

RECOMMENDATIONS FOR CHANGES TO THE SEDIMENTATION CONTROL RULES

***Note:** The NC statutes require that administrative rules be subject to a periodic rules review process. The rules in Title 15A, Chapter 04 have been reviewed by an ad hoc Sediment Rules Review Workgroup. The review process involved 11 meetings over a two-year period. Although the Workgroup did not vote on these proposed changes, the version contained in this document was prepared by the DEMLR staff based on comments received during the 11 meetings. At the May 29, 2019 Sedimentation Control Commission meeting, permission will be sought to initiate the rule-making process for these rules. A three-member ad hoc committee of the Sediment Commission was chosen to prepare recommendations to the full Commission on these proposals. Their comments and recommendations will be given to the Sedimentation Control Commission prior to the May 29th meeting. The version presented in this document contains **linked comments and discussions** on the major changes proposed from the existing Chapter 04 rules.*



Portions of the rules marked with a star suggests where review priority might be given.

- Rule changes suggested in Mid-May of 2019 by the NC Attorney General's Office are shown in **yellow highlight**.

CHAPTER 04 - SEDIMENTATION CONTROL

SUBCHAPTER 04A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

15A NCAC 04A .0101 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION

Persons may ~~write or visit~~ **contact** the North Carolina Sedimentation Control Commission offices at the Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, North Carolina 27611. Persons may ~~write or visit~~ **contact** regional offices of the Commission's staff in the Division of Energy, Mineral, and Land Resources at the following locations:

- (1) ~~Interchange Building~~
~~59 Woodfin Place~~
~~P.O. Box 370~~
~~Asheville, N.C. 28801~~
Asheville Regional Office
2090 U.S. 70 Hwy.
Swannanoa, NC 28778-8211
- (2) ~~585 Waightown Street~~
Winston-Salem Regional Office
450 W. Hanes Mill Rd., Suite 300
Winston-Salem, N.C. 27107-27105
- (3) ~~919 North Main Street~~
Mooreville Regional Office
610 E. Center Avenue, Suite 301
~~P.O. Box 950~~
Mooreville, N.C. 28115-28115-2578
- (4) Raleigh Regional Office
3800 Barrett Drive
~~P.O. Box 27687~~
Raleigh, N.C. 27611-27609-7222
- (5) ~~Wachovia Building~~

1 Fayetteville Regional Office
2 225 Green Street, Suite 714
3 Suite 714
4 Fayetteville, N.C. ~~28301~~- 28301-5095
5

6 (6) ~~1424 Carolina Avenue~~
7 Washington Regional Office
8 1424 Carolina Ave.
9 P.O. Box 2188 Washington, N.C. ~~27889~~- 27889-3314
10

11 (7) Wilmington Regional Office
12 127 Cardinal Dr., Ext.
13 Wilmington, N.C. 28405-3845
14

15 *History Note: Authority G.S. 143B-298; 113A-54*
16 *Eff. February 1, 1976;*
17 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; February 1, 1992; May*
18 *1, 1990; December 1, 1988;*
19 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
20 *2016.*
21

22 **15A NCAC 04A .0105 DEFINITIONS**

23 In addition to the terms defined in G.S. 113A-52, ~~As used in this Chapter,~~ the following definitions shall have these
24 meanings:

- 25 (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of
26 land-disturbing activities.
- 27 (2) "Act" means the Sedimentation Pollution Control Act of 1973 in G.S. 113A-50 et seq.
- 28 (3) "~~Adequate Erosion Control Measures, Structure, or Device~~ Devices or Structures" means one that
29 controls the soil material within the land area under responsible control of the person conducting
30 the land-disturbing activity.
- 31 (4) "Approving Authority" means the Division or other state or a local government agency that has been
32 delegated erosion and sedimentation plan review responsibilities in accordance with the provisions
33 of the Act.
- 34 (5) "Being Conducted" means a land-disturbing activity has been initiated and permanent stabilization
35 of the site has not been completed. not deemed complete.
- 36 (6) "Borrow" means fill material ~~which that~~ is required for on-site construction that is obtained from
37 other locations.
- 38 (7) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.
- 39 (8) "~~Coastal counties~~ Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden,
40 Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico,
41 Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- 42 (8) "~~Commission~~" means the North Carolina Sedimentation Control Commission.
- 43 (9) "Completion of Construction or Development" means that no further land-disturbing activity is
44 required on a phase of a project except that which is necessary for establishing a permanent ground
45 cover.
- 46 (10) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the
47 Department of Environmental Quality
- 48 (11) "Discharge Point or Point of Discharge" means that point where runoff leaves a tract of land where
49 a land-disturbing activity has occurred or enters a lake or natural watercourse.
- 50 (12) "Division" or "DEMLR" means the Division of Energy, Mineral, and Land Resources of the
51 Department of Environmental Quality.
- 52 (13) "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring placed
53 at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- 54 (14) "Ground Cover" means any natural vegetative growth or other material ~~which that~~ renders the soil
55 surface stable against accelerated erosion.

- 1 (15) "High Quality Waters" means those described in 15A NCAC 02B .0224-.02B .0224 which is herein
2 incorporated by reference including subsequent amendments and editions, and may be accessed at
3 no cost at <http://reports.oah.state.nc.us/.pdf>.
- 4 (16) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of
5 High Quality Waters and for the remainder of the ~~state~~ State areas that are within one mile of and
6 drain to HQW's.
- 7 (17) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run,
8 branch, canal, waterway, estuary, and any reservoir, lake, or pond ~~natural or impounded~~, in which
9 ~~sediment may be moved or carried in suspension, and which could be damaged by accumulation of~~
10 ~~sediment.~~ ☐
- 11 (18) "Natural Erosion" means ~~erosion~~ "erosion" as defined in G.S. 113A-52(5) under natural
12 environmental conditions undisturbed by man.
- 13 (19) "Person Conducting the Land-disturbing Activity" means any person who may be held responsible
14 for a violation unless ~~expressly~~ provided otherwise by the ~~Sedimentation Pollution Control Act of~~
15 ~~1973, G.S. 113A 50 to 69, the Act, the Rules of this Chapter, or any order or local ordinance adopted~~
16 ~~pursuant to the these Rules or the Act. Sedimentation Pollution Control Act of 1973, G.S. 113A 50~~
17 ~~to 69.~~
- 18 (18) "Person Who Violates" as used in G.S. 113A 64, means:
19 (a) ~~the developer or other person who has or holds himself or herself out as having financial~~
20 ~~or operational control over the land-disturbing activity; or~~
21 (b) ~~the landowner or person in possession or control of the land when he has directly or~~
22 ~~indirectly allowed the land-disturbing activity or has directly benefitted from it or he has~~
23 ~~failed to comply with any provision of the Sedimentation Pollution Control Act of 1973,~~
24 ~~G.S. 113A 50 to 66, the North Carolina Administrative Code, Title 15A, Chapter 4, or any~~
25 ~~order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act of~~
26 ~~1973, G.S. 113A 50 to 66, as imposes a duty upon him.~~
- 27 ★ (20) (19) "Person Who Violates", or "Violator", as used in G.S. 113A-64, means: any landowner or other
28 person who has financial or operational control over the land-disturbing activity; or who has directly
29 or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the
30 Rules of this Chapter, or any order or local ordinance adopted pursuant to the Act, as it imposes a
31 duty upon that person
- 32 (10) "Phase of Grading" means ~~one of two types of grading, rough or fine.~~
- 33 (21) "Plan" means an erosion and sedimentation control plan.
- 34 (22) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been
35 or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.
- 36 (23) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches and
37 appurtenances that serve to collect and convey stormwater through and from a given drainage area.
- 38 (24) "Stormwater Runoff" means the ~~direct~~ runoff of water resulting from precipitation in any form.
- 39 (25) "Ten Year Storm" means a rainfall of an intensity predicted to be equaled or exceeded, on the
40 average, once in 10 years, and of a duration that will produce the maximum peak rate of runoff from
41 the watershed of interest under average antecedent wetness conditions. ☐
- 42 (26) "Twenty-five Year Storm or Q25" means a rainfall of an intensity expected that, based on historical
43 data, is predicted to be equaled or exceeded, on the average, once in 25 years, and of a duration that
44 will produce the maximum peak rate of runoff from the watershed of interest under average
45 antecedent wetness conditions.
- 46 (27) ☐ "Uncovered" means ~~the removal of~~ having had ground cover removed from, on, or above the soil
47 surface.
- 48 (28) "Undertaken" means the initiating of any activity or phase of activity that results or will result in a
49 change in the ground cover or topography of a tract of land.
- 50 (29)(28) "Velocity" means the ~~average velocity~~ speed of flow through a cross-section perpendicular to the
51 direction of the main channel at the peak flow of the storm of interest but not exceeding bank full
52 flows. The cross section of the main channel shall be that area defined by the geometry of the
53 channel plus the area of flow below the flood height defined by vertical lines at the main channel
54 banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- 55 (30) "Waste" means surplus materials resulting from on-site construction and to be disposed of at other
56 locations offsite. ☐

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2
3 *History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire*
4 *on July 11, 1992;*
5 *Filed as a Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire*
6 *on April 29, 1991;*
7 *Statutory Authority G.S. 113A-52; 113A-54;*
8 *Eff. November 1, 1984;*
9 *Amended Eff. May 1, 1990;*
10 *ARRC Objection Lodged November 14, 1990;*
11 *ARRC Objection Removed December 20, 1990;*
12 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); October 1, 1995; April 1, 1992; January*
13 *1, 1991.*

16 SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

18 15A NCAC 04B .0105 PROTECTION OF PROPERTY

19 Persons conducting land-disturbing activity shall ~~take all reasonable~~ follow the measures specified in this Chapter and
20 ~~the Act~~ to protect all public and private property from sedimentation and erosion damage caused by ~~such~~ the land-
21 disturbing activities. 

22
23 *History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire*
24 *on July 11, 1992;*
25 *Filed as a Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire*
26 *on April 29, 1991;*
27 *Statutory Authority G.S. 113A-52; 113A-54;*
28 *Eff. November 1, 1984;*
29 *Amended Eff. May 1, 1990;*
30 *ARRC Objection Lodged November 14, 1990;*
31 *ARRC Objection Removed December 20, 1990;*
32 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); October 1, 1995; April 1, 1992; January*
33 *1, 1991.*

35 15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES

36  (a) ~~An erosion and sedimentation control plan developed pursuant to Chapter 04 of these rules shall may be~~
37 ~~disapproved pursuant to 15A NCAC 4B .0118 if the plan fails to be designed to address the following: following~~
38 ~~control objectives:~~

- 39 (1) Identify Critical Areas. Identify site areas subject to accelerated erosion and off-site areas vulnerable
40 to damage from erosion and sedimentation.
- 41 (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- 42 (3) Limit Time of Exposure. Limit exposure to the shortest ~~feasible time allowable by rules, other~~
43 ~~permits, time specified in NCGS 113A-57, the Rules in this Chapter, or as directed by the approving~~
44 ~~authority.~~
- 45 (4) Control Surface Water. Control surface water originating upgrade of exposed areas in order to
46 reduce erosion and sediment loss during exposure.
- 47 (5) Control Sedimentation. All land-disturbing activity shall be planned to prevent off-site
48 sedimentation damage.
- 49 (6) Manage ~~Storm Water~~ Stormwater Runoff. Plans shall be designed so that ~~When the increased any~~
50 increase in velocity of ~~storm water~~ stormwater runoff resulting from a land-disturbing activity
51 causes will not result in accelerated erosion of the receiving ~~waterecourse, stormwater conveyance~~
52 or at the point of discharge. plans Plans shall include measures to ~~control~~ prevent accelerated erosion
53 velocity within the project boundary and at to the point of discharge.

54 (b) ~~When deemed necessary by the approving authority a preconstruction conference may be required.~~ 

1
2 *History Note: Authority G.S. 113A-54(d)(4); 113A-54.1;*
3 *Eff. February 1, 1976;*
4 *Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980.*
5

6 **15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY**

7 (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with the G.S. ~~113A-~~
8 ~~57-~~ 113A-57 and the standards established in these Rules.
9

10 (b) Pursuant to G.S. 113A-57(3), Unless where otherwise specified in the Act or the rules of this Chapter, provisions
11 for a permanent ground cover sufficient to restrain erosion shall be accomplished within ~~15 working days or~~ 90
12 calendar days following completion of construction or development. ~~whichever period is shorter, except as provided~~
13 ~~in 15A NCAC 4B .0124(e).~~

14 (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan shall be filed and
15 approved by approving authority.

16 (d) All individuals that obtain a State or locally-issued erosion and sedimentation control plan, that disturb one acre
17 or more of land, are required by the U.S. Environmental Protection Agency to obtain coverage under the N.C.
18 Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in
19 NCG01 for temporary or permanent ground cover may differ from the ground cover, or stabilization, requirements in
20 this Chapter. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance with
21 the NCG01.
22

23 *History Note: Authority G.S. 113A-54(d)(4); 113A-57; 113A-57(3)(4); 113A-61.1;*
24 *Eff. February 1, 1976;*
25 *Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980.*
26

27 **15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD**

28 Except where otherwise specified in this Chapter, erosion and sedimentation control measures, structures, and devices
29 shall be planned, designed, and constructed to provide protection from the runoff of a 10-year storm that produces the
30 maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture,
31 Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices Handbook
32 630." This document is herein incorporated by reference including subsequent amendments and editions, and may be
33 accessed at no cost at
34 <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063> or
35 according to procedures adopted by any other agency of this state or the United States or any generally recognized
36 organization or association. Other methodologies can be used if based on generally accepted engineering standards
37 that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall
38 determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on
39 observed data in agreement with the predictive model.
40

41 *History Note: Authority G.S. 113A-54;*
42 *Eff. February 1, 1976;*
43 *Amended Eff. November 1, 1984; July 1, 1978.*
44

45 **15A NCAC 04B .0109 STORMWATER OUTLET PROTECTION**

46 (a) Persons shall ~~conduct~~ provide a design for the land-disturbing activity so that the post-construction velocity of the
47 ten-year storm runoff in the receiving stormwater conveyance to, and including, the discharge point, does not exceed
48 the greater of:

- 49 (1) the velocity established by the table in Paragraph (d) of this Rule; or
- 50 (2) the projected velocity of the ~~ten-year~~ ten-year storm runoff in the receiving stormwater conveyance
51 prior to development.

52 If projected conditions (1) or (2) of this Paragraph cannot be met, then the receiving stormwater conveyance to, and
53 including including, the discharge point shall be designed and constructed to withstand the expected velocity
54 anywhere the velocity exceeds the "prior to development" velocity prior to development by ten percent.

1 ~~(b) Acceptable Management Measures. The Commission recognizes that management of storm water stormwater run~~
2 ~~off runoff to control downstream erosion constitutes a developing technology and consequently invites the use of~~
3 ~~innovative techniques shown to produce successful results. Alternatives include:~~

4 (b) The Commission shall allow alternative measures to control downstream erosion, including:

- 5 (1) compensation for increased runoff from areas rendered impervious by designing measures to
6 promote infiltration; or
- 7 (2) avoiding increases in stormwater discharge velocities by using vegetated or roughened swales and
8 waterways in place of closed drains and paved sections; or
- 9 (3) providing energy dissipators at storm drainage outlets to reduce flow velocities to the discharge
10 points; or
- 11 (4) protecting stormwater conveyances subject to accelerated erosion by improving cross sections
12 and/or or providing erosion-resistant lining.

13 ~~(c) Exceptions. This Rule shall not apply when stormwater discharge velocities will not create an erosion problem~~
14 ~~not result in accelerated erosion in the receiving stormwater conveyance or discharge point.~~

15 (d) The following table sets maximum permissible velocity for storm water discharges:

Material	Maximum Permissible Velocities in Feet and Meters Per Second*	
	F.P.S.	M.P.S.
Fine Sand (noncolloidal)	2.5	.8
Sandy Loam (noncolloidal)	2.5	.8
Silt Loam (noncolloidal)	3.0	.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (very colloidal)	5.0	1.5
Graded, Loam to Cobbles (noncolloidal)	5.0	1.5
Graded, Silt to Cobbles (colloidal)	5.5	1.7
Alluvial Silts (noncolloidal)	3.5	1.1
Alluvial Silts (colloidal)	5.0	1.5
Coarse Gravel (noncolloidal)	6.0	1.8
Cobbles and Shingles	5.5	1.7
Shales and Hard Pans	6.0	1.8

35 ~~Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil~~
36 ~~Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for~~
37 ~~slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.~~

38 ~~*For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous~~
39 ~~channels, and by 0.8 for highly sinuous channels. Source: Adapted from recommendations by Special Committee on~~
40 ~~Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment.~~

41
42 *History Note: Authority G.S. 113A-54(b)(c);*
43 *Eff. February 1, 1976;*
44 *Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978.*

46 **15A NCAC 04B .0110 BORROW AND WASTE AREAS**

47 If the same person conducts the ~~land-disturbing~~ land-disturbing activity and any related borrow or waste activity, the
48 related borrow or waste activity shall constitute part of the ~~land-disturbing~~ land-disturbing activity, unless the
49 borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the
50 Division of Solid Waste Management. If the ~~land-disturbing~~ land-disturbing activity and any related borrow or waste
51 activity are not conducted by the same person, they shall be considered separate land-disturbing activities.

52
53 *History Note: Authority G.S. 74-67; 113A-54(b); 130A-166.21;*
54 *Eff. February 1, 1976;*
55 *Amended Eff. May 1, 1990; November 1, 1984.*

1 **15A NCAC 04B .0111 ACCESS AND HAUL ROADS**

2 ~~Except for public roads, temporary~~ access and haul roads ~~roads, other than public roads,~~ constructed or used in
3 connection with any land-disturbing activity shall be considered a part of the activity.

4
5 *History Note: Authority G.S. 113A-54;*
6 *Eff. February 1, 1976.*

7
8 **15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES**

9 ~~Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall~~
10 ~~minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential~~
11 ~~part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.~~

12
13 *History Note: Authority G.S. 113A-54;*
14 *Eff. February 1, 1976;*
15 *Amended Eff. November 1, 1984.*

16
17 **15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE**

18 During the development of a site, the person conducting the land-disturbing activity shall install and maintain all
19 temporary and permanent erosion and sedimentation control measures as required by the approved plan or any
20 provision of the Act, ~~these Rules of this Chapter,~~ or any order or local ordinance adopted pursuant to the Act. After
21 site development, the land owner or person in possession or control of the land shall install ~~and/or~~ and maintain all
22 ~~necessary~~ permanent erosion and sediment control measures, except those measures installed within a road or street
23 right of way or ~~easement~~ easement, accepted for maintenance by a governmental agency.

24
25 *History Note: Authority G.S. 113A-54;*
26 *Eff. February 1, 1976;*
27 *Amended Eff. November 1, 1984; July 1, 1978.*

28
29 **15A NCAC 04B .0115 ADDITIONAL MEASURES**

30 Whenever the Commission or a local government determines that ~~significant~~ accelerated erosion and sedimentation
31 continues despite the installation of protective practices, the person conducting the land-disturbing activity shall take
32 additional protective action ~~necessary~~ to achieve compliance with the conditions specified in the Act or the Rules of
33 this Chapter.

34
35 *History Note: Authority G.S. 113A-54(b); G.S. 113A-54.1(b);*
36 *Eff. February 1, 1976;*
37 *Amended Eff. November 1, 1984.*

38
39 **15A NCAC 04B .0118 APPROVAL OF PLANS**

40 (a) Persons conducting land-disturbing activity on a tract that covers one or more acres shall file ~~three copies of the~~
41 erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no
42 local government has jurisdiction. The approving agency must act on the plan at least within 30 days of receipt of the
43 plan or the plan shall be deemed approved. A paper copy of the approved plan shall be kept on file at the job site.
44 After approving a plan, if the Commission or local government determines, either upon review of such plan or upon
45 inspection of the job site, that ~~a significant risk of accelerated erosion or off-site sedimentation exists,~~ the plan is
46 inadequate to meet the requirements of the Act and of this Chapter, the Commission or local government shall require
47 a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions
48 outlined by the appropriate authority.

49 (b) Commission Approval:

- 50 (1) The Commission shall review plans for all land-disturbing activity over which the Commission has
51 exclusive jurisdiction pursuant to G.S. 113A-56, and all other land-disturbing activity where no local
52 government has jurisdiction.
53 (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall
54 notify the person submitting the plan in writing that it has been:
55 (A) approved;



- (B) approved with modification;
- ~~(C) approved with performance reservations;~~
- ~~(D)(C) disapproved.~~

- (3) The Commission's approval with modification, or disapproval of any proposed plan shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23.
- ~~(4) (This Section does not modify any other rights to a contested case hearing which may arise under G.S. 150B-23.)~~
- (4) Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed by the Commission. Appeals of local government decisions shall be conducted pursuant to G.S. 113A-61(c).
- (5) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act as set forth in Article 1 of G.S. 113A and the rules of this Department as set forth in NCAC 15A Subchapter 01C shall be deemed incomplete until a complete an environmental document is available for review. The Commission shall promptly notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to Subparagraph (b)(2) of this Rule shall not begin until a complete the environmental document is available for review.

(c) An erosion and sedimentation control plan shall also be disapproved unless the application includes an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) Local Government Approval:

- (1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. The procedures shall follow applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) The Secretary shall appoint employees of the Department as he or she deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, such departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan should be approved, approved with modifications, ~~approved with performance reservations~~ or disapproved.
- (3) If either the local government or the person submitting the plan disagrees with the decision reached by a Departmental employee, ~~then~~ he or she may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Energy, Mineral, and Land Resources. The Director shall make the proposed erosion control plan and the records relating to the local government's and Departmental employee's review, available to an erosion and sedimentation control plan review committee consisting of three members of the Commission appointed by the chairman. Within 10 days following receipt of the notification of appeal, the erosion and sedimentation plan review committee shall notify the local government and the person submitting the plan of a place and time for a hearing for consideration of the appeal. Both parties shall be given at least 15 day's notice of the hearing and an opportunity to present written or oral arguments. The appeals erosion and sedimentation plan review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following such the hearing.

(e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under G.S. 113A-54.1(c) gives rise to a right to a an appeal to the Commission. ~~contested case under G.S. 150B, Article 3.~~ An applicant desiring to appeal the ~~Director's~~ Commission's disapproval of an erosion control plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3. ~~The general time limitation for filing a petition, and the commencement of the time limitation, shall be as set out in G.S. 150B-23(f). Contested cases shall be conducted under the procedures of G.S. 150B, Article 3 and applicable rules of the Office of Administrative Hearings. The Commission shall make the final decision on any contested case under G.S. 150B-36.~~

History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire

1 on July 11, 1992;
2 Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-60(a); 113A-61(b); 113A-61(c);
3 150B, Article 3; 150B-23;
4 Eff. February 1, 1976;
5 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); June 1, 1995; February 1, 1992; May 1,
6 1990; August 1, 1988.

7
8 **15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS**

9 (a) The Commission, Department of Environmental Quality, or local government may require written ~~statements,~~
10 ~~statements related to items including but not limited to NOV's or Stop-Work orders~~ or the filing of reports under oath,
11 ~~such as self-inspection or engineering/design reports,~~ concerning land-disturbing activity.

12 ~~(b) Inspection of sites shall be carried out by the staff of Department of Environment, Health, and Natural Resources~~
13 ~~or other qualified persons authorized by the Commission or Department of Environment, Health, and Natural~~
14 ~~Resources as necessary to carry out its duties under the Act.~~

15 ~~e) No person shall refuse entry or access to any representative of the Commission or any representative of a local~~
16 ~~government who requests entry for purposes of inspection.~~

17 ~~(b) When deemed necessary by the approving authority a preconstruction conference may be required and shall be~~
18 ~~specified on the plans. "When a preconstruction conference is proposed pursuant to G.S. 113A-51, it shall be specified~~
19 ~~on the plans."~~

20
21 *History Note:* Authority G.S. 113A-54(b); 113A-58; 113A-61.1;
22 Eff. February 1, 1976;
23 Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984.

24
25 **15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS**

26 (a) Uncovered areas in HQW zones shall be limited ~~at any time~~ to a maximum total area of 20 acres within the
27 boundaries of the tract ~~of 20 acres~~. Only ~~the portion of~~ the land-disturbing activity within a HQW zone shall be
28 governed by this Rule. Larger areas may be uncovered within the boundaries of the tract with the written approval of
29 the Director upon providing adequate engineering justification with a specific construction sequence that addresses
30 considers phasing, limiting exposure, weekly submitted self-inspection reports and more conservative design than the
31 25-year storm. The Director may also include other conditions as necessary based on specific site conditions.

32 (b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned,
33 designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak
34 rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources
35 Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices" ~~Practices or according~~
36 ~~to procedures adopted by any other agency of this state or the United States or any generally recognized organization~~
37 ~~or association. Other methodologies can be used if based on generally-accepted engineering standards that are shown~~
38 to be equivalent to or improved over the procedures in Handbook 630. The Division shall determine acceptability of
39 an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement
40 with the predictive model.

41 ~~(c) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling~~
42 ~~efficiency of at least 70 percent for the 40 micron (0.04mm) size soil particle transported into the basin by the runoff~~
43 ~~of that two year storm which produces the maximum peak rate of runoff as calculated according to procedures in the~~
44 ~~United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for~~
45 ~~Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or~~
46 ~~any generally recognized organization or association.~~

47 (c) In order to provide for water quality protection in HQW Zones, sediment basins that discharge to those areas shall
48 be designed and constructed to meet the following criteria:

- 49 (1) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
50 (2) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
51 (3) have a minimum surface area of 325 square feet per cfs of Q25 peak inflow;
52 (4) have a minimum dewatering time of 48 hours and,
53 (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles are
54 sufficient

55 (d) Upon a written request of the applicant, the Director may allow alternative design of control measures in lieu of
56 meeting the conditions required in subparagraphs (c)(2) through (c)(5) if the applicant demonstrates that meeting all

1 of those conditions will result in design or operational hardships and that the alternative measures will provide an
2 equal or more effective level of erosion and sedimentation control on the site. Alternative measures may include, but
3 are not limited to, quicker application of ground cover, use of sediment flocculants and use of enhanced ground cover
4 practices.
5

6 (e)(d) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper
7 than two horizontal to one vertical if a vegetative cover is used for stabilization, unless soil conditions permit a steeper
8 slope or where the slopes are stabilized by using mechanical devices, structural devices, or other forms of ~~acceptable~~
9 ditch liners proven effective and acceptable to the Division. ~~In any event, the~~ The angle for side slopes shall be
10 sufficient to restrain accelerated erosion.

11 ~~(e)(f) Pursuant to G.S. 113A-57(3) provisions for a ground cover sufficient to restrain erosion must be provided for~~
12 ~~any portion of a land disturbing activity in a HQW zone within 15 working days or 60 calendar days following~~
13 ~~completion of construction or development, whichever period is shorter.~~

14 History Note: Authority G.S. 113A-54(b); 113A-54(c)(1);
15 *Eff. May 1, 1990.*

17 **15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS**

18 (a) ~~Unless otherwise provided, the~~ The width of a buffer zone is shall be measured from the edge of the water to the
19 nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural
20 or artificial means of confining visible siltation.

21 (b) A 25-foot ~~minimum~~ minimum, ~~for an~~ undisturbed buffer zone shall be protected adjacent to designated trout
22 ~~waters~~ waters designated by the Environmental Management Commission. The 25-foot width buffer zone shall be
23 measured horizontally from the top of the bank to the nearest area of disturbance.

24 (c) Where a temporary and minimal disturbance is permitted as an ~~exception~~ exception by G.S. 113A-57(1), land-disturbing
25 activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the
26 total length of the buffer zone within the tract ~~to be~~ and distributed such that there is not more than 100 linear feet of
27 disturbance in each 1000 linear feet of buffer zone. ~~Larger areas may be disturbed with the written approval of the~~
28 Director.

29 ~~(d) If, upon a written request of the applicant, the Director may allow a larger area of disturbance than provided in~~
30 ~~Paragraph (c) of this rule if the applicant demonstrates that additional measures will be utilized that will achieve an~~
31 ~~equally effective or more effective level of erosion and sedimentation control than would be achieved had the~~
32 ~~specifications prescribed in Paragraph (c) of this Rule been followed.~~

33 ~~(d) (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that is~~
34 ~~predicted by the approving authority to will cause adverse stream temperature violations in these waters fluctuations,~~
35 ~~as set forth in 15A NCAC 2B .0211 "Fresh Surface Water Quality Classification and Standards for Class C Waters",~~
36 ~~in these waters. which is hereby incorporated by reference including subsequent amendments and editions. Copies~~
37 ~~of 15A NCAC 2B .0211 are available at <https://www.oah.state.nc.us/> at no cost.~~

38
39 *History Note: Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);*
40 *Eff. May 1, 1990;*
41 *Amended Eff. February 1, 1992.*

43 **15A NCAC 04B .0126 PLAN REVIEW APPLICATION FEE**

44 (a) The nonrefundable ~~plan review processing application~~ application fee, in the amount, provided in G.S. 113A-54.2 shall be
45 paid when an erosion and sedimentation control plan is filed in accordance with 15A NCAC 04B .0118.

46 (b) Each plan shall be deemed incomplete until the ~~plan review processing~~ application fee is paid.

47 ~~(e) The plan review processing fee shall be based on the number of acres, or any part of an acre, of disturbed land~~
48 ~~shown on the plan.~~

49 ~~(d) (c) No plan review processing application~~ application fee shall be charged for review of a revised plan unless the revised plan
50 contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of
51 acres to be disturbed, the plan review processing fee to be charged shall be the amount specified in G.S. 113A-54.2
52 for each additional acre (or any part thereof) disturbed.

53 ~~(e) The nonrefundable plan review processing fee shall be fifty dollars (\$50.00) for each acre or part of any acre of~~
54 ~~disturbed land.~~

1 ~~(f) Payment of the plan review processing fee may be by check or money order made payable to the “N.C. Department~~
2 ~~of Environment and Natural Resources”~~

3
4 *History Note:* Authority G.S. 113A-54; 113A-54.2;
5 Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29,
6 1991;
7 AARC Objection Lodged November 14, 1990;
8 AARC Objection Removed December 20, 1990;
9 Eff. January 1, 1991;
10 Amended Eff. August 1, 2002; July 1, 2000.

12 **15A NCAC 04B .0127** **PLAN APPROVAL CERTIFICATE**

13 ~~(a) Approval of a sedimentation and erosion control plan that shall be contained in a document called "Certificate of~~
14 ~~Plan Approval" to be issued by the Commission.~~

15 ~~(b) The Certificate of Plan Approval must be posted at the primary entrance of the job site, before construction begins.~~

16 ~~(a) The Commission shall issue a “Certificate of Approval” or a similar written documentation of approval that is~~
17 ~~provided to the applicant by hard copy or electronic submittal. Before construction begins, that documentation shall~~
18 ~~be posted at the primary entrance of the job site or other location that is easily observable to the public and inspectors.~~

19 ~~(c) (b) No person may initiate a land-disturbing activity until notifying the approving authority agency that issued the~~
20 ~~plan approval of the date that the land-disturbing activity will begin.~~

21
22 *History Note:* Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29,
23 1991;
24 Authority G.S. 113A-54(b);
25 ARRC Objection Lodged November 14, 1990;
26 ARRC Objection Removed December 20, 1990;
27 Eff. January 1, 1991;
28 Amended Eff. July 1, 2000.

30 **15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE**

31 ~~An erosion control plan shall expire three years following the date of approval, if~~ If no land-disturbing activity has
32 been undertaken on a site, an erosion control plan shall expire three years following the date of approval, 

33
34 *History Note:* Authority G.S. 113A-54.1(a);
35 Eff. October 1, 1995.

37 **15A NCAC 04B .0130 EMERGENCIES**

38 Any person who conducts an emergency repair essential to protect human life that results in ~~constitutes~~ a
39 land-disturbing activity within the meaning of G.S. 113A-52(6) and these ~~Rules;~~ rules shall take the following actions:

40 (1) ~~shall notify the Commission Director, or his or her designee, of such the repair as soon as reasonably~~
41 ~~possible, but in no event later than five working days after the emergency has ended, as determined~~
42 ~~by the Division, and~~

43 (2) ~~shall take all reasonable measures to protect all public and private property from damage caused by~~
44 ~~such the repair as soon as reasonably possible, but in no event later than 15 working days after the~~
45 ~~emergency ends.~~

46
47 *History Note:* Authority G.S. 113A-52.01(4); 113A-54(b);
48 Eff. October 1, 1995.

50 **15A NCAC 04B .0131** ~~SELF INSPECTIONS~~

51 ~~Where inspections are required by G.S. 113A-54.1(e), the following apply:~~

52 (1) ~~The person who performs the inspection shall make a record of the site inspection by documenting~~
53 ~~the following items:~~

54 (a) ~~all of the erosion and sedimentation control measures, practices and devices, as called for~~
55 ~~in a construction sequence consistent with the approved erosion and sedimentation~~

- 1 control plan, including but not limited to sedimentation control basins, sedimentation
2 traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains,
3 rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage
4 facilities, energy dissipaters, and stabilization methods of open channels, have initially
5 been installed and do not significantly deviate (as defined in Sub-item (1)(e) of this Rule)
6 from the locations, dimensions and relative elevations shown on the approved erosion
7 and sedimentation plan. Such documentation shall be accomplished by initialing and
8 dating each measure or practice shown on a copy of the approved erosion and
9 sedimentation control plan or by completing, dating and signing an inspection report that
10 lists each measure, practice or device shown on the approved erosion and sedimentation
11 control plan. This documentation is required only upon the initial installation of the
12 erosion and sedimentation control measures, practices and devices as set forth by the
13 approved erosion and sedimentation control plan or if the measures, practices and devices
14 are modified after initial installation;
- 15 (b) — the completion of any phase of grading for all graded slopes and fills shown on the
16 approved erosion and sedimentation control plan, specifically noting the location and
17 condition of the graded slopes and fills. Such documentation shall be accomplished by
18 initialing and dating a copy of the approved erosion and sedimentation control plan or by
19 completing, dating and signing an inspection report;
- 20 (c) — the location of temporary or permanent ground cover, and that the installation of the
21 ground cover does not significantly deviate (as defined in Sub-item (1)(e) of this Rule)
22 from the approved erosion and sedimentation control plan. Such documentation shall be
23 accomplished by initialing and dating a copy of the approved erosion and sedimentation
24 control plan or by completing, dating and signing an inspection report;
- 25 (d) — that maintenance and repair requirements for all temporary and permanent erosion and
26 sedimentation control measures, practices and devices have been performed. Such
27 documentation shall be accomplished by completing, dating and signing an inspection
28 report (the general storm water permit monitoring form may be used to verify the
29 maintenance and repair requirements); and
- 30 (e) — any significant deviations from the approved erosion and sedimentation control plan,
31 corrective actions required to correct the deviation and completion of the corrective
32 actions. Such documentation shall be accomplished by initialing and dating a copy of the
33 approved erosion and sedimentation control plan or by completing, dating and signing an
34 inspection report. A significant deviation means an omission, alteration or relocation of
35 an erosion or sedimentation control measure that prevents the measure from performing
36 as intended.
- 37 (2) — The documentation, whether on a copy of the approved erosion and sedimentation control plan or
38 an inspection report, shall include the name, address, affiliation, telephone number, and signature
39 of the person conducting the inspection and the date of the inspection. Any relevant licenses and
40 certifications may also be included. Any documentation of inspections that occur on a copy of the
41 approved erosion and sedimentation control plan shall occur on a single copy of the plan and that
42 plan shall be made available on the site. Any inspection reports shall also be made available on
43 the site.
- 44 (3) — The inspection shall be performed during or after each of the following phases of a plan:
- 45 (a) — installation of perimeter erosion and sediment control measures;
- 46 (b) — clearing and grubbing of existing ground cover;
- 47 (c) — completion of any phase of grading of slopes or fills that requires provision of temporary
48 or permanent ground cover pursuant to G.S. 113A-57(2);
- 49 (d) — completion of storm drainage facilities;
- 50 (e) — completion of construction or development; and
- 51 (f) — quarterly until the establishment of permanent ground cover sufficient to restrain erosion
52 or until the financially responsible party has conveyed ownership or control of the tract of
53 land for which the erosion and sedimentation control plan has been approved and the
54 agency that approved the plan has been notified. If the financially responsible party has
55 conveyed ownership or control of the tract of land for which the erosion and
56 sedimentation control plan has been approved, the new owner or person in control shall

1 ~~conduct and document inspections quarterly until the establishment of permanent ground~~
2 ~~cover sufficient to restrain erosion.~~

3
4 **15A NCAC 04B .0131 SELF-INSPECTIONS**

5 All land-disturbing activities required to have an approved erosion and sedimentation control plan under G.S. 113A-
6 54.1 shall conduct self-inspections for initial installation or modification of any erosion and sedimentation control
7 devices and practices described in an approved plan. In addition, weekly and rain-event self-inspections are required
8 by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000.

9 (1) For self-inspections required pursuant to G.S. 113A-54.1(e), the inspection shall be performed
10 during or after each of the following phases of the plan:

11 (a) initial installation of erosion and sediment control measures;

12 (b) clearing and grubbing of existing ground cover;

13 (c) completion of any grading that requires ground cover;

14 (d) completion of all land-disturbing activity, construction, or development, including
15 permanent ground cover establishment and removal of all temporary measures; and

16 (e) transfer of ownership or control of the tract of land where the erosion and sedimentation
17 control plan has been approved and work has begun. The new owner or person in control
18 shall conduct and document inspections until the project is permanently stabilized as in
19 Sub-Item (1)(c) of this Rule.

20 (2) Documentation of self-inspections performed under Item (1) shall include:

21 (a) Visual verification of ground stabilization and other erosion control measures and practices
22 as called for in the approved plan;

23 (b) Verification by measurement of settling basins, temporary construction entrances, energy
24 dissipators and traps.

25 (c) The name, address, organization affiliation, telephone number, and signature of the person
26 conducting the inspection and the date of the inspection shall be included, whether on a
27 copy of the approved erosion and sedimentation control plan or an inspection report. A
28 template for an example of an inspection and monitoring report is provided on the DEMLR
29 website at: [https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-](https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms)
30 [sediment-control/forms](https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms). Any relevant licenses and certifications may also be included.
31 Any documentation of inspections that occur on a copy of the approved erosion and
32 sedimentation control plan shall occur on a single copy of the plan and that plan shall be
33 made available on the site.

34 (d) A record of any "significant deviation" from any erosion or sedimentation control measure
35 from that on the approved plan. For the purpose of this rule, a "significant deviation" means
36 an omission, alteration or relocation of an erosion or sedimentation control measure that
37 prevents it from performing as intended. The record shall include measures required to
38 correct the deviation along with documentation of when those measures were taken.
39 Deviations from the approved plan may also be recommended to enhance the intended
40 performance of the sedimentation and erosion control measures.

41
42 *History Note: Authority G.S. 113A-54; 113A-54.1(e);*
43 *Eff. October 1, 2010.*

44
45 **15A NCAC 04B .0132 DESIGN STANDARDS FOR THE UPPER NEUSE RIVER BASIN (FALLS LAKE**
46 **WATERSHED)**

47 In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the
48 drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3.(a),
49 shall meet all of the following design standards for sedimentation and erosion control:

50 (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and
51 constructed to provide protection from the runoff of the 25-year storm that produces the maximum
52 peak rate of runoff as calculated according to procedures set out in the United States Department of
53 Agriculture, Natural Resources Soil Conservation Service's "National Engineering Field Handbook
54 630 for Conservation Practices" or according to procedures adopted by any other agency of the State
55 or the United States."

- 1 (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling
 2 efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the
 3 runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according
 4 to procedures in the United States Department of Agriculture, Natural Resources Soil Conservation
 5 Service's "National Engineering Field Handbook 630 for Conservation Practices" or according to
 6 procedures adopted by any other agency of the State or the United States."
- 7 (3) Newly constructed open channels shall be planned, designed, and constructed with side slopes no
 8 steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil
 9 conditions permit steeper side slopes or where the side slopes are stabilized by using mechanical
 10 devices, structural devices, or other ditch liners, as being sufficient to restrain accelerated erosion.
 11 The angle for side slopes shall be sufficient to restrain accelerated ~~erosion~~ erosion, as determined
 12 by the Division, based on soil conditions.
- 13 (4) For an area of land-disturbing activity where grading activities have been completed, temporary or
 14 permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but
 15 not later than seven days after completion of grading. For an area of land-disturbing activity where
 16 grading activities have not been completed, temporary ground cover shall be provided as follows:
- 17 (a) For an area with no slope, temporary ground cover shall be provided for the area if it has
 18 not been disturbed for a period of 14 days.
- 19 (b) For an area of moderate slope, temporary ground cover shall be provided for the area if it
 20 has not been disturbed for a period of 10 days. For purposes of this Item, "moderate slope"
 21 means an inclined area, the inclination of which is less than or equal to three units of
 22 horizontal distance to one unit of vertical distance
- 23 (c) For an area of steep slope, temporary ground cover shall be provided for the area if it has
 24 not been disturbed for a period of seven days. For purposes of this Item, "steep slope"
 25 means an inclined area, the inclination of which is greater than three units of horizontal
 26 distance to one unit of vertical distance.

27
 28 *History Note:* Authority S.L. 2009-486; G.S. 113A-54(b)
 29 *Eff. February 1, 2012.*

30
 31
 32 **SUBCHAPTER 4C - SEDIMENTATION CONTROL CIVIL PENALTIES**

33
 34 **15A NCAC 04C .0103 WHO MAY ASSESS**

35 The ~~Director~~ **Secretary** may assess civil penalties against any person responsible for a violation.

36
 37 *History Note:* Authority G.S. 113A-55; 113A-64; ~~143B-10~~; 143B-10(a);
 38 *Eff. February 1, 1976;*
 39 *Amended Eff. November 1, 1984*

40
 41 **15A NCAC 04C .0106 CRITERIA**

42 In determining the amount of the civil penalty assessment, the ~~Director~~ **Secretary** shall consider the following criteria:

- 43 (1) severity of the violation;
 44 (2) degree and extent of the harm;
 45 (3) type of violation;
 46 (4) duration;
 47 (5) cause;
 48 (6) extent of any off-site damage which may have resulted;
 49 (7) effectiveness of action taken by violator;
 50 (8) adherence to plan submitted by violator;
 51 (9) effectiveness of plan submitted by violator;
 52 (10) cost of rectifying any damage;
 53 (11) the violator's previous record in complying with the Act, or any rule or order rules of the
 54 Commission;

- (12) estimated cost of taking corrective sediment control actions; ~~and~~
- (13) staff investigative ~~costs~~; costs;
- (14) the amount of money the violator saved by noncompliance; and
- (15) whether the violation was committed willfully.

History Note: Authority G.S. 113A-54(b); 113A-55; 113A-64(a);
Eff. February 1, 1976;
Amended Eff. November 1, 1984; April 1, 1978.

15A NCAC 04C .0107 PROCEDURES: NOTICES

- (a) The notice of violation shall describe the violation ~~with reasonable particularity~~, request that all illegal activity cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be taken, shall specify a time period for compliance, and shall state that upon failure to comply within the allotted time, the person shall become subject to the assessment of a civil penalty for each day of the continuing violation beginning with the date of the violation.
- (b) The stop-work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the stop-work order shall be served upon persons the Department has reason to believe may be responsible for the violation pursuant to G.S. 1A-1, Rule 4.

History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1; 143B-10;
Eff. February 1, 1976;
Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992; May 1, 1990; November 1, 1984;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2001.

15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING

After receipt of notification of any assessment, the assessed person must select one of the following options within 30 days:

- (1) ~~tender payment; or~~
- (2) ~~file a petition for an administrative hearing in accordance with G.S. 150B-23.~~

History Note: Authority G.S. 113A-64; 143B-10; 150B-23;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; October 1, 1988; October 5, 1980; April 1, 1978.

15A NCAC 04C .0110 ADMINISTRATIVE HEARING

~~Administrative hearings shall be conducted in accordance with the procedures outlined in G.S. 150B-22 et seq. and the contested case procedures in 15A NCAC 1B .0200.~~

History Note: Authority G.S. 113A-55; 150B-22 et seq.;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; August 1, 1988; November 1, 1984; October 5, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

15A NCAC 04C .0111 FURTHER REMEDIES

~~No provision of this Subchapter shall be construed to restrict or impair the right of the Secretary, the Director, or the Sedimentation Control Commission to pursue any other remedy provided by law for violations of the Sedimentation Pollution Control Act.~~

History Note: Authority G.S. 113A-54; 113A-60; 113A-64 through 113A-66;

1 *Eff. February 1, 1976;*
2 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
3 *2016.*

7
8 **SUBCHAPTER 4D - LOCAL ORDINANCES**

9
10 **15A NCAC 04D .0102 MODEL ORDINANCE** 

11 ~~The commission has adopted a model ordinance. Local governmental units wishing to establish a local erosion and~~
12 ~~sedimentation control program may obtain a copy of the model ordinance upon writing to:~~

13 ~~North Carolina Department of Environment, Health, and Natural Resources~~
14 ~~Land Quality Section~~
15 ~~P.O. Box 27687~~
16 ~~Raleigh, North Carolina 27611~~

17
18 *History Note: Authority G.S. 113A-54(d); 113A-60;*
19 *Eff. February 1, 1976;*
20 *Amended Eff. March 14, 1980; February 23, 1979;*
21 *Summary Rule Filed January 26, 1982*
22 *Amended Eff. October 1, 1995; May 1, 1990; August 1, 1988; November 1, 1984.*

23
24
25 **SUBCHAPTER 04E - RULEMAKING PROCEDURES**

26
27 **SECTION .0100 - GENERAL PROVISIONS**

28
29 **15A NCAC 04E .0101 GENERAL PURPOSE** 

30 ~~Rules at 15A NCAC 1B .0100 are adopted by reference and with the rules of this Subchapter shall govern rule making~~
31 ~~hearings conducted under the purview of the commission.~~

32
33 *History Note: Authority G.S. 113A-54; 113A-55; 150B;*
34 *Eff. March 14, 1980;*
35 *Amended Eff. November 1, 1984;*
36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
37 *2016.*

38
39 **15A NCAC 04E .0102 DEFINITIONS** 

40 ~~As used in this Subchapter:~~

- 41 (1) ~~"Commission" means the North Carolina Sedimentation Control Commission.~~
42 (2) ~~"Director" means the Director of the Division of Energy, Mineral, and Land Resources of the~~
43 ~~Department of Environment, Health, and Natural Resources.~~

44
45 *History Note: Authority G.S. 113A-54; 113A-55;*
46 *Eff. March 14, 1980;*
47 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); May 1, 1990;*
48 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
49 *2016.*

50
51 **15A NCAC 04E .0104 COPIES OF RULES: INSPECTION RULES**

1 (a) Anyone desiring to obtain a copy of any or all of the rules of the ~~commission~~ Commission may do so by requesting
2 such from the ~~director~~ Director at the address of the ~~commission~~ Commission as set forth at Rule ~~0004~~ 0101 of
3 Subchapter A of this Chapter. The request must specify the rules requested, for example, 15A ~~NCAC 4,~~ NCAC 04,
4 Sedimentation Control, or 15A NCAC ~~4E, Rulemaking Procedures~~ 04B .0113 Responsibility for Maintenance. The
5 ~~director~~ Director may charge reasonable fees to recover mailing and duplication costs for requests of more than one
6 copy of the same rule(s).

7 (b) The rules of the ~~commission~~ Commission (15A NCAC ~~4 NCAC 04~~ and other documents specified in G.S. 150B-11
8 are available for public inspection at the Office of the Director (P.O. Box 27687, 512 N. Salisbury Street, Raleigh,
9 N.C. 27611) during regular office hours. can also be found on the website of the NC Office of Administrative Hearings
10 at: <https://www.oah.state.nc.us/>

11 *History Note: Authority G.S. 113A-54; 113A-55; ~~150B-11;~~*
12 *Eff. March 14, 1980;*
13 *Amended Eff. August 1, 1988; November 1, 1984;*
14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
15 *2016.*
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17

18 SECTION .0200 - PETITIONS FOR RULEMAKING

19 **15A NCAC 04E .0201 PETITIONS FOR RULEMAKING FORM AND CONTENT OF PETITION**

20 ~~Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Commission~~
21 ~~shall forward the petition to the Director at the address of the Commission in Rule .0101 of Subchapter A of this~~
22 ~~Chapter. The first page of the petition shall bear the notation: RULEMAKING PETITION RE and then the subject~~
23 ~~area (for example, RE PLAN REQUIREMENTS, RE PENALTIES, RE INSPECTIONS).~~
24

25 
26 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall make the
27 request in a petition to the Commission addressed to the:
28

29 Director
30 Division of Energy, Mineral, and Land Resources
31 1612 Mail Service Center
32 Raleigh, North Carolina 27699-1612
33

34 (b) The petition shall contain the following information:

- 35 (1) the text of the proposed rule(s) for adoption or amendment;
36 (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an
37 existing rule(s);
38 (3) a statement of the effect on existing rules or orders;
39 (4) the name(s) and address(es) of the petitioner(s); and

40 (c) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the
41 effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed
42 rule; and the impact of the rule on the public and regulated entities. The petitioner may include the following
43 information within the request:

- 44 (1) the statutory authority for the agency to promulgate the rules(s);
45 (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including
46 cost factors for persons affected by the proposed rule(s);
47 (3) a statement explaining the computation of the cost factors;
48 (4) a description, including the names and addresses, if known, of those most likely to be affected by the
49 proposed rule(s); and
50 (5) documents and data supporting the proposed rule(s).

51 (d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the
52 petitioner by the Director on behalf of the Commission.
53
54

55 *History Note: Authority G.S. 113A-54; ~~150B-16;~~ 150B-20*

1 *Eff. March 14, 1980;*
2 *Amended Eff. November 1, 1984;*
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
4 *2016.*

5
6 **15A NCAC 04E .0203 DISPOSITION OF PETITIONS**

7 ~~(a) The director will determine whether the petition contains sufficient information for the commission to determine~~
8 ~~whether the public interest will be served by granting the request. The director may request additional information~~
9 ~~from the petitioner(s), he may contact interested persons or persons likely to be affected by the proposed rule and~~
10 ~~request comments, and he may use any other appropriate method for obtaining additional information.~~

11 ~~(b) The commission will render a decision within 30 days after the petition is submitted. If the decision is to grant~~
12 ~~the petition, the director, within 30 days of submission, will initiate a rulemaking proceeding. If the decision is to~~
13 ~~deny the petition, the director will notify the petitioner(s) in writing, stating the reasons therefor.~~

14 ~~(c) If the commission is not scheduled to meet within 30 days of submission of a petition the director may either:~~

15 ~~(1) — accept the petition and initiate a rulemaking proceeding; or~~

16 ~~(2) — Ask the chairman of the commission to call a special meeting of the commission so that a decision~~
17 ~~can be made by the commission within the 30 day time period required by 150B-16 and in~~
18 ~~accordance with the procedures set out in (b) of this Rule.~~

19
20 *History Note: Authority G.S. 113A-54; 113A-55; 150B-16;*
21 *Eff. March 14, 1980;*
22 *Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981;*
23 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
24 *2016.*

25
26
27 **SECTION .0300 - NOTICE OF RULEMAKING HEARINGS**

28
29 **SECTION .0400 - RULEMAKING HEARINGS**

30
31 **15A NCAC 04E .0403 WRITTEN SUBMISSIONS**

32 ~~(a) Any person may file a written submission containing data, comments, or arguments after distribution or publication~~
33 ~~of a rulemaking notice until the day of the hearing, unless a longer period has been prescribed in the notice or granted~~
34 ~~upon request. These written comments should be sent to the director at the address of the commission.~~

35 ~~(b) The first page of any written submission shall clearly identify the rulemaking proceeding or proposed rule to~~
36 ~~which the comments are addressed and include a statement of the position of the person making the submission (for~~
37 ~~example, "In support of adopting proposed Rule .0000," "In opposition to adopting proposed Rule .0000").~~

38 ~~(c) Upon receipt of written comments, acknowledgment will be made with an assurance that the comments therein~~
39 ~~will be considered fully by the commission.~~

40
41 *History Note: Authority G.S. 113A-54; 150B-12(e);*
42 *Eff. March 14, 1980;*
43 *Amended Eff. June 5, 1981;*
44 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
45 *2016.*

46
47 **15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION**

48 ~~(a) Any interested person desiring a concise statement of the principal reasons for and against the adoption of a rule~~
49 ~~by the commission and the factors that led to overruling the considerations urged for or against its adoption may~~
50 ~~submit a request to the director of the address of the commission.~~

51 ~~(b) The request must be made in writing and submitted prior to adoption of the rule or within 30 days thereafter.~~

52
53 *History Note: Authority G.S. 113A-54; 150B-12(e);*
54 *Eff. March 14, 1980;*

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

15A NCAC 04E .0406 RECORD OF PROCEEDINGS

A record of all rulemaking proceedings will be maintained by the director for as long as the rule is in effect, and for five years thereafter, following filing with the Office of Administrative Hearings. Record of rulemaking proceedings will be available for public inspection during the hours of 8:30 AM to 5:30 PM on workdays.

History Note: Authority G.S. 113A-54; 150B-11(2); Eff. March 14, 1980; Amended Eff. August 1, 1988; November 1, 1984; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0500 - DECLARATORY RULINGS

15A NCAC 04E .0501 SUBJECTS OF DECLARATORY RULINGS: GENERALLY

Any person aggrieved by a statute administered or rule promulgated by the Commission may request a declaratory ruling as to either the manner in which a statute or rule applies to a given factual situation, if at all, or whether a particular agency rule is valid. For purposes of this Section, an aggrieved person means a person substantially affected by a statute administered by the Commission or a rule promulgated by the Commission. At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Sedimentation Control Commission may issue a declaratory ruling as provided in G.S. 150B-4.

History Note: Authority G.S. 113A-54; 150B-17; Eff. March 14, 1980; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS SUBMISSION OF REQUEST FOR RULING.

All requests for declaratory rulings shall be written and mailed to the director at the address of the commission. The first page of a request for a declaratory ruling shall bear the notation: REQUEST FOR DECLARATORY RULING. The request shall include the following information:

- (1) name and address of petitioner;
- (2) statute, rule, or order of the Commission to which petition relates;
- (3) statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him or her; and
- (4) a statement of whether an oral hearing is desired and, if so, the reason therefor.

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Energy, Mineral and Land Resources, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, NC 27699-1612.

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute or order upon which a ruling is desired;
- (3) a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute to a given factual situation;
- (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule, statute or order, or its potential application to petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a statement of the facts proposed for adoption by the Commission;
- (7) a draft of the proposed ruling; and

1 (8) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an
2 oral argument.

3 (c) A request for a ruling on the applicability of a rule, order or statute shall include a description of the specific factual
4 situation on which the ruling is to be based and documentation supporting those facts. A request for a ruling on the
5 validity of a Commission rule shall state the aggrieved person's reason(s) for questioning the validity of the rule and
6 a brief or legal memorandum supporting the aggrieved person's position. A person may ask for both types of
7 declaratory rulings in a single request.

8 (d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for
9 declaratory ruling. The request to intervene shall be determined by the Chairman.

10
11 **Note from the DEMLR staff. (Not a part of the rule proposal.)**

12
13 *The issue of whether to add language to the rule to allow 3rd party intervention for declaratory ruling requests was
14 originally suggested in 2017 by a member of the Rules Review Workgroup. The Workgroup proceeded, with the help
15 of DEMLR's attorney with the Office of General Counsel, to draft a rule that allowed for outside parties to intervene
16 in a petition for a Declaratory Ruling on an issue. The Workgroup did not voice any objections and the draft with the
17 proposed rules that allowed for interventions went forward. However, after a "pre-review," the legal staff of the
18 Rules Review Commission (RRC) voiced several concerns about the appropriateness and impact of the proposed
19 language, and recommended it not be included in the rules. The Workgroup member, who introduced this option,
20 stated in a note that he believed that "it serves a valuable purpose by offering an opportunity for others who may not
21 file a request for a ruling but have a strong interest to get their voices and comments on the record." He also stated
22 his belief that "declaratory rulings can decide key policy issues and unlike a standard rulemaking, where everyone
23 has a chance to offer their comments . . . a declaratory ruling is a quasi-judicial process" and doesn't offer that
24 opportunity. He stated his belief that "failure to include a mechanism for intervention effectively suppresses the voices
25 of all these interested, even though they may be strongly affected in the future by the policy choices and rationales
26 adopted by the Commission."*

27
28 *In Mid-May, upon reviewing the comments and concerns of the RRC legal staff, the Commission's counsel with the
29 Attorney General's Office voiced their concerns regarding issues and problems with the proposed rule. (All of the
30 yellow-highlighted type in this document are recommended rule changes from the Commission's counsel with the
31 Attorney General's Office.) They have recommended that the Commission not include third-party intervention in the
32 rules, however if the Commission decides it wants third-party intervention in the rules, the Commission's counsel has
33 provided language for third-party intervention that delegates to the Chairman the authority to determine on a case-
34 by-case basis whether to allow each individual request for intervention. The Commission's counsel recommends that
35 if the Commission decides it wants third party intervention in the rules, that only the language in **15A NCAC 04E**
36 **.0502(d) shown above**, highlighted in yellow, be used.*

37
38 *At the time of publishing this "RECOMMENDATIONS" document, the three-membered ad hoc Committee of the
39 Commission has discussed this issue but has not prepared a final report. Their recommendations will be given to the
40 full Commission prior to the May 29th meeting.*

41
42
43 *History Note: Authority G.S. 113A-54; ~~150B-17~~;*
44 *Eff. March 14, 1980;*
45 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
46 *2016.*

47
48 **15A NCAC 04E .0503 — DISPOSITION OF REQUESTS** *(This is the existing rule and is proposed to be deleted*
49 *and rewritten. There are two proposals presented below for discussion at the May 29th*
50 *Commission meeting.)*

51 ~~(a) Upon receiving a request, the director is authorized to initiate a declaratory ruling proceeding to receive~~
52 ~~information concerning the request. A declaratory ruling proceeding may consist of written submissions, an oral~~
53 ~~hearing, or other procedures as may be appropriate in the circumstances of the particular request. If the proceeding~~
54 ~~takes the form of an oral hearing the director may direct that the proceeding take place before the commission.~~

1 ~~(b) The director will compile the information collected in the proceeding, along with other relevant information, in a~~
2 ~~recommendation to the commission on whether to issue the ruling and what the ruling should be.~~

3 ~~(c) A decision whether to issue the ruling will be made by the commission at the next regularly scheduled meeting of~~
4 ~~the commission within the 60 day period required by 150B-17 and after the director's recommendation is presented.~~
5 ~~If no meeting is scheduled within that time period, the director will ask the chairman of the commission to call a~~
6 ~~special meeting so that the commission can comply with the requirements of G.S. 150B-17.~~

7 ~~(d) If the decision of the commission is to issue the ruling, the ruling will be issued by the commission with the 60~~
8 ~~day period required by G.S. 150B-17. If necessary, the chairman of the commission will call a special meeting so that~~
9 ~~the commission can comply with this requirement.~~

10 ~~(e) If the decision of the commission is to deny the request, the director will notify the petitioner(s) in writing stating~~
11 ~~the reasons therefor.~~

12 ~~(f) For purposes of this Rule, the commission will ordinarily refuse to issue a declaratory ruling:~~

13 ~~(1) unless the rule is unclear on its face;~~

14 ~~(2) unless the petitioner shows that the circumstances are so changed since the adoption of the rule that~~
15 ~~such a ruling would be warranted;~~

16 ~~(3) unless the petitioner shows that the agency did not give to the factors specified in the request for a~~
17 ~~declaratory ruling a full consideration at the time the rule was issued;~~

18 ~~(4) where there has been a similar controlling factual determination in a contested case or where the~~
19 ~~factual context being raised for a declaratory ruling was specifically considered upon the adoption~~
20 ~~of the rule or directive being questioned, as evidenced by the rulemaking record; or~~

21 ~~(5) where the subject matter of the request is involved in pending litigation in any state or federal court~~
22 ~~in North Carolina.~~

24 **15ANCAC 04E .0503 DISPOSITION OF REQUESTS FOR DECLARATORY RULING**

26 Workgroup/DEMLR attorney's 2017 version

27 (a) Requests for declaratory ruling by the Commission shall be submitted in writing to the Chair of the Commission
28 at the Division of Energy, Mineral and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612, with a
29 copy to the Director by first class mail, postage prepaid with a copy sent via email to the Clerk of the Commission at
30 sedimentation.commission.clerk@ncdemlr.gov.

31 (b) The Director shall post the request to the DEQ website. The post shall specify that parties may intervene by
32 submitting to the Director within 15 days after the posting of the request, a petition in writing, setting forth a
33 justification for intervention unless it is previously denied by the Commission Chair.

34 (c) Upon expiration of the 15-day period for petitions to intervene, the Commission Chair shall grant or deny any
35 submitted petitions.

36 (d) Petitions to intervene shall not be granted unless the requestor provides in the petition, facts that show that the
37 intervenor would be a person aggrieved, as that term is defined in G.S. 150B-2.

38 (e) For purposes of this Rule, the Commission Chair shall deny a request to issue a declaratory ruling, if any of the
39 following is found:

40 (1) a declaratory ruling has previously been issued determining the validity of, or interpreting the
41 applicability of facts to, the same rule upon which a declaratory ruling is sought, unless the petitioner
42 shows that the circumstances applicable to the request are so changed since the issuance of the prior
43 declaratory ruling, or the facts are so clearly distinguishable from the facts presented in the prior
44 declaratory ruling, that such a ruling would be warranted;

45 (2) during the rulemaking process, or in deliberation of a prior request for declaratory ruling, full
46 consideration was given to the factors or issues raised in a request seeking to have the validity of a
47 rule determined, as evidenced by the record of the rulemaking or declaratory ruling process;

48 (3) a similar controlling factual determination was made in a contested case in the Office of
49 Administrative Hearings;

50 (4) the factual context being raised for a declaratory ruling was considered upon the adoption of the rule
51 or directive being questioned, as evidenced by the rulemaking record;

52 (5) there is litigation pending in any state or federal court in North Carolina in which the interpretation
53 of the rule or statute pertinent to the request is at issue in the litigation; or

54 (6) evidence provided in the request did not demonstrate that the requestor is a person aggrieved.

1 **15A NCAC 04E .0503 DISPOSITION OF REQUEST** 

2
3 *Attorney General's Office attorney's recommendation, May 2019*

4 (a) The Commission Chairman shall make a determination on the completeness of the request for declaratory
5 ruling based on the requirements of this Section, and the Chairman shall make a recommendation to the
6 Commission on whether to grant or deny a request for a declaratory ruling.

7 (b) Before deciding the merits of the request, the Commission may:

- 8 (1) request additional written submissions from the petitioner(s);
- 9 (2) request a written response from the Department, or any other person; and
- 10 (3) hear oral arguments from the petitioner(s) and the Department or their legal counsel.

11 (c) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable,
12 the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the
13 ruling, stating the reason(s) for the refusal to issue a ruling on the request.

14 (d) "Good cause" as set out in paragraph (c) of this Rule shall include:

- 15 (1) finding that there has been a similar determination in a previous contested case or
16 declaratory ruling;
- 17 (2) finding that the matter is the subject of a pending contested case hearing or
18 litigation in any North Carolina or federal court;
- 19 (3) finding that no genuine controversy exists as to the application of a statute, order or rule to the
20 specific factual situation presented; or
- 21 (4) finding that the factual context put forward as the subject of the declaratory ruling
22 was specifically considered upon the adoption of the rule being questioned, as
23 evidenced by the rulemaking record.

24 (e) The Commission, through the Department, shall keep a record of each declaratory ruling, which shall include at a
25 minimum the following items:

- 26 (1) the request for a ruling;
- 27 (2) any written submission by a party;
- 28 (3) the given state of facts on which the ruling was based;
- 29 (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary
30 of all arguments;
- 31 (5) any other matter considered by the Commission in making the decision; and
- 32 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling,
33 together with the reasons therefore.

34 (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

- 35 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant
36 provisions of the statute or rule are amended or altered;
- 37 (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or
38 rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the
39 declaratory ruling;
- 40 (3) the Commission changes the declaratory ruling prospectively; or,
- 41 (4) any court sets aside the declaratory ruling in litigation between the Commission or
42 Department of Environmental Quality and the party requesting the ruling.

43 (g) The party requesting a declaratory ruling may agree to allow the Commission to issue a ruling on the merits of
44 the request beyond the time allowed by G.S. 150B-4.

45 (h) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a
46 contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the
47 merits within the time allowed by G.S. 150B-4 shall constitute a denial of the request as well as a denial of the
48 merits of the request and shall be subject to judicial review.
49

50 **15A NCAC 04E .0504 RECORD OF DECISION** 

51 A record of all declaratory rulemaking proceedings will be maintained in the director's office for as long as the ruling
52 is in effect and for five years thereafter. This record will contain: the petition, the notice, all written submissions filed
53 in the request, whether filed by the petitioner or any other person, and a record or summary of oral presentations, if
54 any. Records of declaratory rulemaking proceedings will be available for public inspection during the regular office
55 hours of the director.
56

1 *History Note: Authority G.S. 113A-54; 150B-11;*
2 *Eff. March 14, 1980;*
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
4 *2016.*
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