



North Carolina Department of Environment and Natural Resources  
**Division of Energy, Mineral, and Land Resources**

Tracy E. Davis, PE, CPM  
Director

Pat McCrory, Governor  
John E. Skvarla, III, Secretary

December 16, 2013

**MEMORANDUM**

**To:** Toby Vinson, PE  
Chief Engineer

**From:** Gray Hauser, PE  
State Sedimentation Specialist

**Subject:** Rules Review Specifications

The following is an explanation as to why specific portions of the administration code have been labeled unnecessary.

**Rule:**

**15A NCAC 04B .0116      EXISTING UNCOVERED AREAS**

- (a) All uncovered areas which:
- (1) existed on the effective date of these Rules;
  - (2) resulted from land disturbing activity;
  - (3) exceed one acre;
  - (4) are experiencing continued accelerated erosion; and
  - (5) are causing off-site damage from sedimentation,

shall be provided with ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

(b) The commission or local government shall serve a notice to comply with the provisions of G.S. 113A-50 et. seq. or any ordinance, rule or order adopted or issued pursuant to G.S. 113A-50 et. seq. by the Commission or by a local government upon the landowner or other person in possession or control of the land by any means authorized under G.S. 1A-1, Rule 4. The notice shall state the measures needed and the time allowed for compliance. The commission or local government issuing the notice shall consider the economic feasibility, technological expertise and quantity of work required, and shall establish reasonable time limits for compliance.

(c) State agency erosion and sedimentation control programs submitted to the commission for delegation of authority to administer such programs shall contain provisions for the treatment of

existing exposed areas. Such provisions shall consider the economic feasibility, existing technology, and quantity of work required.

(d) This Rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

**Explanation:**

This rule was written to cover areas that predated the sedimentation pollution control act. Since the act was 1973 this part of the administrative code is unnecessary.

**Rule:**

**15A NCAC 04B .0126 (e) PLAN REVIEW FEE**

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

**Explanation:**

This rule has been superseded by the general statutes and is unnecessary.

**Rule:**

**15A NCAC 04B .0128 RAILROAD COMPANIES**

(a) The Commission recognizes that under the Federal Railroad Safety Act of 1970 (FRSA), 45 U.S.C. 421 et seq., as interpreted by federal administrative rules and court decisions, existing railroad roadbeds comprise a zone of federal preeminence within which federal law takes precedence over the Act [the SPCA].

(b) While the specific definition of this zone of federal preeminence is a question of federal law and regulation, in general the zone of federal preeminence extends outward from the center of the railroad roadbed to and including drainage ditches and spoil banks on either side of the roadbed.

(c) In the event of a derailment, washout, or other emergency condition which requires immediate action to protect public safety, the zone of federal preeminence temporarily expands, for the duration of the emergency condition, to encompass areas adjacent to the roadbed within which emergency repairs are undertaken pursuant to the FRSA and Federal Railroad Administration rules.

(d) The Act and rules do not apply to activities conducted within the zone of federal preeminence. The Act and rules apply to all other activities conducted by railroad companies.

Railroad companies shall take all reasonable measures that are consistent with the requirements of federal law to control sedimentation originating in the zone of federal preeminence.

(e) A railroad company's failure to comply with a requirement of the Act or rules in order to avoid creating a safety hazard or to avoid noncompliance with a federal safety requirement is not a knowing or willful violation of the Act or rules.

(f) The Commission will provide advice and technical assistance to railroad companies in the development and implementation of voluntary best management practices to reduce environmental impacts that may otherwise result from activities conducted within the zone of federal preeminence.

**Explanation:**

This rule has been superseded by federal law and is unnecessary.

**Rule:**

**15A NCAC 04C .0109            TENDER OF PAYMENT**

The director shall accept and acknowledge all tenders of payment on behalf of the secretary.

**Explanation:**

This rule is unnecessary because the Attorney General's office handles the collection of civil penalties.