

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](#)

4
5 **SUBCHAPTER 05A - ORGANIZATION AND ADMINISTRATION**

6
7 **SECTION .0100 – MINING AND ENERGY COMMISSION**

8
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.

13
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. Xxxx, 2023; August 1, 2012 (see S.L. 2012-143, s.1.(d)); April 1, 1990.*

19
20
21 **SECTION .0200 - ADMINISTRATION**

22 **15A NCAC 05A .0202 ~~DELEGATION~~ AUTHORITIES AND DEFINITIONS**

23 (a) ~~The Secretary of the Department of Environmental Quality shall delegate to the Director The Director, Division~~
24 ~~of Energy, Mineral, and Land Resources, Department of Environment, Health, and Natural Resources, shall have the~~
25 ~~following powers and duties with regard to necessary for the administration of the Mining Act of 1971-1971. These~~
26 ~~powers and duties shall include, but are not limited to, the following:~~

27 (1) the issuance, denial, modification, ~~renewal~~, suspension, transfer, and revocation of permits;

28 (2) the approval of reclamation plans;

29 (3) the initiation of forfeiture proceedings;

30 (4) the giving of notices, setting of hearings and taking of action upon findings of violations; and

31 (5) the institution of all criminal and civil actions.

32 (b) ~~The Director, Division of Energy, Mineral, and Land Resources, Department of Environment, Health, and Natural~~
33 ~~Resources shall have~~ The Secretary of the Department of Environmental Quality shall delegate to the Director the
34 following powers and duties with regard to the administration of the Control of Exploration for Uranium in North
35 Carolina Act of 1983. These powers and duties shall include, but are not limited to, the following:

36 (1) the issuance, denial, modification, renewal, suspension, transfer, and revocation of permits;

37 (2) the review of the plans for the initiation and approval of the abandonment of affected land;

38 (3) the inspection and approval of the abandonment of affected land;

39 (4) the giving of notices, setting of hearings, and taking of action upon findings of violations;

40 and

41 (5) the institution of all criminal and civil actions.

1 (c) These terms as used in Subchapters 05A, 05B, 05F and 05G have these meanings:

2 (1) "Commission" means the Mining Commission as is established in [G.S. 143B-290](#).

3 (2) "Department" means the Department of Environmental Quality.

4 (3) "Director" means the Director of the Division of Energy, Mineral and Land Resources of the
5 Department of Environmental Quality.

6
7 *History Note: Authority G.S. 74-50 through 74--53; 74--56 to 74---59; 74-75 through 74-85; 74---87;*
8 *143B--290;*
9 *Eff. February 1, 1976;*
10 *Amended Eff. January 31, 1979; September 3, 1976;*
11 *Readopted Eff. August 1, 1982;*
12 *Amended Eff. Xxxxx, 2023; August 1, 2012 (see S.L. 2012-143, s.1.(f)); April 1, 1990; December 1,*
13 *1983.*

16 SUBCHAPTER 5B - PERMITTING AND REPORTING

17 15A NCAC 05B .0101 PURPOSE

18 15A NCAC 05B .0102 ACTIVITIES REQUIRING PERMITS

19 15A NCAC 05B .0103 BONDING REQUIREMENTS

20
21
22 (a) After an application for a new mining permit or permit ~~renewal, modification,~~ modification, or transfer is
23 considered approvable by the Department, an applicant or permittee must file a bond with the Department in an amount
24 to be determined by the ~~Director.~~ Director based on the conditions in this rule and [G.S. 74-54](#).

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

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

35 (d) The amount of the bond shall be based on the costs to reclaim the affected land as determined by the reclamation
36 plan approved pursuant to [G.S. 7453](#) and ~~15A NCAC 5B .0004(b).~~ 15A NCAC 5B .0104(b). The bond amount shall
37 be based on a range of five hundred dollars (\$500.00) to five thousand (\$5000.00) per acre of land approved by the
38 Department to be affected. If the mining permit is modified to increase the total affected land, the bond shall be
39 increased accordingly. The Director shall consider the method and extent of the required reclamation for a particular

1 site in determining the bond amount. As areas at a site are reclaimed and formally released by the Department, the
 2 permittee may substitute a bond in an amount covering the remaining affected land at the site for the bond previously
 3 filed with the Department; otherwise, without such bond substitution, the Department shall retain the previously filed
 4 bond until all reclamation has been completed and approved by the Department.

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

9 (1) the applicant or permittee with separate bonds may substitute a ~~five hundred thousand dollar~~
 10 ~~(\$500,000)~~ one million dollars (\$1,000,000) blanket bond to be used for all future sites, or

11 (2) the applicant or permittee with ~~five hundred thousand dollar (\$500,000)~~ one million dollars
 12 (\$1,000,000) blanket bond covering all sites may use that blanket bond for all future sites,

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

18 (f) For the purposes of this Rule, a good operating record is defined as two consecutive years of operation within the
 19 State of North Carolina without final assessment of a civil penalty or other enforcement action pursuant to G.S. 74-
 20 64, or having a permit suspended or revoked under G.S. 74-58, or having a bond or other surety forfeited under G.S.
 21 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](#).

22
 23 *History Note:* Authority G.S. 7451; 7454; [143B-290](#);

24 *Eff. February 1, 1976;*

25 *Amended Eff. January 1, 1994; April 1, 1990; November 1, 1985; November 1, 1984.*

26 27 **15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION**

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

- 31 (1) materials to be mined;
 32 (2) method of mining;
 33 (3) expected depth of mine;
 34 (4) size of the mine, including:
 35 (A) acreage for tailings ponds,
 36 (B) acreage for stockpiles,
 37 (C) acreage for waste piles,
 38 (D) acreage for processing plants,

- 1 (E) acreage for mine excavation,
 2 (F) acreage for annual disturbance;
 3 (5) anticipated effect on wildlife, freshwater, estuarine or marine fisheries;
 4 (6) whether or not the operation will have a ~~waste water~~ wastewater discharge ~~or air contaminant~~
 5 ~~emission~~ which will require a permit from the ~~division of environmental management;~~ Division
 6 of Water Resource or an air contaminant emission which will require a permit from the Division of
 7 Air Quality;
 8 (7) method to prevent physical hazard to any neighboring dwelling house, school, church, hospital,
 9 commercial or industrial building, or public road if the mining excavation will come within 300 feet
 10 thereof;
 11 (8) measures to be taken to insure against landslides and acid water pollution;
 12 (9) measures to be taken to minimize siltation of streams, lakes, or adjacent properties during the mining
 13 operation;
 14 (10) measures to be taken to screen the operation from public view.
 15 (b) Information required in the reclamation plan shall include:
 16 (1) intended plan for overall mine reclamation, subsequent land use and the general methods to be used
 17 in reclaiming;
 18 (2) intended practices to be taken to protect adjacent surface resources;
 19 (3) intended methods to prevent or eliminate conditions hazardous to animal or fish life in or adjacent
 20 to the affected areas;
 21 (4) intended methods of rehabilitation of settling ponds;
 22 (5) intended methods of restoration or establishment of stream channels and stream beds to a condition
 23 minimizing erosion, siltation and other pollution;
 24 (6) intended measures to stabilize slopes;
 25 (7) intended measures to provide for safety to persons and adjoining property in excavation in rock;
 26 (8) intended measures of disposal of mining refuse and control of contaminants;
 27 (9) provisions to prevent collection of noxious, odious or foul water in mined areas; and
 28 (10) plan for revegetation and reforestation or other surface treatment of the affected areas which plan
 29 must be approved in writing by one of the following prior to submission of the application:
 30 (A) Authorized ~~representatives~~ representative of the local soil and water conservation district
 31 having jurisdiction over lands in question;
 32 (B) Authorized ~~representatives~~ representative of the ~~division of forest resources, Department~~
 33 ~~of Environment, Health, and Natural Resources;~~ North Carolina Forest Service within the
 34 Department of Agriculture and Consumer Services;
 35 (C) NC Cooperative Extension County agricultural extension chairmen county director in a
 36 county listed in the reclamation plan or research and extension personnel headquartered at

- 1 North Carolina State University in the ~~school of agriculture and life sciences~~ School of
2 Agriculture and Life Sciences;
- 3 (D) North Carolina licensed landscape ~~architects~~; Architect pursuant to G.S. 89A;
- 4 (E) Private consulting ~~foresters~~ forester referred by the ~~division of forest resources,~~
5 Department of Environment, Health, and Natural Resources; Division of Forest Resources,
6 Department of Environmental Quality; or
- 7 (F) Others as may be approved by the ~~department~~; Department; Provided that areas expected
8 to be in use beyond the maximum permissible permit period, such as processing plants or
9 stockpiles, do not require a specific revegetation plan;
- 10 (11) time schedule of reclamation that provides that reclamation activities be conducted simultaneously
11 with mining operations whenever feasible and in any event be initiated at the earliest practicable
12 time after completion or termination of mining on any segment and completed within two years.
- 13 (c) In addition to the application form, the operator shall also submit ~~two copies~~ a copy of a county map showing the
14 mine location and ~~two copies~~ a copy of a mine map. Mine maps should be accurate drawings, aerial photographs or
15 enlarged topographic maps of the mine area and must ~~clearly~~ show the following:
- 16 (1) property lines or affected area of mining operation;
- 17 (2) outline of pits;
- 18 (3) outline of stockpile areas;
- 19 (4) outline of overburden disposal areas;
- 20 (5) location of processing plants (Processing plants may be described as to location and distance from
21 ~~mine if sufficiently far removed.~~; the mine if not contiguous to the mine property.);
- 22 (6) location and name of streams and lakes;
- 23 (7) outline of settling ponds;
- 24 (8) location of access roads;
- 25 (9) mine permit boundaries;
- 26 (10) map legend:
- 27 (A) name of company,
- 28 (B) name of mine,
- 29 (C) north arrow,
- 30 (D) county,
- 31 (E) scale,
- 32 (F) date prepared,
- 33 (G) name and title of person preparing map; and
- 34 (11) names of owners of record, both public and private, of all adjoining ~~land~~ land as is specified in
35 G.S. 74-50.
- 36 The mine maps should be correlated with the reclamation plan. The approximate areas to be mined during the life of
37 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
2 reclaimed 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 about property ownership in a manner
9 ~~reasonable~~ calculated to identify the owners of all adjoining land and approved by the ~~department~~
10 Department. The proposed mining site means all land to be included within the proposed permitted
11 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) As is specified in G.S. 74-50, Proof ~~proof~~ satisfactory to the ~~department~~ Department that the
16 applicant has made a ~~reasonable~~ the required effort to notify all owners of record of all adjoining
17 land and the chief administrative ~~officer~~ officers of the county ~~or~~ and municipality of the pending
18 application. Proof satisfactory to the ~~department~~ Department shall include an affidavit by the
19 applicant ~~that he has caused~~ stating that a notice of the pending application ~~to be~~ has been sent by
20 certified or registered mail to all known adjoining owners and to the chief administrative ~~officer~~
21 officers of the county or municipality. Other means of notice shall be satisfactory if approved in
22 advance by the ~~department~~ Department.

23

24

25 *History Note: Authority G.S. 74-63; 74--51; 74---53;*

26 *Eff. February 1, 1976;*

27 *Amended Eff. Xxxxx, 2023; April 1, 1990; May 1, 1982; September 1, 1979; January 31, 1979.*

28

29 **15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT**

30 To assure that the operation will comply fully with the requirements and objectives of the Mining Act of 1971, the
31 ~~director~~ Director may ~~approve~~ require that an application or reclamation plan include certain conditions. ~~conditions~~
32 such as: ~~Such conditions of application approval may include:~~

33 (1) additional erosion control measures to be installed during the mining ~~operation;~~ operation as
34 specified in G.S. 74-51;

35 (2) a ~~natural~~ vegetated buffer ~~to be left~~ between any stream and the affected ~~land.~~ land when specified
36 in state or local stream protection requirements.

- 1 (3) visual screening such as existing ~~natural~~ vegetation, vegetated earthen berms, tree plantings at
 2 staggered spacing, etc. to be installed and maintained as feasible between any affected land and any
 3 adjoining property containing occupied buildings or public access within view of the affected land;
 4 (4) erosion control measures to be taken during the construction and operation of all haul roads or access
 5 roads to minimize offsite damage from ~~sediment~~; sediment.

6
 7 *History Note:* Authority G.S. 74-63; 74---51;
 8 Eff. February 1, 1976;
 9 Amended Eff. May 1, 1992; November 1, 1984.

10 **15A NCAC 05B .0106 STANDARDS FOR DENYING AN APPLICATION**

11 An application for a mining permit ~~including new permits, modified permits and renewal permits~~, may be denied when
 12 the Department finds that any adverse conditions of G.S. 74-51(d) are expected to occur. ~~Operation will have an~~
 13 ~~unduly adverse effect on wildlife or fisheries by:~~

- 14
 15 (1) substantial siltation of streams or lake beds, increasing the average water temperature of adjacent
 16 waterways to a temperature detrimental to the preexisting aquatic wildlife; or
 17 (2) other conditions designated by the North Carolina Wildlife Resources Commission as being
 18 unduly detrimental to wildlife.

19
 20 *History Note:* Authority G.S. 74-51; 74--58; 74---63;
 21 Eff. February 1, 1976;
 22 Amended Eff. November 1, 1984.

23 **15A NCAC 05B .0107 MODIFICATION OF MINING PERMIT**

24 **15A NCAC 05B .0108 RENEWAL OF MINING PERMIT**

25 **15A NCAC 05B .0109 STANDARDS FOR SUSPENDING OR REVOKING A MINING PERMIT**

26
 27
 28 *History Note:* Authority G.S. 74-52; 74--57; 74---58;
 29 Eff. February 1, 1976;
 30 Repealed Eff. November 1, 1984.

31 **15A NCAC 05B .0110 MINING RECLAMATION REPORTS**

32
 33 ~~The mine operator shall, by February 1 of each year during the life of the permitted operation, and within 30 days of~~
 34 ~~completion or termination of mining on an area under permit, file with the department a mining reclamation report~~
 35 ~~on a form prescribed by the department. The mine operator shall complete an annual mining reclamation report as~~
 36 ~~required by § 74-55. In the event of permit release, the operator shall complete a release request which includes the~~
 37 ~~details found on the reclamation report.~~

38
 39 *History Note:* Authority G.S. 74-55; 143B---290;
 40 Eff. March 30, 1978;
 41 Amended Eff. November 1, 1984.

1
2 **15A NCAC 05B .0111 PUBLIC HEARINGS**

3 (a) If the ~~department~~ Department determines that there exists a significant public interest in an application for a new
4 mining permit, or for a modification that adds land to the existing permit, the ~~director~~ Director shall appoint a hearing
5 officer to conduct a public hearing on the application which shall be held no ~~sooner than 20 or~~ later than ~~60 days~~ 90
6 days of the filing of the application and before the ~~department~~ Department makes its final decision regarding the
7 application.

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

13 (c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The
14 hearing officer may impose ~~reasonable~~ limitations on the length of time that any person may speak and may summarize
15 comments rather than recording them in full. The hearing officer may allow additional written comments to be
16 submitted after the hearing within a period of time he or she deems appropriate which shall not exceed ten days.

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

22
23 *History Note: Authority G.S. 74-51; 74-63; 74-86;*
24 *Eff. May 1, 1982.*

25
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 (b) No fee is required for administrative changes initiated by the Director to correct processing errors, to change
32 permit standards or to implement new standards.

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

~~(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) e) 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
	50 or more	1000	500	500	
QUARRY, INDUSTRIAL MINERALS, DIMENSION STONE	1 but less than 10		250	100	100
	10 but less than 25		1000	250	500
	25 but less than 50		1500	500	500
	50 or more	2500	500	500	
PEAT & PHOSPHATE GOLD (HEAP LEACH), TITANIUM & OTHERS	1 or more		2500	500	500
	1 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~~

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 Underlines are words proposed for insertion.

1 ~~shows that the statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for~~
 2 ~~the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.~~

3
 4 *History Note:* *Filed as a Temporary Rule Eff. November 1, 1990, for a Period of 180 Days to Expire on April 29,*
 5 *1991;*

6 *Authority G.S. 143B--290;*

7 *ARRC Objection Lodged November 14, 1990;*

8 *ARRC Objection Removed December 20, 1990;*

9 *Eff. January 1, 1991;*

10 *Amended Eff. December 1, 1991.*

11 12 **15A NCAC 05B .0113 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)**

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

19
 20 *History Note:* *Authority G.S. 74-51; 74--52; 74--63; 143B---290; Note:*

21 *RRC Objection Eff. September 15, 1994 due to lack of statutory authority;*

22 *Eff. November 1, 1994;*

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

24 25 26 **SUBCHAPTER 05F - CIVIL PENALTIES**

27 28 **15A NCAC 05F .0101 PURPOSE AND SCOPE**

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

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, 2012 (see S.L. 2012-143, s.1.(d)); November 1, 1984.*

35 36 **15A NCAC 05F .0102 DEFINITIONS**

37 The terms used herein shall be as defined in G.S. 74-49 as follows:

38 (1) "Director" means the Director, Division of Energy, Mineral, and Land Resources;

39 (2) "Regional Engineer", means any regional engineer of the Land Quality Section, Division of Energy, Mineral,
 40 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
7 **15A NCAC 05F .0103 WHO MAY ASSESS**

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

9
10 *History Note: Authority G.S. 74-61; ~~74-62;~~ 74-63; 74-64; 143B-10;*

11 *Eff. May 1, 1982.*

12
13 **15A NCAC 05F .0105 CIVIL PENALTY FOR MINING WITHOUT A PERMIT**

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

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

26 *History Note: Authority G.S. 74-60; 74--61; 74--63; 74--64; 143--B-10;*

27 *Eff. May 1, 1982;*

28 *Amended Eff. December 1, 1988; November 1, 1984.*

29
30 **15A NCAC 05F .0106 CIVIL PENALTY FOR VIOLATING OPERATING PERMIT**

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

37 (b) If the violator does not comply with the requirements of the notice of violation within the time period specified in
38 the notice, the ~~director~~ Director may assess a civil penalty for any violation(s) committed after the date of receipt of
39 the notice of violation. The civil penalty assessment shall specify ~~with reasonable particularity~~ the violation(s) for

1 which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return
2 receipt requested.

3 *History Note:* Authority G.S. 74-60; 74-61; ~~74-62~~; 74-63; 74-64; 143B-10;
4 Eff. May 1, 1982;
5 Amended Eff. November 1, 1984.

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9 **15A NCAC 05F .0107 CRITERIA FOR DETERMINING AMOUNT OF PENALTY**

10 ~~In determining the amount of a civil penalty assessment, the director shall consider the following criteria insofar as~~
11 ~~they are appropriate to the violation:~~

- 12 ~~(1) nature of the violation;~~
- 13 ~~(2) degree and extent of the harm, including off site damage;~~
- 14 ~~(3) duration of the violation;~~
- 15 ~~(4) cause of the violation;~~
- 16 ~~(5) cost of compliance and rectifying any harm or damage;~~
- 17 ~~(6) violator's previous record of compliance with the Mining Act, or any rules promulgated thereunder,~~
- 18 ~~or any mining permit issued to the violator;~~
- 19 ~~(7) staff investigative costs ; and~~
- 20 ~~(8) effectiveness of any action taken by the operator .~~

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Statute says: "Department shall consider:"

1. "Degree and extent of harm caused by violation."
2. "Cost of rectifying the damage"
3. "The amount of money the violator saved"
4. "whether violation committed willfully"
5. "prior record of the violator"

- In 74-64(a)(1), statute says Dept. can assess \$500 civil penalty for each day of violation of any rules or the Act. May not need the rule.

The gray box shows quotes from the Mining statutes that can be used in determining the amount of an assessment. In the past, the RRC has limited assessment criteria rules to only those specifically stated in statute and then said that those remaining were duplications and not needed in rules. We expect they will do the same here.

34 *History Note:* Authority G.S. 74-61; ~~74-62~~; 74-63; 74-64; 143B-10;
35 Eff. May 1, 1982.

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37 **15A NCAC 05F .0108 ADMINISTRATIVE REMEDIES**

38 Within ~~60 days~~ 30 days after receipt of notification of any civil penalty assessment, the person against whom the civil
39 penalty is assessed may contest the decision of the department by filing a petition as described in G.S. 74-61 and G.S.
40 150B-23.

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42 *History Note:* Authority G.S. 74-61; ~~74-62~~; 74-63; 74-64; 143B-10;
43 Eff. May 1, 1982;

~~Strikethroughs~~ are words proposed for removal.
Underlines are words proposed for insertion.

1 *Amended Eff. August 1, 1988.*

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3 **15A NCAC 05F .0109 HEARING PROCEDURES**

4 ~~(a) The final decision for purposes of judicial review under G.S. 74-61 shall be made by a majority vote of a quorum~~
5 ~~of the Mining and Energy Commission.~~

6 ~~(b) All hearings shall be conducted in accordance with the departmental hearing procedures in 15A NCAC 1B .0200~~
7 ~~et seq., and Chapter 150B of the General Statutes.~~

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9 *History Note: Authority G.S. 74-61; 74-62; 74-63; 143B-10; 150B-23;*

10 *Eff. May 1, 1982;*

11 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d)); August 1, 1988.*

12
13 **15A NCAC 05F .0110 TENDERS OF PAYMENT**

14 The director shall accept and acknowledge all tenders of payment.

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16 *History Note: Authority G.S. 74-61; ~~74-62~~; 74-63; 74-64; 143B-10;*

17 *Eff. May 1, 1982.*

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19 **15A NCAC 05F .0111 REFERRAL TO ATTORNEY GENERAL**

20 (a) If the person against whom a civil penalty is assessed, fails to pay the assessment ~~respond~~ within ~~60 days~~ 30 days
21 as provided in G.S. 74-64(a)(3), ~~Rule .0008~~ nor file a contested case as provided in G.S. 74-61 during that time, the
22 ~~director~~ Director shall refer the matter to the Attorney General to recover the amount of the civil penalty.

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

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27 *History Note: Authority G.S. 74-61; ~~74-62~~ 74-63; 74-64; 143B-10;*

28 *Eff. May 1, 1982.*

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30 **15A NCAC 05F .0112 FURTHER REMEDIES**

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

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35 *History Note: Authority G.S. 74-61; ~~74-62~~; 74-63; 74-64; 143B-10;*

36 *Eff. May 1, 1982;*

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

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4 **SUBCHAPTER 5G - URANIUM EXPLORATION REGULATIONS**

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6 **15A NCAC 05G .0101 PURPOSE**

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8 *History Note: Authority G.S. 143B-290(1)(e); 74--75 through 74---89;*
9 *Eff. December 1, 1983;*
10 *Repealed Eff. August 1, 1988.*

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12 **15A NCAC 05G .0102 ACTIVITIES REQUIRING PERMITS**

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14 *History Note: Authority G.S. 74-76; 74---77;*
15 *Eff. December 1, 1983;*
16 *Repealed Eff. November 1, 1984.*

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18 **15A NCAC 05G .0103 PROCEDURES FOR OBTAINING PERMITS**

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

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21 *History Note: Authority G.S. 74-77 through 74---89;*
22 *Eff. December 1, 1983.*

23
24 **15A NCAC 05G .0104 ABANDONMENT PLAN: BONDING REQUIREMENTS**

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

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

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

1 Department may negotiate a different bond amount that will assure adequate abandonment in the
2 event of bond forfeiture.

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

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6 *History Note:* *Authority G.S. 74-78; 74--79; 74---86;*
7 *Eff. December 1, 1983.*

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9 **15A NCAC 05G .0105 DRILLING: CASING: TESTING AND ABANDONMENT**

10 The methods and procedures utilized in drilling, casing, testing and abandonment shall be in accordance with the
11 requirements of Title 15A NCAC Subchapter 2C, Section .0100, Criteria and Standards Applicable to Water Supply
12 and Certain Other Type Wells.

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14 *History Note:* *Authority G.S. 74-78; 74--86; 143B---290;*
15 *Eff. December 1, 1983.*