permit the violator to correct the violation. The notice shall also state that civil penalties may be assessed against the alleged violator if he fails to correct the violation within the specified time.~~

Sincerely,

Jasper G. Stem, Jr.

Jasper G. Stem, Jr., P.E.
Executive Director

DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Comments in Opposition to Draft Mining Rules proposed changes
Date: Monday, December 15, 2025 9:00:39 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI...This one slipped by me last week. I don't believe I forwarded it yet.

Thanks.

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief

[North Carolina Geological Survey](#)

Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality

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From: Ervin Portman <eportman@weststarprecision.com>
Sent: Wednesday, December 10, 2025 10:06 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Comments in Opposition to Draft Mining Rules proposed changes

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A review of the draft rules shows a clear bias in favor of mining companies at the expense of the public.

While it's clear that the Quarry operators prefer these changes there is no justification offered as to why these changes benefit the public or respect the balance of interests contained in the Mining Act.

In fact, it's clear that these changes hurt the public by allowing destruction of natural buffers, before any permit decision is made, limit public comment to only a first version while allowing revisions that would not allow public comment and delegate text changes that should not be delegated or allowed.

As a reminder the law promises;

§ 74-48. Purposes.

The purposes of this Article are to provide:

- (1) That the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration.

In fact, the draft changes trample any balance of interest in favor of industry. Specifically, see my comments on each of the draft changes. I ask that these draft changes be rejected in full.

- Logging in prep for mining NOT be exempted and continue to be considered a part of “mining operation”
 - **15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS**
 - **(c) (2) Delete the addition of exceptions for “silviculture including timber harvesting”**
- No justification is offered as to why it benefits the public to allow clear cutting of land as a non-mining activity. In fact, doing so without the permit allows destruction of the natural habitat even in cases when the permit may never be issued, cases that evoke the denial criteria. Why would the state want to carve out deforestation as allowed in cases that would later be determined inappropriate for mining?

The Act says;

§ 74-50. Permits - General.

- (a) No operator shall engage in mining without having first obtained from the

Department an operating permit that covers the affected land

(3) "Permitted area" means affected land and all other land used for or designated as buffers or reserves, or used for other purposes, as delineated in a mining permit or an application for a mining permit.

§ 74-65. Effect on local zoning regulations.

No provision of this Article shall be construed to supersede or otherwise affect or prevent the enforcement of any zoning regulation or ordinance duly adopted by an incorporated city or county or by any agency or department of the State of North Carolina, except insofar as a provision of said regulation or ordinance is in direct conflict with this Article. (1971, c. 545, s. 20.)

By allowing clear cutting before permitting the rule change tries to override local zoning laws that may prevent such actions. There is no justification to allow destruction of buffer lands prior to permitting, except profit of the applicant at the expense of the public. This change disrespects the intent of the law to provide maximum protection, and would allow clear cutting in sites that are denied later. Its bad for the public, contrary to the law, an should be rejected.

- “Unexcavated buffers” should not be allowed as a type of protective buffer – they allow so much bad – roads, trucks, stockpiling, crushing, conveyor belts, etc. This is NOT what the public considers as a “buffer” and ‘undisturbed’ buffers should not be allowed to be converted to ‘unexcavated’ buffers – remember, the public only has the opportunity to provide public comment when a mining permit application is submitted – sequent ‘modifications’ are essentially between the mining operator and DEQ. Loopholes and abuse could abound.

Such a change disrespects the following regulation;

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

To assure that the operation will comply fully with the requirements and objectives of the Mining Act of 1971, the director may approve an application or reclamation plan subject to certain conditions. Such conditions of application approval may include: (1) additional erosion control measures to be installed during the mining operation; (2) a natural buffer to be left between any stream and the affected land; (3) visual screening such as existing natural vegetation, vegetated earthen berms, tree plantings at staggered

spacing, etc. to be installed and maintained as feasible between any affected land and any adjoining property containing occupied buildings or public access within view of the affected land; (4) erosion control measures to be taken during the construction and operation of all haul roads or access roads to minimize off-site damage from sediment; (5) other conditions necessary to safeguard the adjacent surface resources or wildlife

- Here the mining commission is trying to obfuscate the reason buffers are needed around mines; the law is clear to minimize visibility of the mine disturbance. Environmental protections such a stream buffers exist for water quality for a completely unrelated reason. In fact, the mining buffers existed before any such stream buffers for good reason - to protect the viewshed. By ignoring this and only relying of environmental stream buffers you effectively gut the viewshed protection assumed in the mining act. Clever on the part of the industry but without any public benefit. This change should be rejected, and buffers need to be undisturbed to block the visible scars of mining from the viewshed of neighboring lands. Failure to do so disrespects the intent on the Mining Act to mine with 74-47;
However, it is possible to conduct mining in such a way as to minimize its effects on the surrounding environment.

- -
 - **15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION**
 - **(d) delete the proposed wording addition of “approved in advance by the Department”**
 - Stream protection should NOT be limited by whatever law is or is not on the books. Rather, stream protective buffers for water quality, dust, noise, visuals should not be eliminated or gutted if they are insufficient per other regulations for other purposes.
 - **15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT**
 - **(2) delete proposed words “natural” and “when specified in State or local stream protection requirements” and keep the old working of “a natural buffer to be left between any stream and the affected land.”**
-

- Public and agency comments on a mining application should NOT be limited to a few days after the first version of the mining application submittal but rather allowed throughout the evaluation – especially after changes to the permit application are submitted to DEQ.

- **15A NCAC 05B .0111 PUBLIC HEARINGS**

- **(c) (e) the proposed change regarding public comments should NOT be included. INSTEAD, public and agency comments should be allowed at least up to 30 days after every change to the mining application.**

- This change does not allow for public comment of the actual proposal being considered by DEQ. Any operator could submit one plan allowing for only x days public comment then change the plan after the public comment period prevent any public comment on the actual proposal.

-

Recently Wake Stone Corporation did this tactic, first submitting a proposed expansion of their permit 92-10 with 100 foot buffers and berms to block public view, then later gutted the buffers reducing them to 25 feet and elimination the berms . With this change the public would have no opportunity to advise the department of its concerns and why the change should not be allowed. This is a clear example of self-dealing by the mining commission, attempting to limit public comment on one plan knowing full well they can then change the draft plan blocking any public comment. Its bad policy and should be rejected. **There is no good reason DEQ should not be informed of public concerns at any time prior to its decision of the permit application. There is no good reason the public should be barred from commenting on changes made after the initial application, doing so blocks public comments on what is actually being considered by DEQ.**

- Blasting records should record the GPS coordinates and elevation.
 - **15A NCAC 05B .0114 BLASTING**
 - **(g) (10) blast location should include GPS coordinates AND elevation (MSL)**

Blasting records should be made public and include the GPS coordinates and elevation of every blast. Those near a blast and impacted by it should be allowed to know the

frequency, intensity and location of any blast that effects them.

Please advise of the next steps regarding acceptance and or rejection of these changes.
Who will be involved and when? How can we advocate to that body?

Sincerely,

Ervin Portman
Cary NC

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Comments on the Proposed Mining Rule Changes

As they relate to the NC Mining Law and ARTICLE XIV, Section 5 of the North Carolina Constitution

The introductory section of the Mining Law (74-47: Findings) includes the following concepts:

- "... it is possible to **conduct mining** in such a way as to **minimize its effects on the surrounding environment.**"
- A "proper reclamation of mined land is necessary to **prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, beauty, and property rights of the citizens of the State.**
- The General Assembly finds that the **conduct of mining** and reclamation of mined lands **as provided by this Article ... will provide for the protection of the State's environment and for the subsequent beneficial use of the mined and reclaimed land.**

So, the remainder of the text contained within the Mining Law AND all Rules written to implement the Mining Law must support these concepts.

In addition, in instances when a mine or potential mine is adjacent to a State Park or taking land for which the State has documented plans for acquiring for a Park, the Mining Law and Mining Rules must not contradict or override the Constitution of the State of North Carolina. ARTICLE XIV, Section 5, Conservation of natural resources says "It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty."

15A NCAC 05A .0202 ~~DELEGATION~~ AUTHORITIES AND DEFINITIONS

All of this text is newly proposed in the Mining Rules:

(c)(7) "Mining Buffer" means an unexcavated, undisturbed, or vegetative area managed to protect adjacent land owners or areas of special concern.

(A) "Unexcavated" means no mine excavation shall occur. Unexcavated buffers may be used for 9 roadways, berms and erosion and sedimentation control or stabilization. Excavation may be allowed for sediment basins or erosion and sedimentation control when shown on the mine map.

(B) "Undisturbed" means no disturbance shall occur.

(C) "Vegetative Buffer" means an unexcavated buffer that may be managed through landscaping or additional plantings.

Per an internet search, a buffer is an area on a property that is left undeveloped, not covered by buildings, pavement, or other structures, and is intended to serve as a protective area between an industrial site and neighboring properties by providing screening and separation; buffers typically consist of natural vegetation, such as trees and shrubs, which should remain undisturbed. The goal of a buffer is such that the character of the neighboring properties is NOT drastically changed, that there is a transition area from the industrial site to the neighboring property.

The newly proposed text defining a "Mining Buffer" does NOT meet the goals of the Mining Law as stated in 74-47 as it allows for an "unexcavated" buffer. **An "unexcavated buffer" essentially eliminates buffers as it allows for the removal of the trees and vegetation that actually create the buffer.** This newly proposed definition also contradicts the NC Constitution when the proposed mine site is adjacent to a State Park or when the proposed mine site is on land planned to become a part of a State Park.

The definition of a "Mining Buffer" should only include the terms undisturbed and vegetative. The word "unexcavated" must be removed from the definition.

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Monday, December 15, 2025 8:35:28 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
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Raleigh, NC 27699-1612



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From: Neal Chawla <neal.chawla@gmail.com>
Sent: Sunday, December 14, 2025 8:42 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

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For public comment.

Please reject the proposed mining rules, consistent with the details that the Umstead Coalition provides, that remove reasonable regulations and weakens public power from unreasonable practices that harm the environment and take land away from public use.

Thank you.
Neal Chawla

Pasted from Umstead Coalition:

The Purposes of the 1971 Mining Act (G.S.74-48) (aka Mining Law) is “to provide (1) That the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration. AND (2) That ... no mining shall be carried on in the State unless plans for such mining include reasonable provisions for protections of the surrounding environment and for reclamation of the area of land affected by mining.”

15A NCAC 05A .0202 (c) (2). DEFINITION OF MINING.

Request to DELETE this entire proposed addition to the rules.

Why delete? Logging has always been considered a mining related activity because the only way to create the mine pit is to log the entire area of the pit and related operations. There is a proposed addition to the rules that would allow logging or deforestation (silviculture) of a mining site even before a mining permit is issued. Then the clear cutting might not even count as part of the adverse impact of mining. Also, this may allow logging even in “undisturbed” areas. This change is inconsistent with Section 74-49(7)(ii) of the Mining Act, THE LAW! **15A NCAC 05A .0202 (c) (7).

Request to DELETE the word “unexcavated.”

Why delete? “**Unexcavated” means the land can be clear cut and deforested for roadways, trucking, stockpiling, erosion control, conveyor belts, crushers, etc. This type of activity is NOT a buffer; it is the opposite of a buffer. – WHY would any member of the public consider this a meaningful “buffer”? 15A NCAC 05A .0202 (c) (6) (B).

Request to ADD “including no logging” so Rule reads: “Undisturbed Buffer” means no disturbance shall occur, including no logging.” Why important to add? The draft rules might allow logging in an undisturbed buffer

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

REQUEST TO ADD the following information to meet the purposes of the mining act (G.S. 74-48) the following should be required in an application: • anticipated life of the mine (in years) • identification of any established State, City or County plans for the land or adjacent lands to be used for public parks, public recreation area, or other public uses • identification of permanent undisturbed buffers

15A NCAC 05B .0105 (2) REJECT revised Rule and KEEP old rule to read: “a natural buffer

to be left between any stream and the affected land.” WHY keep old rule? The proposed rule eliminates “natural” and limits stream buffer width to the few state or local protections that exist for streams (much of the state is not covered by any, and those that are such as in the Neuse Basin, the buffer widths are narrow and only for nitrogen – this ignores all the other reasons natural buffers area should be required along streams and might be wider).

15A N CAC 05B .0111 PUBLIC HEARINGS. REJECT ALL the proposed Rule changes. WHY? The proposed Rule changes eliminate ALL public and agency comments after 10 days, allowing for the mining company to then make significant changes to a Mining Permit Application for a new or modified permit without any public or agency comment! That is not even how any permit application consideration in NC works for any permit. The abuse this would create is beyond comprehension!

15A NCAC 05F .0112 FURTHER REMEDIES. REJECT the deletion – KEEP the existing RULE. Why keep? This rule maintains the right of the Director to pursue remedies for violations of the Mining Act itself. WHY take away enforcement of the Mining Act?

15A NCAC 05B .0114 BLASTING. (g)(10) and (g). Add GPS and elevation. CHANGE “upon request” with “quarterly.” Why? Blasting location should include GPS coordinates and elevation to know where the blast accurately occurs. Blasting records now are not available to the public and DEQ-Mining refuses to ask the Mining Companies for this data – Mining is a heavy industrial activity; the public deserves to have transparent access to blasting data through a Public Information Request.

From: [Veach, Dwain M](#)
To: [Jonas, Kelly B](#); [Clayton, Corey](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Monday, December 15, 2025 8:41:13 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI...final one from over the weekend.

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
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Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612



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From: Sarah Hubbard <24sarahkate@gmail.com>
Sent: Saturday, December 13, 2025 10:54 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from 24sarahkate@gmail.com. [Learn why this is important](#)

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Mr. Veach,

I am submitting the following comments as this issue has been brought to my attention.

15A NCAC 05A .0202 (c) (2). DEFINITION OF MINING. Request to DETETE this entire proposed addition to the rules. Why delete? Logging has always been considered a mining related activity because the only way to create the mine pit is to log the

entire area of the pit and related operations. There is a proposed addition to the rules that would allow logging or deforestation (silviculture) of a mining site even before a mining permit is issued. Then the clear cutting might not even count as part of the adverse impact of mining. Also, this may allow logging even in “undisturbed” areas. Absurd! This change is inconsistent with Section 74-49(7)(ii) of the Mining Act, THE LAW!

15A NCAC 05A .0202 (c) (7). Request to DELETE the word “unexcavated.” Why delete? “Unexcavated” means the land can be clear cut and deforested for roadways, trucking, stockpiling, erosion control, conveyor belts, crushers, etc. This type of activity is NOT a buffer; it is the opposite of a buffer. – WHY would any member of the public consider this a meaningful “buffer”?

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- anticipated life of the mine (in years)
- identification of any established State, City or County plans for the land or adjacent lands to be used for public parks, public recreation area, or other public uses
- identification of permanent undisturbed buffers

15A NCAC 05B .0105 (2) REJECT revised Rule and KEEP old rule to read: “a natural buffer to be left between any stream and the affected land.” WHY keep old rule? The proposed rule eliminates “natural” and limits stream buffer width to the few state or local protections that exist for streams (much of the state is not covered by any, and those that are such as in the Neuse Basin, the buffer widths are narrow and only for nitrogen – this ignores all the other reasons natural buffers area should be required along streams and might be wider).

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WHY? The proposed Rule changes eliminate ALL public and agency comments after 10 days, allowing for the mining company to then make significant changes to a Mining Permit Application for a new or modified permit without any public or agency comment! That is not even how any permit application consideration in NC works for any permit. The abuse this would create is beyond comprehension!

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RULE. Why keep? This rule maintains the right of the Director to pursue remedies for violations of the Mining Act itself. **WHY** take away enforcement of the Mining Act?

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“upon request” with “quarterly.” Why? Blasting location should include GPS coordinates and elevation to know where the blast accurately occurs. Blasting records now are not available to the public and DEQ-Mining refuses to ask the Mining Companies for this data – Mining is a heavy industrial activity; the public deserves to have transparent access to blasting data through a Public Information Request.

Thank you.

Respectfully,

Sarah Hubbard
NC Music Educator



984-484-9437

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Monday, December 15, 2025 8:29:23 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
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Raleigh, NC 27699-1612



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From: Maple Osterbrink <maosterbrink@gmail.com>
Sent: Sunday, December 14, 2025 11:20 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

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Outrageous that **Sam Bratton** even thinks that any of this change request is alright. How can he sleep at night?

Rule 15A NCAC 05A .0202 (c) (2)

Cannot be changed to exempt logging as a destructive part of a mining operation. My granddaughter even knows this.

15A NCAC 05B .0114 BLASTING. (g)(10) and (g).

The public needs to know where this might occur. GPS coordinates are how they mark/ locate / do everything. This needs to be able to be requested at whatever time it is needed. This is part of all their job communication, both business and government.

AND all the rest.
MaryAnn Osterbrink
Chapel Hill NC

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DRAFT

From: [Veach, Dwain M](#)
To: [Jonas, Kelly B](#); [Clayton, Corey](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Monday, December 15, 2025 8:37:32 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
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Raleigh, NC 27699-1612



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From: Alan Piercy <calan.piercy@gmail.com>
Sent: Sunday, December 14, 2025 6:47 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

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Dear Mr. Veach,

The mining rule changes to the Mining Act Rules, Subchapters 05A, 05B, 05F, and 05G should be REJECTED.

The Mining Rules should be consistent with the Mining Law passed by our Legislators. The Mining Rules must not attempt to make new law, or be more lenient for private mining companies who seek to compromise meaningful regulations and to circumvent current restrictions without the opportunity for future public comment.

The North Carolina Mining Act is already one of the weakest in the nation. I implore you and the Commission to resist weakening it further.

The Citizens of North Carolina need, deserve, and demand meaningful regulatory restrictions on this private industry which, if left unfettered, would operate in direct opposition to the public good. For example 1.A., I offer you the grotesque shenanigans pulled by Wake Stone (now Vulcan), in their attempts to destroy public land adjacent to Umstead State Park.

Quite simply, industry will always do what is in the best interest of industry, and they will do so, in the absence of meaningful regulation and oversight, to the detriment of the citizenry. That, sir, is where you and the Mining Board come in.

Operating, as your board does, under the auspices of the North Carolina Department of Environmental Quality (NCDEQ), you MUST do what is in the best interest of the citizens of North Carolina. It says so right on the [homepage of the DEQ website](#). (Go check it out!)

I will direct your attention to the following statement from the DEQ homepage, which falls under the heading "What We Do," particularly the words which I have bolded for emphasis: "*The NCDEQ is the lead stewardship agency for the PROTECTION of North Carolina's environmental resources... DEQ touches the lives of all North Carolinians in many ways to ENHANCE and ENSURE our QUALITY of life.*"

The proposed changes neither protect our environmental resources, nor enhance or ensure the quality of life of North Carolinians. What's more, they are a nakedly anti-democratic power grab crafted by private industry, and serve no purpose other than to enrich said industry.

I will refer you to the comments offered by Dr. Jean Spooner of the Umstead Coalition from a November 18, 2025 public hearing, [linked here](#) for additional details on the putrid nature of these proposed changes.

Mr. Veach, I humbly ask that you and the Mining Board act in accordance with the noble mission laid out by the DEQ. You have an opportunity to protect, enhance, and ensure the quality of life of North Carolinians. And, sir, we are watching to see what you do.

Thank you for your careful consideration,

-Alan Piercy, Raleigh, North Carolina

Alan Piercy
803.238.9979

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DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Curry, Adam C](#)
Subject: FW: [External] Mining Rules - public comment
Date: Monday, December 15, 2025 8:33:10 AM

FYI

Dwain Veach, MS, PG
State Geologist of North Carolina | Section Chief
North Carolina Geological Survey
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
Mobile: 919.900.0281
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Email: dwain.veach@deq.nc.gov
Physical Address: 512 North Salisbury Street
Mailing Address: 1612 Mail Service Center
Raleigh, NC 27699-1612

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-----Original Message-----

From: Robin Stern <usability100@gmail.com>
Sent: Sunday, December 14, 2025 11:13 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules - public comment

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I support The Umstead Coalition and all their recommendations regarding mining near Umstead State Park. I live within 5 miles of the current quarry and love biking and hiking in Umstead Park. Please preserve the park and all surrounding nature, at all costs.

Thanks for listening,
Robin Stern
Cary, NC

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From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, December 16, 2025 10:50:36 AM
Attachments: [image001.png](#)
[image002.png](#)

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
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Raleigh, NC 27699-1612



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From: John Davis <jrdavis37@gmail.com>
Sent: Monday, December 15, 2025 6:19 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

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I ask that the following proposed Rule changes NOT be approved.

John Davis
Raleigh NC

15A NCAC 05A .0202 (c) (2). DEFINITION OF MINING. Request to DETETE this entire proposed addition to the rules. Why delete? Logging has always been considered a mining related activity because the only way to create the mine pit is to log the entire area of the pit and related operations. There is a proposed

addition to the rules that would allow logging or deforestation (silviculture) of a mining site even before a mining permit is issued. Then the clear cutting might not even count as part of the adverse impact of mining. Also, this may allow logging even in “undisturbed” areas. Absurd! This change is inconsistent with Section 74-49(7)(ii) of the Mining Act, THE law!

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15A NCAC 05A .0202 (c) (6) (B). Request to ADD “including no logging” so Rule reads: “Undisturbed Buffer” means no disturbance shall occur, including no logging.” Why important to add? The draft rules might allow logging in an undisturbed buffer – WRONG!

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION. REQUEST TO ADD the following information to meet the purposes of the mining act (G.S. 74-48) the following should be required in an application:

- anticipated life of the mine (in years)
- identification of any established State, City or County plans for the land or adjacent lands to be used for public parks, public recreation area, or other public uses
- identification of permanent undisturbed buffers

15A NCAC 05B .0105 (2) REJECT revised Rule and KEEP old rule to read: “a natural buffer to be left between any stream and the affected land.” WHY keep old rule? The proposed rule eliminates “natural” and limits stream buffer width to the few state or local protections that exist for streams (much of the state is not covered by any, and those that are such as in the Neuse Basin, the buffer widths are narrow and only for nitrogen – this ignores all the other reasons natural buffers area should be required along streams and might be wider).

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CHANGE “upon request” with “quarterly.” Why? Blasting location should include GPS coordinates and elevation to know where the blast accurately occurs. Blasting records now are not available to the public and DEQ-Mining refuses to ask the Mining Companies for this data – Mining is a heavy industrial activity, the Public deserves to have transparent access to blasting data through a Public Information Request.

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DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Proposed Mining Rule changes to Subchapters 05A, 05B, 05F and 05G of the Mining Act Rules.
Date: Tuesday, December 16, 2025 10:46:21 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
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Raleigh, NC 27699-1612



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From: William Doucette <william8865@att.net>
Sent: Monday, December 15, 2025 3:23 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Proposed Mining Rule changes to Subchapters 05A, 05B, 05F and 05G of the Mining Act Rules.

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These rule changes re-write the Mining Rules such that they prevent meaningful public comments on Mining Permit applications (both new and modified permit applications), gut protective buffers and allow trucking and other heavy industrial mining operations right up to edge of property line, exempt logging as a destructive part of a mining operation and continue the dilution of the protections the 1971 mining act. Given the proven inability of the DEQ mining staff to properly implement mining regulations as evident in the October NC Superior Court decision

admonishing DEQ for its handling of the Sunset Clause and buffer requirements at the Wake Stone Triangle Quarry, public involvement is clearly essential to ensuring that the intent of the Mining Act is achieved. Any further limits on public comments will mean that mining companies can improperly conduct business without penalty.

Below are my specific comments were developed based on many years of active participation in the mining permitting process and from a review of comments from others and no doubt may appear similar to other comments submitted to DEQ.

15A NCAC 05A .0202 (c) (2). DEFINITION OF MINING. Request to DELETE this entire proposed addition to the rules. Why delete? Logging has always been considered a mining related activity because the only way to create the mine pit is to log the entire area of the pit and related operations. There is a proposed addition to the rules that would allow logging or deforestation (silviculture) of a mining site even before a mining permit is issued. Then the clear cutting might not even count as part of the adverse impact of mining. Also, this may allow logging even in “undisturbed” areas. This change is inconsistent with Section 74-49(7)(ii) of the Mining Act, THE LAW!

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- identification of permanent undisturbed buffers

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15A NCAC 05B .0111 PUBLIC HEARINGS. REJECT ALL the proposed Rule changes. WHY? The proposed Rule changes eliminate ALL public and agency comments after 10 days, allowing for the mining company to then make significant changes to a Mining Permit Application for a new or modified permit without any further public or agency comment. The public must be allowed to comment on every proposed change to a permit.

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=====

william8865@att.net

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DRAFT

Comments on the Mining Commission's Proposed Rule Changes

As they relate to the NC Mining Law and Public Hearings

15A NCAC 05B .0111 IS PROPOSED FOR READOPTION WITH SUBSTANTIVE CHANGES AS FOLLOWS → Changing “department” to “Department” and “director” to “Director” is ok, but most of the remainder of the changes should NOT be accepted as the proposed changes do NOT account for all of the text in the Mining Law and undermine the purpose of the Mining Law.

Restricting public hearings as is being done with the proposed changes in the Mining Rules:

- Contradicts, at minimum, the Findings (74-47) and the Purposes of the Mining Law (74-48) as well as the NC Constitution.
- Gives mining companies a blank check to revise applications (both new and modifications) without oversight.
- Allows a mining company to avoid public scrutiny by withholding information until after an unnecessary deadline has passed.

15A NCAC 05B .0111 PUBLIC HEARINGS

Item (a)

If the ~~department~~ Department determines that there exists a significant public interest in an application for a new mining permit, or for a modification that adds land to the existing permit, the ~~director~~ Director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no ~~sooner than 20 or later than 60 days~~ 90 days ~~of from~~ the filing of the application and before the ~~department~~ Department makes its final decision regarding the application.

- **The phrase “that adds land to the existing permit” must NOT be added.** The Mining Law when read as a whole and considering 74-50, 74-51, and 74-52 does NOT limit public hearings. As per Section 74-52, permit modifications have to meet all criteria of new permits, so public hearings must be allowed for permit modifications when there is significant public interest.

Item (c)

Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose **reasonable** limitations on the length of time that any person may speak and may summarize comments rather than recording them in full. The hearing officer may allow additional written comments to be submitted for up to ten days after the ~~hearing~~ hearing after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application. ~~within a period of time he deems appropriate which shall not exceed ten days.~~

- The word “**reasonable**” must not be deleted. Deleting this word allows “unreasonable” limitations to be enacted.
- The phrase “for up to ten days” must not be added. This is an unreasonable restriction. At the time of the hearing, neither the application nor the draft permit is final. The public and all agencies must be allowed to submit comments when there are significant changes to the application or draft permit or when new relevant information is discovered. The Mining Law does not restrict public comments and neither should the Mining Rules. Making a hard cut

Comments on the Mining Commission's Proposed Rule Changes As they relate to the NC Mining Law and Public Hearings

off for public comments allows a mining company to avoid public scrutiny by withholding information until after the unnecessary deadline has passed

- The phrase “**after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application**” must not be added. This is an unreasonable restriction. At the time of the hearing, neither the application nor the draft permit is final. The public and all agencies must be allowed to submit comments when there are significant changes to the application or draft permit or when new relevant information is discovered. The Mining Law does not restrict public comments and neither should the Mining Rules. Making a hard cut off for public comments allows a mining company to avoid public scrutiny by withholding information until after the unnecessary deadline has passed.

Item (e)

In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of the application after which the public comment period will be considered closed and no other public comments will be considered in the final determination of the application.

- All of the text in Item (e) is new. ***None of this language should be included in the Mining Rules.*** This is an unreasonable restriction. The public and all agencies must be allowed to submit comments when there are significant changes to the application or draft permit or when new relevant information is discovered. The Mining Law does not restrict public comments and neither should the Mining Rules. Making a hard cut off for public comments allows a mining company to avoid public scrutiny by withholding information until after the unnecessary deadline has passed.

From: [Veach, Dwain M](#)
To: [Jonas, Kelly B](#); [Clayton, Corey](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Monday, December 15, 2025 12:26:15 PM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
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From: Marilyn Mayer <marilyn.mayer1@gmail.com>
Sent: Monday, December 15, 2025 11:49 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>; Marilyn Mayer <marilyn.mayer1@gmail.com>
Subject: [External] Mining Rules

You don't often get email from marilyn.mayer1@gmail.com. [Learn why this is important](#)

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I am opposed to the Mining Commission's recently Proposed Rule Changes, changes that significantly favor the mining industry over other State agencies and the public . It is supposed to protect NC's environment, our on the ground resources as well as allowing companies to access natural resources that lie beneath the ground. The proposed changes would permit several negative impacts on adjacent properties.

sections to oppose

15A NCAC 05B .0105 (2) DEFINITION OF MINING. Request to DELETE this entire proposed addition to the rules. Why delete? Logging has always been considered a mining related activity because the only way to create the mine pit is to log the entire area of the pit and related operations. There is a proposed addition to the rules that would allow logging or deforestation (silviculture) of a mining **REJECT revised Rule and KEEP old rule to read: “a natural buffer to be left between any stream and the affected land.” WHY keep old rule?** The proposed rule eliminates “natural” and limits stream buffer width to the few state or local protections that exist for streams (much of the state is not covered by any, and those that are such as in the Neuse Basin, the buffer widths are narrow and only for nitrogen – this ignores all the other reasons natural buffers area should be required along streams and might be wider).

15A NCAC 05B .0111 PUBLIC HEARINGS. REJECT ALL the proposed Rule changes. WHY? The proposed Rule changes eliminate ALL public and agency comments after 10 days, allowing for the mining company to then make significant changes to a Mining Permit Application for a new or modified permit without any public or agency comment! That is not even how any permit application consideration in NC site even before a mining permit is issued. Then the clear cutting might a not even count as part of the adverse impact of mining. Also, this may allow logging even in “undisturbed” areas. Absurd! This change is inconsistent with Section 74-49(7)(ii) of the Mining Act

15A NCAC 05A .0202 (c) (7). Request to DELETE the word “unexcavated.” Why delete? “Unexcavated” means the land can be clear cut and deforested for roadways, trucking, stockpiling, erosion control, conveyor belts, crushers, etc. **This type of activity is NOT appropriate in a buffer and would have very negative impacts.**

15A NCAC 05A .0202 (c) (6) (B). Request to ADD “including no logging” so Rule reads: **“Undisturbed Buffer” means no disturbance shall occur, including no logging.**” to be completely explicit.

Thank you for considering my comments and acting as requested. Please send me a response on your actions and the final decision of this matter.

Marilyn Mayer

NC Conservation Network • NC League of Conservation Voters

December 15, 2025

Mr. Dwain Veach
North Carolina Mining Commission
1612 Mail Service Center
Raleigh NC 27699-1611
dwain.veach@deq.nc.gov

Re: Comments on the proposed mining rules, 15A NCAC 05A and 05B

Dear Mr. Veach:

Thank you for the opportunity to comment on the North Carolina Mining Commission's proposed revision of the state's mining rules, 15A NCAC 05A and 05B. Through much of 2024, staff of the NC Department of Environmental Quality (DEQ) hosted a multi-interest stakeholder group to review these rules. We submit these comments as the two advocates who represented the perspectives of the environmental community on that group.

The NC League of Conservation Voters is a statewide organization that prioritizes pragmatic policies to improve local environments. The NC Conservation Network works to protect North Carolina's environment and promote solutions for a safer, healthier state. Both of our organizations have supporters who benefit from the products of North Carolina's mining industry, and who also treasure clean air, clean water, and livable communities. We count on effective state regulatory oversight to ensure that mining operations protect these resources and treat nearby neighbors fairly.

We appreciated the opportunity to serve on the stakeholder group. Most of the rule revisions the Commission has proposed in this rulemaking reflect the consensus of the stakeholders last fall. However, in three respects, the rules proposed for public comment by the Mining Commission depart from the stakeholder recommendations and make changes that we believe will have negative unintended consequences. For the reasons outlined below, we hope you will reconsider them. We also raise a fourth issue - good operating record - that we do not think the stakeholders discussed, and for which we suggest a restoration of rule language that we think would benefit both the agency and the industry.

1. Vegetated buffers for the protection of wildlife and fisheries

15A NCAC 05B .0105 addresses the kinds of conditions that the Department of Environmental Quality (DEQ) can include in mining permits to ensure that they do not have unduly adverse impacts. As recommended by the stakeholders, the opening to .0105 read:

The Director may require that an application or reclamation plan include conditions that include but are not limited to: ... (2) a vegetated buffer between any stream and the affected land when specified in State or local stream protection requirements.

As proposed in the current package, the section reads:

The Director may require that a permit or reclamation plan contain conditions including: ... (2) a vegetated buffer between any stream and the affected land when specified in State or local stream protection requirements.

We suspect that the change - the deletion of the phrase 'but not limited to' - was likely the result of conversations with staff of the Rules Review Commission (RRC), who tend to find the phrase impermissibly vague. But in this case, eliminating it changes the meaning of the sentence from 'the conditions can include the following points, and others as needed to prevent undue impacts' to 'the conditions can include the following points, and - by implication - none others'.

The specific concern attends vegetated buffers. Subsection (2) on the list of conditions covers buffers where required by other state or local laws. But in practice, buffers have also been a crucial tool to prevent unduly adverse impacts for specific sites in places where state and local laws do not impose an overarching requirement. Such buffers should in fact be allowed under subsection (5), "other conditions necessary to safeguard the adjacent surface resources or wildlife." But the narrowing of the section's first sentence has the potential to confuse that, and has raised alarms among some resource agency biologists. Moreover, at some specific sites, only an undisturbed buffer, not merely a vegetated buffer, will protect the sensitive endpoints.

For that reason, we recommend adjusting subsection (5) as follows, to leave no doubt that vegetated buffers may be required:

(5) other conditions, including vegetated or undisturbed buffers, necessary to safeguard the adjacent surface resources or wildlife.

2. Information received after the close of public comments

The second change with unintended consequences is in 15A NCAC 05B .0111, Public hearings. As recommended by the stakeholders, section (c) read,

(c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose limitations on the length of time that any person may speak and may summarize comments rather than recording them in full.

The hearing officer may allow additional written comments to be submitted after the hearing within a period of time he or she deems appropriate which shall not exceed ten days.

As proposed by the Commission, the subsection reads as follows (the difference is the underlined portion),

- (c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose reasonable limitations on the length of time that any person may speak and may summarize comments rather than recording them in full. The hearing officer may allow additional written comments to be submitted for up to ten days after the hearing after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application.

With or without the additional language, we think it is uncontestable that the agency is not *required* to accept a late public comment. But - quite apart from public comment - the agency cannot disregard information from any source that affects whether a permit can lawfully be issued, right up to the moment when the agency actually issues the permit. The problem with the proposed language is that it ignores the distinction between the closing of the comment period and the closing of the record of decision. It is also unworkable. For example, if a crucial fact that means a permit cannot be issued comes to light in a newspaper article, the proposed language would not apply. However, if that same information came in the form of a comment from a concerned neighbor, would the agency be forbidden to acknowledge the fact and deny or condition the permit? That line is arbitrary and would be impossible to defend in court.

We recommend that the Commission strike the underlined language, and rely on the agency's standard discretion - exercised in this as in all other programs - to manage letters submitted after the deadline. The Commission must recognize, if the agency becomes aware of facts that make it illegal to issue a permit as drafted, the agency cannot ignore that knowledge, even if it arises after the end of the comment period.

On a related point, we support the addition of a new subsection (e), clarifying that public comments are accepted for 60 days when there is no public hearing. But in that subsection also, the parallel language stating categorically that late public comments will not be considered should be struck.

3. Standards for denying an application

The Commission's proposal deletes a rule, current .0106 but missing from the proposed ruleset, that discusses the authority of the state program to deny applications. That is a change from what the stakeholders recommended, and we suspect it reflects the Rules Review Commission's current view that a rule cannot merely regurgitate the language of the general

statutes. We think this is an unfortunate approach to drafting - it makes rules less transparent for the regulated community - but it is the RRC's current practice. That said, we think there is a way to revise and tighten the language in .0106 in a way that is consistent with but distinct from GS 74-51, and would keep this useful rule in the final ruleset.

To see this, it is worth starting with the language of the statute:

- (d) The Department may deny a permit upon the finding: [a list of seven factors]
- (e) In the absence of any finding set out in subsection (d) of this section, or if adverse effects are mitigated by the applicant as determined necessary by the Department, a permit shall be granted.

In other words, if any of the seven factors are present and can be mitigated, the permit issues; conversely - but not expressly stated in the statute - if any of the seven factors are present and cannot be mitigated, the permit is denied. We think that is worth spelling out, and adds an interpretive detail consistent with but not duplicative of the statute. For that reason, we recommend restoring section .0106 to the ruleset with this language:

- (a) An application for a mining permit including new permits, modified permits and renewal permits and transferred permits, may shall be denied when the operation will have an unduly adverse effect on wildlife or fisheries by: Department finds that any elements of G.S. 74-51(d) are expected to occur and can not be mitigated.

4. Removal of definition for bonding requirements

Finally, we are concerned regarding the removal of the "good operating record" standard in Section .0103. In the rule currently in force, only operators with a good operating record - two years without a civil penalty or enforcement action - have access to the blanket bond.

We suspect that this was removed - in both the stakeholder draft and the proposed new rules - based on a narrow reading of GS 74-54(b), Bonds: "The applicant shall have the option of filing a separate bond for each operating permit or of filing a blanket bond covering all mining operations within the State for which the applicant holds a permit. The amount of each bond...shall not exceed one million dollars (\$1,000,000). Under a narrow reading, the applicant gets to make the choice between individual bonds or a blanket bond.

Yet, the narrow reading leads to a perverse outcome for applicants. Under GS 54-51(d)(7), DEQ can deny a permit to an applicant who has not been in substantial compliance or has not corrected violations, including those that resulted in a civil penalty or enforcement action. This creates an all-or-nothing choice: DEQ can deny the permit, or issue it and let the applicant choose an inadequate blanket bond. Surely it would be better - for both the applicant and the agency - for the Mining Commission to interpret this with a bit more flexibility, to allow an

applicant with a poor compliance record to get a permit, but without a blanket bond, until their record improves.

Moreover, two years of penalty-free operation is a very low threshold in comparison to requirements in other states. Other states with comprehensive mining codes affirm the need for an operator standard within their bonding requirements, usually referred to as good standing (see Chapter 519A of the Nevada Administrative Code, with particular emphasis on [Section 3\(c\)](#)).

Finally, as the United States expands domestic mineral production, many new companies with no track records could begin business here in North Carolina. Without a requirement for a good operating record in the bonding process, DEQ may open our state up to unproven companies who are unable to maintain the standards previously set by these rules. Operators without a good operating record may be unable to reclaim their mined areas, putting further financial strain on the agency. Therefore, we request that the requirement for a good operating record be reintroduced to the bonding requirements or otherwise included in the publicly available documentation for a permit application.

5. Grammatical fix

This is a nonsubstantive change: it appears to us that .0103, Bonding Requirements, needs a small grammatical fix. We recommend that it be revised to read,

- (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 compliance action taken by the Department.

Conclusion

Thank you for considering these comments. If we can answer questions, please don't hesitate to reach us at the emails in our signature blocks below.

Sincerely,

Michelle (Meech) Carter
Clean Energy Campaigns Director
NC League of Conservation Voters
meech@nclcv.org

Grady McCallie
Policy Director
NC Conservation Network
grady@ncconservationnetwork.org



◊ North Carolina Wildlife Resources Commission ◊

M. Kyle Briggs, Executive Director

December 15, 2025

Dwain Veach
NC Mining Commission
1612 Mail Service Center
Raleigh, NC 27699-1611

SUBJECT: Proposed revisions to Mining Act Rules 15A NCAC Chapter 05

Dear Mr. Veach:

Biologists with the North Carolina Wildlife Resources Commission (NCWRC) have reviewed the proposal from the NC Division of Energy, Mineral and Land Resources (NCDEMLR) to revise the Mining Act (Act) Rules. The NCWRC is charged by statute with management, regulation, protection and conservation of wildlife resources and inland fisheries in North Carolina (General Statute 113-132). The NCWRC's mission includes conserving North Carolina's wildlife resources and their habitats, which include wetlands and streams.

NCDEMLR has proposed rule changes to the NC Mining Act Rules to satisfy the rule review process required by Title 15A, Chapter 05 of the North Carolina Administrative Code. According to the public notice for this action, the proposed changes are also designed to update references and terminology and to revise requirements in line with current practices and technological advancements. Within the notice, NCDEMLR acknowledges that mineral extraction will involve ground disturbance and create waste materials and complete restoration of all sites to their original condition is unachievable. However, NCDEMLR also noted that the Act references the intent to conduct mining in a way "to minimize its effects on the surrounding environment through planning and restoration" and "to provide a framework to provide for the protection of the environment."

NCWRC reviews mine permit applications and provides recommendations to minimize impacts to wildlife and their habitats. Mines can directly impact terrestrial wildlife by removing habitats like native vegetation, soils, and rock, as well as eliminating aquatic habitat by filling in or dredging streams and wetlands and changing water chemistry due to a project's discharge. The NC Wildlife Action Plan (Plan) provides reference and scale to these impacts and notes mining activities as a threat to wildlife species and habitats. The Plan serves as a resource in determining the scale of sensitivity of a species to habitat changes based on their protection status. The Plan tracks trends of federal and state listed species as well as Species of Conservation Need (SGCN) with references in the Threats Chapter (Chapter 5) to which activities are of greatest concern. For example, Table 5.5-1 highlights species at risk of impacts from energy production and mining. Several years ago, NCWRC coordinated with NCDEMLR staff on methods to screen mining

projects for highly sensitive species to instream mining activities which were applied for 15A NCAC 05B .0106. With this language removal, NCWRC requests the opportunity to meet with NCDEMLR staff to discuss and review current practices in relation to minimizing impacts to wildlife resources per G.S. 74-51 (2) and (3) to improve our coordination and sharing of information. This coordination would allow us an opportunity to provide clarity on impacts to wildlife resources that we have the greatest concern for.

NCWRC appreciates the details included in the Regulatory Impact Analysis for the Mining Rules which are in support of rules for the Mining Act. The current rules which are proposed for removal have a direct reference to the NCWRC in 15A NCAC 05B .0106. We offer the following input on the proposed changes to the Mining Act Rules:

Stream Buffers

Riparian buffers are essential for the protection of water quality and aquatic habitats, providing ecologically important functions, including pollutant reduction and runoff filtration, channel stability, stream temperature moderation, in-stream habitat, flood attenuation, hydrologic exchange between surface and groundwater, and terrestrial habitat. NCWRC's [2002 Guidance Memorandum to Address and Mitigate Secondary and Cumulative Impacts to Aquatic and Terrestrial Wildlife Resources and Water Quality](#) provides references and more detailed information on the importance of riparian buffers to wildlife resources. Currently, new mining applications typically propose a 50-ft buffer along streams which provides minimal protection for these streams from the mined area.

The proposal changes to 05B .0105 modify the requirement for a natural buffer along streams to “a vegetated buffer to be left between any stream and the affected land when specified in State or local stream protection requirements.” Many streams are not subject to State or local stream protection requirements, and this proposal would eliminate a buffer requirement for these streams. This change not only impacts the ecological integrity of the streams on a mined area, but it can impact downstream waters, as stream function is highly dependent on the state of its headwater streams. **NCWRC requests that NCDEMLR modify this proposal to continue to protect natural riparian buffers for all affected streams.**

In addition, the proposed definition of a “vegetated buffer” in 05B .0202—an unexcavated buffer that may be managed through landscaping or additional plantings—would allow an existing forested buffer to be cut and replaced with grass and/or non-native vegetation that does not provide the same functions as a native riparian buffer described above. **We request that the language be modified, requiring a natural, undisturbed buffer so that the buffer's ecological functions be maintained.**

Wildlife and Fisheries Protection

We request the NCAC language clarify under which circumstances a permit would be denied related to GS 74-51 (d) (2) to provide clarity on how NCWRC can assist in coordinating. NCWRC supports project denials if they have “unduly adverse effects” on wildlife as noted in GS 74-51 (d) (2), but better defined and clarified in the rule. With the removal of 15A NCAC 05B .106 from the rules, NCWRC has questions on how the denial of projects will be prioritized according to GS 74-51 (d) (2) allowing for the conservation of public trust resources, including NCWRC's role in minimizing a mine's impacts to state wildlife resources. For example, an in-river mine could be proposed in an ecologically important river reach that supports state-listed mussels and amphibians. NCWRC's recommendations to deny the mine or move it away from this reach may have no regulatory backing due to this change. If federally listed species is found within a project reach, permitting may result in the take of endangered species. Due to these potential scenarios, NCWRC requests that instream mining permits include NCWRC coordination within a scoping process to ensure potential impacts to wildlife are considered and minimized.

Information Required in Permit Application

NCDEMLR notes there are 722 permitted sites that these rule changes would apply to and an average of 25 new permits each year with 64% being sand and gravel sites. In order to help NCWRC with the scoping step of proposed mining projects, we request additional information be added to application for instream mining, including the 12-digit Hydrologic Unit Code (HUC) and a Natural Heritage inventory report. As long as the application already includes GPS coordinates for the project site, this information should be easily accessible and at no additional expense. This information would assist NCWRC in determining the scale of “unduly adverse effects” for the proposed project as specified in General Statute.

Thank you for the opportunity to review and comment on the proposed regulation change. Please contact me at (919) 218-1023 or shannon.deaton@ncwildlife.gov if I can assist further.

Sincerely,



Shannon L. Deaton, P.E., Chief
Division of Habitat Conservation

DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining Rules
Date: Tuesday, December 16, 2025 10:59:42 AM
Attachments: [image001.png](#)
[image002.png](#)

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
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From: Parker <tankmtbnc@gmail.com>
Sent: Sunday, December 14, 2025 7:46 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining Rules

You don't often get email from tankmtbnc@gmail.com. [Learn why this is important](#)

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I agree with the Umstead coalition. There should be a lot of limits on mining.

15A NCAC 05A .0202 (c) (2). DEFINITION OF MINING. Request to DETETE this entire proposed addition to the rules. Why delete? Logging has always been considered a mining related activity because the only way to create the mine pit is to log the entire area of the pit and related operations. There is a proposed addition to the rules that would allow logging or deforestation (silviculture) of a mining site even before a mining permit is issued. Then the clear cutting might a not even count as part of the adverse impact of mining. Also, this may allow logging even in

“undisturbed” areas. Absurd! This change is inconsistent with Section 74-49(7)(ii) of the Mining Act, THE LAW!

15A NCAC 05A .0202 (c) (7). Request to DELETE the word “unexcavated.” Why delete? “Unexcavated” means the land can be clear cut and deforested for roadways, trucking, stockpiling, erosion control, conveyor belts, crushers, etc. This type of activity is NOT a buffer; it is the opposite of a buffer. – WHY would any member of the public consider this a meaningful “buffer”?

15A NCAC 05A .0202 (c) (6) (B). Request to ADD “including no logging” so Rule reads: “Undisturbed Buffer” means no disturbance shall occur, including no logging.” Why important to add? The draft rules might allow logging in an undisturbed buffer – WRONG!

15A NCAC

05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION. REQUEST TO ADD the following information to meet the purposes of the mining act (G.S. 74-48) the following should be required in an application:

- anticipated life of the mine (in years)
- identification of any established State, City or County plans for the land or adjacent lands to be used for public parks, public recreation area, or other public uses
- identification of permanent undisturbed buffers

15A NCAC 05B .0105 (2) REJECT revised Rule and KEEP old rule to read: “a natural buffer to be left between any stream and the affected land.” WHY keep old rule? The proposed rule eliminates “natural” and limits stream buffer width to the few state or local protections that exist for streams (much of the state is not covered by any, and those that are such as in the Neuse Basin, the buffer widths are narrow and only for nitrogen – this ignores all the other reasons natural buffers area should be required along streams and might be wider).

15A N

CAC 05B .0111 PUBLIC HEARINGS. REJECT ALL the proposed Rule changes. WHY? The proposed Rule changes eliminate ALL public and agency comments after 10 days, allowing for the mining company to then make significant changes to a Mining Permit Application for a new or modified permit without any public or agency comment! That is not even how any permit application consideration in NC works for any permit. The abuse this would create is beyond comprehension!

15A NCAC 05F .0112 FURTHER REMEDIES. REJECT the deletion – KEEP the existing RULE. Why keep? This rule maintains the right of the Director to pursue remedies for violations of the Mining Act itself. WHY take away enforcement of the Mining Act?

15A NCAC 05B .0114 BLASTING. (g)(10) and (g). Add GPS and elevation.

CHANGE “upon request” with “quarterly.” Why? Blasting location should include GPS coordinates and elevation to know where the blast accurately occurs. Blasting records now are not available to the public and DEQ-Mining refuses to ask the Mining Companies for this data – Mining is a heavy industrial activity; the public deserves to have transparent access to blasting data through a Public Information Request.

Parker Perkins

Raleigh NC

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DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Amended Public Comments on Regulatory Impact Analysis and proposed Draft Mining Regulation Changes
Date: Tuesday, December 16, 2025 10:46:58 AM
Attachments: [image.png](#)
[image.png](#)
[image.png](#)
[image001.png](#)
[image002.png](#)

fyi

Dwain Veach, MS, PG

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From: Ervin Portman <reportman@weststarprecision.com>
Sent: Monday, December 15, 2025 3:39 PM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Amended Public Comments on Regulatory Impact Analysis and proposed Draft Mining Regulation Changes

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On page 1 Paragraph A; **Purposes of the Mining Act Rules**, DEMLR staff paraphrase not the Purpose of the act but restates selectively only a portion of the findings cited in the law. This is revealing in how DEMLR staff cites the portion of the finding allowing mining but actually excluded the actual stated purpose of the act which calls for ;

Excerpt from the DEMLR staff Regulatory impact analysis;

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.

Here we see clearly the staff report ignores the Purpose of the Mining act but selectively edits the finding of the law and calls it the purpose. (yellow highlighted finding were lifted into the report as purpose, while excluding the portion of the same findings that speak to the need for balance to protect the environment.

§ 74-47. Findings. (the law)

The General Assembly finds 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. Furthermore, it is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain surface mining operations precludes complete restoration of the land to its original condition. However, it is possible to conduct mining in such a way as to minimize its effects on the surrounding environment. Furthermore, proper reclamation of mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, beauty, and property rights of the citizens of the State. The General Assembly finds that the conduct of mining and reclamation of mined lands as provided by this Article will allow the mining of valuable minerals and will provide for the protection of the State's environment and for the subsequent beneficial use of the mined and reclaimed land. (1971, c. 545, s. 2.)

The staff report included the portion of the law allowing mining, highlighted in yellow above, but excluded the portion that provide for the protection of the environment. Also important to note this is the the stated purpose of the mining act but a earlier pragraph findings.

The actual stated purpose of the act is not included in the Regulatory impact analysis at all, and its absence reflects a sharp change of role by DEMPLR over the last decade. This change has aligned the division with the interests of mining companies as a advocate for mining and has been a sharp departure of the way the department opereated from 1971-2018. During this period Directors Conrad, Gardner and Simons strived to balace the need for mining and the need to protect the environment.

A review of mining permit 92-10 clearly shows how DEMLR has become coopted by industry at the expense of the Law (and the publics interest) in providing maximum protection of the environment. The DEMLR staff Regulatory Impact analysis, serves as proof of this chnage in current practices. Practices that are contry to the actual Purpose of the Mning Act.

The fact that current DEMLR leadership has lost it objectivity in the purpose of the law should not be justification for changing these regulations to legitimize this new bias.

Here is the actual purpose of the Mining Act of 1971 these regulations should be supporting;

§ 74-48. Purposes.

The purposes of this Article are to provide:

- (1) That the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration.
- (2) That from June 11, 1971, no mining shall be carried on in the State unless plans for such mining

include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining. (1971, c. 545, s. 3.)

This omission is not by accident as a careful review of DEMLR actions in the last decade show a sharp change from this objective, and how the department operated from 1971-2015; During this time Directors Conrad, Gardenr and Simons enforced the act ensuring balance in both the needs of mining industry and the requirement for maximum environmental protection.

The shift from the law Occured with Tracy Davis, who began a systemic shift from environmental protection to favor the interests of industry over the Acts requirement for maximum protection of the environment.

Davis took permit requirements out of the permit, allowing them to be only shown in the site plan which is prepared by industry. Doing so eliminated the checklist the department used to specifically list the requirements of the permit, making it abundantly clear to both DEMLR and the operator exactly what they are required to do. Moving this text into a site plan was a clever way to allow it to be watered down and lost over time.

These draft regulatory changes further this erosion of balance by making targeted yet significant changes to the stated purpose of the act.

1. 15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS
- 2.
3. , included added text to allow timber harvesting, which in the past was considered a part of mining. By excluding timber harvesting from mining , DEMLR with this change guts environmental protection which only helps industry at the expense of the environment and the public.

For this reason the paragraph Affected land should be removed from these changes.

Exclude

(2) "Affected land", as defined in G.S. 74-49(1) shall not include an unrelated use that does not meet 29 the definition of mining that occurs within the permit boundaries, including activities pertaining to 30 agriculture and silviculture including timber harvesting, where an erosion and sedimentation plan is 31 approved under G.S. 113A, Article 4, when required, and the unrelated use area is shown on the 32 mine map.

If the change is adopted, a mining applicant would be allowed to destroy all existing natural vegetation before they even apply for a mining permit. Having done so all possible existing natural vegetation that could have been used as a buffer to protect surrounding land from the sights and sounds of mining, would have already been eliminated, **even for permits that may be denied** . There is no public benefit of allowing this drastic change in the regulation which are directly contrary to the stated purpose of the mining act itself, which required maximum protection of the environment.

The fact that the mining commission even proposed such a change and staff did not oppose it, is evidence that both the current mining commission and DEMLR staff have lost any objectivity to respect and protect the purposes of the Mining Act.

The next example of Industry bias at the expense of the public and maximum protection of the environment is paragraph 7 of this same section;

- (7) "Mining Buffer" means an unexcavated, undisturbed, or vegetative area managed to protect adjacent 8 landowners or areas of special concern. 9 (A) **"Unexcavated" means no mine excavation shall occur. Unexcavated buffers may be used for 10 roadways, berms and erosion and sedimentation control or stabilization.** Excavation may be allowed 11 for sediment basins or erosion and sedimentation control when shown on the mine map. 12 (B) "Undisturbed" means no disturbance shall occur. 13 (C) "Vegetative Buffer" means an unexcavated buffer that may be managed through landscaping or 14 additional plantings.

Until Director Tracy Davis DEMLR required buffers of natural undisturbed vegetation. This was key to protecting the surrounding areas from the undesirable sights and sounds of mining, which is the purpose of a buffer. In this text addition the Mining Commission and DEMLR staff actually GUT one of the only and most effective environmental protections available to DEMLR to minimize impacts of mining on surrounding land, by actually allowing complete and total deforestation of buffer land, doing so is not consistent with the law as stated in the purpose of the mining act. This text change should be eliminated and DEMLR should return to the practice of requiring buffers remain undisturbed natural vegetation as the department did prior to Director Davis started gutting permits.

The fact that this may have now become department practices does not mean it is lawful, and certainly should not be legitimized by adding it to the regulations that should support the purpose of the ACT not undermine it. If they mean to use this only in areas that require a berm be constructed that is the way it should be phrased, not a loophole that would show a buffer that actually is not any buffer but rather a place to drive trucks.

Stated directly a portion of the permitted area that has been clearcut and allows for roads is not in fact a buffer at all, and it should not be allowed or legitimized as a new category of allowed buffers. It is the opposite of a buffer.

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

Proposed text

- (2) a natural vegetated buffer to be left between any stream and the affected land. land **when specified in State or local stream protection requirements.**
- (3) visual screening such as existing natural vegetation, vegetated earthen berms, and tree plantings at staggered spacing spacing, etc. to be installed and maintained as feasible between any affected land and any adjoining property containing occupied buildings or public access within view of the affected land; any screening conditions shall take into consideration the mining operation activities that are being screened and the current usage of the neighboring property.

I object to the addition of ; **when specified in State or local stream protection requirements.**

The 1971 Mining act predated any stream protection requirement.

It included mining buffers to protect surrounding property from the unsightly impacts of open pit mining.

The riparian buffer requirements came about 20-40 years later for a completely different reason to protect streams from nitrogen runoff.

to use the latter as a prerequisite for mining buffers is illogical and effectively guts any buffer protect from the mining act completely.

Case in point, Permit 92-10 issued in 1981 required undisturbed buffers of natural vegetation to block the sights and sounds of an open pit quarry nearby. It had nothing to do with stream buffers. Stream buffers are a separate and independent legal requirement aside from mining. In the case of permit 92-10 DEQ recognized the sensitive nature of such a use adjacent to a state park. That's why the permit required several distinct mining buffers.

1. A buffer of undisturbed natural vegetation between the stream and the mining disturbance. During the first 10 years when mining activity is loudest near the surface, there was an additional 10-year buffer between the mining disturbance and the mining activity that was an average of 1200 feet between the pit and the park to the north. The 2023 expansion permit approved only 25 feet of buffer!!!!

1.

Your proposed text addition to these regs virtually eliminates such protections from the future because stream buffers are only 50 feet wide. A 50-foot-wide buffer next to a stream offers no visual buffer between the mining disturbance of the quarry activity. This change when combined with the other text changes discussed above in this email , allowing timber harvesting and allowing unexcavated buffers effectively gut any buffer protection going forward. This is unlawful, as it directly violates the stated purpose of the mining act, which is to provide maximum protection to surrounding lands.

The fact that in the last decade this diminution of buffers has become common in DEMLR should not be used as justification to make this change in the regulations. Rather it should be used as evidence that the current leadership at DEMLR has become coopted by the very industry it exists to regulate. It is the change in DEMLR since Director Davis and now with Director Vinson that has trampled on the balance of environmental protection required by the mining act that was upheld from 1971-2018, by all prior directors, Conrad, Gardner and Simons.

These text changes cannot be approved and still be compliant with the law of the mining act.

I hope DEQ leadership reviews these comments and sees that the changes themselves reflect overreach by the industry members of the mining commission at the expense of the public and common-sense environmental protection for lands surrounding mining. Allowing clear cutting and "unexcavated buffers" as buffers, and limiting them to stream buffers all serve the same purpose to gut and reduce the most important protection used by DEMLR for the first 47 years of the mining ACT.

The regulatory text changes proposed should be a flashing red light to DEQ leadership that DEMLR today is no longer an effective independent regulator for the people of this state, and changes must occur to restore this small department to the integrity that was its hallmark from 1971-2018.

15A NCAC 05B .0106 STANDARDS FOR DENYING AN APPLICATION 4 An application for a mining permit including new permits, modified permits and renewal permits, may be denied 5 when the operation will have an unduly adverse effect on wildlife or fisheries by: 6 (1) substantial siltation of streams or lake beds, increasing the average water temperature of adjacent 7 waterways to a temperature detrimental to the pre-existing aquatic wildlife; or 8 (2) other conditions designated by the North Carolina Wildlife Resources Commission as being 9 unduly detrimental to wildlife.

Here the changes completely eliminate the regulation citing reasons to deny a permit or modification,

this section should not be eliminated but expanded to include the denial criteria contained in the law and make clear they also apply to permit modifications.

15A NCAC 05B .0111 PUBLIC HEARINGS 38 (a) If the department determines that there exists a significant public interest in an application for a new 39 mining permit, or for a modification that adds land to the existing permit, the director shall appoint a hearing

officer to conduct a public hearing on the application which shall be held ~~no sooner than 20 or later than 60 days~~ 90 days ~~of from~~ the filing of the application and before the ~~department~~ Department makes its final decision regarding the application.

(b) At least ~~10~~ 20 days prior to the public hearing, the ~~department~~ Department shall ~~publish~~ provide notice ~~thereof~~ in a newspaper ~~or~~ or other media platform with general coverage in the county(s) in which the proposed mine is located. ~~The department may also give notice to the public by other means.~~ In addition, the ~~department~~ Department shall cause written notice of the hearing to be sent by certified or registered mail to the applicant and to the known owners of all adjoining ~~land.~~ land as specified in G.S. 74-50.

(c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose ~~reasonable~~ limitations on the length of time that any person may speak and may summarize comments rather than recording them in full. The hearing officer may allow additional written comments to be submitted for up to ten days after the hearing hearing after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application. ~~within a period of time he deems appropriate which shall not exceed ten days.~~

(d) Within ten days after the hearing or time for additional comment, the hearing officer shall prepare a written report summarizing the comments that were submitted regarding the application. The report shall include copies of all written comments submitted. Copies of the report shall be made available to the applicant or members of the public upon request. The ~~department~~ Department shall give full consideration to all comments contained in the hearing record in making its final determination on the application.

(e) In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of the application after which the public comment period will be considered closed and no other public comments will be considered in the final determination of the application.

The proposed changes to Public hearings are yet another attempt by DEMLR and the industry members of the Mining commission to insulate itself from public comment about public business. These changes as proposed are contrary to the law and the purpose of DEQ. The Agency works for the public to protect the environment and regulate industry that operates in our state. As proposed these regulations set up a sham process where a mining applicant can present a permit application , limit public comment to that version of the application , then change the request with subsequent versions that completely change the protections offered, and allow no public comment on those changes or the final version of the application.

This is the strongest and most obvious example of regulatory capture of DEMLR by the industry it regulates. The members of industry on the mining commission have violated the ethics code expected of such persons by even drafting such regulations. there is no benefit to the public nor the department to limit or block public comment about the work of DEMLR as it is considering new permits or permit modifications. These changes should not be approved, and the department must allow public comment during any review period until the decision is decided.

15A NCAC 05B .0114 BLASTING

Records shall be maintained at the permittee mine office, and copies shall be provided to the Department upon request. 9 (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. 11 (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.

Blasting is one of the most obtrusive aspects of mining and the proposed text changes water down the impact of a violation, by simply saying the operator shall make an effort to incorporate the studies recommendations into blasting programs

Blasting records should be made available to the public, showing all information on the record including the GPS coordinates and elevation . Any exceedance of permit limits should be a condition that warrants corrective action and or revocation of the permit , as stated in the law. The regulation cannot be allowed to undermine the law, as drafted it does.

15A NCAC 05B .0117 DRAFT PERMITS

Upon approval of an application prior to receipt of any performance bond or security, new or updated, any operating permit generated by the Department shall be considered a preliminary draft and shall not be considered issued or binding, regardless of whether the draft is shared with the applicant. Where a new or modified performance bond or other security is required pursuant to G.S. 74-54, timely approval of an application, pursuant G.S. 74-51(h), shall satisfy the requirement to grant a permit within the deadlines included in G.S. 74-51(b).

Draft permits should be posted in the website to allow public transparency of the draft permit and any negotiations between the applicant and the staff. This is critical and not captured by the proposed draft text. Had this been done in the past the applicant could not claim to not understand the permit for 37 years and only then claim to have just discovered a one word typo. this transparency would have held the operator to both the letter and the spirit of the law and shaved the state millions of dollars of legal fees and staff time trying to enforce a permit after so much time has passed.

~~15A NCAC 05F .0111 — REFERRAL TO ATTORNEY GENERAL~~

~~(a) If the person against whom a civil penalty is assessed, fails to respond within 60 days as provided in Rule .0008, the director shall refer the matter to the Attorney General to recover the amount of the civil penalty.~~

~~(b) If payment of any civil penalty assessed pursuant to the rules of this Subchapter is not received by the director within 30 days following denial of any appeal pursuant to G.S. 74-61 and G.S. 74-62 the director shall refer the matter to the Attorney General to recover the amount of the civil penalty.~~

*History Note: Authority G.S. 74-61; ~~74-62~~ 74-63; 74-64; 143B-10;
Eff. May 1, 1982.*

15A NCAC 05F .0112 FURTHER REMEDIES

~~No provision of this Subchapter shall be construed to restrict or impair the right of the director or the Mining and Energy to pursue any other remedy provided by law for violations of the Mining Act of 1971 or the rules of this Chapter.~~

*History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d)).*

There is no stated reason or justification to gut the enforcement provision of a case when the operator has not complied, eliminating the referral to the AG office for enforcement, none.

Likewise, it's wrong to eliminate the catchall that allows the Director to specifically states these regulations should in ow way limit the Director from pursuing any other remedy provided by law for violations of the mining act or this chapter. It's an important catchall that indicates these regulations cannot cover every possible violation of the mining act and its regulations and the Director is required to enforce the act.

Eliminating this reg has no balance and only benefits the industry DEMLR exists to regulate, yet another example of a need to a overhaul on both the mining commission and DEMLR staff.

The mining commission is required to comply with both its by laws and the State Government Ethics Act, these changes as proposed raise serious questions about the mining industry representation on the Mining commission.

In summary, the proposed changes should not be adopted and should be evidence that DEMLR today is no longer an objective independent regulatory arm of DEQ.

Sincerely

Ervin Portman
Cary NC

DRAFT

From: [Veach, Dwain M](#)
To: [Clayton, Corey](#); [Jonas, Kelly B](#)
Cc: [Parr, Adam](#)
Subject: FW: [External] Mining rules
Date: Monday, December 15, 2025 11:13:49 AM
Attachments: [image001.png](#)
[image002.png](#)

FYI

Dwain Veach, MS, PG

State Geologist of North Carolina | Section Chief
[North Carolina Geological Survey](#)
Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
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From: David Sokal <dcsoak@gmail.com>
Sent: Monday, December 15, 2025 11:10 AM
To: Veach, Dwain M <Dwain.Veach@deq.nc.gov>
Subject: [External] Mining rules

You don't often get email from dcsoak@gmail.com. [Learn why this is important](#)

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15A NCAC 05B .0111 PUBLIC HEARINGS.

Please REJECT ALL the proposed Rule changes. WHY? The proposed Rule changes eliminate ALL public and agency comments after 10 days, allowing for the mining company to then make significant changes to a Mining Permit Application for a new or modified permit without any public or agency comment! That is not even how any permit application consideration in NC site even before a mining permit is issued. Then the clear cutting might a not even count as part of the adverse impact of mining. Also, this may allow logging even in "undisturbed" areas. Absurd! This change is inconsistent with Section 74-49(7)(ii) of the Mining Act, THE LAW!

David C. Sokal
Volunteer, Citizens' Climate Lobby
Durham, NC 27713

What can I personally do to slow climate change? Eat less beef !!

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DRAFT



The Umstead Coalition

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MEMORANDUM

December 15, 2025

To: Dwain Veach, Hearing Officer
dwain.veach@deq.nc.gov

From: Dr. Jean Spooner, Chair
The Umstead Coalition
919-852-2268 919-602-0049

Subject: **Public Comment on Proposed Mining Rules**

Please accept these public comment on behalf of the Umstead Coalition, the Friends Group supporting William B. Umstead State Park and its surrounding open space.

The proposed changes to the Mining Rules that weaken buffers, restrict public comments, and exclude impacts from logging should be rejected.

The proposed Rule changes are attempting to CHANGE THE LAW, which should not be allowed.

Please refer to Attachment A which tabulates the specific wording that should be changed in the proposed Rules prior to adoption. Attachment B are the pages from the Draft proposed Rules which highlight the same. Attachment C are Dr. Spooner's oral comments delivered at the November 18, 2025 Public Hearing that illustrate the potential abuse which could result in these proposed Rules were adopted.

The Mining Rules are the "Rules" used to administer the Mining Program. They are supposed to be consistent with the Law passed by the Legislators – not an attempt to make new law or be more lenient for the mining companies. The NC Mining Act is already one of the weakest in the national, the proposed Rule changes weaken it further.

The proposed Mining Rules are inconsistent with the Mining Act by preventing meaningful public comments on Mining Permit applications, gut protective buffers, allow trucking and other heavy industrial mining operations right up to edge of property line, and exempt logging as a destructive part of a mining operation. The Umstead Coalition submits our suggestions with the intent to honor the Purposes of the 1971 Mining Act with (G.S.74-48) "*to provide (1) That the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration. (2) ... no mining shall be carried out Unless plans for such mining include reasonable provisions for protections of the surrounding environment and for reclamation of the area of land affected by mining.*"

The Umstead Coalition recommends the draft rules as proposed NOT be approved, rather we recommend to amend the proposed Rule changes as follows:

Specifically, The Umstead Coalition strongly recommends the following draft rules be changed as follows:

15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS

(c) (2) Delete the addition of exceptions for “silviculture including timber harvesting where an erosion and sedimentation plan is approved pursuant to G.S. 113A, Article 4, when required,”

OR better yet, DELETE this entire proposed Rule that is proposed to be added.

-- logging a mining site has always been considered by the agencies and the public as part of a “Mining operation” as it is a preparation of the site for extraction of minerals, ores or other solid matter - Any logging on a mining site MUST be considered a “Mining Activity.”

This proposed Rule change is inconsistent with the Mining Act of 1971 G.S74-49(7)(ii) which states:

“74-49 Definitions. (7) Mining” means any of the following: (i) the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; (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; or (iii) the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.”

Furthermore, logging/silviculture is NOT one of the named exclusions for the definition of mining in the Mining Act of 1971.

This proposed rule is attempting to CHANGE THE LAW, which should not be allowed.

Dire Consequences of proposed change: site is destroyed by deforestation and that devastation is then no long considered in the protection options for the adjacent neighbors or the increase in “adverse” impacts of the proposed mining operation. A mining company can “get away” with severe noise, dust, visual impacts to adjacent landowners.

=====

(c) (4) Delete “or any position to which the Director has designated their authority.”

Dire Consequences of proposed change: Delegating to a “maverick” employee is dangerous. Mining Permits and their modifications have severe and often permanent adverse impacts on adjacent landowners and public lands. This proposed Rule change would open up all sorts of potential abuse (and hidden bribes).

This proposed Rule change is inconsistent with the Mining Act of 1971. This Act uses “Department” 131 times in the law. The Law specifies numerous duties for the “Department.” The Law defines “Department” as:

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.

Nowhere in the law does the Director have the authority to delegate. **This proposed rule is attempting to CHANGE THE LAW, which should not be allowed.**

=====

(c) (7) Delete the addition of “unexcavated” to the definition of “Mining Buffer”

“Unexcavated buffers” are NOT words that exist in the Mining Act of 1971 – this is a made up set of words that basically allow a mining site to be devoid of meaningful buffers. Using “unexcavated” as an adjective to “buffer” is essentially stripping most of the value of a “buffer.”

Unexcavated allows deforestation, roads (noisy, dusty trucking), berms, sediment basins – these are NOT what the public thinks of as “buffers.” There are no other regulations (zoning, riparian stream protections, forestry, etc) that allow buffers to be essentially part of the industrial site activities. “Unexcavated” in NO WAY can be thought of as “protecting adjacent landowners or areas of special concerns”.

There is no such thing as an “Unexcavated buffers” in the Mining Act. This proposed change is inconsistent with the Mining Act of 1971:

G.S. 74-50 (b) (3). "Permitted area" means affected land and all other land used for or designated as buffers or reserves, or used for other purposes, as delineated in a mining permit or an application for a mining permit.

This proposed rule is attempting to CHANGE THE LAW, which should not be allowed.

Dire Consequences of proposed change: The public believes a buffer not DOES NOT allow mining activities – an unexcavated buffer allows almost all surface mining operations, as well as excavation for sediment basins. This is NOT consistent with protective buffers (usually vegetative or undisturbed) typically used for buffering heavy industrial sites from adjacent and nearby land owners. Potentially worse yet, a Mining Permit approved with “undisturbed” or “vegetative buffers” or similar buffer types – could be later changed on a ‘whim’ of the mining operator destroying the buffer that was approved and expected by the public – effectively removing a previously committed protective buffer. **All the more damaging given the proposed Rules also attempt to severely limit any public notice or comment when such a destruction of a promised protective buffer is converted to “unexcavated.”**

=====

(c) (7) (C) Delete the addition of “unexcavated” to the definition of “Vegetative Buffer”

“Unexcavated” should not be an adjective to “Buffer” - same reasons as stated above.

To repeat: There is no such thing as an “Unexcavated buffers” in the Mining Act. This proposed change is inconsistent with the Mining Act of 1971:

G.S. 74-50 (b) (3). "Permitted area" means affected land and all other land used for or designated as buffers or reserves, or used for other purposes, as delineated in a mining permit or an application for a mining permit.

This proposed rule is attempting to CHANGE THE LAW, which should not be allowed.

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

(d) (1) and (d)(3) delete the proposed addition of “approved in advance by the Department” and “proof satisfactory to the Department” and replace “Register of Deeds” for “tax records”

This proposed Rule addition is inconsistent with the Mining Act of 1971:

§ 74-50. (b1) At the time of an application for a new mining permit or for a modification of a mining permit to add land to the permitted area, the applicant or operator shall make a reasonable effort, satisfactory to the Department, to notify:

- (1) The chief administrative officer of each county and municipality in which any part of the permitted area is located.*
- (2) The **owners of record of land** adjoining that lies within 1,000 feet of the permit boundaries.*

The proposed Rule is attempting to violate the law. The while tax records sometimes are an indication, the recorded DEED at the county Register of Deeds or County’s Clerks office is the official legal document that proves the owner of record. – they are NOT, no way, somehow “approved by Department employees.” **This proposed rule is attempting to CHANGE THE LAW, which should not be allowed. In fact, in this case it also violates other NC legislative actions.**

Dire consequences: DEQ does not NOT have expertise or authority in determining the legal landowners – violations of the law can occur. For example, Wake Stone Corporation claimed the Raleigh Durham Airport Authority (RDUAA) owns the adjacent land. The Deeds in Wake County Register of Deeds clearly state that the Cities of Raleigh and Durham and the Counties of Durham are the deeded owners as was confirmed by a Wake County Superior Court Judge order. In addition, another set of NC legislative actions, HB 476 (1939) and its amendments, refer to the four government owners of the RDUAA as the “*owning municipalities*” This proposed Rule can result in abuse by a mining company and/or DEQ staff to avoid the required notifications of land owners as required by the Mining Act of 1971.

=====

ADD to (d) the following information to meet the purposes of the mining act (G.S. 74-48) the following should be required in an application:

- anticipated life of the mine (in years)
- identification of any established State, City or County plans for the land or adjacent lands to be used for public parks, public recreation area, or other public uses
- identification of permanent undisturbed buffers

The addition of these required information items IS consistent (and allowed) with G.S. 51:

§ 74-51. Permits - Application, granting, conditions.

(a) Any operator desiring to engage in mining shall make written application to the Department for a permit. The application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, the applicant may be required to furnish any other information as may be deemed necessary by the Department in order adequately to enforce this Article.

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

(2) KEEP “*natural*” and delete “*vegetative*” and DELETE “when specified in State or local stream protection requirements” and keep the old working of “*a natural buffer to be left between any stream and the affected land.*” KEEP CURRENT RULE.

(3) keep “*natural*” word

Furthermore, the Director must NOT be restricted. The Mining Act of 1971 does just the opposite – it allows the Department (Director) to require any information deemed necessary ...

This proposed rule is attempting to CHANGE THE LAW, which should not be allowed.

The proposed Rule is an attempt to unduly restrict DEQ-staff from adequate protection of adjacent lands. There is nothing in the law that suggests stream buffers must be restricted. The proposed RESTRICTION on stream buffers is inconsistent with G.S. 74-51:

§ 74-51. Permits - Application, granting, conditions.

(a) Any operator desiring to engage in mining shall make written application to the Department for a permit. The application shall be upon a form furnished by the Department and shall fully state the information called for; in addition, **the applicant may be required to furnish any other information as may be deemed necessary by the Department in order adequately to enforce this Article.**

Dire consequences: Protective buffers along the streams serve many purposes including water quality, water quantity, noise, visual, wildlife corridors, aquatic habitat, and dust protection. Riparian buffers that are mandated by local or State protection requirements usually do not take into account most of these protective aspects for a mining site. Case in point: the Neuse Buffer Rules are primarily for nitrogen and aquatic life, but were not implemented to protect adjacent landowners from a mining site.

Furthermore, many streams in NC have little to no other stream buffer protections. And, we all know, in the current anti-regulatory political environment, the sparse protections now required are under threat and could change. Stream buffers for a mining permit SHOULD NOT BE LIMITED by whatever the whim of the current (other) regulatory protections – but, instead based upon the protections applicable for the mining site and its adjacent and nearby neighbors. Similarly, if the stream laws change to be less protective – that should NOT trigger same reduction in protections that the adjacent and nearby landowners expected for the mining operation.

15A NCAC 05B .0111 PUBLIC HEARINGS

(a) ADD “or adds to the affected area of a permit” so the Rule is:

(a) If the Department determines that there exists a significant public interest in an application for a new mining permit, or for a modification that adds land to the existing permit, **or adds lands to the affected area of a permit**, the Director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no later than 90 days from the filing of the application and before the Department makes its final decision regarding the application.

Without this additional words, what a mining company first submits for approval is a large permitted area, but only a portion as “affected area.” This essentially prohibits public comments regarding the non “affected areas” such as “future reserves” on the Application. Then, when the inevitable Permit Modification application comes in and adds “affected lands” - a Public Hearing is not considered as an option. However, the law does not LIMIT Public hearings (or public comments) to just the first application and therefore eliminating any meaningful public comments when more land within the permitted area is changed to “affected” which may cause considerable “adverse effects.”

This is consistent with the Mining Act of 1971.

§ 74-52. Permit modifications. (c) A modification under this section may affect the land area covered by the permit, the approved reclamation plan coupled with the permit, or other terms and conditions of the permit. A permit may be modified to include land neighboring the affected land, but not other lands. The reclamation plan may be modified in any manner, so long as the Department determines that the modified plan fully meets the standards set forth in G.S. 74-53 and that the modifications would be generally consistent with the bases for issuance of the original permit. Other terms and conditions may be modified only where the Department determines that the permit as modified would meet all requirements of G.S. 74-50 and [G.S.] 74-51.

=====

(c) KEEP Current RULE

(e) Delete proposed new Rule

(c) (e) the proposed change regarding public comments should NOT be included. INSTEAD, public and agency comments should be allowed at least up to 30 days after every change to the mining application. And, allowed up to the permit is signed if the Director wants to consider. ANY COMMENT from an agency, individual, or organization should not be “cut off” and unable to be considered by the Department. That is in violation of the Mining Act of 1971. The law allows for a minimum of time for agency and public comments; the law does NOT restrict continued assessment of public or agency comments on a pending application. The Mining Act lays out required minimum time that must be allowed for public comments, but NOT restrict additional comments. Similarly, there is not such restriction for other permits such as Air Quality, 401/404 permits administered by DEQ.

It is appropriate to cut off the comments to be included in the Hearing Officer Report to 10 days after a Public Hearing – it is NOT appropriate to cut off public comments that could be considered by the Department.

The proposed changes to (c) and the addition of (e) are inconsistent with the entire Mining Act of 1971 as well as current practice in which DEQ considers all comments until the permit is issued.

Dire consequences of proposed changes: A mining permit is incomplete, DEQ asks for more information (e.g., Additional Information or ADI) which is indicative of an incomplete mining application, additional information is added or changed for the mining application. For example, decrease or change in the protective buffers or site plan map, etc. NOT allowing public and agency comment on these changes to the mining application will yield potential abuse by the mining operator – e.g., think of the advantages of “gaming” the system by submitting an incomplete mining application, only to decrease the public protections after the public and agencies would be no long allowed to have their comments considered.

15A NCAC 05B .0114 BLASTING

(g) (10) blast location should include GPS coordinates AND elevation (MSL)

Dire consequences if not required: elevation determines the depth of the blast which affects potential impacts to adjacent landowners; GPS is standard and exact.

=====

(g) “Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.”

Should be changed to: Records shall be maintained at the permittee's mine office and copies shall be provided to the Department quarterly.”

There is no requirement in the Mining Act that makes blasing records available only “if Department requests.”

Dire consequences: we experience this now. DEQ refuses to ask the mining operators for this data and there is a total LACK of public transparency. These records should be required to be copied to the Department and not HIDDEN at the whim of the DEQ staff.

15A NCAC 05F .0112 FURTHER REMEDIES

Do not delete. The director SHOULD be able to pursue remedies to ensure a mining operation complies with the law.

ATTACHMENT B. HIGHLIGHTED ISSUES AND RECOMMENDED CHANGES TO PROPOSED RULES (SELECTED SECTIONS)

1 15A NCAC 05A .0202 IS PROPOSED FOR READOPTION WITH SUBSTANTIVE CHANGES AS FOLLOWS:

2
3 **15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS**

4 (a) The Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality,
5 Department of Environment, Health, and Natural Resources, shall have the following powers and duties with regard
6 to necessary to administer the administration of the Mining Act of ~~1971-~~1971, including:

- 7 (1) the issuance, denial, modification, ~~renewal, suspension~~ suspension, transfer, and revocation of
8 permits;
9 (2) the approval of reclamation plans;
10 (3) the initiation of forfeiture proceedings;
11 (4) the giving of notices, setting of hearings and taking of action upon findings of violations; and
12 (5) the institution of all criminal and civil actions.

13 (b) The Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality,
14 Department of Environment, Health, and Natural Resources shall have the following powers and duties necessary to
15 administer with regard to the administration of the Control of Exploration for Uranium in North Carolina Act of ~~1983-~~
16 1983, including:

- 17 (1) the issuance, denial, modification, ~~renewal, suspension~~ suspension, transfer, and revocation of
18 permits;
19 (2) the review of the plans for the initiation and approval of the abandonment of affected land;
20 (3) the inspection and approval of the abandonment of affected land;
21 (4) the giving of notices, setting of hearings, and taking of action upon findings of violations; and
22 (5) the institution of all criminal and civil actions.

23 (c) The following definitions apply to Subchapters 05A, 05B, 05F and 05G of Chapter 5 of Title 15A of the North
24 Carolina Administrative Code:

25 (1) “Administrative Change” means any change initiated by the Department or requested by the
26 applicant to correct errors including, grammatical errors, typographical errors, and map
27 inaccuracies, that do not substantively change the permit.

28 (2) “Affected land”, as defined in G.S. 74-49(1) shall not include an unrelated use that does not meet
29 the definition of mining that occurs within the permit boundaries, including activities pertaining to
30 agriculture and silviculture including timber harvesting, where an erosion and sedimentation plan is
31 approved pursuant to G.S. 113A, Article 4, when required, and the unrelated use area is shown on
32 the mine map.

Delete words crossed out here, inconsistent with G.S. 74-49

33 (3) "Contaminants" shall be defined as set forth in 42 USC 9601(33) "Pollutants or Contaminants",
34 which is hereby incorporated by reference, including any amendments or subsequent editions.
35 Copies may be accessed at <https://www.govinfo.gov/content/pkg/USCODE-2023->
36 title42/html/USCODE-2023-title42-chap103-subchapI-sec9601.htm at no charge.

1 (4) "Director" means the Director of the Division of Energy, Mineral and Land Resources of the
2 Department of Environmental Quality, ~~or any position to which the Director has delegated their~~
3 ~~authority.~~ Delete words crossed, inconsistent with G.S. 74-49(4)

4 (5) "Division" means the Division of Energy, Mineral, and Land Resources.

5 (6) "Filed" or "Filing", as applicable to G.S. 74-51(b), shall be deemed to occur at the start of the
6 following business day, when an application is submitted electronically outside of business hours.

7 (7) "Mining Buffer" means an ~~unexcavated~~, undisturbed, or vegetative area managed to protect adjacent
8 land owners or areas of special concern. Delete "unexcavated", inconsistent with G.S. 74-50(b)(3)

9 (A) "Unexcavated" means no mine excavation shall occur. Unexcavated buffers may be used for
10 roadways, berms and erosion and sedimentation control or stabilization. Excavation may be
11 allowed for sediment basins or erosion and sedimentation control when shown on the mine map.

12 (B) "Undisturbed" means no disturbance shall occur.

13 (C) "Vegetative Buffer" means an ~~unexcavated~~ buffer that may be managed through landscaping
14 or additional plantings. Delete "unexcavated", inconsistent with G.S. 74-50(b)(3)

15 (8) "Non-public roads" means any private road that is not maintained by the State or had maintenance
16 requirements delegated to a municipality. Temporary access roads utilized for exploratory purposes
17 shall not be considered non-public roads when they comply with any requirements for approvals
18 pursuant to G.S. 113A, Article 4.

19 (9) "Notice", as applicable to G.S. 74-50(b3), includes written or electronic correspondence.

20 (10) "On-site Construction" means development of a site where the primary purpose is to construct,
21 develop, or erect, structures, infrastructure, or waste facilities, and the removal, but not sale, of any
22 extracted material off-site is incidental to the primary purpose and time limited.

23 (11) "Transfer Material" means material brought into the mine permit boundary for the purpose of
24 blending, recycling, or upgrading of onsite materials for the purpose of resale.

25
26 *History Note:* Authority G.S. 74-50 through 74--53; 74--56 to 74---59; 74-7775 through 74-85; 74---87;
27 143B--290;
28 Eff. February 1, 1976;
29 Amended Eff. January 31, 1979; September 3, 1976;
30 Readopted Eff. August 1, 1982;
31 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); April 1, 1990; December 1, 1983;
32 Readopted Eff. XXXX, 2025
33

1 15A NCAC 05B .0104 IS PROPOSED FOR READOPTION WITH SUBSTANTIVE CHANGES AS FOLLOWS:

2
3 **15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION**

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

- 7 (1) materials to be mined;
- 8 (2) method of mining;
- 9 (3) expected depth of mine;
- 10 (4) size of the mine, including:
- 11 (A) acreage for tailings ponds,
- 12 (B) acreage for stockpiles,
- 13 (C) acreage for waste piles,
- 14 (D) acreage for processing plants,
- 15 (E) acreage for mine excavation,
- 16 (F) acreage for annual disturbance;
- 17 (5) anticipated effect on wildlife, freshwater, estuarine or marine fisheries;
- 18 (6) ~~whether or not the mining operation will have a waste water wastewater discharge or air contaminant~~
19 ~~emission which that will require a permit from the division of environmental management; Division~~
20 ~~of Water Resources, an air contaminant emission that will require a permit from the Division of Air~~
21 ~~Quality, or will have a stormwater discharge that will require a permit from the Division of Energy,~~
22 ~~Mineral, and Land Resources;~~
- 23 (7) ~~method~~ methods to prevent physical hazard to any neighboring dwelling house, school, church,
24 hospital, commercial or industrial building, or public road if the mining excavation will come within
25 300 feet thereof;
- 26 (8) ~~measures to be taken required~~ to ~~insure~~ ensure against landslides and acid water pollution;
- 27 (9) ~~measures to be taken required~~ to minimize siltation of streams, lakes, or adjacent properties during
28 the mining operation;
- 29 (10) ~~measures to be taken required~~ to screen the mining operation from public ~~view~~ view;
- 30 (11) name of mine and location;
- 31 (12) responsible officer contact information;
- 32 (13) site contact information; and
- 33 (14) statement of authority as provided in Paragraph (f) of this Rule, when necessary.

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

- 35 (1) intended plan for overall mine reclamation, subsequent land use and the ~~general~~ methods to be used
36 in reclaiming the affected land;
- 37 (2) intended practices ~~to be taken required~~ to protect adjacent surface resources;

- 1 (3) intended methods to prevent or eliminate conditions hazardous to animal or fish life in or adjacent
2 to the affected areas;
- 3 (4) intended methods of rehabilitation of settling ponds;
- 4 (5) intended methods of restoration or establishment of stream channels and stream beds to a condition
5 minimizing erosion, siltation and other pollution;
- 6 (6) intended measures to stabilize slopes;
- 7 (7) intended measures to provide for safety to persons and adjoining property in excavation in rock;
- 8 (8) intended measures of disposal of mining refuse and control of contaminants;
- 9 (9) provisions to prevent collection of noxious, odious or foul water in mined areas; and
- 10 (10) plan for revegetation and reforestation or other surface treatment of the affected areas which plan
11 ~~shall~~must be approved in writing by one of the following prior to submission of the application:
- 12 (A) Authorized ~~representatives~~ representative of the local soil and water conservation district
13 having jurisdiction over lands in question;
- 14 (B) Authorized ~~representatives~~ representative of the ~~division of forest resources, Department~~
15 ~~of Environment, Health, and Natural Resources; North Carolina Forest Service within the~~
16 Department of Agriculture and Consumer Services;
- 17 (C) North Carolina Cooperative Extension County agricultural extension chairmen County
18 Director in a county listed in the county(s) where the site is located or research and
19 extension personnel headquartered at North Carolina State University in the ~~school of~~
20 ~~agriculture and life sciences~~ School of Agriculture and Life Sciences;
- 21 (D) North Carolina licensed ~~landscape architects;~~ Landscape Architect pursuant to G.S. 89A;
- 22 (E) North Carolina licensed Professional Engineer pursuant to G.S.89C;
- 23 (E)(F) Private consulting ~~foresters~~ forester referred by the ~~division of forest resources,~~
24 ~~Department of Environment, Health, and Natural Resources; North Carolina Forest Service~~
25 within the Department of Agriculture and Consumer Services; or
- 26 (F)(G) Others as may be approved by the ~~department;~~ Department; Provided that areas expected
27 to be in use beyond the maximum permissible permit period, such as processing plants or
28 stockpiles, do not require a specific revegetation plan;
- 29 (11) In lieu of the written approval required by Subparagraph (10) of this Paragraph a plan for
30 revegetation and reforestation developed utilizing one of the following:
- 31 (A) North Carolina Erosion and Sedimentation Control Planning and Design Manual; or
- 32 (B) North Carolina Surface Mining Manual: A Guide for Permitting, Operation and
33 Reclamation; and
- 34 (11)(12) time schedule of reclamation that provides that reclamation activities be conducted simultaneously
35 with mining operations whenever feasible and in any event be initiated at the earliest practicable
36 time after completion or termination of mining on any segment and completed within two ~~years.~~
37 years unless a longer period is specifically permitted by the Department.

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

- 5 (1) property lines or affected area of mining operation;
- 6 (2) outline of pits;
- 7 (3) outline of stockpile areas;
- 8 (4) outline of overburden disposal areas;
- 9 (5) location of processing plants (Processing plants may be described as to location and distance from
10 ~~mine if sufficiently far removed.); the mine if not contiguous to the mine property.);~~
- 11 (6) location and name of streams and lakes;
- 12 (7) outline of settling ponds;
- 13 (8) location of access roads;
- 14 (9) mine permit boundaries;
- 15 (10) existing and proposed contours showing all drainage areas;
- 16 ~~(9)(11)~~ map legend; legend, including:
 - 17 (A) name of company,
 - 18 (B) name of mine,
 - 19 (C) north arrow,
 - 20 (D) county,
 - 21 (E) scale,
 - 22 (F) date prepared,
 - 23 (G) name and title of person preparing map; and
- 24 ~~(10)(12)~~ names of owners of record, both public and private, of all adjoining ~~land~~ land as is specified in
25 G.S. 74-50.
- 26 (13) Any unrelated use area, that has the potential to disturb the soil surface, that does not meet the
27 definition of mining within the permit boundaries.
- 28 (14) Vicinity map showing the mining operation in relation to the general area at a minimum scale of
29 1:24,000.
- 30 (15) Drawings showing typical sections or cross sections and layout of proposed reclamation where
31 such drawings will assist in describing reclamation.
- 32 (16) Approximate limits of future reserves not included in affected area.
- 33 (17) Intended reclamation for projected phases or segments when reclamation is accomplished
34 concurrently with mining.

35 The mine maps should be correlated with the reclamation plan. The approximate areas to be mined during
36 the life of the permit should be clearly marked. If reclamation is to be accomplished concurrently with
37 mining, then show segments that are to be mined and reclaimed during each year of the permit. Add

DELETE - Dept is NOT the authority on land titles and should NOT be able to override WHO is the actual owner; Register of Deeds has owner of record.

1 drawings showing typical sections or cross sections and
2 drawings will assist in describing reclamation.

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

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

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

13 (3) Pursuant to G.S. 74-50, Proof proof satisfactory to the department Department that the applicant has
14 made a reasonable the required effort to notify all owners of record of all adjoining land and the
15 chief administrative officer officers of the county or and municipality of the pending application.
16 Proof satisfactory to the department Department shall include an affidavit by the applicant that he
17 has caused stating that a notice of the pending application to be has been sent by certified or
18 registered mail to all known adjoining owners and to the chief administrative officer officers of the
19 county or municipality. Other means of notice shall be satisfactory if approved in advance by the
20 department. Department.

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

24 (5) Any application submitted to the Department for approval of mining activities pursuant to G.S. 74-
25 50 shall include proof of ownership or the portion of valid and unexpired Memorandum Of Lease
26 or option from the property owner allowing mining activities for all lands to be included in the
27 permitted area as defined in G.S. 74-50(b)(3).

28 (e) An application for a mining permit shall not be deemed filed pursuant to G.S. 74-51(b) until the nonrefundable
29 permit application processing fee required pursuant to G.S. 74-54.1 is received by the Department. If the necessary
30 fee is not received within 30 days of initial receipt of the application, the application shall be denied and required to
31 be resubmitted in its entirety.

32 (f) Permit applications shall be signed as follows:

- 33 (1) in the case of corporations, by a principal executive officer of at least the level of vice-president, or
34 their authorized representative;
- 35 (2) in the case of a partnership or limited partnership, by a general partner;
- 36 (3) in the case of a sole proprietorship, by the proprietor;

Add as requirements of a Permit Application: anticipated life of mine (years); Identification of any established State, City or County plans for the land or adjacent lands to be used for public parks, public recreation area, or other public uses; and identification of permanent undisturbed buffers

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

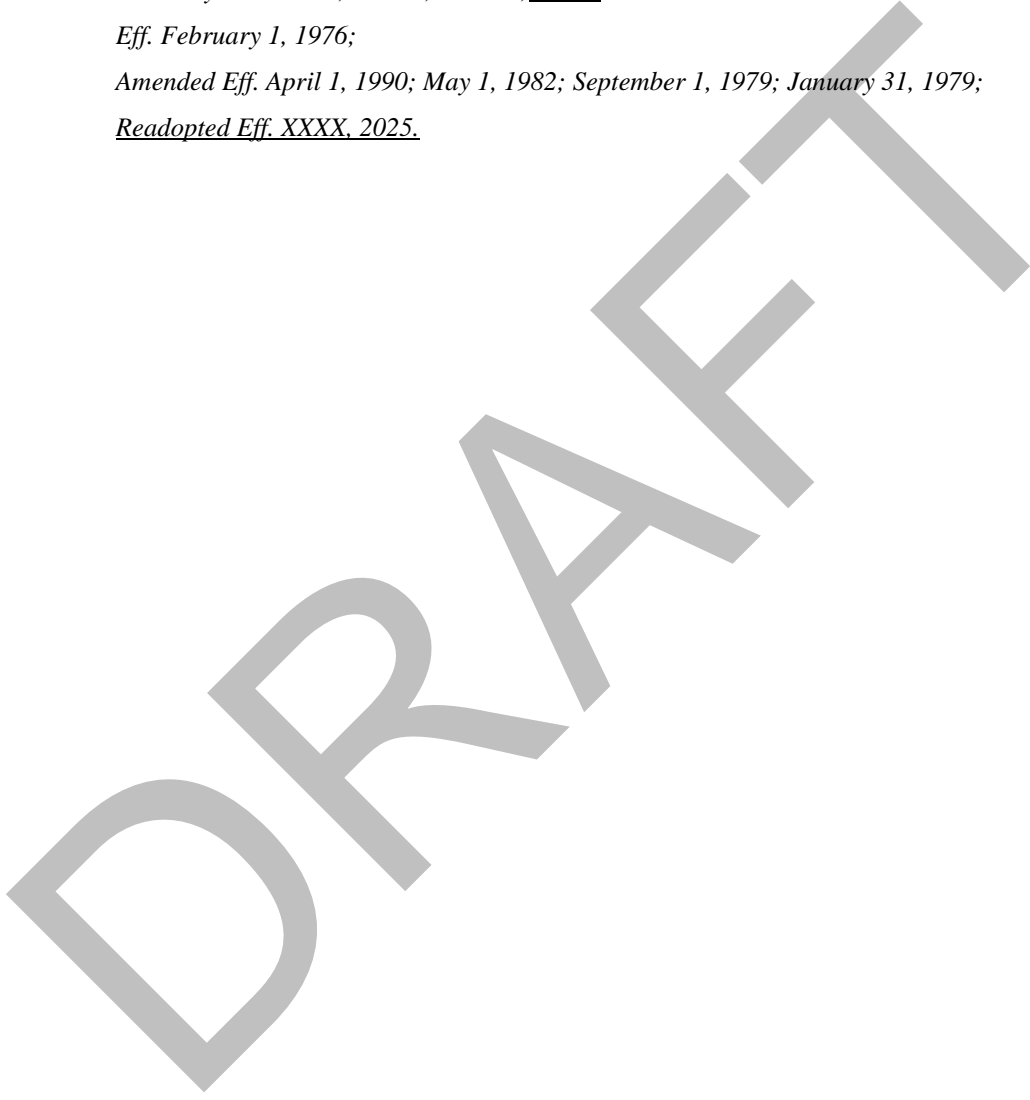
3 (5) in the case of a limited liability company, by a managing member. The signature of the consulting
4 engineer or other agent shall be accepted on the application only if accompanied by a letter of
5 authorization from one of the individuals listed in Subparagraphs (1) through (5) of this Paragraph.

6
7 *History Note: Authority G.S. 74-63; 74--51; 74---53;74-56;*

8 *Eff. February 1, 1976;*

9 *Amended Eff. April 1, 1990; May 1, 1982; September 1, 1979; January 31, 1979;*

10 *Readopted Eff. XXXX, 2025.*

11


stream buffers for a mining site should NOT be constrained by another regulation that may or may not exist, and if it does, not meant to protect adjacent land owners from visual, noise, dust, wildlife corridor destruction, and other adverse impacts from the mining operation

1 15A NCAC 05B .0105 IS PROPOSED FOR READOPTION WITH SUBSTANTIVE CHANGES AS FOLLOWS:

2

3 **15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT**

4 To ~~assure~~ ensure that the mining operation will comply fully ~~fully complies~~ with the requirements and objectives of
5 the Mining Act of 1971, the ~~director~~ Director may ~~approve an application or reclamation plan subject to certain~~
6 ~~conditions. Such conditions of application approval may include:~~ require that a permit or reclamation plan contain
7 conditions including:

8 (1) additional erosion control measures to be installed during the ~~mining operation;~~ operation as
9 specified in G.S. 74-51;

10 (2) a natural vegetated buffer to be left between any stream and the affected land. ~~land when specified~~
11 ~~in State or local stream protection requirements.~~

12 (3) visual screening such as existing natural vegetation, vegetated earthen berms, and tree plantings at
13 staggered spacing ~~spacing, etc.~~ to be installed and maintained ~~as feasible~~ between any affected land
14 and any adjoining property containing occupied buildings or public access within view of the
15 affected land; any screening conditions shall take into consideration the mining operation activities
16 that are being screened and the current usage of the neighboring property.

17 (4) erosion control measures to be taken during the construction and operation of all haul roads or access
18 roads to minimize offsite damage from ~~sediment;~~ sediment.

19 (5) other conditions necessary to safeguard the adjacent surface resources or wildlife.

20 (6) ~~hydrogeological analysis to assess potential influences of mine dewatering on water supply wells~~
21 ~~and measures to mitigate potential adverse impacts.~~

KEEP "Natural"

23 *History Note: Authority G.S. 74-63; 74---51;*
24 *Eff. February 1, 1976;*
25 *Amended Eff. May 1, 1992; November 1, 1984;*
26 *Readopted Eff. XXXX, 2025.*
27

VERY BAD - public and agencies should have be allowed to comment AFTER EACH ADI to submit comments -- ADI indictes application is NOT complete, public comments should NOT be limited to the 1st draft, incomplete application - this is NOT the case for a land use permit application to a local gov't, should not be the case for mining - heavy industrial site.

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15A NCAC 05B .0111 PUBLIC HEARINGS

(a) If the ~~department~~ Department determines that there exists a significant public interest in an application for a new mining permit, or for a modification that adds land to the existing permit ~~the director~~ Director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no ~~sooner than 20~~ or later than ~~60 days~~ 90 days ~~of from~~ the filing of the application and before the ~~department~~ Department makes its final decision regarding the application.

or adds to the affected area of a permit

(b) At least ~~40~~ 20 days prior to the public hearing, the ~~department~~ Department shall ~~publish~~ provide notice ~~thereof~~ in a newspaper ~~of or other media platform with~~ general coverage in the county(s) in which the proposed mine is located. ~~The department may also give notice to the public by other means.~~ In addition, the ~~department~~ Department shall cause written notice of the hearing to be sent by certified or registered mail to the applicant and to the known owners of all adjoining ~~land.~~ land as specified in G.S. 74-50.

(c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose ~~reasonable~~ limitations on the length of time that any person may speak and may summarize comments rather than recording them in full. The hearing officer may allow additional written comments to be submitted for up to ten days after the hearing ~~hearing after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application.~~ ~~within a period of time he deems appropriate which shall not exceed ten days.~~

(d) Within ten days after the hearing or time for additional comment, the hearing officer shall prepare a written report summarizing the comments that were submitted regarding the application. The report shall include copies of all written comments submitted. Copies of the report shall be made available to the applicant or members of the public upon request. The ~~department~~ Department shall give full consideration to all comments contained in the hearing record in making its final determination on the application.

(e) ~~In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of the application after which the public comment period will be considered closed and no other public comments will be considered in the final determination of the application.~~

History

VERY BAD - public and agencies should have be allowed to comment AFTER EACH ADI to submit comments -- ADI indictes application is NOT complete, public comments should NOT be limited to the 1st draft, incomplete application - this is NOT the case for a land use permit application to a local gov't, should not be the case for mining - heavy industrial site.

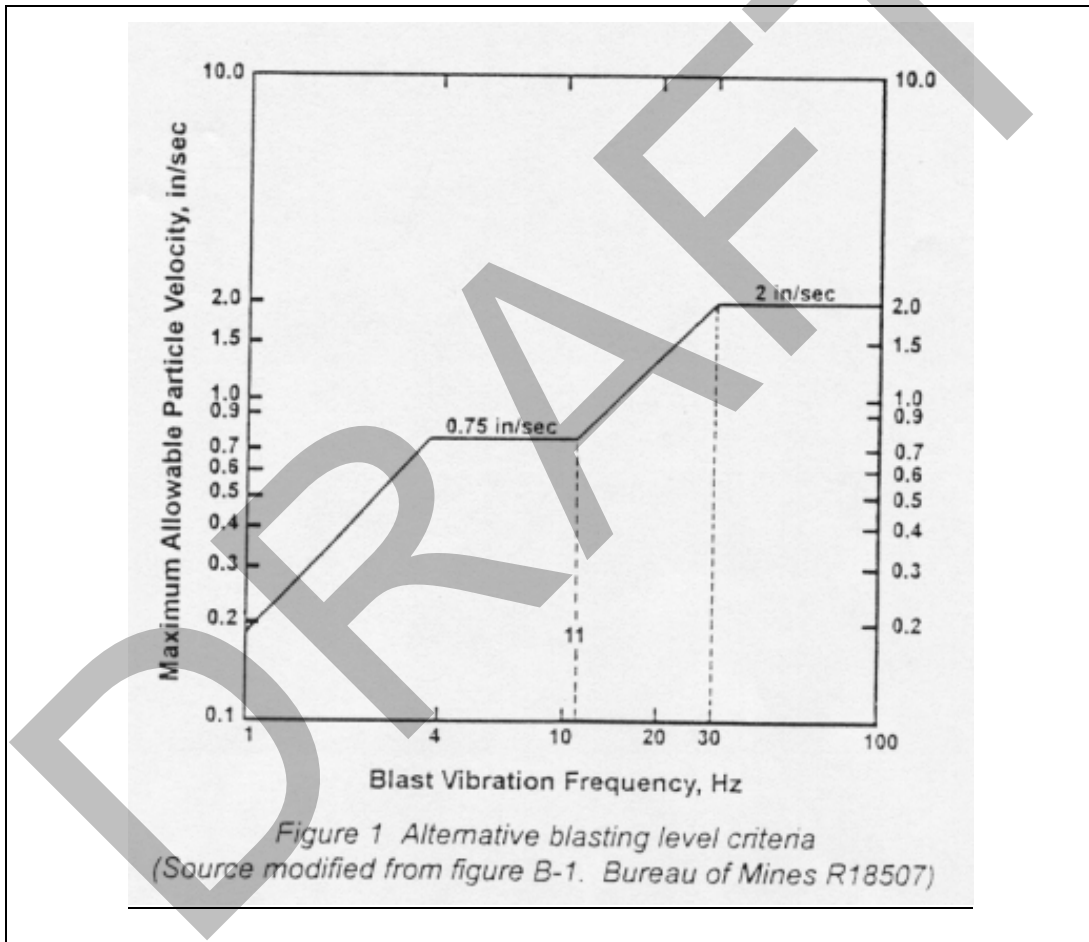
1 15A NCAC 05B .0114 IS PROPOSED FOR ADOPTION AS FOLLOWS:

2

3 **15A NCAC 05B .0114 BLASTING**

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

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



11

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

$$14 \quad W = \left(\frac{D}{Ds}\right)^2 \qquad Ds = \frac{D}{\sqrt{W}} \qquad V = 160(Ds)^{-1.6}$$

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

1 D = Distance from the blast site to the nearest inhabited building not owned or leased
2 by the mine operator. (feet).

3 Ds = Scaled distance factor.

4 V = Peak Particle Velocity (inches per second).

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

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

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

10
11 (e) In the event of seismograph malfunction or other condition that prevents monitoring, blasting shall be conducted
12 in accordance with the following formulas:

13 Formula from ISEE Blasters Handbook 17th Edition ISBN:1-892396-00-9

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

$$dB = 20 \log \left(\frac{P}{2.9 \times 10^{-9}} \right)$$

16
17 P = Airblast overpressure average burial (pounds per square inch).

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

20 D = Distance from the blast site to the nearest inhabited building not owned or leased
21 by the mine operator (feet).

22 dB = Airblast overpressure average burial (decibels).

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

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

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

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

2 (1) name of Company or contractor;

3 (2) date, and time of the blast;

4 (3) type of material blasted;

5 (4) the total number of holes;

6 (5) pattern of holes and delay of intervals;

7 (6) depth and size of holes;

8 (7) type and total pounds of explosives;

9 (8) maximum pounds per 8ms delay interval;

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

11 (10) blast location;

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

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

14 (13) Whether mats or other protections were used.

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

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

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

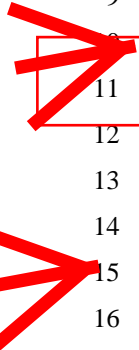
23 History Note: Authority G.S. 74-51; 74-63;

24 Eff. XXXX X, 2025.

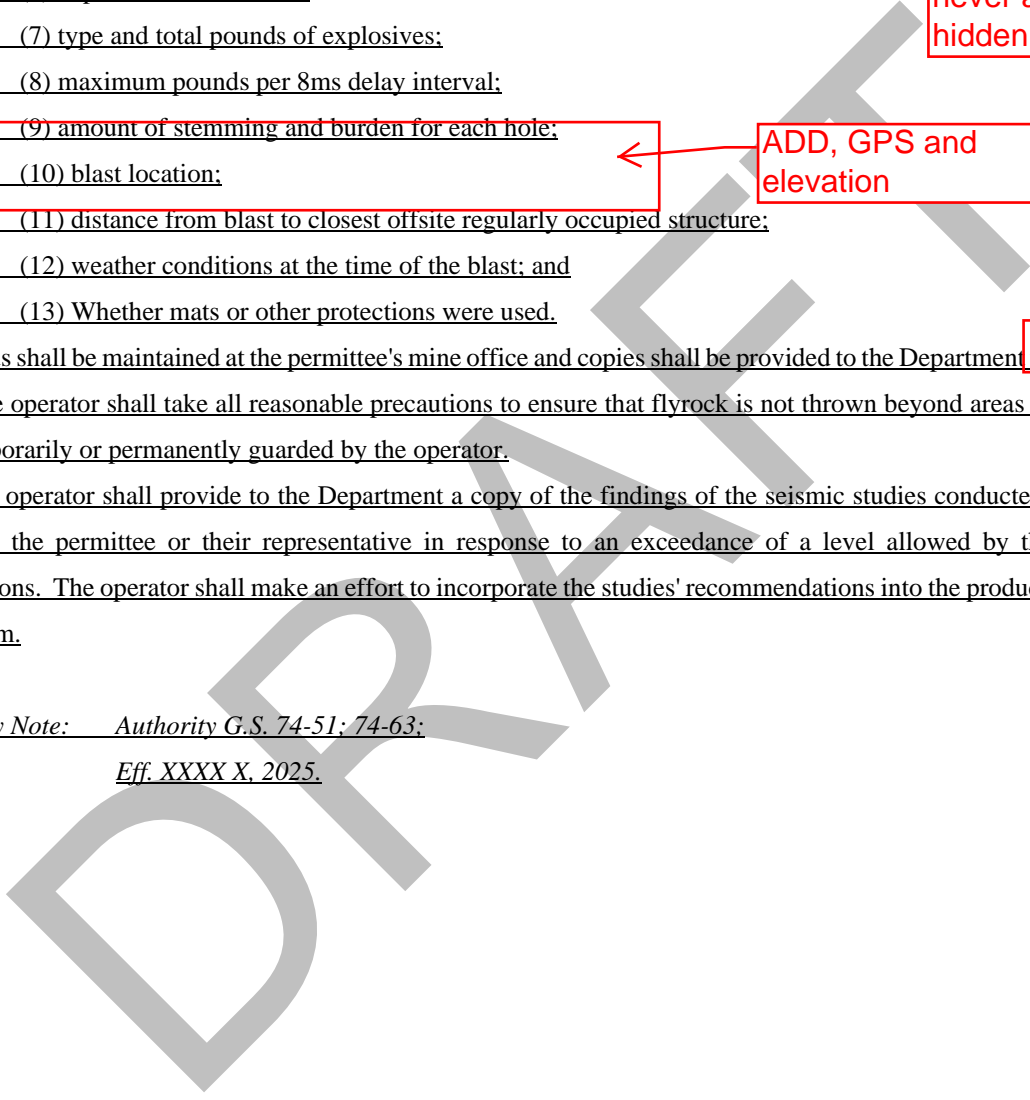
25

Change to on a quarterly basis - else, the Dept never asks and hidden.

ADD, GPS and elevation



upon request.



1 15A NCAC 05F .0112 IS PROPOSED FOR REPEAL THROUGH READOPTION AS FOLLOWS:
2

3 **15A NCAC 05F .0112 FURTHER REMEDIES**
4 ~~No provision of this Subchapter shall be construed to restrict or impair the right of the director or the Mining and
5 Energy to pursue any other remedy provided by law for violations of the Mining Act of 1971 or the rules of this
6 Chapter.~~

7
8 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
9 Eff. May 1, 1982;
10 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d));
11 Repealed Eff. XXXX, 2025.
12

WHY DELETE?
KEEP!

DRAFT

Attachment C.

Dr. Jean Spooner, Chair, The Umstead Coalition
Oral Comments, Public Hearing November 18, 2025

NC already has one of the weakest mining regulations in the country. Even West Virginia coal mines have greater protections for its citizens.

The Umstead Coalition is opposed to further weakening by adding additional loopholes and removing protections, as these proposed Rules do. These Proposed Rules add restrictions beyond the LAW, allowing mining companies to get away with little protections of adjacent lands. These Rules as written should NOT be adopted.

The following scenario can easily happen with the proposed Rules:

Beautiful New River Properties wants to establish a new mine along the New River near the put-in, takeout for the popular water and tourist scenic recreation waterway. The Director of DEMLR has delegated his authority for Mining Permits to the Regional Supervisor (an action NOT done today). This Field employee is a land owner along the New River; hates the rafters and kayakers; is a decades-long family friend of the Mining owner, goes to Church and Sunday dinners together; same bowling team.

By these proposed mining rules:

Beautiful New River Properties submits Mining Application for what is likely a controversial mine. Big public interest, DEMLR staff allow mining company to avoid contacting all the deeded landowners as the LAW requires- this proposed rule change is in violation of the law.

Initial Application promises 500ft width undisturbed forest buffer from the top edge of river bank and all adjacent property owners.

Public hearing occurs, short comment period ends. No more comments allowed, even though the LAW does not limit, these proposed Rules are rewriting the Mining Act of 1971 by prohibiting further public comments, even after Additional Information requests by DEQ (ADI's) which indicate even DEMLR THINKS application is incomplete or AFTER substantial changes to Application by applicant.

Beautiful New River properties submits revised application, buffer width decreased to 100ft, argues still complies with LAW. Public and agencies now prohibited from commenting on dramatically changed application. THE REVISED RULES WOULD PROHIBIT AGENCY, PUBLIC COMMENTS ON THE CHANGED CONDITIONS. THIS IS PLAIN WRONG.

New River Beautiful Properties logs, devastated the forest to within 100ft. Mine permit approved. Predictable given DEMLR had only denied 5 applications out of the tens of thousands.

Citizens only have 30 days to appeal, which would be a long onerous and expensive court process. Meanwhile severe damage to the land happens.

Sediment erosion basins dug in the buffer. 1 year later, Beautiful New River Property submits modification, converts buffers to unexcavated. DEMLR staff approves. No public comments allowed to be considered.

New River Beautiful Properties logs and removes all remaining trees to top edge of river bank and adjacent neighbors. Builds trucking roads, conveyor belts, crushers, stock pile area, weigh stations, right up to permit boundary.

5 years later, permit mod removes any buffer.

Absolutely no public protections.

These lack of protections don't occur as easily with a subdivision, or commercial site. Why should the most heavy industrial, trucking, noise, dusty, polluting industry have Rules that allow massive abuse of their neighbors and our water resources ?

These proposed Rules go BEYOND the weakness of the Law, they rewrite the LAW.

Do not limit public comments, do not allow uneducated buffers, do not allow delegation below Director, include deeded land owners for notification per the Law, do NOT limit stream buffers to regulations that may not even exist, and if they do, they are for nutrients and not sediment, dust, visual noise, etc that a heavy industrial site requires.

The Umstead Coalition will follow-up with written comments.

Attachment A. Summary of proposed Rules that should NOT be adopted as drafted

Rule	Proposed Rule	Recommended Wording	G.S. that needs to be honored
<p>15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS</p>	<p>New, Added Proposed Rule:</p> <p>(c)(2) “Affected land”, as defined in G.S. 74-49(1) shall not include an unrelated use that does not meet the definition of mining that occurs within the permit boundaries, including activities pertaining to agriculture and silviculture including timber harvesting, where an erosion and sedimentation plan is approved pursuant to G.S. 113A, Article 4, when required, and the unrelated use area is shown on the mine map.</p>	<p>Delete the entire proposed new Rule, or at least revise by:</p> <p>(c) (2) Delete the addition of exceptions for “silviculture including timber harvesting” to read:</p> <p>c)(2) “Affected land”, as defined in G.S. 74-49(1) shall not include an unrelated use that does not meet the definition of mining that occurs within the permit boundaries, including activities pertaining to agriculture and the unrelated use area is shown on the mine map.</p>	<p>Proposed Rule is inconsistent with:</p> <p>74-49(7)(ii)</p>
<p>15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS</p>	<p>New, Added Proposed Rule:</p> <p>(c)(4) "Director" means 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.</p>	<p>Delete any further delegation under the Director, to read as:</p> <p>"Director" means the Director of the Division of Energy, Mineral and Land Resources of the Department of Environmental Quality.</p>	<p>Proposed Rule is inconsistent with:</p> <p>74-49 (4) and the other 132 times “Department” is cited in the Mining Act of 1971</p>
<p>15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS</p>	<p>New, Added Proposed Rule:</p> <p>(c)(7) “Mining Buffer” means an unexcavated, undisturbed, or vegetative area managed to protect adjacent land owners or areas of special concern.</p>	<p>“Mining Buffer” means an undisturbed, or vegetative area managed to protect adjacent land owners or areas of special concern.</p>	<p>Proposed Rule is inconsistent with:</p> <p><i>G.S. 74-50 (b) (3)</i></p>

Rule	Proposed Rule	Recommended Wording	G.S. that needs to be honored
15A NCAC 05A .0202 DELEGATION AUTHORITIES AND DEFINITIONS	New, Added Proposed Rule: (c)(7)(C) “Vegetative Buffer” means an unexcavated buffer that may be managed through landscaping or additional plantings.	Delete “unexcavated” : (c)(7)(C) “Vegetative Buffer” means an buffer that may be managed through landscaping or additional plantings.	Proposed Rule is inconsistent with: <i>G.S. 74-50 (b) (3)</i>
15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION	(d) An application for a mining permit shall include: (1) The names and 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 that identifies the owners of all adjoining land and approved by the Department . The proposed mining site means all land to be included within the proposed permitted area;	(d) An application for a mining permit shall include: (1) The names and 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 <u>Register of Deed</u> records that identifies the owners of all adjoining land. The proposed mining site means all land to be included within the proposed permitted area;	Proposed Rule is inconsistent with: § 74-50. (b1) Chapter 168 Public-Local Laws of 1939 (HB 476 of SL1939 and its amendments)
15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION	None	ADD to (d) to require the following in a Permit application: (6) anticipated life of the mine (in years) (7) identification of any established State, City or County plans for the land or adjacent lands to be used for public parks, public recreation area, or other public uses (8) identification of permanent undisturbed buffers	These additional requirements IS consistent and allowed by the law with: § 74-51. Permits - Application, granting, conditions

Rule	Proposed Rule	Recommended Wording	G.S. that needs to be honored
<p>15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT</p>	<p>(2) a vegetated buffer between any stream and the affected land when specified in State or local stream protection requirements.</p>	<p>Restore current Rule which was correct as:</p> <p>(2) a natural vegetated buffer to be left between any stream and the affected land.</p>	<p>Adding a stream buffer restriction based on other requirements which may or may not exist and were not implemented for to protect adjacent landowners from dust, noise, visual, etc of a mining site is inconsistent with:</p> <p>§ 74-51. Permits - Application, granting, conditions</p>
<p>15A NCAC 05B .0111 PUBLIC HEARINGS</p>	<p>(a) If the Department determines that there exists a significant public interest in an application for a new mining permit, or for a modification that adds land to the existing permit, the Director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no later than 90 days from the filing of the application and before the Department makes its final decision regarding the application.</p>	<p>Add words to the Rule:</p> <p>(a) If the Department determines that there exists a significant public interest in an application for a new mining permit, or for a modification that adds land to the existing permit, or adds lands to the affected area of a permit, the Director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no later than 90 days from the filing of the application and before the Department makes its final decision regarding the application.</p>	<p>These additional words in this Rule IS consistent and allowed by the law with§ 74-52. <i>Permit modifications must comply with G.S. 74-50 and 74-1.</i></p>

<p>15A NCAC 05B .0111 PUBLIC HEARINGS</p>	<p>(c) The hearing officer may allow additional written comments to be submitted for up to ten days after the hearing after which the public comment period will be considered closed and no other public comments can be considered in the final determination of the application.</p>	<p>KEEP CURRENT RULE (C)</p> <p>The hearing officer may allow additional written comments to be submitted for up to ten days after the hearing</p>	<p>Proposed revised Rule is inconsistent with the Mining Act of 1971 and current DEQ practice for all permits and prevent meaningful public comments when significant changes are made to an application after a Public Hearing.</p>
<p>15A NCAC 05B .0111 PUBLIC HEARINGS</p>	<p>Proposed new Rule:</p> <p>(e) In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of the application after which the public comment period will be considered closed and no other public comments will be considered in the final determination of the application.</p>	<p>Delete proposed new Rule</p>	<p>Proposed new Rule is inconsistent with the Mining Act of 1971 and current DEQ practice for all permits and prevent meaningful public comments when significant changes are made to an application.</p>
<p>15A NCAC 05B .0114 BLASTING</p>	<p>Proposed Rule for required records:</p> <p>(g) (10) blast location</p>	<p>Add:</p> <p>(g) (10) blast location <u>with GPS coordinates and elevation as MSL</u></p>	<p>Consistent with mining act</p>
<p>15A NCAC 05B .0114 BLASTING</p>	<p>Proposed Rule for required records:</p> <p>(g) Records shall be maintained at the permittee's mine office and copies shall be provided to the Department upon request.</p>	<p>Change to:</p> <p>(g) Records shall be maintained at the permittee's mine office and copies shall be provided to the Department <u>quarterly</u>.</p>	<p>Consistent with mining act</p>
<p>15A NCAC 05F .0112 FURTHER REMEDIES</p>	<p>Proposed Rules delete this section</p>	<p>KEEP current rule. The Director SHOULD be able to enforce the Mining Act of 1971.</p>	<p>Consistent with mining act</p>

PART V – AMENDED PROPOSED RULES

DRAFT

15A NCAC 05B .0103 BONDING REQUIREMENTS

DRAFT

1 15A NCAC 05B .0103 IS PROPOSED FOR READOPTION AS FOLLOWS:

2
3 **15A NCAC 05B .0103 BONDING REQUIREMENTS**

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

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

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

17 (d) The amount of the bond shall be based on the costs to reclaim the affected land as determined by the reclamation
18 plan approved pursuant to G.S. 74-53 and ~~45A NCAC 5B .0004(b).~~ 15A NCAC 05B .0104(b). ~~The bond amount shall~~
19 ~~be based on a range of five hundred dollars (\$500.00) to five thousand (\$5000.00) per acre of land approved by the~~
20 ~~Department to be affected.~~ If the mining permit is modified to increase the total affected land, the bond shall be
21 increased ~~accordingly~~ pursuant to this Rule. The Director shall consider the method and extent of the required
22 reclamation for a particular site in determining the bond amount. As areas at a site are reclaimed and formally released
23 by the Department, the permittee may substitute a bond in an amount covering the remaining affected land at the site
24 for the bond previously filed with the Department; otherwise, without such bond substitution, the Department shall
25 retain the previously filed bond until all reclamation has been completed and approved by the Department.

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

31 (1) Table of Mining Reclamation Factors.

32

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

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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	\$810	\$2,430	\$2,916	\$3,240	\$,2916	\$810	\$3,240
CS, DS, FS, MI, LI, PF, OL, KY	\$810	\$2,430	\$2,916	\$3,240	\$3,240	\$810	\$4,050
PH	\$1,620	\$4,050	\$4,050	\$8,100	\$8,100	\$3,240	\$8,100
CL	\$1,620	\$4,050	\$4,050	\$8,100	\$8,100	\$3,240	\$5,994
PE, AU, TI, OT	\$1,620	\$4,050	\$4,050	\$4,860	\$5,670	\$3,240	\$8,100

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

(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,

1 if the Director finds that the applicant or permittee, in either case, has a good operating record, that the five hundred
2 thousand dollars (\$500,000) is sufficient to reclaim all sites and that no additional reclamation bond money is needed.

3 If the Director finds that the applicant or permittee does not have a good operating record, that the five hundred
4 thousand dollars (\$500,000) is not sufficient to reclaim all sites, or that additional reclamation money is needed, the
5 Director shall require per acreage bonding for future sites as provided in Paragraph (d) of this Rule.

6 (f) For the purposes of this Rule, a good operating record is defined as two consecutive years of operation within the
7 State of North Carolina without final assessment of a civil penalty or other enforcement action pursuant to G.S. 74-
8 64, or having a permit suspended or revoked under G.S. 74-58, or having a bond or other surety forfeited under G.S.
9 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.

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

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

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

16 (1) Surety Bonds:

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

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

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

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

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

27 (F) Further conditioned that if the Principal shall comply with the requirements set forth in
28 "The Mining Act of 1971" (G.S. 74-46 through 74-68) and with the rules and regulations
29 adopted pursuant thereto and faithfully perform all obligations under their approved
30 Reclamation Plan then this obligation shall be null and void; otherwise to be and remain in
31 full force and effect until released by the Department of Environmental Quality in
32 accordance with G.S. 74-56 or canceled by the surety. Cancellation by the surety shall be
33 effectuated only upon 60 days written notice thereof to the Department of Environmental
34 Quality and the operator as provided in G.S. 74-54;

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

36 (H) Notarization.

37 (2) Assignment of Savings Account:

- 1 (A) Name, address and type of business entity of Assignor exactly matching name of Permittee;
2 (B) The State of North Carolina, Department of Environmental Quality, 1612 Mail Service
3 Center, Raleigh, North Carolina 27699-1612 as the Assignee;
4 (C) Name, address and account information for the bank holding assigned account;
5 (D) Sum of assigned amount required under this Rule;
6 (E) Statement that, in consideration of the promises contained in the agreement and the
7 Department accepting the assignment of the savings account in question, the Assignor sells,
8 assigns, transfers and sets over to the Department the sum in Part (j)(2)(D) of this Rule and
9 directly authorizes the bank holding the assigned account to pay over to the Department
10 the sum in Part (j)(2)(D) of this Rule upon request;
11 (F) Conditioned that if the Assignor conducts the mining operations faithfully, honestly, and
12 lawfully and in compliance with the requirements of the Mining Act of 1971 and applicable
13 rules and regulations adopted pursuant thereto, then the assignment shall be null and void;
14 otherwise it shall remain in full force and effect and that compliance with the requirement
15 of the Mining Act of 1971 and applicable rules and regulations shall be determined by the
16 Department;
17 (G) Specification that the assignment is made and held by the Department as collateral security
18 in lieu of a surety bond in accordance with "The Mining Act of 1971" (G.S. 74-46 through
19 74-68) to assure compliance and reclamation of the permitted operation and for all direct
20 or indirect liabilities of the assignor Operator to the assignee Department that may arise by
21 reason of the Mining Act 1971, Article 7, Chapter 74 of the General Statutes of North
22 Carolina;
23 (H) Signature, Name and Title of an officer of the Assignor;
24 (I) Notarization of the Assignor's signature;
25 (J) Signature, Name and Title of an officer of the bank holding the assigned account
26 acknowledging the assignment and committing that the funds assigned shall not be
27 disbursed except to the Department so long as the assignment remains in effect; and
28 (K) Notarization of the Bank's signature.
29 (3) Irrevocable Standby Letter of Credit (ILOC)
30 (A) Name, address and type of business entity of Operator exactly matching name of Permittee;
31 (B) Name, address and type of business entity of Issuing Institution;
32 (C) The State of North Carolina, Department of Environmental Quality, Department of
33 Environmental Quality 1612 Mail Service Center Raleigh, North Carolina 27699-1612 as
34 the Beneficiary;
35 (D) Effective Date of the ILOC;

- 1 (E) Automatic renewal clause, such that the ILOC is continuous in nature, subject to at least
- 2 60 days notice via certified mail, return receipt requested, to the Permittee and the
- 3 Department prior to nonrenewal;
- 4 (F) Sum of the ILOC required under this Rule;
- 5 (G) That the sum of the ILOC is available by the Department drafts on sight;
- 6 (H) Instructions for drafts by the Department;
- 7 (I) Non-transferability clause;
- 8 (J) Choice of Law provisions specifying North Carolina venue for all disputes
- 9 (K) Statement that the Issuing Institution agrees with the drawers, endorsers, and bona fide
- 10 holders that all drafts drawn under and in compliance with the terms of the ILOC will be
- 11 duly honored upon presentation to the Issuing Institution.
- 12 (L) Statement that the ILOC is being issued in lieu of a surety bond in accordance with "The
- 13 Mining Act of 1971" (G.S. 74-46 through 74-68) to assure compliance and reclamation of
- 14 the permitted operation;
- 15 (M) Signature, Name and Title of an officer of the Issuing Institution; and
- 16 (N) Notarization of the Issuing Institution officer's signature.

17 (4) Bank Guaranty

- 18 (A) Name, address and type of business entity of Operator exactly matching name of Permittee;
- 19 (B) Name, address and type of business entity of Issuing Institution;
- 20 (C) The State of North Carolina, Department of Environmental Quality, Department of
- 21 Environmental Quality 1612 Mail Service Center Raleigh, North Carolina 27699-1612 as
- 22 the Beneficiary;
- 23 (D) Effective Date of the guaranty;
- 24 (E) Automatic renewal clause, such that the guaranty is continuous in nature, subject to at least
- 25 60 days notice via certified mail, return receipt requested, to the Permittee and the
- 26 Department prior to nonrenewal;
- 27 (F) Sum of the guaranty required under this Rule;
- 28 (G) That the sum of the guaranty is available by the Department drafts on sight;
- 29 (H) Instructions for drafts by the Department;
- 30 (I) Non-transferability clause;
- 31 (J) Choice of Law provisions specifying North Carolina venue for all disputes
- 32 (K) Statement that the Issuing Institution agrees with the drawers, endorsers, and bona fide
- 33 holders that all drafts drawn under and in compliance with the terms of the guaranty will
- 34 be duly honored upon presentation to the Issuing Institution.
- 35 (L) Statement that the guaranty is being issued in lieu of a surety bond in accordance with "The
- 36 Mining Act of 1971" (G.S. 74-46 through 74-68) to assure compliance and reclamation of
- 37 the permitted operation;

- 1 (M) Signature, Name and Title of an officer of the Issuing Institution; and
- 2 (N) Notarization of the Issuing Institution officer’s signature.
- 3 (5) Cash Deposit:
- 4 (A) Cash in the form of a cashiers or certified check in the sum required under this Rule; and
- 5 (B) Cover Letter specifically identifying Permittee and specifying the intended function of the
- 6 money to serve as the required bond amount under this Rule

7

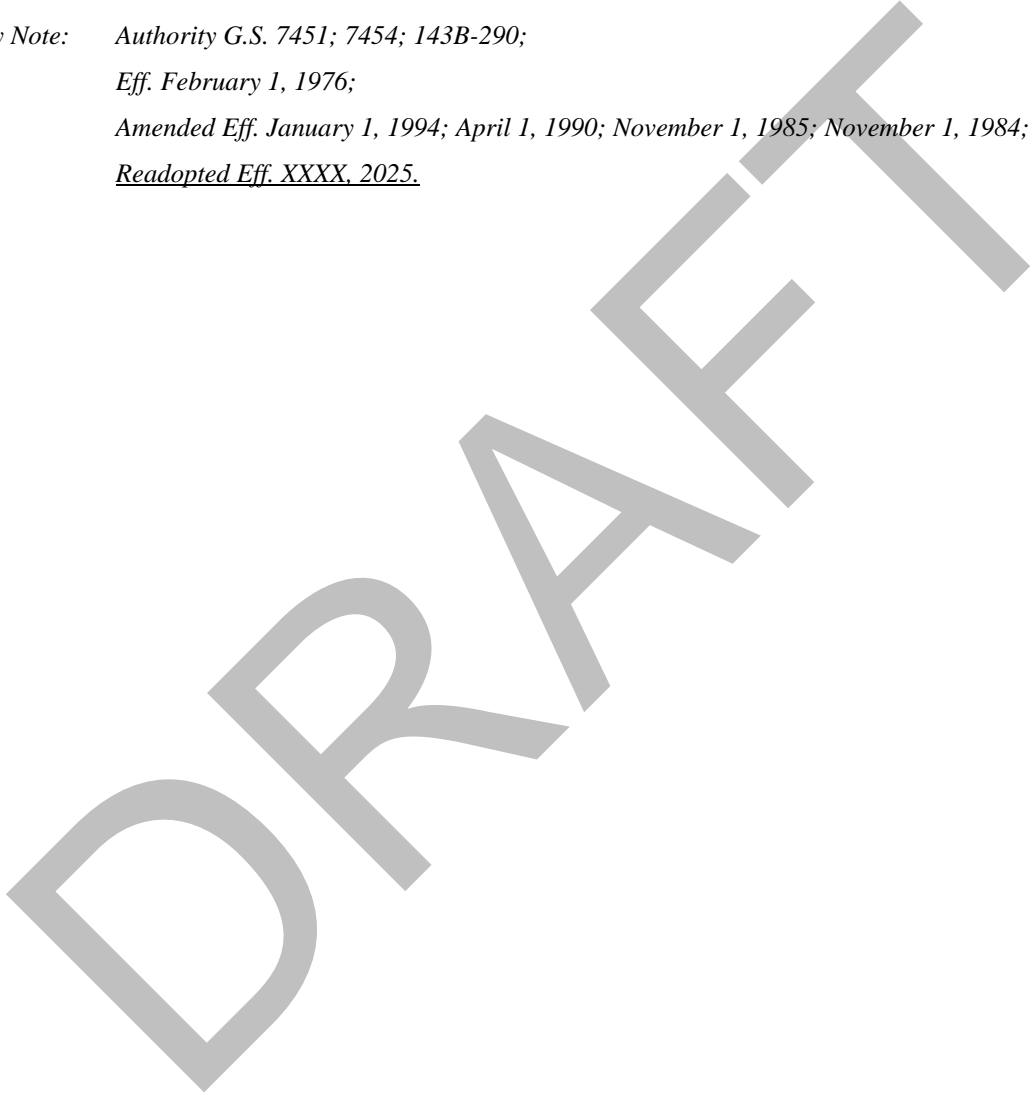
8 *History Note: Authority G.S. 7451; 7454; 143B-290;*

9 *Eff. February 1, 1976;*

10 *Amended Eff. January 1, 1994; April 1, 1990; November 1, 1985; November 1, 1984;*

11 *Readopted Eff. XXXX, 2025.*

12



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

DRAFT

1 15A NCAC 05B .0104 IS PROPOSED FOR READOPTION AS FOLLOWS:

2
3 **15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION**

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

- 7 (1) materials to be mined;
- 8 (2) method of mining;
- 9 (3) expected depth of mine;
- 10 (4) size of the mine, including:
- 11 (A) acreage for tailings ponds,
- 12 (B) acreage for stockpiles,
- 13 (C) acreage for waste piles,
- 14 (D) acreage for processing plants,
- 15 (E) acreage for mine excavation,
- 16 (F) acreage for annual disturbance;
- 17 (5) anticipated effect on wildlife, freshwater, estuarine or marine fisheries;
- 18 (6) ~~whether or not the mining operation will have a waste water wastewater discharge or air contaminant~~
19 ~~emission which that will require a permit from the division of environmental management; Division~~
20 ~~of Water Resources, an air contaminant emission that will require a permit from the Division of Air~~
21 ~~Quality, or will have a stormwater discharge that will require a permit from the Division of Energy,~~
22 ~~Mineral, and Land Resources;~~
- 23 (7) ~~method~~ methods to prevent physical hazard to any neighboring dwelling house, school, church,
24 hospital, commercial or industrial building, or public road if the mining excavation will come within
25 300 feet thereof;
- 26 (8) ~~measures to be taken required~~ to insure ensure against landslides and acid water pollution;
- 27 (9) ~~measures to be taken required~~ to minimize siltation of streams, lakes, or adjacent properties during
28 the mining operation;
- 29 (10) ~~measures to be taken required~~ to screen the mining operation from public view-view;
- 30 (11) name of mine and location;
- 31 (12) responsible officer contact information;
- 32 (13) site contact information; and
- 33 (14) statement of authority as provided in Paragraph (f) of this Rule, when necessary.

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

- 35 (1) intended plan for overall mine reclamation, subsequent land use and the ~~general~~ methods to be used
36 in reclaiming the affected land;
- 37 (2) intended practices ~~to be taken required~~ to protect adjacent surface resources;

- 1 (3) intended methods to prevent or eliminate conditions hazardous to animal or fish life in or adjacent
2 to the affected areas;
- 3 (4) intended methods of rehabilitation of settling ponds;
- 4 (5) intended methods of restoration or establishment of stream channels and stream beds to a condition
5 minimizing erosion, siltation and other pollution;
- 6 (6) intended measures to stabilize slopes;
- 7 (7) intended measures to provide for safety to persons and adjoining property in excavation in rock;
- 8 (8) intended measures of disposal of mining refuse and control of contaminants;
- 9 (9) provisions to prevent collection of noxious, odious or foul water in mined areas; and
- 10 (10) plan for revegetation and reforestation or other surface treatment of the affected areas which ~~plan~~
11 shall ~~must~~ be approved in writing by one of the following prior to submission of the application:
- 12 (A) Authorized ~~representatives~~ representative of the local soil and water conservation district
13 having jurisdiction over lands in question;
- 14 (B) Authorized ~~representatives~~ representative of the ~~division of forest resources, Department~~
15 ~~of Environment, Health, and Natural Resources; North Carolina Forest Service within the~~
16 Department of Agriculture and Consumer Services;
- 17 (C) North Carolina Cooperative Extension County agricultural extension chairmen County
18 Director in the county(s) where the site is located or research and extension personnel
19 headquartered at North Carolina State University in the ~~school of agriculture and life~~
20 sciences School of Agriculture and Life Sciences;
- 21 (D) North Carolina licensed ~~landscape architects;~~ Landscape Architect pursuant to G.S. 89A;
- 22 (E) North Carolina licensed Professional Engineer pursuant to G.S.89C;
- 23 (E)(F) Private consulting ~~foresters~~ forester referred by the ~~division of forest resources,~~
24 ~~Department of Environment, Health, and Natural Resources; North Carolina Forest Service~~
25 within the Department of Agriculture and Consumer Services; or
- 26 (F)(G) Others as may be approved by the ~~department;~~ Department; Provided that areas expected
27 to be in use beyond the maximum permissible permit period, such as processing plants or
28 stockpiles, do not require a specific revegetation plan;
- 29 (11) In lieu of the written approval required by Subparagraph (10) of this Paragraph a plan for
30 revegetation and reforestation developed utilizing one of the following:
- 31 (A) North Carolina Erosion and Sedimentation Control Planning and Design Manual; or
- 32 (B) North Carolina Surface Mining Manual: A Guide for Permitting, Operation and
33 Reclamation; and
- 34 (11)(12) time schedule of reclamation that provides that reclamation activities be conducted simultaneously
35 with mining operations whenever feasible and in any event be initiated at the earliest practicable
36 time after completion or termination of mining on any segment and completed within two ~~years.~~
37 years unless a longer period is specifically permitted by the Department.

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

- 5 (1) property lines or affected area of mining operation;
- 6 (2) outline of pits;
- 7 (3) outline of stockpile areas;
- 8 (4) outline of overburden disposal areas;
- 9 (5) location of processing plants (Processing plants may be described as to location and distance from
10 ~~mine if sufficiently far removed.);~~ the mine if not contiguous to the mine property.);
- 11 (6) location and name of streams and lakes;
- 12 (7) outline of settling ponds;
- 13 (8) location of access roads;
- 14 (9) mine permit boundaries;
- 15 (10) existing and proposed contours showing all drainage areas;
- 16 ~~(9)(11) map legend;~~ legend, including:
 - 17 (A) name of company,
 - 18 (B) name of mine,
 - 19 (C) north arrow,
 - 20 (D) county,
 - 21 (E) scale,
 - 22 (F) date prepared,
 - 23 (G) name and title of person preparing map; and
- 24 ~~(10)(12) names of owners of record, both public and private, of all adjoining land.~~ land as is specified in G.S.
25 74-50.
- 26 (13) Any unrelated use area, that has the potential to disturb the soil surface, that does not meet the
27 definition of mining within the permit boundaries.
- 28 (14) Vicinity map showing the mining operation in relation to the general area at a minimum scale of
29 1:24,000.
- 30 (15) Drawings showing typical sections or cross sections and layout of proposed reclamation where such
31 drawings will assist in describing reclamation.
- 32 (16) Approximate limits of future reserves not included in affected area.
- 33 (17) Intended reclamation for projected phases or segments when reclamation is accomplished
34 concurrently with mining.

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

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

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

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

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

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

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

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

27 (5) Any application submitted to the Department for approval of mining activities pursuant to G.S. 74-
28 50 shall include proof of ownership or the portion of valid and unexpired Memorandum Of Lease
29 or option from the property owner allowing mining activities for all lands to be included in the
30 permitted area as defined in G.S. 74-50(b)(3).

31 (e) An application for a mining permit shall not be deemed filed pursuant to G.S. 74-51(b) until the nonrefundable
32 permit application processing fee required pursuant to G.S. 74-54.1 is received by the Department. If the necessary
33 fee is not received within 30 days of initial receipt of the application, the application shall be denied and required to
34 be resubmitted in its entirety.

35 (f) Permit applications shall be signed as follows:

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

- 1 (2) in the case of a partnership or limited partnership, by a general partner;
- 2 (3) in the case of a sole proprietorship, by the proprietor;
- 3 (4) in the case of a municipal, state or other public entity by either a principal executive officer, ranking
- 4 official or other duly authorized employee.
- 5 (5) in the case of a limited liability company, by a managing member. The signature of the consulting
- 6 engineer or other agent shall be accepted on the application only if accompanied by a letter of
- 7 authorization from one of the individuals listed in Subparagraphs (1) through (5) of this Paragraph.

8

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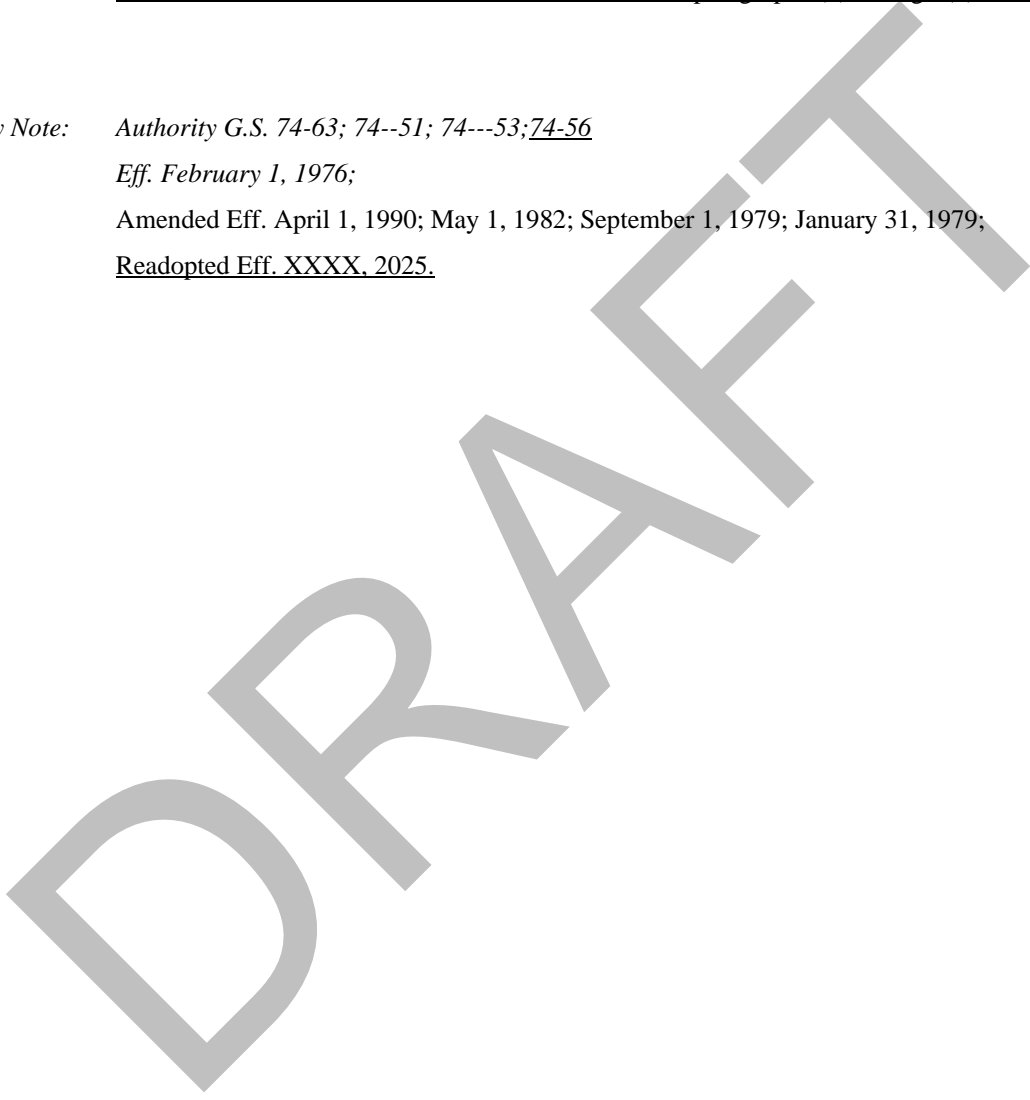
10 *History Note:* Authority G.S. 74-63; 74--51; 74---53;74-56

11 Eff. February 1, 1976;

12 Amended Eff. April 1, 1990; May 1, 1982; September 1, 1979; January 31, 1979;

13 Readopted Eff. XXXX, 2025.

14



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

DRAFT

1 15A NCAC 05B .0113 IS PROPOSED FOR READOPTION AS FOLLOWS:
2

3 **15A NCAC 05B .0113 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)**

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

11
12 *History Note:* Authority G.S. 74-51; 74--52; 74--63; 143B---290; *Note:*
13 *RRC Objection Eff. September 15, 1994 due to lack of statutory authority;*
14 *Eff. November 1, 1994;*
15 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d));*
16 *Readopted Eff. XXXX, 2025.*
17

15A NCAC 05B .0114 BLASTING

DRAFT

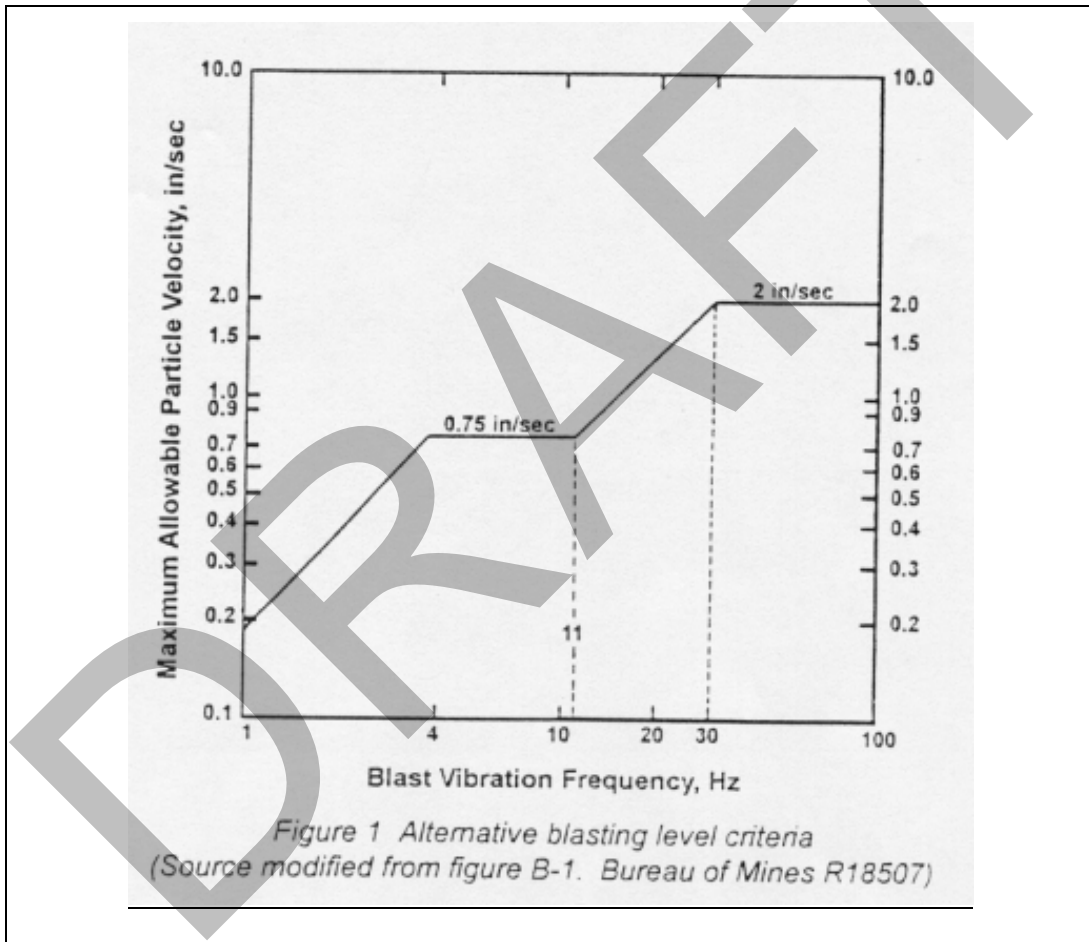
1 15A NCAC 05B .0114 IS PROPOSED FOR ADOPTION AS FOLLOWS:

2

3 **15A NCAC 05B .0114 BLASTING**

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

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



11

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

14 Formula from ISEE Blasters Handbook 17th Edition ISBN:1-892396-00-9

$$15 \quad \underline{W = \left(\frac{D}{Ds}\right)^2 \qquad \qquad \qquad Ds = \frac{D}{\sqrt{W}} \qquad \qquad \qquad V = 160(Ds)^{-1.6}}$$

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

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

5 Ds = Scaled distance factor.

6 V = Peak Particle Velocity (inches per second).

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

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

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

12
13 (e) In the event of seismograph malfunction or other condition that prevents monitoring, blasting shall be conducted
14 in accordance with the following formulas:

15 Formula from ISEE Blasters Handbook 17th Edition ISBN:1-892396-00-9

16
$$P = 1.0 \left(\frac{D}{\sqrt[3]{W}} \right)^{-1.1}$$

17
$$dB = 20 \log \left(\frac{P}{2.9 \times 10^{-9}} \right)$$

18
19 P = Airblast overpressure average burial (pounds per square inch).

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

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

24 dB = Airblast overpressure average burial (decibels).

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

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

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

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

5 (1) name of Company or contractor;

6 (2) date, and time of the blast;

7 (3) type of material blasted;

8 (4) the total number of holes;

9 (5) pattern of holes and delay of intervals;

10 (6) depth and size of holes;

11 (7) type and total pounds of explosives;

12 (8) maximum pounds per 8ms delay interval;

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

14 (10) blast location;

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

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

17 (13) Whether mats or other protections were used.

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

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

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

25
26 History Note: Authority G.S. 74-51; 74-63;

27 Eff. XXXX X, 2025.

15A NCAC 05F .0108 ADMINISTRATIVE REMEDIES

DRAFT

1 15A NCAC 05F .0108 IS PROPOSED FOR REPEAL AS A READOPTION AS FOLLOWS:

2

3 ~~15A NCAC 05F .0108~~ — ~~ADMINISTRATIVE REMEDIES~~

4 ~~Within 60 days after receipt of notification of any civil penalty assessment, the person against whom the civil penalty~~
5 ~~is assessed may contest the decision of the department by filing a petition as described in G.S. 74-61 and G.S. 150B-~~
6 ~~23.~~

7

8 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;

9

Eff. May 1, 1982;

10

Amended Eff. August 1, 1988.

11

Repealed Eff. XXXX, 2026

DRAFT