

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

**Notice** is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Environmental Quality intends to readopt with substantive changes the rules cited as 15A NCAC 01C .0101, .0103-.0109, .0206-.0208, .0305, .0306, .0405-.0411 and repeal through readoption the rules cited as 15A NCAC 01C .0205 and .0304.

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-main/proposed-rules>

**Proposed Effective Date:** March 1, 2022

**Public Hearing:**

**Date:** December 2, 2021

**Time:** 5:00 p.m.

**Location:**

**WebEx link:** <https://ncdenrits.webex.com/ncdenrits/onstage/g.php?MTID=efa9744ccc8b4b8711e6ffe493ca18a2b>

**WebEx password:** NCDEQ

**Audio Conference:** 1-415-655-0003

**Audio Conference Access code:** 2437 801 8812

If you wish to speak at the virtual public hearing, you must register before noon on December 2, 2021. To register, please use the following link: <https://forms.office.com/g/ESsj4Jzfkq> or QR Code:



**Reason for Proposed Action:** G.S. 150B-21.3A requires state agencies to review existing rules every ten years, determine which rules are still necessary, and either readopt or repeal each rule. Two rules are proposed for repeal. 15A NCAC 01C .0205 is proposed for repeal because the content of the first sentence is being moved to 15A NCAC 01C .0109 and the second sentence was duplicative of language that was in and continues to be in 15A NCAC 01C .0109. 15A NCAC 01C .0304 is proposed for repeal because the significance of the minimum criteria and its relationship to the statutory thresholds is more completely described in 15A NCAC 01C .0206, .0306, and .0405. The remaining rules are proposed for readoption and all proposed revisions are technical in nature for the purpose of providing clarity, updating agency names, recognizing that some divisions are no longer within DEQ, reducing redundancy with other State regulations, and updating language to reflect changes to North Carolina General Statutes.

**Comments may be submitted to:** Jennifer Everett, 1601 Mail Service Center, Raleigh, NC 27699-1601; email [jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)

**Comment period ends:** December 14, 2021

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

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

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

### CHAPTER 01 - DEPARTMENTAL RULES

#### SUBCHAPTER 01C - CONFORMITY WITH NORTH CAROLINA ENVIRONMENTAL POLICY ACT

## 15A NCAC 01C .0101 STATEMENT OF PURPOSE, POLICY, AND SCOPE

(a) The purpose of the rules in this Subchapter is to establish procedures within the Department of ~~Environment and Natural Resources (DENR)~~ Environmental Quality (DEQ) ~~for conforming with related~~ to the North Carolina Environmental Policy Act (NCEPA).

(b) ~~Rules for implementation of the NCEPA (01 NCAC 25) are hereby incorporated by including subsequent amendments and editions. Copies of these Rules can be obtained from the Department of Administration, State Clearinghouse, 1302 Mail Service Center, Raleigh, NC 27699-1302.~~

~~(c)~~(b) Environmental documents shall be available to public officials and citizens before decisions are made and before actions are taken. The information shall be reliable and sufficient to allow selection among alternatives.

~~(d)~~(c) The Secretary is the "responsible state official" for ~~DENR~~ DEQ. The Secretary may delegate responsibility for the implementation of the NCEPA to staff.

~~(e)~~(d) The provisions of the rules in this Subchapter, the ~~state~~ Department of Administration's rules (01 NCAC 25), and the NCEPA shall be read together as a whole in order to comply with the spirit and letter of the law.

~~(f)~~(e) These ~~Rules~~ rules establish minimum criteria to determine when preparation of an environmental document is not required when DEQ is the state project agency. ~~the procedures for determining whether an environmental document is required when DENR is the State Project Agency.~~

*History Note: Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10;  
Eff. August 1, 1989;  
Transferred from T15.01D .0201 Eff. November 1, 1989;  
Amended Eff. April 1, 2003; August 1, 1996; March 1, 1990;  
Readopted Eff. xxxxx.*

## 15A NCAC 01C .0103 DEFINITIONS

The definition of any word or phrase used in rules of this Subchapter is the same as given in G.S. ~~113A-9~~ 113A-9, ~~and in 1 NCAC 25,~~ including ~~subsequent amendments and editions~~. The following words and phrases have the following meaning.

- (1) "Agency" ~~means the Divisions and Offices of DENR, as well as the boards, commissions, committees, and councils of DENR having decision-making authority and adopting these rules by reference; except where the context clearly indicates otherwise.~~
- (2)(1) "Channel Disturbance" means activities that permanently remove or degrade the natural functions of the stream such as culverting, relocation, channelization or streambank stabilization methods including gabions, rip rap or similar hard structures.
- (3)(2) "Cumulative Impacts" ~~mean~~ means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions. Cumulative impacts are the reasonably foreseeable impacts from individually minor but collectively significant activities.
- (4)(3) "Direct Impacts" mean environmental impacts which are caused by an activity and occurring at the same time and place.
- (5)(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that the waste or any constituent part of the waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters, or beneath or on the surface of the land.
- (6)(5) "Ecosystem" means all the interrelated organisms and their environment within a defined area.
- (7)(6) "Forestry Management Plan" means a document that guides the practical and sustainable application of biological, physical, quantitative, managerial, economic, social and policy principles to the regeneration, management, utilization and conservation of forests to meet specified goals and objectives while maintaining the productivity of the forest. Forest management includes management for aesthetics, fish, recreation, urban values, water, wilderness, wildlife, wood products and other forest resource values.
- (8)(7) "Hazardous Waste" means a waste, or combination of wastes, in any state or form including gas, liquid or solid, that because of its quantity, concentration or physical, chemical or infectious characteristics may cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness, or pose a present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- (9)(8) "High Quality Waters (HQW)" ~~has the same meaning as in 15A NCAC 02B .0224. means a subset of waters with quality higher than the existing classification standards. These include those rated as excellent based on biological and physical/chemical characteristics through Division of Water Quality monitoring or special studies; native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission; primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Marine Fisheries Commission; all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Water Quality; and all Class SA waters.~~
- (10)(9) "Inlet" means a waterway between islands connecting a lagoon, estuary, sound or similar water body with the ocean.
- (11)(10) "Instream Flow" means the amount of water needed in a stream to adequately provide for downstream uses occurring within the stream channel, including some or all of the following: aquatic habitat, recreation, wetlands maintenance, navigation, hydropower, riparian vegetation, and water quality.

- (12)(11) "~~Land-Disturbing Activity~~" ~~has the same meaning as in G.S. 113A-52. means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.~~
- (13) "~~Lead Agency~~" ~~means the agency or agencies preparing or having taken primary responsibility for preparing an environmental document. The lead agency is a sub agency of the state project agency.~~
- (14) "~~Non State Entity~~" ~~means local governments, special purpose units of government, contractors, and individuals or corporations to whom NCEPA may apply.~~
- (12) "Lead Division" means the division within DEQ that has been appointed by the Secretary, pursuant to 15A NCAC 01C .0105, to have primary responsibility for preparation of an environmental document when DEQ is the state project agency.
- (15)(13) "Perennial Stream" means a channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- (14)(14) "Prime agricultural and forest land" means lands ~~which~~ that possess the best combination of physical and chemical characteristics for producing food, feed, fiber (including forest products), forage, oilseed, and other agricultural products (including livestock), without intolerable soil erosion. This does not apply to lands ~~which~~ that are already in or committed to development projects such as water impoundment, transportation, and urban development.
- (15)(15) "Reclaimed Water Utilization" means the use of reclaimed water that meets the criteria provided in 15A NCAC 02H .0219(k) for beneficial uses in lieu of water from other sources. "Reclaimed Water" has the same meaning as in 15A NCAC 02U .0103.
- (16)(16) "Resource" means any natural product or value, not necessarily economic, but including trees, minerals, wildlife, clean air and water, fisheries, ecosystems, landscapes and open space.
- (17)(17) "River Basin" means the watershed of a major river system.
- (18)(18) "Secondary Impacts" mean indirect impacts caused by and resulting from a specific activity that occur later in time or further removed in distance than direct impacts, but are reasonably foreseeable. Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
- (19)(19) "Secretary" means the Secretary of ~~DENR~~ DEQ.
- (20)(20) "State Project Agency" means the state department or council of state agency ~~which~~ that has been designated pursuant to ~~4~~ 01 NCAC 25 .0210(a) for ensuring compliance with NCEPA.
- (21)(21) "Stream Enhancement" means the process of implementing stream rehabilitation practices in order to improve water quality or ecological function. These practices are typically conducted on the stream bank or in the flood prone area. Enhancement activities may also include the placement of in-stream habitat structures.
- (22)(22) "Stream Restoration" means the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.
- (23)(23) "Total Design Withdrawal" means the pumping rate at which water can be removed from the contributing stream. It is the sum of any pre-existing withdrawal capacity plus any withdrawal increase.
- (24)(24) "Wetlands" ~~mean "wetlands" as defined~~ has the same meaning as in 15A NCAC 02B .0202.

*History Note:* Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

#### **15A NCAC 01C .0104 AGENCY COMPLIANCE**

- (a) ~~Each DENR agency~~ DEQ shall interpret the provisions of the ~~NC EPA~~ NCEPA as a supplement to its existing authority and as a mandate to view its policies and programs in the light of the ~~NC EPA's~~ NCEPA's comprehensive environmental ~~objectives~~ objectives, ~~except where existing law applicable to the DENR agency's~~ DEQ's operations ~~expressly prohibits compliance or makes compliance impossible.~~
- (b) As part of making a decision on a project for which an environmental document has been prepared, ~~the DENR agency decision-maker~~ DEQ shall review the document and incorporate it as part of continuing deliberations. The resulting decision shall be made after weighing all of the impacts and mitigation measures presented in the environmental document, which shall become part of the decision-making record.

*History Note:* Authority G.S. 113A-2; 113A-5; 113A-6; 113A-10; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

#### **15A NCAC 01C .0105 LEAD AND COOPERATING AGENCY DIVISIONS RESPONSIBILITY**

Where ~~DENR~~ DEQ is the ~~State Project Agency~~ state project agency and more than one of its divisions ~~DENR agency~~ must issue a permit or other authorization for the project requiring review under NCEPA, the Secretary shall appoint a lead division ~~DENR~~ agency

to be responsible for ~~issuance~~ preparation of the environmental document. The lead and cooperating ~~DENR agencies' divisions'~~ responsibilities shall be established by the Secretary.

*History Note:* Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10;  
Eff. April 1, 2003.

#### **15A NCAC 01C .0106 SCOPING AND HEARINGS**

~~DENR agencies~~ When DEQ is the state project agency, DEQ shall utilize scoping and hearing processes in their NCEPA activities to the extent appropriate to the complexity, potential for environmental effects, and level of expressed interest associated with the proposed ~~activity~~ action. Scoping and hearing processes are public processes designed to determine the types of environmental issues to be addressed in environmental documents. They are open processes intended to obtain the view of other agencies and the public in order for state agencies to make informed decisions.

*History Note:* Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

#### **15A NCAC 01C .0107 LIMITATION ON ACTIONS DURING NCEPA PROCESS**

(a) ~~While work on an environmental document is in progress, no DENR agency shall undertake in the interim any action which might limit the choice among alternatives or otherwise prejudice the ultimate decision on the issue. A permit approval or other action to approve land disturbing activity or construction of part of the project or action, other than those actions necessary for gathering information needed to prepare the environmental document, limits the choice among alternatives and shall not be approved until the final environmental document for the action is published in the Environmental Bulletin pursuant to 01 NCAC 25 .0212 and adopted by the DENR agency through the procedures established by to the Department of Administration's Rules for administering NC EPA and this Subchapter of the Department's rules. If an environmental document is required under NCEPA, DEQ shall not undertake an action until the environmental document for that action is final.~~

(b) ~~If a DENR agency DEQ is considering a proposed action for which an environmental document is to be or is being prepared, prepared under NCEPA, the DENR agency DEQ shall promptly notify the initiating party applicant that the DENR agency DEQ cannot take final action until the environmental documentation document is completed and available for use as a decision-making tool. The notification shall be consistent with the statutory and regulatory requirements of the DENR agency DEQ and may be in the form of a notification that the application is incomplete.~~

(c) ~~When a DENR agency a program within DEQ decides that a proposed action, activity, for which state other DEQ actions are pending or have been taken, requires environmental documentation, then the DENR agency that program shall promptly notify all the other relevant DEQ programs DENR action agencies of the decision. When statutory and regulatory requirements prevent a DENR agency from suspending action, the DENR agency shall deny any action for which it determines an environmental document is necessary but not yet available as a decision-making tool.~~

(d) ~~When statutory and regulatory requirements prevent DEQ from suspending action, DEQ shall deny any action for which it determines an environmental document is required under NCEPA but not yet available as a decision-making tool.~~

*History Note:* Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

#### **15A NCAC 01C .0108 EMERGENCIES**

(a) ~~Where emergency circumstances make it necessary to take an otherwise lawful action with potential environmental effects without observing the public review provisions of the NC EPA, the DENR agency taking the action shall notify the Secretary and limit actions to those necessary to control and mitigate for the immediate threat to the public health, safety, and welfare. If there is an immediate threat to public health, safety, and welfare, DEQ may take otherwise lawful actions with potential environmental effects without preparing an environmental document. In those emergency circumstances, DEQ shall limit actions to those necessary to control and mitigate for the immediate threat to the public health, safety, and welfare.~~

(b) ~~DENR agencies DEQ may prepare and maintain environmental documents for repetitive emergency programs affecting the public, to review the scope of involved activities, identify specific effects to be expected, and mitigation measures that can be employed in various circumstances to assure protection of the public and long-term environmental productivity.~~

(c) ~~The minimum criteria established pursuant to Section .0400 of this Subchapter or the review processes for environmental assessments or environmental impact statements set out in Rules 01 NCAC 25 .0506 and .0605, may be altered where an emergency makes it necessary to take action or control or mitigate any threat to the public health, safety and welfare caused by the emergency. Rule 01 NCAC 25 .1002 establishes the procedures to supplement the provisions of this Chapter in an emergency consistent with the policies of NC EPA.~~

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-7; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

#### **15A NCAC 01C .0109 ~~NON-STATE INVOLVEMENT AND CONSULTANTS PREPARATION OF ENVIRONMENTAL DOCUMENTS~~**

- (a) ~~If a lead DENR agency requires a non state entity to submit environmental information for use by the DENR agency in preparing an environmental document for the non state entity's activity, then the DENR agency shall assist by outlining the types of information requested. When DEQ is the state project agency, DEQ may request information from an applicant to prepare an environmental document. The DENR agency DEQ shall independently evaluate the information provided and shall be responsible for its accuracy.~~
- (b) ~~When DEQ is the state project agency, an environmental document may be prepared by a consultant, including the applicant for the action's consultant. If a lead DENR agency DEQ a non state entity allows an applicant for the action to prepare an environmental document, the lead DENR agency DEQ shall furnish guidance and participate in the preparation, and take responsibility for its scope, objectivity, content, and accuracy.~~
- (c) ~~An environmental document may be prepared by a consultant.~~
- (d)(c) ~~The Environmental Assessment Guidance Document available through the State Clearinghouse and Rules 01 NCAC 25 .0400 through .1000 offer provides guidance in preparing environmental documents.~~
- (d) ~~When DEQ is the state project agency, the content and finalization of an environmental document shall comply with NCEPA, DEQ's rules, and the Department of Administration's rules (01 NCAC 25).~~

*History Note:* Authority G.S. 113A-4; 113A-5; 113A-6; 113A-9; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

## SECTION .0200 - INTEGRATION WITH AGENCY ACTIVITY

### 15A NCAC 01C .0205 IMPLEMENTATION

~~DENR agencies shall prepare environmental documents in accordance with the NC EPA, its related rules at 01 NCAC 25, and the rules in this Subchapter. As set out in Rule .0109 of this Subchapter, consultants may prepare environmental documents.~~

*History Note:* Authority G.S. 113A-2; 113A-4; 113A-5; 113A-6; 143B-10;  
Eff. April 1, 2003.

### 15A NCAC 01C .0206 WHEN TO PREPARE ENVIRONMENTAL DOCUMENTS

- (a) ~~DENR agencies shall prepare an environmental assessment in accordance with the NC EPA and the related state rules at 01 NCAC 25 for those activities described in Section .0300 of this Subchapter, and for those activities above the thresholds set in DENR's minimum criteria described in Section .0400 of this Subchapter. When an environmental document is required under NCEPA and DEQ is the state project agency, DEQ shall prepare an environmental document unless the action falls below the minimum criteria set forth in Section .0400 of this Subchapter. As described in 15A NCAC 01C .0306, the Secretary may require preparation of an environmental document that would otherwise not be required through application of DEQ's minimum criteria.~~
- (b) ~~An environmental assessment is not necessary if a DENR agency DEQ has decided to prepare an environmental impact statement, because the scope or complexity of the activity has a clear potential for environmental effects.~~
- (c) ~~DENR agencies DEQ shall insure ensure that the activity that is the subject of the environmental document is properly defined. Closely connected activities should be reviewed together. Closely connected activities include:~~
- (1) activities that automatically trigger other activities that may require environmental impact statements;
  - (2) activities that cannot or will not proceed unless other activities occur either previously or simultaneously; and
  - (3) activities that are interdependent parts of a larger plan of development and depend on the larger plan of development for justification.

*History Note:* Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

### 15A NCAC 01C .0207 INCORPORATION BY REFERENCE

- (a) ~~DENR agencies DEQ shall incorporate material into environmental documents by reference to cut down on bulk without impeding DENR agency DEQ and public reviews of the action. The incorporated material shall be cited in the document and its contents briefly described.~~
- (b) ~~Incorporated-by-reference material must shall be made available by the applicant for inspection by reviewers and potentially interested persons within the time allowed for comment.~~

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-10; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

### 15A NCAC 01C .0208 INCOMPLETE OR UNAVAILABLE INFORMATION

- (a) ~~Where a DENR agency DEQ is evaluating significant effects upon the environment in an environmental document and there are gaps in relevant information or scientific uncertainty, the DENR agency DEQ should always shall make clear that such information is lacking or that uncertainty exists.~~
- (b) ~~If the information relevant to the effects is essential to a reasonable choice among alternatives and the overall costs of and time for obtaining it are not out of proportion to the potential environmental effects of the activity, the DENR agency DEQ should shall include the information in the environmental document.~~

(c) If the information relevant to the effects is essential to a reasoned choice among alternatives and the overall cost of and time for obtaining it are out of proportion to the potential environmental effects of the activity, or the means of obtaining it are not known (beyond the state of the art), then ~~the DENR agency~~ DEQ shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If ~~the DENR agency~~ DEQ proceeds, it shall include within the environmental document:

- (1) a statement that such information is incomplete or unavailable;
- (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- (4) ~~the DENR agency's~~ DEQ's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

(d) For the purposes of this Section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

*History Note: Authority G.S. 113A-4; 113A-6; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.*

## **SECTION .0300 - ~~PREPARATION OF ENVIRONMENTAL DOCUMENTS~~ SPECIAL CIRCUMSTANCES**

### **15A NCAC 01C .0304 ~~ACTIVITIES ABOVE THE MINIMUM CRITERIA~~**

~~Any activity which is outside the parameters of the minimum criteria set out in Section .0400 of this Subchapter is required to have environmental documentation under the NCEPA.~~

*History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-11; 143B-10;  
Eff. April 1, 2003.*

### **15A NCAC 01C .0305 ~~ACTIVITIES UNDERTAKEN BY DEQ TYPES OF ACTIVITIES REQUIRING ENVIRONMENTAL DOCUMENTATION~~**

The following ~~DENR agency activities~~ activities, when undertaken by DEQ, will shall be deemed to have a potential effect upon the environment of the state and require preparation of an environmental document unless they ~~fall under~~ satisfy the minimum criteria set out in Section .0400 of this Subchapter.

- (1) ~~Proposed~~ construction of facilities or infrastructures on lands and waters owned or managed by ~~any DENR agency~~ DEQ.
- (2) ~~Specific programs conducted by DENR agencies on lands and waters or in the atmosphere owned or managed by the state.~~
- (3)(2) Demolition of or additions, rehabilitation and/or renovations to a structure listed in the National Register of Historic Places or more than 50 years of age except where agreement exists with the Department of Natural and Cultural Resources that the structure lacks architectural or historical significance.
- (4)(3) Ground disturbances involving National Register listed archaeological sites or areas around buildings 50 years old or older, except where agreement exists with the Department of Natural and Cultural Resources.

*History Note: Authority G.S. 113A-4; 113A-6; 113A-8; 113A-9; 113A-10; 143B-10;  
Eff. April 1, 2003.*

### **15A NCAC 01C .0306 ~~ACTIVITIES OF A SPECIAL NATURE~~**

~~Any activity falling within the parameters of the minimum criteria set out in Section .0400 of this Subchapter shall not routinely be required to have environmental documentation under the NCEPA. However, an environmental document is required when the Secretary determines that~~ The Secretary may require preparation of an environmental document that would otherwise not be required through application of DEQ's minimum criteria if the Secretary determines:

- (1) the proposed activity may have a potential for significant adverse effects on wetlands; surface waters such as rivers, streams and estuaries; parklands; game lands; prime agricultural or forest lands; or areas of local, state or federally recognized scenic, recreational, archaeological, ecological, scientific research or historical value, including secondary impacts; or would threaten a species identified on the Department of Interior's or the state's threatened and endangered species lists; or
- (2) the proposed activity could cause changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, instream flow, air quality, or ground water impacts; or affect long-term recreational benefits, fish, wildlife, or their natural habitats; or
- (3) the proposed activity has secondary impacts, or is part of cumulative impacts, not generally covered in the approval process for the state action, and that may result in a potential risk to human health or the environment; or
- (4) the proposed activity is of such an unusual nature or has such widespread implications that a concern for its environmental effects has been identified by ~~the DENR agency~~ DEQ or expressed to ~~the DENR agency.~~ DEQ.

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

## SECTION .0400 — ~~OTHER REQUIREMENTS~~ MINIMUM CRITERIA

### 15A NCAC 01C .0405 PURPOSE OF THE MINIMUM CRITERIA THRESHOLDS

~~(a) This Section establishes minimum criteria to be used in determining when environmental documents are not required. The minimum criteria, as defined in state rules at 01 NCAC 25, shall be used by the Secretary and DENR agencies to provide sound decision-making processes by allowing separation of activities with a high potential for environmental effects from those with only a minimum potential.~~

~~(b) The minimum criteria set out in this Section are established to determine when environmental documentation under the NCEPA is not required. If NCEPA requires preparation of an environmental document and DEQ is the state project agency, the minimum criteria set forth in this Section determine when preparation of an environmental document is not required because the action or class of actions have no significant long-term impact on the environment. An activity must be at or below shall satisfy each applicable minimum criteria threshold to maintain this status. As set out in Rule .0306 of Section .0300 this Subchapter, the Secretary may require preparation of an environmental documentation document for activities that would otherwise not be required through application of DEQ's qualify under these minimum criteria. criteria thresholds.~~

*History Note:* Authority G.S. 113A-2; 113A-4; 113A-6; 113A-11; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

### 15A NCAC 01C .0406 SAMPLING, SURVEY, MONITORING, AND RELATED RESEARCH ACTIVITIES

Sampling, survey, monitoring and research activities do not require the ~~filling preparation~~ of environmental ~~documentation documents~~. These activities include, but are not limited to the following:

- (1) Aerial photography projects involving the photographing or mapping of the lands of the state;
- (2) Biology sampling and monitoring of:
  - (a) Fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone; and
  - (b) Wildlife resources through the use of traditional techniques, including but not limited to traps, drugs, and firearms;
- (3) Soil survey projects involving the sampling or mapping of the soils of the state;
- (4) Establishing stream gaging stations for the purpose of measuring water flow at a particular site;
- (5) Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality;
- (6) Gathering surface or subsurface information on the geology, minerals, or energy resources, of the state.
- (7) Placement and use of geodetic survey control points;
- (8) Other routine survey and resource monitoring activities, or other temporary activities required for research into the environment ~~which that~~ do not have adverse effects; and
- (9) Investigation and assessment of sites contaminated with regulated substances.

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;  
Eff. April 1, 2003;  
Readopted Eff. xxxxx.

### 15A NCAC 01C .0407 STANDARD MAINTENANCE OR REPAIR ACTIVITIES

Standard maintenance or repair activities, if needed to maintain the originally defined function of an existing project or facility (but without expansion, increase in quantity, decrease in quality, use, or release of hazardous waste), do not require the ~~filling preparation~~ of environmental documents. These activities include but are not limited to maintenance and repair of the following:

- (1) Housekeeping projects ~~which that~~ maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process;
- (2) Roads, bridges, parking lots, and their related facilities;
- (3) Utilities on their existing rights-of-way;
- (4) Surface drainage systems;
- (5) Boat ramps, docks, piers, bulkheads, rip rap, breakwaters and associated facilities;
- (6) Diked, high ground dredge-material disposal areas;
- (7) Activities necessary to fulfill the existing requirements of in-effect permits for the protection of the environment and human health;
- (8) Other maintenance and repair activities on projects ~~which that~~ are consistent with previously approved environmental documents; and
- (9) Routine grounds maintenance and landscaping of sidewalks, trails, walls, gates, and related facilities, including outdoor exhibits.

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;  
Eff. April 1, 2003;

**15A NCAC 01C .0408 MINOR CONSTRUCTION ACTIVITIES**

This Rule sets out the general and specific minimum criteria for construction activities. Construction and land disturbing activities ~~must fall under~~ that satisfy both the general minimum criteria and any specific minimum criteria applicable to the ~~project.~~ project do not require preparation of environmental documents.

- (1) General criteria. ~~The following categories of land disturbing activity do not require preparation of an environmental document.~~
  - (a) In the 20 coastal counties, land disturbing activity that:
    - (i) is located more than 575 feet away from waters classified as High Quality Waters (HQW) or impacts less than five acres located all or in part within 575 feet of waters classified as High Quality Waters (HQW);
    - (ii) is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225; and
    - (iii) impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225.
  - (b) Land disturbing activity outside the ~~twenty~~ 20 coastal counties that:
    - (i) is located more than one mile from waters classified as HQW or impacts less than five acres located within one mile of and draining to waters classified as HQW;
    - (ii) is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225;
    - (iii) impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225; and
    - (iv) is located more than 25 feet from any waters classified as Trout (Tr) waters or impacts less than five acres located all or in part within 25 feet of any waters classified as Trout (Tr) waters.
  - (c) Channel disturbance and land disturbing activities associated with non-compensatory stream restoration or stream enhancement.
  - (d) Land disturbing activities impacting wetlands if the activity will result in the loss of one acre or less of Class WL wetlands.
  - (e) Land disturbing activities impacting streams if the activity will result in channel disturbance of less than 500 linear feet of perennial streams. Land disturbing activities that impact 500 linear feet or more of perennial streams do not require preparation of an environmental document if stream restoration or stream enhancement is performed.
- (2) Specific Criteria. ~~Construction or expansion activities listed below require an environmental document if they exceed either the minimum criteria set out in Item (1) of this Rule or the thresholds established below.~~
  - (a) The following activities related to wastewater treatment systems.
    - (i) Relocation of discharge points within the same river basin;
    - (ii) New discharge facilities with a proposed permitted expansion of less than 500,000 gallons per day and producing an instream waste concentration of less than 33 percent during the 7-day 10-year low flow conditions;
    - (iii) Expansion of an existing discharge facility of less than 500,000 gallons per day additional flow;
    - (iv) New surface irrigation, high rate infiltration, or subsurface waste water systems with a proposed permitted capacity not exceeding 100,000 gallons per day;
    - (v) Reclaimed water utilization systems with reclaimed water utilization being the sole disposal option with a proposed permitted capacity not exceeding 200,000 gallons per day;
    - (vi) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 500,000 gallons per day when the reclaimed water utilization system is required for compliance with any other wastewater disposal permit;
    - (vii) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 1,000,000 gallons per day when the reclaimed water utilization system is not required for compliance with any other wastewater disposal permit;
    - (viii) New reclaimed water utilization distribution lines;
    - (ix) New permits or modification to existing permits for land application of residuals utilization, where less than 10 acres not previously permitted is prior converted within three years or will be converted from a non-plantation forested area to application area;
    - (x) New or expanding surface disposal sites disposing less than 3000 dry tons of residuals per year;
    - (xi) Gravity sewer extensions with less than three miles of new lines or lines of less than 18 inches in diameter; and
    - (xii) New or expanding individual pump stations and associated force mains with a proposed permitted capacity of less than 1750 gallons per minute.
  - (b) The following activities related to potable water systems.



- (i) Improvements to water treatment plants that involve less than 1,000,000 gallons per day added capacity and total design withdrawal less than one-fifth of the 7-day, 10-year low flow of the contributing stream;
- (ii) Improvements not intended to add capacity to the facility;
- (iii) Installation of appurtenances in existing rights-of-way for streets or utilities, or water lines and appurtenances less than five miles in length and having only directional bore stream crossings or no stream crossings; and
- (iv) Construction of water tanks, or booster pumping or secondary or remote disinfection stations.
- (c) Groundwater withdrawals of less than 1,000,000 gallons per day where such withdrawals are not expected to cause alterations in established land use patterns, or degradation of groundwater or surface water quality.
- (d) The following activities related to solid waste disposal:
  - (i) Construction of solid waste management facilities, other than landfills exempt pursuant to G.S. 130A-294 (a)(4), which store, treat, process incinerate, or dispose of less than 350 tons per day (averaged over one year) of solid waste; and
  - (ii) Disposal of solid waste by land application on 100 total acres or less, where less than 10 percent of the total land application area is converted from a non-plantation forested area.
- ~~(e) Development requiring a Coastal Area Management Act (CAMA) permit or State Dredge and Fill Law permit that does not involve:~~
  - ~~(i) Construction of a new marina, or a 25% or greater expansion in the number of slips at existing and operating marinas;~~
  - ~~(ii) Excavation of a new navigation channel. Maintenance activities associated with maintaining the traditional and established use of a channel and new excavation activities located entirely within 100 feet of the shoreline, or within 50 feet from the waterward edge of any existing or authorized docking facility and involving the excavation of less than 5,000 square feet of public trust bottom do not constitute excavation of a new navigation channel for purposes of these rules.~~
  - ~~(iii) Excavation of materials from aquatic environments for use for beach nourishment or other purposes not directly related to approved navigation projects;~~
  - ~~(iv) A large scale beach nourishment or spoil deposition project. A project shall be considered large scale when it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline;~~
  - ~~(v) The salvaging of cut logs from public trust waters for commercial use, unless the salvage operation complies with any departmentally approved best management practices developed for such activities;~~
  - ~~(vi) The construction over state owned submerged lands of private bridges to privately owned islands, unless the length of the bridge is less than 50 feet; and~~
  - ~~(vii) The excavation, dredging or other hydrodynamic manipulation of an inlet, inlet channel(s) or inlet shoal(s) for non navigational purposes.~~
- ~~(f)(e)~~ Construction of a minor source or modification of a minor source of air emissions as defined in 15A NCAC 02D .0530, that are less than 100 tons per year or 250 tons per year as defined therein.
- ~~(f)(f)~~ Construction relating to the reclamation of underground storage tanks and restoration of groundwater quality.
- ~~(f)(g)~~ The construction, repair or removal of dams less than 25 feet in height and having less than 50 acre-feet of effective storage capacity.
- ~~(f)(h)~~ Any new construction for a building ~~which that~~ involves all of the following:
  - (i) A footprint of less than 10,000 square feet;
  - (ii) A location that is not a National Register Archaeological site; and
  - (iii) The building's purpose is not for storage of hazardous waste.
- ~~(f)(i)~~ Demolition of or additions, rehabilitation or renovations to a structure not listed in the National Register of Historic places or less than 50 years of age.
- ~~(f)(j)~~ Routine grounds construction and landscaping of sidewalks, trails, walls, gates and related facilities, including outdoor exhibits.
- ~~(f)(k)~~ Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service.
- ~~(f)(l)~~ Construction or remodeling of swimming pools.
- ~~(f)(m)~~ Construction of a new two-lane road in accordance with DOT accepted design practices and DOT standards and specifications involving less than a total of 25 cumulative acres of ground surface limited to a single project, and not contiguous to any other project making use of this provision.
- ~~(f)(n)~~ Expansion of a two-lane road in accordance with DOT accepted design practices and DOT standards and specifications involving less than a total of 10 cumulative acres of ground surface limited to a single project, and not contiguous to any other project making use of this provision.

*History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003; Readopted Eff. xxxxx.*

## 15A NCAC 01C .0409 MANAGEMENT ACTIVITIES

Management activities do not require the filling preparation of environmental documents. These activities include but are not limited to the following:

- (1) Replenishment of shellfish beds through the placement of seed oysters, seed clams or shellfish cultch on marine or estuarine habitats.
- (2) Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs in accordance with the Division of Marine Fisheries' Artificial Reef Master Plan.
- (3) Placement of fish attractors and shelter in public waters managed by the N.C. Wildlife Resources Commission.
- (4) Translocation and stocking of native or naturalized fish and wildlife in accordance with appropriate ~~DENR~~ agency DEQ species management plans, watershed management plans, or other state agency approved resource management plans.
- (5) Reintroduction of native endangered or threatened species in accordance with state or federal guidelines or recovery plans.
- (6) Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with fisheries, wildlife, or forestry management plans.
- ~~(7) Forest products harvest in accordance with the forestry Best Management Practices (BMPs) and the performance standards in the Forest Practice Guidelines (FPGs) Related to Water Quality (15A NCAC 01H .0201—.0209) and the United States Forest Service or the N.C. Division of Forest Resources forest management plans.~~
- ~~(8) Reforestation of woodlands in accordance with the United States Forest Service or the N.C. Division of Forest Resources forest management plans.~~
- ~~(9) Use of forestry best management practices to meet the performance standards in Forest Practice Guidelines Related to Water Quality codified as 15A NCAC 01H.~~
- ~~(10) The control of forest or agricultural insects and disease outbreaks by biological treatments, mechanical treatments, or the lawful application of labeled pesticides by licensed applicators, or any combination of those practices, on areas of no more than 100 acres.~~
- ~~(11) Control of species composition on managed forestlands as prescribed by approved forest management plans by the lawful application of labeled herbicides by licensed applicators, on areas no more than 100 acres.~~
- ~~(12)(7) Control of aquatic weeds in stream channels, canals and other water bodies, by the lawful application of labeled herbicides by licensed applicators pursuant to Article 15, Chapter 113A of the NC General Statutes, applicators, on areas of no more than two acres or 25 percent of surface area, whichever is less, except in Primary Nursery Areas designated by the Marine Fisheries Commission, Inland Primary Nursery Areas designated by the Wildlife Resources Commission, and Anadromous Fish Spawning Areas designated by the Marine Fisheries Commission or the Wildlife Resources Commission.~~
- ~~(13)(8) Removal of logs, stumps, trees, and other debris from stream channels where there is no channel excavation, and activities are carried out in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging," Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines approved through the Intergovernmental Review process as set out at 01 NCAC 25 .0211.~~
- ~~(14)(9) Dredging of existing navigation channels and basins to originally approved specifications, provided that the spoil is placed in existing and approved high ground disposal areas.~~
- ~~(15)(10) Controlled or prescribed burning for wildlife, timber enhancement, and hazard reduction in accordance with applicable management plans.~~
- ~~(16)(11) Plowing fire lines with tractor plow units, or other mechanized equipment, for the purpose of suppressing wildland (brush, grass, or woodland) fires and prescribed burning.~~
- ~~(17)(11) Scooping or dipping water from streams, lakes, or sounds with aircraft or helicopters for the purpose of suppressing wild land (brush, grass, or woodland) fires.~~
- ~~(18)(12) Drainage projects where the mean seasonal water table elevation will be lowered less than one foot over an area of one square mile or less, and riparian and wetland areas will not be affected.~~
- ~~(19)(13) Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans, for the purpose of providing for water supply storage, flood control, recreation, hydroelectric power, fish and wildlife, downstream water quality and aquatic weed control.~~
- ~~(20)(14) Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service.~~
- ~~(21)(15) Continuation of previously permitted activities where no increase in quantity or decrease in quality are proposed.~~
- ~~(22)(16) Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits.~~
- ~~(23)(17) Acquisition or acceptance of real property to be managed in accordance with plans for which environmental documents have been approved.~~
- ~~(24)(18) Care of all trees, plants, and groundcovers on public lands.~~
- ~~(25)(19) Care, including medical treatment, of all animals maintained for public display.~~
- ~~(26)(20) Activities authorized for control of mosquitoes such as the following:~~
  - (a) Mosquito control water management work in freshwater streams performed in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging" Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical

- Report EL-92-35, Smith et al, 1992, or other guidelines reviewed through the Intergovernmental Review process as set out at 01 NCAC 25 .0211;
- (b) Mosquito control water management work in salt marsh environments performed under Open Marsh Water Management guidelines reviewed through the Intergovernmental Review process as set out at 01 NCAC 25 .0211;
- (c) Lawful application of chemicals approved for mosquito control by the United States Environmental Protection Agency and the State when performed under the supervision of licensed operators; and
- (d) Lawful use of established species to control mosquitoes.

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;  
 Eff. April 1, 2003;  
Readopted Eff. xxxxx.

**15A NCAC 01C .0410 PRIVATE USE OF PUBLIC LANDS**

Activities related to the private use of public lands, when conducted in accordance with permit requirements, do not require the filing preparation of environmental documents. These activities include but are not limited to the following:

- (1) Use of pound nets.
- (2) Shellfish relaying and transplanting.
- (3) Harvest of shellfish during closed season.
- (4) Special fisheries management activities under ~~15A NCAC 03I .0012~~ 15A NCAC 03O .0506.
- (5) Aquaculture operations within coastal waters.
- (6) Scientific collecting within coastal waters.
- (7) Introduction and transfer of marine and estuarine organisms.
- (8) ~~Development requiring a Coastal Area Management Act (CAMA) or a State Dredge and Fill Law permit that does not involve:~~
  - (a) ~~Construction of a new marina, or a 25% or greater expansion in the number of slips at existing and operating marinas;~~
  - (b) ~~Excavation of a new navigation channel. Maintenance activities associated with maintaining the traditional and established use of a channel and new excavation activities located entirely within 100 feet of the shoreline, or within 50 feet from the waterward edge of any existing or authorized docking facility and involving the excavation of less than 5,000 square feet of public trust bottom do not constitute excavation of a new navigation channel for purposes of these rules.~~
  - (c) ~~Excavation of materials from aquatic environments for use for beach nourishment or other purposes not directly related to approved navigation projects;~~
  - (d) ~~A large scale beach nourishment or spoil deposition project. A project shall be considered large scale when it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline;~~
  - (e) ~~The salvaging of cut logs from public trust waters for commercial use, unless the salvage operation complies with any Departmentally approved best management practices developed for such activities;~~
  - (f) ~~The construction over state owned submerged lands or private bridges to privately owned islands, unless the length of the bridge is less than 50 feet; and~~
  - (g) ~~The excavation, dredging or other hydrodynamic manipulation of an inlet, inlet channel(s) or inlet shoal(s) for non navigational purposes.~~
- (9) ~~Construction of piers and boat docks on all State Lakes when conducted in accordance with 15A NCAC 12C .0300.~~

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;  
 Eff. April 1, 2003;  
Readopted Eff. xxxxx.

**15A NCAC 01C .0411 REMEDIATION ACTIVITIES**

Activities that seek to clean up, remove, remediate, abate, contain or otherwise protect public health or the environment from the effect of contamination released to the environment do not require the filing preparation of environmental ~~documentation~~ documents.

*History Note:* Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;  
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Readopted Eff. xxxxx.