

Rule Formatting Guide

- Anything that is highlighted is a **change** from what was published in the register on 7/15/19.
 - Highlighted language that is struck through is now being deleted. (i.e. ~~now being deleted~~)
 - Highlighted language that is struck through and in brackets *was new language* in the register and is now being deleted. (i.e. ~~[was new but now being deleted]~~)
 - Highlighted language that is underlined is new. (i.e. new)
 - Language that is only highlighted is now being kept and not deleted (i.e. **now keeping not deleting**)

CORRECTED FINAL RULES PROPOSED FOR ADOPTION

1 15A NCAC 04A .0101 is proposed for amendment as follows:

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3 **15A NCAC 04A .0101 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION**

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

8 (1) ~~Interchange Building~~
9 ~~59 Woodfin Place~~
10 ~~P.O. Box 370~~
11 ~~Asheville, N.C. 28801~~
12 Asheville Regional Office
13 2090 U.S. 70 Hwy.
14 Swannanoa, NC 28778-8211
15

16 (2) ~~585 Woughtown Street~~
17 Winston-Salem Regional Office
18 450 W. Hanes Mill Rd., Suite 300
19 Winston-Salem, N.C. 27107-27105
20

21 (3) ~~919 North Main Street~~
22 Mooreville Regional Office
23 610 E. Center Avenue, Suite 301
24 ~~P.O. Box 950~~
25 Mooreville, N.C. 28115-28115-2578
26

27 (4) Raleigh Regional Office
28 3800 Barrett Drive
29 ~~P.O. Box 27687~~
30 Raleigh, N.C. 27611-27609-7222
31

32 (5) ~~Wachovia Building~~
33 ~~Suite 714~~
34 Fayetteville Regional Office
35 225 Green Street, Suite 714
36 Fayetteville, N.C. 28301-28301-5095
37

38 (6) ~~1424 Carolina Avenue~~

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Washington Regional Office
1424 Carolina Ave.
P.O. Box 2188 Washington, N.C. 27889- 27889-3314

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

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

1 15A NCAC 04A .0105 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04A .0105 DEFINITIONS**

4 In addition to the terms defined in G.S. 113A-52, As used in this Chapter, the following terms definitions shall apply
5 in this Chapter and have these meanings:

6 (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of
7 land-disturbing activities.

8 (2) "Act" means the Sedimentation Pollution Control Act of 1973 in G.S. 113A-50 et seq.

9 ~~(3)(2)~~ "Adequate Erosion Control ~~Measures, Structure, or Device~~ Devices or Structures" means one ~~which~~
10 that controls the soil material within the land area under responsible control of the person conducting
11 the land-disturbing activity.

12 (4) "Approving Authority" means the Division or other state or a local government agency that has been
13 delegated erosion and sedimentation plan review responsibilities in accordance with the provisions
14 of the Act.

15 ~~(5)(14)~~ "Being Conducted" means a land-disturbing activity has been initiated and ~~permanent stabilization~~
16 ~~of the site has not been completed.~~ not deemed complete.

17 ~~(6)(3)~~ "Borrow" means fill material ~~which~~ that is required for on-site construction ~~and~~ that is obtained
18 from other locations.

19 ~~(7)(4)~~ "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.

20 ~~(8)(27)~~ "Coastal ~~counties~~ Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden,
21 Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico,
22 Pasquotank, Pender, Perquimans, ~~Tyrrell~~ Tyrrell, and Washington.

23 ~~(9)(23)~~ "Completion of Construction or Development" means that no further land-disturbing activity is
24 required on a phase of a project except that which is necessary for establishing a permanent ground
25 cover.

26 ~~(10)(26)~~ "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the
27 Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality.

28 ~~(11)(22)~~ "Discharge ~~Point~~" Point or Point of Discharge" means that point where runoff leaves a tract of ~~land.~~
29 land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

30 ~~(12)~~ "Division" or "DEMLR" means the Division of Energy, Mineral, and Land Resources of the
31 Department of Environmental Quality.

32 ~~(13)(18)~~ "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring placed
33 at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

34 ~~(14)(5)~~ "Ground Cover" means any natural vegetative growth or other material ~~which~~ that renders the soil
35 surface stable against accelerated erosion.

36 ~~(15)(24)~~ "High Quality Waters" means those ~~classified as such~~ described in 15A NCAC 02B .0101(e)(5) –
37 General Procedures, which is incorporated herein by reference to include further amendments. 02B

1 .0224 which is herein incorporated by reference including subsequent amendments and editions,
2 and may be accessed at no cost at <http://reports.oah.state.nc.us/.pdf>.

3 (16) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of
4 High Quality Waters and for the remainder of the ~~state~~ State areas that are within one mile of and
5 drain to HQWs.

6 (17) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run,
7 branch, canal, waterway, estuary, and any reservoir, lake lake, or pond pond. ~~natural or impounded.~~
8 ~~in which sediment may be moved or carried in suspension, and which could be damaged by~~
9 ~~accumulation of sediment.~~

10 (18)(7) "Natural Erosion" means ~~erosion~~ "erosion" as defined in G.S. 113A-52(5) under natural
11 environmental conditions undisturbed by man.

12 (19)(9) "Person Conducting the ~~Land Disturbing~~ Land-disturbing Activity" means any person who may be
13 held responsible for a violation unless expressly provided otherwise by the Sedimentation Pollution
14 Control Act of 1973, G.S. 113A 50 to 66, the North Carolina Administrative Code, Title 15A Chapter
15 4 the Act, the Rules of this Chapter, or any order or local ordinance adopted pursuant to ~~the these~~
16 Rules or the Act, Sedimentation Pollution Control Act of 1973, G.S. 113A 50 to 69.

17 (8) ~~"Person Who Violates" as used in G.S. 113A 64, means:~~

18 (a) ~~the developer or other person who has or holds himself or herself out as having financial~~
19 ~~or operational control over the land disturbing activity; or~~

20 (b) ~~the landowner or person in possession or control of the land when he has directly or~~
21 ~~indirectly allowed the land disturbing activity or has directly benefitted from it or he has~~
22 ~~failed to comply with any provision of the Sedimentation Pollution Control Act of 1973,~~
23 ~~G.S. 113A 50 to 66, the North Carolina Administrative Code, Title 15A, Chapter 4, or any~~
24 ~~order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act of~~
25 ~~1973, G.S. 113A 50 to 66, as imposes a duty upon him.~~

26 (20) "Person Who Violates", or "Violator", as used in G.S. 113A-64, means: any landowner or other
27 person who has financial or operational control over the land-disturbing activity; or who has directly
28 or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the
29 Rules of this Chapter, or any order or local ordinance adopted pursuant to the Act, as it imposes a
30 duty upon that person

31 (10) ~~"Phase of Grading" means one of two types of grading, rough or fine.~~

32 (21)(11) "Plan" means an erosion and sedimentation control plan.

33 (22)(12) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been
34 or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

35 (23) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches and
36 appurtenances that serve to collect and convey stormwater through and from a given drainage area.

1 (24) ~~“Storm Water~~ “Stormwater Runoff” means the ~~direct~~ runoff of water resulting from precipitation in
2 any form.

3 (25)(20) ~~“Ten Year Storm”~~ means ~~the surface runoff resulting from a rainfall~~ of an intensity ~~that, based on~~
4 historical data, is expected predicted to be equaled or exceeded, on the average, once in 10 years,
5 and of a duration ~~that which~~ will produce the maximum peak rate of runoff ~~for~~ from the watershed
6 of interest under average antecedent wetness conditions.

7 (26)(28) ~~“Twenty-five Year Storm”~~ “Storm or Q25” means ~~the surface runoff resulting from~~ a rainfall of an
8 intensity ~~expected that, based on historical data, is predicted~~ to be equaled or exceeded, on the
9 average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff from
10 the watershed of interest under average antecedent wetness conditions.

11 (27)(15) ~~“Uncovered”~~ means ~~the removal of having had~~ ground cover removed from, on, or above the soil
12 surface.

13 (28)(16) ~~“Undertaken”~~ means the initiating of any ~~activity or phase of activity which~~ activity or phase of
14 activity that results or will result in a change in the ground cover or topography of a tract of land.

15 (29)(21) ~~“Velocity”~~ means the ~~average velocity speed~~ of flow through ~~a the cross-section~~ cross-section
16 perpendicular to the direction of the main channel at the peak flow of the storm of ~~interest. interest~~
17 but not exceeding bank full flows. The cross-section of the main channel shall be that area defined
18 by the geometry of the channel plus the area of flow below the flood height defined by vertical lines
19 at the main channel banks. Overload flows are not to be included for the purpose of computing
20 velocity of flow.

21 (30)(17) ~~“Waste”~~ means surplus materials resulting from on-site construction and to be disposed of at other
22 locations offsite.

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24 History Note: *Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire*
25 *on July 11, 1992;*
26 *Filed as a Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire*
27 *on April 29, 1991;*
28 *Statutory Authority G.S. 113A-52; 113A-54*
29 *Eff. November 1, 1984;*
30 *Amended Eff. May 1, 1990;*
31 *ARRC Objection Lodged November 14, 1990;*
32 *ARRC Objection Removed December 20, 1990;*
33 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; April 1, 1992; January*
34 *1, 1991.*
35 *Readopted Eff. XX, 1, 20XX*
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1 15A NCAC 04B .0105 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0105 PROTECTION OF PROPERTY**

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

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8 *History Note: Authority G.S. ~~113A-54(b)~~; 113A-54(d)(2);*

9

Eff. February 1, 1976;

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Amended Eff. August 1, 1988; November 1, 1984.

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Readopted Eff. XX, 1, 20XX

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1 15A NCAC 04B .0106 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES**

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

- 7 (1) Identify Critical ~~Areas:~~ Areas. Identify site areas subject to ~~severe~~ accelerated erosion, and off-site
8 areas ~~especially~~ vulnerable to damage from erosion and sedimentation.
- 9 (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- 10 (3) Limit Time of Exposure. Limit exposure to the shortest ~~feasible time.~~ time specified in G.S. 113A-
11 57, the Rules of this Chapter, or as directed by the approving authority.
- 12 (4) Control Surface Water. Control surface water ~~run-off~~ originating upgrate of exposed areas in order
13 to reduce erosion and sediment loss during exposure.
- 14 (5) Control Sedimentation. All land-disturbing activity ~~is to~~ shall be planned ~~and conducted so as to~~
15 prevent off-site sedimentation damage.
- 16 (6) Manage ~~Storm Water~~ Stormwater Runoff. ~~When the increased~~ Plans shall be designed so that any
17 increase in velocity of ~~storm water~~ stormwater runoff resulting from a land-disturbing activity
18 causes will not result in accelerated erosion of the receiving ~~waterecourse,~~ stormwater conveyance
19 [within the project boundary,] or at the point of discharge. plans Plans shall include measures to
20 control the velocity prevent accelerated erosion within the project boundary and at ~~to~~ the point of
21 discharge.

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

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24 *History Note: Authority G.S. 113A-54(d)(4); 113A-54.1;*

25 *Eff. February 1, 1976;*

26 *Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980.*

27 *Readopted Eff. XX, 1, 20XX*
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1 15A NCAC 04B .0107 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY**

4 (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with ~~the G.S. 113A-~~
5 ~~57. 113A-57~~ and the standards established in these Rules.

6 (b) ~~Pursuant to G.S. 113A-57(3), Unless where otherwise specified in the Act or the rules of this Chapter, provisions~~
7 ~~for [for a] permanent ground cover sufficient to restrain erosion must shall be accomplished within 45 working days~~
8 ~~or 90 calendar days following completion of construction or development, development, whichever period is shorter,~~
9 ~~except as provided in 15A NCAC 4B .0124(e).~~

10 (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan ~~must shall be both~~
11 ~~filed and approved by the agency having jurisdiction. approving authority.~~

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

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19 *History Note: Authority G.S. 113A-54(d)(4); 113A-57; 113A-57(3)(4);*

20 *Eff. February 1, 1976;*

21 *Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980.*

22 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04B .0108 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD**

4 Except where otherwise specified in this Chapter, erosion ~~Erosion~~ and sedimentation control measures, structures, and
5 devices shall be ~~so~~ planned, designed, and constructed to provide protection from the ~~run-off runoff~~ of that a ~~10-year~~
6 10-year storm ~~that [which]~~ produces the maximum peak rate of ~~run-off runoff~~ as calculated according to procedures
7 in the United States Department of ~~Agriculture~~ Agriculture, Soil Natural Resources Conservation Service's "National
8 Engineering Field ~~Manual~~ Handbook 630 (Handbook 630)" This document is herein incorporated by reference
9 including subsequent amendments and editions, and may be accessed at no cost at
10 <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063> ~~or~~
11 according to procedures adopted by any other agency of this state or the United States or any generally recognized
12 organization or association. Other methodologies can be used if based on generally accepted engineering standards
13 that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall
14 determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on
15 observed data in agreement with the predictive model.

16

17 *History Note: Authority G.S. 113A-54;*

18 *Eff. February 1, 1976;*

19 *Amended Eff. November 1, 1984; July 1, 1978.*

20 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04B .0109 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0109 ~~STORM—WATER~~ STORMWATER OUTLET [DISCHARGE POINT]**
4 **PROTECTION**

5 (a) Persons shall ~~conduct~~ provide a design for the land-disturbing land-disturbing activity so that the ~~post construction~~
6 post-construction velocity of the ~~ten-year~~ ten-year storm ~~run-off~~ [run-off] runoff in the receiving ~~waterecourse~~
7 stormwater conveyance ~~to to, and including,~~ the discharge ~~point~~ point, does not exceed the greater of:

- 8 (1) the velocity established by the table in Paragraph (d) of this Rule; or
9 (2) the projected velocity of the ~~ten-year~~ ten-year storm ~~run-off~~ runoff in the receiving ~~waterecourse~~
10 stormwater conveyance prior to development.

11 If projected conditions in Subparagraphs (1) or (2) of this Paragraph cannot be met, then the receiving ~~waterecourse~~
12 stormwater conveyance ~~to to, and including~~ and including, the discharge point shall be designed and constructed to
13 withstand the expected velocity anywhere the velocity exceeds the "~~prior to development~~" velocity prior to
14 development by ten percent.

15 (b) ~~Acceptable Management Measures.~~ ~~The commission recognizes that management of storm water run-off to~~
16 ~~control downstream erosion constitutes a developing technology and consequently invites the use of innovative~~
17 ~~techniques shown to produce successful results. Alternatives include:~~ The Commission [shall] may allow alternative
18 measures to control downstream erosion, including:

- 19 (1) ~~Compensate~~ compensation for increased ~~run-off~~ runoff from areas rendered impervious by designing
20 measures to promote ~~infiltration.~~ Infiltration; or
21 (2) ~~Avoid~~ avoiding increases in ~~storm water~~ stormwater discharge velocities by using vegetated or
22 roughened swales and waterways in place of closed drains and paved ~~sections.~~ sections; or
23 (3) ~~Provide~~ providing energy dissipators at storm drainage outlets to reduce flow velocities to the
24 discharge ~~points.~~ points; or
25 (4) ~~Protect~~ protecting ~~waterecourses~~ stormwater conveyances subject to accelerated erosion by
26 improving cross sections ~~and/or~~ or providing erosion-resistant lining.

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

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

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Material	Maximum Permissible	
	Velocities For in feet and Meters Per Second*	
	F.P.S.	M.P.S.
Fine Sand (noncolloidal)	2.5	.8
Sandy Loam (noncolloidal)	2.5	.8
Silt Loam (noncolloidal)	3.0	.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (very colloidal)	5.0	1.5
Graded, Loam to Cobbles (noncolloidal)	5.0	1.5

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1	Graded, Silt to Cobbles (colloidal)	5.5	1.7
2	Alluvial Silts (noncolloidal)	3.5	1.1
3	Alluvial Silts (colloidal)	5.0	1.5
4	Coarse Gravel (noncolloidal)	6.0	1.8
5	Cobbles and Shingles	5.5	1.7
6	Shales and Hard Pans	6.0	1.8

7
8 ~~Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil~~
9 ~~Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for~~
10 ~~slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.~~

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

15
16 *History Note: Authority G.S. 113A-54(b)(c);*
17 *Eff. February 1, 1976;*
18 *Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978.*
19 *Readopted Eff. XX, 1, 20XX*
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1 15A NCAC 04B .0110 is proposed for readoption as follows:

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3 **15A NCAC 04B .0110 BORROW AND WASTE AREAS**

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

9

10 *History Note: Authority G.S. 74-67; 113A-54(b); 130A-166.21;*

11

Eff. February 1, 1976;

12

Amended Eff. May 1, 1990; November 1, 1984.

13

Readopted Eff. XX, 1, 20XX

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1 15A NCAC 04B .0111 is proposed for readoption as follows:

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3 **15A NCAC 04B .0111 ACCESS AND HAUL ROADS**

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

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7 History Note: Authority G.S. 113A-54;

8 Eff. February 1, 1976

9 Readopted Eff. XX, 1, 20XX

1 15A NCAC 04B .0112 is proposed for readoption as follows:

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3 **15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES**

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

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9 *History Note: Authority G.S. 113A-54;*

10 *Eff. February 1, 1976;*

11 *Amended Eff. November 1, 1984.*

12 Readopted Eff. XX, 1, 20XX

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1 15A NCAC 04B .0113 is proposed for readoption as follows:

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15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE

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

*History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. November 1, 1984; July 1, 1978.
Readopted Eff. XX, 1, 20XX*

1 15A NCAC 04B .0115 is proposed for re adoption with substantive changes as follows:

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3 **15A NCAC 04B .0115 ADDITIONAL MEASURES**

4 Whenever the ~~commission~~ Commission or a local government determines that ~~significant~~ accelerated erosion and
5 sedimentation continues despite the installation of protective practices, the person conducting the ~~land disturbing~~ land-
6 disturbing activity ~~will be required to~~ and shall take additional protective ~~action.~~ action necessary to achieve
7 compliance with the conditions specified in the Act or the Rules of this Chapter.

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9 *History Note: Authority G.S. 113A-54(b); G.S. 113A-54.1(b);*

10 *Eff. February 1, 1976;*

11 *Amended Eff. November 1, 1984.*

12 Readopted Eff. XX, 1, 20XX

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1 15A NCAC 04B .0118 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0118 APPROVAL OF PLANS**

4 (a) Persons conducting land-disturbing activity on a tract ~~which~~ that covers one or more acres shall file ~~three copies~~
5 ~~of~~ the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission
6 if no local government has ~~jurisdiction~~, jurisdiction. The approving agency shall act on the plan at least 30 days prior
7 ~~to beginning such activity and within 30 days of receipt of the plan or the plan shall be deemed approved.~~ shall keep
8 ~~another~~ A paper copy of the approved plan shall be kept on file at the job site. After approving a plan, if the
9 Commission or local government determines, either upon review of such plan or ~~on~~ upon inspection of the job site,
10 ~~that a significant risk of accelerated erosion or off site sedimentation exists, the plan is inadequate to meet the~~
11 requirements of the Act and of this Chapter, the Commission or local government shall require a revised plan. Pending
12 the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate
13 authority.

14 (b) Commission Approval:

15 (1) The Commission shall review plans for all land-disturbing activity over which the Commission has
16 exclusive jurisdiction ~~by statute pursuant to G.S. 113A-56~~, and all other land-disturbing activity if
17 where no local government has jurisdiction.

18 (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall
19 notify the person submitting the plan in writing that it has been:

20 (A) ~~approved~~, approved;

21 (B) ~~approved with modification~~, modification; or,

22 (C) ~~approved with performance reservations~~, or

23 (C) ~~(D)~~ disapproved.

24 (3) The Commission's ~~disapproval~~, approval with modification, or ~~performance reservations~~
25 disapproval of any proposed ~~plan~~, plan shall entitle the person submitting the plan to an
26 administrative hearing in accordance with the provisions of G.S. 150B-23. ~~(This Section does not~~
27 modify any other rights to a contested case hearing which may arise under G.S. 150B-23).

28 (4) ~~Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed~~
29 ~~by the Commission~~ Appeals of local government decisions shall be conducted pursuant to G.S.
30 113A-61(c).

31 (5) Any plan submitted for a land-disturbing activity for which an environmental document is required
32 by the North Carolina Environmental Policy Act as set forth in Article 1 [of] of G.S. 113 and the
33 rules of this Department as set forth in 15A NCAC 01C shall be deemed incomplete until a complete
34 an environmental document is available for review. The Commission shall ~~promptly~~ notify the
35 person submitting the plan that the ~~30-day~~ 30-day time limit for review of the plan pursuant to
36 Subparagraph ~~(b)(2)~~ (2) of this Rule Paragraph shall not begin until a ~~complete~~ the environmental
37 document is available for review.

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

6 (d) Local Government Approval:

7 (1) Local Governments administering erosion and sedimentation control programs shall develop and
8 publish procedures for approval of plans. ~~Such~~ The procedures shall ~~respect~~ follow applicable laws,
9 ordinances, and rules, and shall contain procedures for appeal consistent with the local government's
10 organization and operations.

11 (2) The ~~secretary~~ Secretary shall appoint ~~such employee(s)~~ employees of the Department as he or she
12 deems necessary to consider appeals from the local government's final disapproval or modification
13 of a plan. Within 30 days following receipt of notification of the appeal, such departmental
14 employee shall complete the review and shall notify the local government and the person appealing
15 the local government's decision that the plan should be approved, approved with modifications,
16 ~~approved with performance reservations~~, or disapproved.

17 (3) If either the local government or the person submitting the plan disagrees with the decision reached
18 ~~by an employee of the Department~~ a Departmental employee, then he or she may appeal the decision
19 to the Commission by filing notice within 15 days with the Director of the Division of Energy,
20 Mineral, and Land Resources. The ~~director~~ Director shall make the proposed erosion control plan
21 and the records relating to the local government's and ~~departmental employees'~~ Departmental
22 employee's review, available to an ~~appeals review~~ erosion and sedimentation control plan review
23 committee consisting of three members of the Commission appointed by the chairman. Within 10
24 days following receipt of the notification of appeal, the ~~appeals~~ erosion and sedimentation control
25 plan review committee shall notify the local government and the person submitting the plan of a
26 place and time for a hearing for consideration of the ~~appeal~~, appeal. ~~and shall afford both~~ Both
27 parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or
28 oral arguments. The ~~appeals~~ erosion and sedimentation plan review committee shall notify both
29 parties of its decision concerning the approval, disapproval, or modification of the proposed plan
30 within 30 days following ~~such~~ the hearing.

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

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History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-57; 113A-60(a); 113A-61(b); 113A-61(c); 150B, Article 3; ~~150B-23~~;
Eff. February 1, 1976;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); June 1, 1995; February 1, 1992; May 1, 1990; August 1, 1988.
Readopted Eff. XX, 1, 20XX

1 15A NCAC 04B .0120 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS**

4 (a) The Commission, Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality or local
5 government may require written ~~statements,~~ statements related to items including but not limited to NOVs or Stop-
6 Work orders or the filing of reports under oath, such as self-inspection or engineering/design reports, concerning ~~land~~
7 ~~disturbing land-disturbing~~ activity.

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

11 (c) No person shall refuse entry or access to any representative of the Commission or any representative of a local
12 government who requests entry for purposes of inspection.

13 ~~(b)~~ (d) When a preconstruction conference is proposed pursuant to G.S. 113A-51, it shall be specified on the plans.

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15 *History Note: Authority G.S. 113A-51; 113A-54(b); 113A-58; 113A-61.1;*

16 *Eff. February 1, 1976;*

17 *Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984.*

18 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04B .0124 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS**

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

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

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

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

- 27 (1) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
28 (2) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
29 (3) have a minimum surface area of 325 square feet per cfs of [Q_{25 peak}] Q25 peak inflow;
30 (4) have a minimum dewatering time of 48 hours and,
31 (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles are
32 sufficient.

33 (d) Upon a written request of the applicant, the Director may allow alternative design or control measures in lieu of
34 meeting the conditions required in Subparagraphs (c)(2) through (c)(5) of this Rule if the applicant demonstrates that
35 meeting all of those conditions will result in design or operational hardships and that the alternative measures will
36 provide an equal or more effective level of erosion and sedimentation control on the site. Alternative measures may

1 include, but are not limited to, quicker application of ground cover, use of sediment flocculants and use of enhanced
2 ground cover practices.

3 ~~(e)(4)~~ Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper
4 than two horizontal to one vertical if a vegetative cover is used for ~~stabilization~~ stabilization, unless soil conditions
5 permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural ~~devices~~ devices, or
6 other forms of acceptable ditch liners. liners proven effective and acceptable to the Division. In any event, the The
7 angle for side slopes shall be sufficient to restrain accelerated erosion.

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

11 *History Note: Authority G.S. 113A-54(b); 113A-54(c)(1);*
12 *Eff. May 1, 1990.*
13 *Readopted Eff. XX, 1, 20XX*
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1 15A NCAC 04B .0125 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS**

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

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

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

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

19
20 ~~(d)~~(e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that is
21 predicted by the plan approving authority to will cause adverse stream temperature fluctuations, violations in these
22 waters as set forth in 15A NCAC 2B 02B .0211 "Fresh Surface Water Quality Classification and Standards", Standards
23 in these for Class C waters. Waters", which is hereby incorporated by reference including subsequent amendments
24 and editions. Copies of 15A NCAC 02B .0211 are available at <https://www.oah.state.nc.us/> at no cost.

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26 *History Note: Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);*
27 *Eff. May 1, 1990;*
28 *Amended Eff. February 1, 1992.*
29 *Readopted Eff. XX, 1, 20XX*

1 15A NCAC 04B .0126 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0126 PLAN REVIEW APPLICATION FEE**

4 (a) ~~A~~ The nonrefundable plan review processing application fee, in the amount ~~stated in Paragraph (e) of this Rule,~~
5 provided in [G.S. 113A-54.2] G.S. 113A-54.2, shall be paid when an erosion and sedimentation control plan is filed
6 in accordance with ~~15A NCAC 04B .0118.~~ Rule .0118 of this Section.

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

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

10 ~~(c)(d)~~ No plan review processing application fee shall be charged for review of a revised plan unless the revised plan
11 contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of
12 acres to be disturbed, the plan review processing fee to be charged shall be the amount stated in Paragraph (e) of the
13 Rule specified in G.S. 113A-54.2 for each additional acre (or any part thereof) disturbed.

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

16 ~~(f) Payment of the plan review processing fee may be by check or money order made payable to the "N.C. Department~~
17 ~~of Environment and Natural Resources". The payment shall refer to the erosion and sedimentation control plan.~~

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19 *History Note: Authority G.S. 113A-54; 113A-54.2;*

20 *Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29,*
21 *1991;*

22 *AARC Objection Lodged November 14, 1990;*

23 *AARC Objection Removed December 20, 1990;*

24 *Eff. January 1, 1991;*

25 *Amended Eff. August 1, 2002; July 1, 2000.*

26 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04B .0127 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0127 PLAN APPROVAL CERTIFICATE**

4 ~~(a) Approval of a sedimentation and erosion control plan will be contained in a document called "Certificate of Plan~~
5 ~~Approval" to be issued by the Commission.~~

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

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

10 ~~(b)(e) No person may initiate a land-disturbing activity until notifying the agency approving authority that issued the~~
11 ~~Plan Approval of the date that the land-disturbing activity will begin.~~

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13 *History Note: Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29,*
14 *1991;*

15 *Authority G.S. 113A-54(b);*

16 *ARRC Objection Lodged November 14, 1990;*

17 *ARRC Objection Removed December 20, 1990;*

18 *Eff. January 1, 1991;*

19 *Amended Eff. July 1, 2000.*

20 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04B .0129 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE**

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

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7 *History Note: Authority G.S. 113A-54.1(a);*

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Eff. October 1, 1995.

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Readopted Eff. XX, 1, 20XX

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1 15A NCAC 04B .0130 is proposed for reoption with substantive changes as follows:

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3 **15A NCAC 04B .0130 EMERGENCIES**

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

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

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

12

13 *History Note: Authority G.S. 113A-52.01(4); 113A-54(b);*

14 *Eff. October 1, 1995.*

15 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04B .0131 is proposed for readoption with substantive changes as follows:

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

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

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

7 (a) ~~all of the erosion and sedimentation control measures, practices and devices, as called for~~
8 ~~in a construction sequence consistent with the approved erosion and sedimentation control~~
9 ~~plan, including but not limited to sedimentation control basins, sedimentation traps,~~
10 ~~sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock cheek~~
11 ~~dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities,~~
12 ~~energy dissipaters, and stabilization methods of open channels, have initially been installed~~
13 ~~and do not significantly deviate (as defined in Sub item (1)(e) of this Rule) from the~~
14 ~~locations, dimensions and relative elevations shown on the approved erosion and~~
15 ~~sedimentation plan. Such documentation shall be accomplished by initialing and dating~~
16 ~~each measure or practice shown on a copy of the approved erosion and sedimentation~~
17 ~~control plan or by completing, dating and signing an inspection report that lists each~~
18 ~~measure, practice or device shown on the approved erosion and sedimentation control plan.~~
19 ~~This documentation is required only upon the initial installation of the erosion and~~
20 ~~sedimentation control measures, practices and devices as set forth by the approved erosion~~
21 ~~and sedimentation control plan or if the measures, practices and devices are modified after~~
22 ~~initial installation;~~

23 (b) ~~the completion of any phase of grading for all graded slopes and fills shown on the~~
24 ~~approved erosion and sedimentation control plan, specifically noting the location and~~
25 ~~condition of the graded slopes and fills. Such documentation shall be accomplished by~~
26 ~~initialing and dating a copy of the approved erosion and sedimentation control plan or by~~
27 ~~completing, dating and signing an inspection report;~~

28 (c) ~~the location of temporary or permanent ground cover, and that the installation of the ground~~
29 ~~cover does not significantly deviate (as defined in Sub item (1)(e) of this Rule) from the~~
30 ~~approved erosion and sedimentation control plan. Such documentation shall be~~
31 ~~accomplished by initialing and dating a copy of the approved erosion and sedimentation~~
32 ~~control plan or by completing, dating and signing an inspection report;~~

33 (d) ~~that maintenance and repair requirements for all temporary and permanent erosion and~~
34 ~~sedimentation control measures, practices and devices have been performed. Such~~
35 ~~documentation shall be accomplished by completing, dating and signing an inspection~~
36 ~~report (the general storm water permit monitoring form may be used to verify the~~
37 ~~maintenance and repair requirements); and~~

1 ~~(e) any significant deviations from the approved erosion and sedimentation control plan,~~
2 ~~corrective actions required to correct the deviation and completion of the corrective actions.~~
3 ~~Such documentation shall be accomplished by initialing and dating a copy of the approved~~
4 ~~erosion and sedimentation control plan or by completing, dating and signing an inspection~~
5 ~~report. A significant deviation means an omission, alteration or relocation of an erosion or~~
6 ~~sedimentation control measure that prevents the measure from performing as intended.~~

7 ~~(2) The documentation, whether on a copy of the approved erosion and sedimentation control plan or~~
8 ~~an inspection report, shall include the name, address, affiliation, telephone number, and signature~~
9 ~~of the person conducting the inspection and the date of the inspection. Any relevant licenses and~~
10 ~~certifications may also be included. Any documentation of inspections that occur on a copy of the~~
11 ~~approved erosion and sedimentation control plan shall occur on a single copy of the plan and that~~
12 ~~plan shall be made available on the site. Any inspection reports shall also be made available on the~~
13 ~~site.~~

14 ~~(3) The inspection shall be performed during or after each of the following phases of a plan:~~

15 ~~(a) installation of perimeter erosion and sediment control measures;~~

16 ~~(b) clearing and grubbing of existing ground cover;~~

17 ~~(c) completion of any phase of grading of slopes or fills that requires provision of temporary~~
18 ~~or permanent ground cover pursuant to G.S. 113A-57(2);~~

19 ~~(d) completion of storm drainage facilities;~~

20 ~~(e) completion of construction or development; and~~

21 ~~(f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion~~
22 ~~or until the financially responsible party has conveyed ownership or control of the tract of~~
23 ~~land for which the erosion and sedimentation control plan has been approved and the~~
24 ~~agency that approved the plan has been notified. If the financially responsible party has~~
25 ~~conveyed ownership or control of the tract of land for which the erosion and sedimentation~~
26 ~~control plan has been approved, the new owner or person in control shall conduct and~~
27 ~~document inspections quarterly until the establishment of permanent ground cover~~
28 ~~sufficient to restrain erosion.~~

29
30 All land-disturbing activities required to have an approved erosion and sedimentation control plan under [G.S. 113A-
31 54.1] G.S. 113A-54.1(e) shall conduct self-inspections for initial installation or modification of any erosion and
32 sedimentation control devices and practices described in an approved plan. In addition, weekly and rain-event self-
33 inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit
34 No. NCG 010000.

35 (1) For self-inspections required pursuant to [G.S. 113A-54.1,] G.S. 113A-54.1(e), the inspection shall
36 be performed during or after [the implementation of] each of the following [components] phases of
37 [a project:] the plan;

- 1 (a) initial installation of [land disturbance, perimeter] erosion, and sediment control measures;
- 2 (b) clearing and grubbing of existing ground cover;
- 3 (c) installation completion of [temporary or permanent sediment and erosion control measures
- 4 to include] any grading that requires ground [cover] cover; [pursuant to G.S. 113A-57(2);]
- 5 [(d) — completion of storm drainage facilities;]
- 6 [(e)](d) completion of all land-disturbing activity, construction, or development, including
- 7 permanent ground cover establishment and removal of all temporary measures; and
- 8 [(f)](e) transfer of ownership or control of the tract of land where the erosion and sedimentation
- 9 control plan has been approved and work has begun. The new owner or person in control
- 10 shall conduct and document inspections until the project is permanently stabilized as in
- 11 [Sub-Item (e)] Sub-Item(1)(c) of this [Item.] Rule.
- 12 (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
- 13 (a) [Verification] Visual verification of [all] ground stabilization and other erosion [and]
- 14 [sedimentation] control [measures;] measures and practices [and devices;] as called for in
- 15 the approved [construction sequence and the erosion and sedimentation control] plan;
- 16 (b) Verification by measurement of settling basins, temporary construction entrances, energy
- 17 dissipators and traps.
- 18 [(b)](c) The name, address, organization affiliation, telephone number, and signature of the person
- 19 conducting the inspection and the date of the inspection shall be included, whether on a
- 20 copy of the approved erosion and sedimentation control plan or an inspection report. A
- 21 template for an example of an inspection and monitoring report is provided on the DEMLR
- 22 website at: [https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-](https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms)
- 23 sediment-control/forms. Any relevant licenses and certifications may also be included. Any
- 24 documentation of inspections that occur on a copy of the approved erosion and
- 25 sedimentation control plan shall occur on a single copy of the plan and that plan shall be
- 26 made available on the site.
- 27 [(e)](d) A record of any "significant deviation" from any erosion or sedimentation control measure
- 28 [made] from that on the approved plan. For the purpose of this Rule, a "significant
- 29 deviation" means an omission, alteration or relocation of an erosion or sedimentation
- 30 control measure that [may change the intended performance of the measure.] prevents it
- 31 from performing as intended. The record shall include measures required to correct the
- 32 deviation along with documentation of when those measures were taken. Deviations from
- 33 the approved plan may also be recommended to enhance the intended performance of the
- 34 sedimentation and erosion control measures.
- 35 [(d) — All self inspection documentation shall be made available on the site for at least 30
- 36 calendar days or maintained until permanent ground cover has been established, whichever
- 37 is longest.]

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*History Note: Authority G.S. 113A-54; 113A-54.1(e);
Eff. October 1, 2010.
Readopted Eff. XX, 1, 20XX*

1 15A NCAC 04B .0132 is proposed for reoption with substantive changes as follows:

2
3 **15A NCAC 04B .0132 DESIGN STANDARDS FOR THE UPPER NEUSE RIVER BASIN (FALLS LAKE**
4 **WATERSHED)**

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

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

1 (c) For an area of steep slope, temporary ground cover shall be provided for the area if it has
2 not been disturbed for a period of seven days. For purposes of this Item, "steep slope"
3 means an inclined area, the inclination of which is greater than three units of horizontal
4 distance to one unit of vertical distance.

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6 *History Note: Authority S.L. 2009-486; G.S. 113A-54(b)*
7 *Eff. February 1, 2012.*
8 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04C .0103 is proposed for readoption with substantive changes as follows:

2

3 **15A NCAC 04C .0103 WHO MAY ASSESS**

4 The ~~director~~ Secretary may assess civil penalties against any person responsible for a violation.

5

6 *History Note: Authority G.S. 113A-55; 113A-64; 143B-10;*

7 *Eff. February 1, 1976;*

8 *Amended Eff. November 1, 1984.*

9 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04C .0106 is proposed for readoption with substantive changes as follows:

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15A NCAC 04C .0106 CRITERIA

In determining the amount of the civil penalty assessment, the ~~director~~ Secretary shall consider the following criteria, in addition to the factors pursuant to G.S. 113A-64(a)(3):

- (1) severity of the ~~violation~~, violation;
- ~~(2) degree and extent of the harm, [harm];~~
- ~~(3) (2) type of violation, violation;~~
- ~~(4) (3) duration, duration;~~
- ~~(5) (4) cause, cause;~~
- ~~(6) (5) extent of any off-site damage which may have resulted, resulted;~~
- ~~(7) (6) effectiveness of action taken by violator, violator;~~
- ~~(8) (7) adherence to plan submitted by violator, violator;~~
- ~~(9) (8) effectiveness of plan submitted by violator, violator;~~
- ~~(10) cost of rectifying any damage, [damage];~~
- ~~(11) the violator's previous record in complying with rules [the Act, or any rule or order] of the commission, [Commission];~~
- ~~(12) (9) estimated cost of installing and/or maintaining taking corrective sediment control measures, actions;~~
and
- ~~(13) (10) staff investigative costs costs;~~
- ~~[(14) the amount of money the violator saved by noncompliance; and]~~
- ~~[(15) whether the violation was committed willfully;]~~

*History Note: Authority G.S. 113A-54(b); 113A-55; 113A-64(a);
Eff. February 1, 1976;
Amended Eff. November 1, 1984; April 1, 1978.
Readopted Eff. XX, 1, 20XX*

1 15A NCAC 04C .0107 is proposed for readoption with substantive changes as follows:

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3 **15A NCAC 04C .0107 PROCEDURES: NOTICES**

4 (a) The notice of violation shall describe the violation ~~with reasonable particularity~~, request that all illegal activity
5 cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions
6 need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be
7 taken, shall specify a time period for compliance, and shall state that upon failure to comply within the allotted ~~time~~
8 time, the person shall become subject to the assessment of a civil penalty for each day of the continuing violation
9 beginning with the date of the violation.

10 (b) The ~~stop-work~~ stop-work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of
11 the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the ~~stop-work~~ stop-work order shall be
12 served upon persons the Department has reason to believe may be responsible for the violation ~~by any means~~
13 authorized under pursuant to G.S. 1A-1, Rule 4.

14

15 *History Note:* Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July
16 11, 1992;

17 *Authority* G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1; ~~143B-10~~;

18 *Eff.* February 1, 1976;

19 *Amended Eff.* August 1, 2000; October 1, 1995; April 1, 1992; May 1, 1990; November 1, 1984;

20 *Temporary Amendment Eff.* August 1, 2000;

21 *Amended Eff.* April 1, 2001.

22 *Readopted Eff. XX, 1, 20XX*

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1 15A NCAC 04C .0108 is proposed for repeal through readoption as follows:

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3 **15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING**

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

6 (1) ~~tender payment; or~~

7 (2) ~~file a petition for an administrative hearing in accordance with G.S. 150B-23.~~

8

9 *History Note: Authority G.S. 113A-64; 143B-10; 150B-23;*

10 *Eff. February 1, 1976;*

11 *Amended Eff. October 1, 1995; October 1, 1988; October 5, 1980; April 1, 1978.*

12 *Repealed Eff. XX, 1, 20XX*

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14

1 15A NCAC 04C .0110 is proposed for repeal as follows:

2

3 **15A NCAC 04C .0110 ADMINISTRATIVE HEARING**

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

6

7 *History Note: Authority G.S. 113A-55; 150B-22 et seq.;*

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Eff. February 1, 1976;

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Amended Eff. October 1, 1995; August 1, 1988; November 1, 1984; October 5, 1980;

10

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,
11 *2016.*

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Repealed Eff. XX, 1, 20XX

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1 15A NCAC 04C .0111 is proposed for repeal as follows:

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3 **15A NCAC 04C .0111 FURTHER REMEDIES**

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

7

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

9

Eff. February 1, 1976;

10

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,
11 *2016.*

11

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Repealed Eff. XX, 1, 20XX

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1 15A NCAC 04D .0102 is proposed for repeal through readoption as follows:

2

3 **15A NCAC 04D .0102 MODEL ORDINANCE**

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

6 ~~North Carolina Department of Environment, Health, and Natural Resources~~
7 ~~Land Quality Section~~
8 ~~P.O. Box 27687~~
9 ~~Raleigh, North Carolina 27611~~

10

11 *History Note: Authority G.S. 113A-54(d); 113A-60;*

12 *Eff. February 1, 1976;*

13 *Amended Eff. March 14, 1980; February 23, 1979;*

14 *Summary Rule Filed January 26, 1982;*

15 *Amended Eff. October 1, 1995; May 1, 1990; August 1, 1988; November 1, 1984.*

16 *Repealed Eff. XX, 1, 20XX*

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18

1 15A NCAC 04E .0101 is proposed for repeal as follows:

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3 **15A NCAC 04E .0101 GENERAL PURPOSE**

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

6

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

8

Eff. March 14, 1980;

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Amended Eff. November 1, 1984;

10

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

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2016.

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Repealed Eff. XX, 1, 20XX

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1 15A NCAC 04E .0102 is proposed for repeal as follows:

2

3 **15A NCAC 04E .0102 DEFINITIONS**

4 ~~As used in this Subchapter:~~

5 (1) ~~"Commission" means the North Carolina Sedimentation Control Commission.~~

6 (2) ~~"Director" means the Director of the Division of Energy, Mineral, and Land Resources of the~~
7 ~~Department of Environment, Health, and Natural Resources.~~

8

9 *History Note: Authority G.S. 113A-54; 113A-55;*

10 *Eff. March 14, 1980;*

11 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); May 1, 1990;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
13 *2016.*

14 *Repealed Eff. XX, 1, 20XX*

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16

1 15A NCAC 04E .0104 is proposed for amendment as follows:

2

3 **15A NCAC 04E .0104 COPIES OF RULES: ~~INSPECTION~~ RULES**

4 (a) Anyone desiring to obtain a copy of any or all of the rules of the ~~commission~~ Commission may do so by requesting
5 such from the ~~director~~ Director at the address of the ~~commission~~ Commission as set forth in 15A NCAC 04A .0101
6 ~~at Rule .0001 of Subchapter A of this Chapter.~~ The request ~~must~~ shall specify the rules requested, for example, 15A
7 NCAC 4, 04, Sedimentation Control, or 15A NCAC 4E, ~~Rulemaking Procedures~~, 04B .0113, Responsibility for
8 Maintenance. The ~~director~~ Director may charge reasonable fees to recover mailing and duplication costs for requests
9 of more than one copy of the same rule(s).

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

14

15 *History Note: Authority G.S. 113A-54; 113A-55; ~~150B-11~~;*

16 *Eff. March 14, 1980;*

17 *Amended Eff. August 1, 1988; November 1, 1984;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
19 *2016.*

20 *Amended Eff. XX, 1, 20XX*

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2 15A NCAC 04E .0201 is proposed for amendment as follows:

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4 **15A NCAC 04E .0201 ~~PETITION FOR RULEMAKING HEARINGS~~ PETITION FOR RULEMAKING HEARINGS FORM AND CONTENT OF**
5 **PETITION**

6 Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the commission
7 shall forward the petition to the director at the address of the commission in Rule .0001 of Subchapter A of this
8 Chapter. The first page of the petition should clearly bear the notation: ~~RULEMAKING PETITION RE~~ and then the
9 subject area (for example, ~~RE PLAN REQUIREMENTS, RE PENALTIES, RE INSPECTIONS~~) or an indication of
10 any other area over which the commission may have rulemaking authority.

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

13
14 Director
15 Division of Energy, Mineral, and Land Resources
16 1612 Mail Service Center
17 Raleigh, North Carolina 27699-1612
18

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

- 20 (1) the text of the proposed rule(s) for adoption or amendment;
21 (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an
22 existing rule(s);
23 (3) a statement of the effect on existing rules or orders; and
24 (4) the name(s) and address(es) of the ~~petitioner(s); and~~ petitioner(s).

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

- 29 (1) the statutory authority for the agency to promulgate the rules(s);
30 (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including
31 cost factors for persons affected by the proposed rule(s);
32 (3) a statement explaining the computation of the cost factors;
33 (4) a description, including the names and addresses, if known, of those most likely to be affected by the
34 proposed rule(s); and
35 (5) documents and data supporting the proposed rule(s).

36 (d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the
37 petitioner by the Director on behalf of the Commission.
38

1 *History Note: Authority G.S. 113A-54; ~~150B-16~~; 150b-20;*
2 *Eff. March 14, 1980;*
3 *Amended Eff. November 1, 1984;*
4 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
5 *2016.*
6 *Amended Eff. XX, 1, 20XX*
7

1 15A NCAC 04E .0203 is proposed for repeal as follows:

2
3 **15A NCAC 04E .0203 DISPOSITION OF PETITIONS**

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

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

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

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

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

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

18 *Eff. March 14, 1980;*

19 *Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
21 *2016.*

22 *Repealed Eff. XX, 1, 20XX*

1 15A NCAC 04E .0403 is proposed for repeal as follows:

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3 **15A NCAC 04E .0403 WRITTEN SUBMISSIONS**

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

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

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

12

13 *History Note: Authority G.S. 113A-54; 150B-12(e);*

14 *Eff. March 14, 1980;*

15 *Amended Eff. June 5, 1981;*

16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
17 *2016.*

18 *Repealed Eff. XX, 1, 20XX*

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1 15A NCAC 04E .0405 is proposed for repeal as follows:

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3 **15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION**

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

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

8

9 *History Note: Authority G.S. 113A-54; 150B-12(e);*

10 *Eff. March 14, 1980;*

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

12 *2016.*

13 *Repealed Eff. XX, 1, 20XX*

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15

1 15A NCAC 04E .0406 is proposed for repeal as follows:

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3 **15A NCAC 04E .0406 RECORD OF PROCEEDINGS**

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

7

8 *History Note: Authority G.S. 113A-54; 150B-11(2);*

9 *Eff. March 14, 1980;*

10 *Amended Eff. August 1, 1988; November 1, 1984;*

11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
12 *2016.*

13 *Repealed Eff. XX, 1, 20XX*

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1 15A NCAC 04E .0501 is proposed for amendment as follows:

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

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

*History Note: Authority G.S. 113A-54; ~~150B-17~~; 150B-4
Eff. March 14, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.
Amended Eff. XX, 1, 20XX*

1 15A NCAC 04E .0502 is proposed for amendment as follows:

2
3 **15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS SUBMISSION**
4 **OF REQUEST FOR RULING**

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

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

13
14 (a) All requests for a declaratory ruling shall be filed with the Director, Division of Energy, Mineral and Land
15 Resources, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, NC 27699-1612.

16 (b) All requests shall include the following:

- 17 (1) name and address of petitioner(s);
18 (2) the rule, statute or order upon which a ruling is desired;
19 (3) a statement as to whether the request is for a ruling on the validity of a rule or on the applicability
20 of a rule, order or statute to a given factual situation;
21 (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule, statute or order,
22 or its potential application to petitioner;
23 (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
24 (6) a statement of the facts proposed for adoption by the Commission;
25 (7) a draft of the proposed ruling; and
26 (8) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an
27 oral argument.

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

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

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

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Eff. March 14, 1980;

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

Amended Eff. XX, 1, 20XX

1 15A NCAC 04E .0503 is proposed for amendment as follows:

2
3 **15A NCAC 04E .0503 DISPOSITION OF REQUESTS REQUEST**

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (1) request additional written submissions from the petitioner(s);

35 (2) request a written response from the Department, or any other person; and

36 (3) hear oral arguments from the petitioner(s) and the Department or their legal counsel.

37 (c) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable,

1 the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the
2 ruling, stating the reason(s) for the refusal to issue a ruling on the request.

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

4 (1) finding that there has been a similar determination in a previous contested case or
5 declaratory ruling;

6 (2) finding that the matter is the subject of a pending contested case hearing or
7 litigation in any North Carolina or federal court;

8 (3) finding that no genuine controversy exists as to the application of a statute, order or rule to the
9 specific factual situation presented; or

10 (4) finding that the factual context put forward as the subject of the declaratory ruling
11 was specifically considered upon the adoption of the rule being questioned, as
12 evidenced by the rulemaking record.

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

15 (1) the request for a ruling;

16 (2) any written submission by a party;

17 (3) the given state of facts on which the ruling was based;

18 (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary
19 of all arguments;

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

21 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling,
22 together with the reasons therefore.

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

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

26 (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or
27 rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the
28 declaratory ruling;

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

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

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

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

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*History Note: Authority G.S. 113A-54; 113A-55; ~~150B-17~~; 150B-4
Eff. March 14, 1980;
Amended Eff. August 1, 1988; June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,
2016.
Amended Eff. XX, 1, 20XX*

1 15A NCAC 04E .0504 is proposed for repeal as follows:

2

3 **15A NCAC 04E .0504 RECORD OF DECISION**

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

9

10 *History Note: Authority G.S. 113A-54; 150B-11;*

11 *Eff. March 14, 1980;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2,*
13 *2016.*

14 *Repealed Eff. XX, 1, 20XX*

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