

1 **CHAPTER 05 - MINING: MINERAL RESOURCES**

2
3 This Chapter, 15A NCAC 05, MINING: MINERAL RESOURCES; was transferred and recodified from 15 NCAC
4 05 effective November 1, 1989. The recodification was pursuant to G.S. 143B-279.1.

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

7
8 **SECTION .0100 - MINING ~~AND ENERGY~~ COMMISSION**

9
10 **15A NCAC 05A .0101 NAME AND ADDRESS**

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

14
15 *History Note: Authority G.S. 143B-290;*
16 *Eff. February 1, 1976;*
17 *Amended Eff. January 31, 1979;*
18 *Readopted Eff. August 1, 1982;*
19 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d)); April 1, 1990.*

20
21
22
23 **SECTION .0200 - ADMINISTRATION**

24
25 5
26 **15A NCAC 05A .0202 DELEGATION AND DEFINITIONS**

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

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

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

- 38 (1) the issuance, denial, modification, ~~renewal,~~ suspension and revocation of permits;
- 39 (2) the initiation and approval of the abandonment of affected land;
- 40 (3) the inspection and approval of the abandonment of affected land;
- 41 (4) the giving of notices, setting of hearings, and taking of action upon findings of violations; and

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

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

3 (1) "Commission" means the Mining Commission as is established in G.S. 143B-290.

4 (2) "Director" means the Director of the Division of Energy, Mineral and Land Resources.

5
6 *History Note: Authority G.S. 74-50 through 74-53; 74-56 to 74-59; 74-77 through 74-85; 74-87;*
7 *143B-290;*
8 *Eff. February 1, 1976;*
9 *Amended Eff. January 31, 1979; September 3, 1976;*
10 *Readopted Eff. August 1, 1982;*
11 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); April 1, 1990; December 1, 1983.*



14 **SECTION .0300 - PETITIONS FOR RULEMAKING**

16 **15A NCAC 05A .0301 FORM AND CONTENTS OF PETITION**

17 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall make the
18 request in a petition to the Commission addressed to the:

19 Director

20 Division of Energy, Mineral, and Land Resources

21 1612 Mail Service Center

22 Raleigh, North Carolina 27699-1612

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

24 (1) the text of the proposed rule(s) for adoption or amendment;

25 (2) a statement of the reasons for adoption or amendment of the proposed rules, or the repeal of an
26 existing rule(s);

27 (3) a statement of the effect on existing rules or orders;

28 (4) any documents and data supporting the proposed rule(s); and

29 (5) the name(s) and address(es) of the petitioner;

30 (c) The petitioner may include the following information within the request:

31 (1) the statutory authority for the agency to promulgate the rule(s);

32 (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including
33 cost factors for persons affected by the proposed rule(s);

34 (3) a statement explaining the computation of the cost factors;

35 (4) a description, including the names and addresses, if known, of those most likely to be affected by
36 the proposed rule(s); and

37 (5) documents and data supporting the proposed rule(s).

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

3 (e) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the
4 effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed
5 rule; and the impact of the rule on the public and regulated entities.

7
8 *History Note: Authority 143B-290; 150B-20;*

9
10 *Eff. xxxxxx, 2021.*

11
12
13
14
15 **SECTION .0400 -DECLARATORY RULINGS** 

16
17 **15A NCAC 05A .0401 ISSUANCE OF DECLARATORY RULING**

18 At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Commission may issue a declaratory
19 ruling as provided in G.S. 150B-4 and the rules of this Section.

20
21 **15A NCAC 05A .0402 PROCEDURE FOR SUBMISSION OF PETITION**

22 (a) All requests for declaratory rulings shall be filed in writing and electronically as follows:

23 (1) with the Director by filing one paper copy for each Commissioner plus five additional copies to
24 the following address: Division of Energy, Mineral, and Land Resources, 1612 Mail Service
25 Center, Raleigh, NC 27699-1612; and

26 (2) the electronic submission shall be in .pdf format and sent to the Division at Mining@ncdenr.gov.

27 (b) All requests for declaratory rulings shall include the following:

28 (1) the name and address of petitioner(s);

29 (2) the statute, rule, or order upon which a ruling is desired;

30 (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the
31 applicability of a statute, rule, or order to a given factual situation;

32 (4) arguments or data demonstrating that the petitioner is aggrieved by the statute, rule, or order, or
33 by its potential application to the petitioner;

34 (5) a statement of the consequences of failure to issue a declaratory ruling in favor of the petitioner;

35 (6) a statement of the desired outcome; and

36 (7) a statement of whether an oral argument is desired, and if so, the reason(s) for requesting such
37 an oral argument.

38 (c) A petitioner may request a declaratory ruling on the applicability of a statute, rule, or order to the petitioner, or
39 on the validity of a Commission rule. The petitioner may request both types of declaratory ruling in a single request.

1 A request on the applicability of a statute, rule, or order shall include a detailed statement of the facts and
2 documentation supporting such facts, in addition to the requirements of Paragraph (b) of this Rule. A request to
3 determine the validity of a Commission rule shall state the petitioner's reason(s) for the request and a written
4 argument, in addition to the requirements of Paragraph (b) of this Rule.

5 (d) Any other person may petition to become a party by filing a motion to intervene in the manner provided in G.S.
6 1A-1, Rule 24. The Chair of the Commission shall determine whether to grant the motion to intervene in accordance
7 with Rule 24 of the North Carolina Rules of Civil Procedure.

8
9 *History Note:* Authority G.S.; 150B-4;
10 Eff. xxxxxx.
11
12

13 **15A NCAC 05A .0403 DISPOSITION OF PETITION**

14
15 (a) The Commission Chairman shall make a determination on the completeness of the request for declaratory
16 ruling based on the requirements of Rule .0402 and the Chairman shall make a recommendation to the
17 Commission on whether to grant or deny a request for a declaratory ruling.

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

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

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

25 (d) "Good cause" as the term is used in Paragraph (c) of this Rule shall include:

- 26 (1) finding that there has been a similar determination in a previous contested case or
27 declaratory ruling;
- 28 (2) finding that the matter is the subject of a pending contested case hearing or
29 litigation in any North Carolina or federal court;
- 30 (3) finding that no genuine controversy exists as to the application of a rule, statute, or order to the
31 specific factual situation presented; or
- 32 (4) finding that the factual context put forward as the subject of the declaratory ruling
33 was considered upon the adoption of the rule being questioned, as
34 evidenced by the rulemaking record.

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

- 37 (1) the request for a ruling;
- 38 (2) any written submission by a party;
- 39 (3) the given state of facts on which the ruling was based;

1 (4) any transcripts or recordings of oral proceedings, or, in the absence of a transcript or
2 recording, a summary of all arguments;

3 (5) any other matter considered by the Commission in making the decision; and

4 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling.

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

6 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant
7 provisions of the statute or rule are amended or altered;

8 (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or
9 rule that is the subject of the declaratory ruling in a manner plainly irreconcilable with the
10 declaratory ruling;

11 (3) the Commission changes the declaratory ruling prospectively; or,

12 (4) any court sets aside the declaratory ruling in litigation between the Commission or
13 Department of Environmental Quality and the party requesting the ruling.

14 (g) The party requesting a declaratory ruling may agree to allow the Commission to issue a decision to grant or deny
15 the request, or a ruling on the merits of the request, beyond the time provided in G.S. 150B-4.

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

20
21 *History Note: Authority G.S. 113A-54; 113A-55; ~~150B-17~~; 150B-4*

22 *Eff. March 14, 1980;*

23 *Amended Eff. August 1, 1988; June 5, 1981;*

24 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
25 *2016;*

26 *Amended Eff. February 1, 2020.*

27 28 **SUBCHAPTER 5B - PERMITTING AND REPORTING**

29
30 **15A NCAC 05B .0101 PURPOSE**

31 **15A NCAC 05B .0102 ACTIVITIES REQUIRING PERMITS**

32
33 **15A NCAC 05B .0103 BONDING REQUIREMENTS**

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

37 (b) If the applicant or permittee disagrees with the bond amount determined by the Director, the applicant or permittee
38 may submit to the Director for ~~his~~ consideration, an estimate of reclamation costs from a third party contractor to be

1 used as the bond amount. The estimate shall be provided to the Director within 30 days following the receipt of the
2 Director's initial bond determination. After considering the estimate and ~~the staff recommendations~~ recommendations,
3 ~~provided by his staff~~, the Director shall notify the applicant or permittee of ~~his~~ the bond determination and the process
4 and conditions used to set the bond amount.

5 (c) When needed to determine compliance with the statutory and regulatory requirements for a permit, the ~~The~~ Director
6 may ~~shall~~ invite the applicant or permittee to submit to the Department an estimate of reclamation costs from a third
7 party contractor for the Director's use in determining the required bond amount. After considering the estimate and
8 the recommendations provided by ~~his~~ Division staff, the Director shall notify the applicant or permittee of ~~his~~ the bond
9 determination and the process and conditions used to set the bond amount.

10 (d) The amount of the bond shall be based on the costs to reclaim the affected land as determined by the reclamation
11 plan approved pursuant to G.S. 74-53 and ~~15A NCAC 5B .0004(b).~~ 15A NCAC 5B .0104(b). The bond amount shall
12 be based on a range of five hundred dollars (\$500.00) to five thousand dollars (\$5,000) per acre of land approved by
13 the Department to be affected. If the mining permit is modified to increase the total affected land, the bond shall be
14 increased accordingly. The Director shall consider the method and extent of the required reclamation for a particular
15 site in determining the bond amount. As areas at a site are reclaimed and formally released by the Department, the
16 permittee may substitute a bond in an amount covering the remaining affected land at the site for the bond previously
17 filed with the Department; otherwise, without such bond substitution, the Department shall retain the previously filed
18 bond until all reclamation has been completed and approved by the Department.

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

- 23 (1) the applicant or permittee with separate bonds may substitute a ~~five hundred thousand dollar~~
24 ~~(\$500,000)~~ one million dollars (\$1,000,000) blanket bond to be used for all future sites, or
- 25 (2) the applicant or permittee with the ~~five hundred thousand dollar~~
26 ~~p (\$500,000)~~ one million dollars (\$1,000,000) blanket bond covering all sites may use that blanket bond for
27 all future sites,

28 if the Director finds that the applicant or permittee, in either case, has a good operating record, that the ~~five hundred~~
29 ~~thousand dollars (\$500,000)~~ one million dollars (\$1,000,000) is sufficient to reclaim all sites and that no additional
30 reclamation bond money is needed. If the Director finds that the applicant or permittee does not have a good
31 operating record, that the ~~five hundred thousand dollars (\$500,000)~~ one million dollars (\$1,000,000) is not sufficient
32 to reclaim all sites, or that additional reclamation money is needed, the Director shall require per acreage bonding
33 for future sites as provided in Paragraph (d) of this Rule.

34 (f) For the purposes of this Rule, a good operating record is defined as two consecutive years of operation within the
35 State of North Carolina without final assessment of a civil penalty or other enforcement action pursuant to G.S. 74-64,
36 or having a permit suspended or revoked under G.S. 74-58, or having a bond or other surety forfeited under G.S.
37 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.

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

Go to [Statutes](#)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38

*History Note: Authority G.S. 74-51; 74-54; 143B-290;
Eff. February 1, 1976;
Amended Eff. January 1, 1994; April 1, 1990; November 1, 1985; November 1, 1984.*

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

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

- (1) materials to be mined;
- (2) method of mining;
- (3) expected depth of mine;
- (4) size of the mine, including:
 - (A) acreage for tailings ponds,
 - (B) acreage for stockpiles,
 - (C) acreage for waste piles,
 - (D) acreage for processing plants,
 - (E) acreage for mine excavation,
 - (F) acreage for annual disturbance;
- (5) anticipated effect on wildlife, freshwater, estuarine or marine fisheries;
- (6) whether or not the operation will have a ~~waste water~~ wastewater discharge ~~or air contaminant emission~~ which will require a permit from the ~~division of environmental management~~; Division of Water Resource or and air contaminant emission which will require a permit from the Division of Air Quality;
- (7) method to prevent physical hazard to any neighboring dwelling house, school, church, hospital, commercial or industrial building, or public road if the mining excavation will come within 300 feet thereof;
- (8) measures to be taken to insure against landslides and acid water pollution;
- (9) measures to be taken to minimize siltation of streams, lakes, or adjacent properties during the mining operation;
- (10) measures to be taken to screen the operation from public view.

(b) Information required in the reclamation plan shall include:

- (1) intended plan for overall mine reclamation, subsequent land use and the general methods to be used in reclaiming;
- (2) intended practices to be taken to protect adjacent surface resources;
- (3) intended methods to prevent or eliminate conditions hazardous to animal or fish life in or adjacent to the affected areas;
- (4) intended methods of rehabilitation of settling ponds;

- 1 (5) intended methods of restoration or establishment of stream channels and stream beds to a condition
 2 minimizing erosion, siltation and other pollution;
- 3 (6) intended measures to stabilize slopes;
- 4 (7) intended measures to provide for safety to persons and adjoining property in excavation in rock;
- 5 (8) intended measures of disposal of mining refuse and control of contaminants;
- 6 (9) provisions to prevent collection of noxious, odious or foul water in mined areas;
- 7 (10) plan for revegetation and reforestation or other surface treatment of the affected areas which plan
 8 must be approved in writing by one of the following prior to submission of the application:
- 9 (A) Authorized ~~representatives~~ representative of the local soil and water conservation district
 10 having jurisdiction over lands in question;
- 11 (B) Authorized ~~representatives~~ representative of the ~~division of forest resources, Department~~
 12 ~~of Environment, Health, and Natural Resources; North Carolina Forest Service within the~~
 13 Department of Agriculture and Consumer Services;
- 14 (C) NC Cooperative Extension County agricultural extension chairmen county director in a
 15 county in the reclamation plan or research and extension personnel headquartered at North
 16 Carolina State University in the ~~school of agriculture and life sciences; School of~~
 17 Agriculture and Life Sciences;
- 18 (D) North Carolina licensed landscape ~~architects;~~ Architect pursuant to G.S. 89A;
- 19 (E) Private consulting ~~foresters~~ forester referred by the ~~division of forest resources,~~
 20 ~~Department of Environment, Health, and Natural Resources; Division of Forest Resources,~~
 21 Department of Environmental Quality; or
- 22 (F) Others as may be approved by the ~~department;~~ Department; Provided that areas expected
 23 to be in use beyond the maximum permissible permit period, such as processing plants or
 24 stockpiles, do not require a specific revegetation plan;
- 25 (11) time schedule of reclamation that provides that reclamation activities be conducted simultaneously
 26 with mining operations whenever feasible and in any event be initiated at the earliest practicable
 27 time after completion or termination of mining on any segment and completed within two years.
- 28 (c) In addition to the application form, the operator shall also submit ~~two copies~~ a copy of a county map showing the
 29 mine location and ~~two copies~~ a copy of a mine map. Mine maps should be accurate drawings, aerial photographs or
 30 enlarged topographic maps of the mine area and must clearly show the following:
- 31 (1) property lines or affected area of mining operation;
- 32 (2) outline of pits;
- 33 (3) outline of stockpile areas;
- 34 (4) outline of overburden disposal areas;
- 35 (5) location of processing plants (Processing plants may be described as to location and distance from
 36 ~~mine if sufficiently far removed.); the mine.);~~
- 37 (6) location and name of streams and lakes;




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

Go to [Statutes](#)

- 1 (7) outline of settling ponds;
- 2 (8) location of access roads;
- 3 (9) map legend:
 - 4 (A) name of company,
 - 5 (B) name of mine,
 - 6 (C) north arrow,
 - 7 (D) county,
 - 8 (E) scale,
 - 9 (F) date prepared,
 - 10 (G) name and title of person preparing map; and

11 (10) names of owners of record, both public and private, of all adjoining ~~land.~~ land as is specified in G.S. 74-50.

12 The mine maps should be correlated with the reclamation plan. The approximate areas to be mined during the life of
13 the permit should be clearly marked. 

14 If reclamation is to be accomplished concurrently with mining, then show segments that are to be mined and
15 reclaimed during each year of the permit.

16 Add drawings showing typical sections or cross sections and layout of proposed reclamation where such drawings
17 will assist in describing reclamation.

18 (d) An application for a mining permit shall include:

19 (1) The name and address of all known owners, both private and public of all land adjoining the
20 proposed mining site as is specified in G.S. 74-50 (see Legis74-50) and as determined by a diligent
21 search of the tax records or other sources of information about property ownership in a manner
22 ~~reasonable~~ calculated to identify the owners of all adjoining land and approved by the ~~department.~~
23 Department. The proposed mining site means all land to be included within the proposed permitted
24 area;

25 (2) The name of the chief administrative officer of ~~the~~ each county or municipality in which the
26 proposed mining site is located together with ~~the~~ each officer's mailing address; and

27 (3) As is specified in G.S. 74-50. ~~Proof~~ proof satisfactory to the ~~department~~ Department that the
28 applicant has made ~~a reasonable~~ the required effort to notify all owners of record of all adjoining
29 land and the chief administrative officer of the county or municipality of the pending application.
30 Proof satisfactory to the ~~department~~ Department shall include an affidavit by the applicant ~~that he~~
31 ~~has caused~~ stating that a notice of the pending application ~~to be~~ has been sent by certified or
32 registered mail to all known adjoining owners and to the chief administrative officer of the county
33 or municipality. Other means of notice shall be satisfactory if approved in advance by the
34 ~~department.~~ Department.

35
36 *History Note:* Authority G.S. 74-63; 74-51; 74-53;
37 Eff. February 1, 1976;
38 Amended Eff. April 1, 1990; May 1, 1982; September 1, 1979; January 31, 1979.

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

Go to [Statutes](#)

1
2 **15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT**

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

- 6 (1) additional erosion control measures to be installed during the mining ~~operation~~; operation to protect
7 environmental standards as specified in G.S. 74-51;
8 (2) a ~~natural vegetated~~ buffer ~~to be left~~ between any stream and the affected ~~land~~; land when specified
9 in state or local stream protection requirements.
10 (3) visual screening such as existing natural vegetation, vegetated earthen berms, tree plantings at
11 staggered spacing, etc. to be installed and maintained as feasible between any affected land and any
12 adjoining property containing occupied buildings or public access within view of the affected land;
13 (4) erosion control measures to be taken during the construction and operation of all haul roads or access
14 roads to minimize off-site damage from ~~sediment~~; sediment and to assure compliance with the
15 provisions of the Erosion and Sedimentation Control Act of 1971;
16 (5) other conditions necessary to safeguard the adjacent surface resources or wildlife.

17
18 *History Note: Authority G.S. 74-63; 74-51;*
19 *Eff. February 1, 1976;*
20 *Amended Eff. May 1, 1992; November 1, 1984.*

21
22 **15A NCAC 05B .0106 STANDARDS FOR DENYING AN APPLICATION**

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

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

30
31 *History Note: Authority G.S. 74-51; 74-58; 74-63;*
32 *Eff. February 1, 1976;*
33 *Amended Eff. November 1, 1984.*

34
35 **15A NCAC 05B .0107 MODIFICATION OF MINING PERMIT**

36 **15A NCAC 05B .0108 RENEWAL OF MINING PERMIT**

37 **15A NCAC 05B .0109 STANDARDS FOR SUSPENDING OR REVOKING A MINING PERMIT**

38
39 *History Note: Authority G.S. 74-52; 74-57; 74-58;*

§ 74-55. Reclamation report.

- (a) By July 1 of each year, the operator shall file a report of activities completed during the preceding year on a form prescribed by the Department, which includes all of the following:
 - (2) State acreage disturbed by mining in the last 12-month period.
 - (3) State and describe amount and type of reclamation carried out in the last 12-month period.

15A NCAC 05B .0110 MINING RECLAMATION REPORTS

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

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

74-51(c) “The public hearing shall be held within 60 days of the end of the 30-day period within which any requests for the public hearing shall be made.” [See Timeline.](#)

15A NCAC 05B .0111 PUBLIC HEARINGS

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

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

(c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose reasonable limitations on the length of time that any person may speak and may summarize comments rather than recording them in full. The hearing officer may allow additional written comments to be submitted after the hearing. ~~hearing within a period of time he deems appropriate which shall not exceed ten days~~ If the Department determines that all relevant and material supplemental information, as required by G.S. 74-51, is not available for the recommendation on the approval or denial of the application request, no approval shall be granted.

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

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

15A NCAC 05B .0112 PERMIT APPLICATION PROCESSING FEES

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

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

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

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

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

TYPE	ACRES	NEW PERMIT	— MAJOR	
			MODIFICATION	RENEWAL
CLAY	1 but less than 25	\$ 500	\$ 250	\$ 250
	25 but less than 50	1000	500	500
	50 or more	1500	500	500
SAND & GRAVEL,	1 but less than 5	150	100	100
GEMSTONE	5 but less than 25	250	100	100
AND BORROW PITS	25 but less than 50	500	250	500
QUARRY,	50 or more	1000	500	500
	1 but less than 10	250	100	100
	INDUSTRIAL	10 but less than 25	1000	250
MINERALS, DIMENSION	25 but less than 50	1500	500	500
STONE	50 or more	2500	500	500
	1 or more	2500	500	500

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

Go to [Statutes](#)

1 PHOSPHATE
2 GOLD (HEAP ~~1 or more~~ 2500 500 500
3 LEACH),
4 TITANIUM &
5 OTHERS
6

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

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

15 *History Note:* Filed as a Temporary Rule Eff. November 1, 1990, for a Period of 180 Days to Expire on April 29, 1991;
17 Authority G.S. 143B-290;
18 ARRC Objection Lodged November 14, 1990;
19 ARRC Objection Removed December 20, 1990;
20 Eff. January 1, 1991;
21 Amended Eff. December 1, 1991.

23 15A NCAC 05B .0113 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)

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

31 *History Note:* Authority G.S. 74-51; 74-52; 74-63; 143B-290; *Note:*
32 RRC Objection Eff. September 15, 1994 due to lack of statutory authority;
33 Eff. November 1, 1994;
34 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d))

36 SUBCHAPTER 5C - GEOPHYSICAL EXPLORATION

38 *The Geophysical Exploration subchapter is highlighted in yellow because it is an oil and gas rule and not related to the mining rules.*

42 SUBCHAPTER 05F - CIVIL PENALTIES

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

Go to [Statutes](#)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

15A NCAC 05F .0101 PURPOSE AND SCOPE

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

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d)); November 1, 1984.

15A NCAC 05F .0102 DEFINITIONS

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

- (1) ~~"Director"~~ means the Director, Division of Energy, Mineral, and Land Resources;
- (2) ~~"Regional Engineer"~~, means any regional engineer of the Land Quality Section, Division of Energy, Mineral, and Land Resources;
- (3) ~~"Mining and Energy Commission"~~, means that body created by N.C.G.S. 143B-290.

History Note: Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
Eff. May 1, 1982;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d)).

15A NCAC 05F .0103 WHO MAY ASSESS

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

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

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

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

(b) In determining whether to assess a civil penalty for any violation committed prior or subsequent to receipt of the notice of violation, the ~~director~~ Director shall consider whether the violator ceased mining, restored the affected area, or otherwise complied with the requirements of the notice of violation and shall also consider the various criteria in Rule ~~5F-0007~~. .0107 of this Subchapter. The civil penalty assessment shall specify with ~~reasonable particularity~~ the violation(s) for which the penalty has been assessed and shall be transmitted to the violator by certified or registered mail, return receipt requested.



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

Go to [Statutes](#)

1 *History Note:* Authority G.S. 74-60; 74-61; 74-63; 74-64; 143B-10;
2 *Eff. May 1, 1982;*
3 *Amended Eff. December 1, 1988; November 1, 1984.*

4
5 **15A NCAC 05F .0106 CIVIL PENALTY FOR VIOLATING OPERATING PERMIT**

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

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

17 *History Note:* Authority G.S. 74-60; 74-61; 74-62; 74-63; 74-64; 143B-10;
18 *Eff. May 1, 1982;*
19 *Amended Eff. November 1, 1984.*

20 **15A NCAC 05F .0107 CRITERIA FOR DETERMINING AMOUNT OF PENALTY**

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

- 23 (1) nature of the violation; **Implicit in the statute, not needed here**
- 24 (2) degree and extent of the harm, including off-site damage; **Came from statute (except for "off-site")**
- 25 (3) duration of the violation; **Statute specifies "for each day of violation" so this is not needed.**
- 26 (4) cause of the violation; **Not in statute and not clear how to fine someone for the "cause."**
- 27 (5) cost of compliance and rectifying any harm or damage; **Came from statute, except for "cost of**
28 **compliance"**
- 29 (6) violator's previous record of compliance with the Mining Act, or any rules promulgated thereunder,
30 or any mining permit issued to the violator; **Covered by statute**
- 31 (7) staff investigative costs; and **Not in statute**
- 32 (8) effectiveness of any action taken by the operator.
33 **I guess we are talking about operator's remediation**
34 **and if that should reduce the fine?**

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

38
39 **15A NCAC 05F .0108 ADMINISTRATIVE REMEDIES**

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. That may be enough.

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

Go to [Statutes](#)

1 Within ~~60~~ 30 days after receipt of notification of any civil penalty assessment, the person against whom the civil
2 penalty is assessed may contest the decision of the ~~department~~ Department by filing a petition as described in G.S.
3 74-61 and G.S. 150B-23.

4
5 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
6 Eff. May 1, 1982;
7 Amended Eff. August 1, 1988.

8 9 **15A NCAC 05F .0109 HEARING PROCEDURES**

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

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

14
15 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 143B-10; 150B-23;
16 Eff. May 1, 1982;
17 Amended Eff. August 1, 2012 (see S.L 2012-143, s.1. (d)); August 1, 1988.

18 19 **15A NCAC 05F .0110 TENDERS OF PAYMENT**

20 The ~~director~~ Director shall accept and acknowledge all tenders of payment.

21
22 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
23 Eff. May 1, 1982.

24 25 **15A NCAC 05F .0111 REFERRAL TO ATTORNEY GENERAL**

26 (a) If the person against whom a civil penalty is assessed, fails to respond within 60 days as provided in ~~Rule .0008,~~
27 Rule .0108, the ~~director~~ Director shall refer the matter to the Attorney General to recover the amount of the civil
28 penalty.

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

32
33 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
34 Eff. May 1, 1982.

35 36 **15A NCAC 05F .0112 FURTHER REMEDIES**

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

1 *History Note:* Authority G.S. 74-61; 74-62; 74-63; 74-64; 143B-10;
2 *Eff. May 1, 1982;*
3 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d)).*

4
5
6
7
8
9
10 **SUBCHAPTER 5G - URANIUM EXPLORATION REGULATIONS**

11
12 **15A NCAC 05G .0101 PURPOSE**

13
14 *History Note:* Authority G.S. 143B-290(1)(e); 74-75 through 74-89;
15 *Eff. December 1, 1983;*
16 *Repealed Eff. August 1, 1988.*

17
18 **15A NCAC 05G .0102 ACTIVITIES REQUIRING PERMITS**

19
20 *History Note:* Authority G.S. 74-76; 74-77;
21 *Eff. December 1, 1983;*
22 *Repealed Eff. November 1, 1984.*

23
24 **15A NCAC 05G .0103 PROCEDURES FOR OBTAINING PERMITS**

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

26
27 *History Note:* Authority G.S. 74-77 through 74-89;
28 *Eff. December 1, 1983.*

29
30 **15A NCAC 05G .0104 ABANDONMENT PLAN: BONDING REQUIREMENTS**

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

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

- 38 (1) The applicant shall provide the ~~department~~ Department with an estimate of the total length of the
39 vehicular access roads which will involve the cutting of vegetation and/or grading and of the number
40 of exploratory drill holes and test pits;

1 (2) The minimum amount of any bond shall be five thousand dollars (\$5,000.00). In addition to the
2 minimum bond amount of five thousand dollars (\$5,000.00), an additional bond amount shall be
3 required at the rate of two dollars (\$2.00) per each linear foot of vehicular access road and of two
4 hundred dollars (\$200.00) per each exploratory drill hole or test pit; and

5 (3) If the ~~department~~ Department determines that the amount of the bond required under Subparagraph
6 (b)(2) of this Rule is either excessive or inadequate due to specific site conditions, the ~~department~~
7 Department may negotiate a different bond amount that will assure adequate abandonment in the
8 event of bond forfeiture.

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

11
12 *History Note: Authority G.S. 74-78; 74-79; 74-86;*
13 *Eff. December 1, 1983.*

14
15 **15A NCAC 05G .0105 DRILLING: CASING: TESTING AND ABANDONMENT**

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

19
20 *History Note: Authority G.S. 74-78; 74-86; 143B-290;*
21 *Eff. December 1, 1983.*

22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42