

CHAPTER 04 - SEDIMENTATION CONTROL

SUBCHAPTER 04A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

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

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

- (1) Asheville Regional Office
2090 U.S. 70 Hwy.
Swannanoa, NC 28778-8211
- (2) Winston-Salem Regional Office
450 W. Hanes Mill Rd., Suite 300
Winston-Salem, N.C. 27105
- (3) Mooresville Regional Office
610 E. Center Avenue, Suite 301
Mooresville, N.C. 28115-2578
- (4) Raleigh Regional Office
3800 Barrett Drive
Raleigh, N.C. 27609-7222
- (5) Fayetteville Regional Office
225 Green Street, Suite 714
Fayetteville, N.C. 28301-5095
- (6) Washington Regional Office
1424 Carolina Ave.
Washington, N.C. 27889-3314
- (7) Wilmington Regional Office
127 Cardinal Dr., Ext.
Wilmington, N.C. 28405-3845

History Note: Authority G.S. 113A-54; 143B-298;
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. April 1, 2020.

15A NCAC 04A .0102 PURPOSES

15A NCAC 04A .0103 STRUCTURE

15A NCAC 04A .0104 DELEGATION

History Note: Authority G.S. 113A-54(b)(d)(3); 113A-56(a)(b); 113A-58(1); 113A-61(d); 143B-298;
Eff. February 1, 1976;
Amended Eff. August 1, 1985; November 1, 1984; June 5, 1981; January 31, 1979;
Repealed Eff. August 1, 1988.

15A NCAC 04A .0105 DEFINITIONS

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

- (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of land-disturbing activities.
- (2) "Act" means the Sedimentation Pollution Control Act of 1973 in G.S. 113A-50, et seq.
- (3) "Adequate Erosion Control Devices or Structures" means one that controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

- (4) "Approving Authority" means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.
- (5) "Being Conducted" means a land-disturbing activity has been initiated and not deemed complete by the approving authority.
- (6) "Borrow" means fill material that is required for on-site construction that is obtained from other locations.
- (7) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.
- (8) "Coastal Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- (9) "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which, as determined by the approving authority, is necessary for establishing a permanent ground cover.
- (10) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.
- (11) "Discharge Point" or "Point of Discharge" means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
- (12) "Division" or "DEMLR" means the Division of Energy, Mineral, and Land Resources of the Department of Environmental Quality.
- (13) "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- (14) "Ground Cover" means any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.
- (15) "High Quality Waters" means those described in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and editions.
- (16) "High Quality Water (HQP) Zones" means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the State, areas that are within one mile of and drain to HQW's.
- (17) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake, or pond.
- (18) "Natural Erosion" means "erosion" as defined in G.S. 113A-52(5) under natural environmental conditions undisturbed by man.
- (19) "Person Conducting the Land-disturbing Activity" means any person who may be held responsible for a violation unless provided otherwise by the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to these Rules or the Act.
- (20) "Person Who Violates," or "Violator," as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter, or any order or local ordinance adopted pursuant to the Act, as it imposes a duty upon that person.
- (21) "Plan" means an erosion and sedimentation control plan.
- (22) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.
- (23) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches, and appurtenances that serve to collect and convey stormwater through and from a given drainage area.
- (24) "Stormwater Runoff" means the runoff of water resulting from precipitation in any form.
- (25) "Ten-Year Storm" means a rainfall of an intensity that, based on historical data, is predicted, by a method acceptable to the approving authority, to be equaled or exceeded, on the average, once in 10 years, and of a duration that will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
- (26) "Twenty-five Year Storm" or "Q25" means a rainfall of an intensity that, based on historical data, is predicted, by a method acceptable to the approving authority, to be equaled or exceeded, on the

- average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff from the watershed of interest under average antecedent wetness conditions.
- (27) "Uncovered" means having had ground cover removed from, on, or above the soil surface.
 - (28) "Undertaken" means the initiating of any activity or phase of activity that results or will result in a change in the ground cover or topography of a tract of land.
 - (29) "Velocity" means the speed of flow through a cross-section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
 - (30) "Waste" means surplus materials resulting from on-site construction and to be disposed offsite.

History Note: Authority G.S. 113A-52; 113A-54;
Eff. November 1, 1984;
Amended Eff. May 1, 1990;
Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire on April 29, 1991;
ARRC Objection Lodged November 14, 1990;
ARRC Objection Removed December 20, 1990;
Amended Eff. January 1, 1991;
Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; April 1, 1992;
Readopted Eff. April 1, 2020.

SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

15A NCAC 04B .0101 AUTHORITY

History Note: Authority G.S. 113A-54; 113A-64;
Eff. February 1, 1976;
Repealed Eff. November 1, 1984.

15A NCAC 04B .0102 PURPOSE

15A NCAC 04B .0103 SCOPE

History Note: Authority G.S. 113A-54(a)(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.

15A NCAC 04B .0104 DEFINITIONS

History Note: Authority G.S. 113A-52; 113A-54;
Eff. February 1, 1976;
Amended Eff. March 14, 1980; January 31, 1979; July 1, 1978;
Repealed Eff. November 1, 1984.

15A NCAC 04B .0105 PROTECTION OF PROPERTY

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

History Note: Authority G.S. 113A-54(d)(2);
Eff. February 1, 1976;
Amended Eff. August 1, 1988; November 1, 1984;
Readopted Eff. April 1, 2020.

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

An erosion and sedimentation control plan developed pursuant to this Chapter shall be designed to address the following:

- (1) Identify Critical Areas. Identify site areas subject to accelerated erosion, and off-site areas vulnerable to damage from erosion and sedimentation.
- (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- (3) Limit Time of Exposure. Limit exposure to the shortest time specified in G.S. 113A-57, the rules of this Chapter, or as directed by the approving authority.
- (4) Control Surface Water. Control surface water originating upgrade of exposed areas in order to reduce erosion and sediment loss during exposure.
- (5) Control Sedimentation. All land-disturbing activity shall be planned to prevent off-site sedimentation damage.
- (6) Manage Stormwater Runoff. Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

History Note: Authority G.S. 113A-54(d)(4); 113A-54.1;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980;
Readopted Eff. April 1, 2020.

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

- (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with G.S. 113A-57 and the standards established in these Rules.
- (b) Unless where otherwise specified in the Act or the rules of this Chapter, provisions for permanent ground cover sufficient to restrain erosion shall be accomplished within 90 calendar days following completion of construction or development.
- (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan shall be filed and approved by the approving authority.
- (d) All individuals that obtain a State or locally-approved erosion and sedimentation control plan that disturb one acre or more of land are required by the U.S. Environmental Protection Agency to obtain coverage under the N.C. Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in NCG01 for temporary or permanent ground cover may differ from the ground cover, or stabilization, requirements in this Chapter. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance with the NCG01.

History Note: Authority G.S. 113A-54(d)(4); 113A-57;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD

Except where otherwise specified in this Chapter, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of a 10-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 (Handbook 630)." This document is herein incorporated by reference including subsequent amendments and editions, and may be accessed at no cost at

<https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063>.

Other methodologies may be used if based on generally accepted engineering standards that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.

*History Note: Authority G.S. 113A-54;
 Eff. February 1, 1976;
 Amended Eff. November 1, 1984; July 1, 1978;
 Readopted Eff. April 1, 2020.*

15A NCAC 04B .0109 STORMWATER OUTLET PROTECTION

(a) Persons shall provide a design for the land-disturbing activity so that the post-construction velocity of the ten-year storm runoff in the receiving stormwater conveyance to, and including, the discharge point, does not exceed the greater of:

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

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

(b) When conditions of this Rule can be met, the Commission shall allow alternative measures to control downstream erosion, including:

- (1) compensation for increased runoff from areas rendered impervious by designing measures to promote infiltration;
- (2) avoiding increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and paved sections;
- (3) providing energy dissipators at storm drainage outlets to reduce flow velocities to the discharge points; or
- (4) protecting stormwater conveyances subject to accelerated erosion by improving cross sections or providing erosion-resistant lining.

(c) This Rule shall not apply when stormwater discharge velocities will not result in accelerated erosion in the receiving stormwater conveyance or discharge point.

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

Material	Maximum Permissible Velocities 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
Graded, Silt to Cobbles (colloidal)	5.5	1.7
Alluvial Silts (noncolloidal)	3.5	1.1
Alluvial Silts (colloidal)	5.0	1.5
Coarse Gravel (noncolloidal)	6.0	1.8
Cobbles and Shingles	5.5	1.7
Shales and Hard Pans	6.0	1.8

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

*History Note: Authority G.S. 113A-54(b); 113A-54(c);
 Eff. February 1, 1976;
 Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978;
 Readopted Eff. April 1, 2020.*

15A NCAC 04B .0110 BORROW AND WASTE AREAS

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

History Note: Authority G.S. 113A-54(b);
Eff. February 1, 1976;
Amended Eff. May 1, 1990; November 1, 1984;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0111 ACCESS AND HAUL ROADS

Except for public roads, temporary access and haul roads constructed or used in connection with any land-disturbing activity shall be considered a part of the activity.

History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Readopted Eff. April 1, 2020.

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

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

History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Readopted Eff. April 1, 2020.

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, the 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 maintain all permanent erosion and sediment control measures, except those measures installed within a road or street right of way or 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. April 1, 2020.

15A NCAC 04B .0114 GUIDELINES FOR EROSION AND SEDIMENT CONTROL PRACTICES

History Note: Authority G.S. 113A-54; 113A-64;
Eff. February 1, 1976;
Repealed Eff. November 1, 1984.

15A NCAC 04B .0115 ADDITIONAL MEASURES

Whenever the Commission or a local government determines that accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or the rules of this Chapter.

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

Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0116 EXISTING UNCOVERED AREAS

History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; February 1, 1992; May 1, 1990; November 1, 1984;
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

15A NCAC 04B .0117 STATEMENT OF FINANCIAL RESPONSIBILITY AND OWNERSHIP

History Note: Authority G.S. 113A-54(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. May 1, 1990.

15A NCAC 04B .0118 APPROVAL OF PLANS

(a) Persons conducting land-disturbing activity on a tract that covers one or more acres shall file the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction. The approving authority shall act on the plan within 30 days of receipt of the plan or the plan shall be deemed approved. A paper copy of the approved plan shall be kept on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or upon inspection of the job site, that the plan is inadequate to meet the requirements of the Act and of this Chapter, the Commission or local government shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the approving authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction pursuant to G.S. 113A-56, and all other land-disturbing activity where no local government has jurisdiction.
- (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person submitting the plan in writing that it has been:
 - (A) approved;
 - (B) approved with modification; or
 - (C) disapproved.
- (3) The Commission's approval with modification or disapproval of any proposed plan shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23.
- (4) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act, G.S. 113, Article 1, and the Department rules set forth in 15A NCAC 01C shall be deemed incomplete until an environmental document is available for review. The Commission shall notify the person submitting the plan that the 30-day time limit for review of the plan pursuant to Subparagraph (2) of this Paragraph shall not begin until the environmental document is available for review.

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

(d) Local Government Approval:

- (1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. The procedures shall follow applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) Appeals of local government decisions shall be conducted pursuant to G.S. 113A-61(c).

- (3) The Secretary shall appoint employees of the Department as he or she deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, the departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan be approved, approved with modifications, or disapproved.
- (4) If the person submitting the plan disagrees with the decision reached by a Departmental employee, he or she may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Energy, Mineral, and Land Resources. The Director shall make the proposed erosion control plan and the records relating to the local government's and Departmental employee's review, available to an erosion and sedimentation control plan review committee consisting of three members of the Commission appointed by the Chairman. Within 10 days following receipt of the notification of appeal, the erosion and sedimentation control plan review committee shall notify the local government and the person submitting the plan of a place and time for a hearing for consideration of the appeal. Both parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or oral arguments. The erosion and sedimentation plan review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following the hearing.
- (e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under G.S. 113A-54.1(c) gives rise to a right to an appeal to the Commission. An applicant desiring to appeal the Commission's disapproval of an erosion control plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3.

History Note:

Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-57; 113A-60(a); 113A-61(b); 113A-61(c); Eff. February 1, 1976;
Amended Eff. May 1, 1990; August 1, 1988;
Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); June 1, 1995; February 1, 1992;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0119 COMPLIANCE WITH PLAN REQUIREMENT

History Note: Authority G.S. 113A-54(b); Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.

15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS

- (a) The Commission, Department of Environmental Quality, or local government may require written statements related to items including Notices of Violation (NOVs) or Stop-Work orders, or the filing of reports under oath, such as self-inspection or engineering/design reports, concerning land-disturbing activity, as necessary to carry out duties specified in the Act.
- (b) Inspection of sites shall be carried out by the staff of Department of Environmental Quality, representatives of a delegated local government, or other qualified persons authorized by the Commission or Department of Environmental Quality as necessary to carry out duties specified in the Act.
- (c) No person shall refuse entry or access to any person authorized by the Commission or any representative of a delegated local government who requests entry for purposes of inspection.
- (d) When a preconstruction conference is proposed pursuant to G.S. 113A-51, the request shall be set forth in the plan.

History Note: Authority G.S. 113A-51; 113A-54(b); 113A-58; 113A-61.1;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0121 PENALTIES

*History Note: Authority G.S. 113A-54; 113A-64;
Eff. February 1, 1976;
Repealed Eff. November 1, 1984.*

15A NCAC 04B .0122 SEVERABILITY CLAUSE

If any of these provisions are held invalid or unenforceable, all of the other provisions shall nevertheless continue in full force and effect.

*History Note: Authority G.S. 113A-54;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.*

15A NCAC 04B .0123 EFFECTIVE DATE

*History Note: Authority G.S. 113A-54(b);
Eff. February 1, 1976;
Amended Eff. November 1, 1984; November 15, 1976;
Repealed Eff. August 1, 1988.*

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

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

(b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture, Natural Resources Conservation Service's "National Engineering Field Handbook 630 for Conservation Practices." Other methodologies may be used if based on generally accepted engineering standards that are shown to the Division to be equivalent to or improved over the procedures in Handbook 630. The Division shall determine acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed data in agreement with the predictive model.

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

- (1) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
- (2) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
- (3) have a minimum surface area of 325 square feet per cfs of Q25 peak inflow;
- (4) have a minimum dewatering time of 48 hours; and
- (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

(d) Upon a written request of the applicant, the Director may allow alternative design or control measures in lieu of meeting the conditions required in Subparagraphs (c)(2) through (c)(5) of this Rule if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sedimentation control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

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

History Note: Authority G.S. 113A-54(b); 113A-54(c)(1);
Eff. May 1, 1990;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS

- (a) The width of a buffer zone shall be measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (b) A 25-foot minimum width undisturbed buffer zone shall be protected adjacent to trout waters designated by the Environmental Management Commission. The 25-foot width buffer zone shall be measured horizontally from the top of the bank to the nearest area of disturbance.
- (c) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10 percent of the total length of the buffer zone within the tract and distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone.
- (d) Upon a written request of the applicant, the Director may allow a larger area of disturbance than provided in Paragraph (c) of this Rule if the applicant demonstrates that additional measures will be utilized that will achieve an equal or more effective level of erosion and sedimentation control than would be achieved had the specifications prescribed in Paragraph (c) of this Rule been followed.
- (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to trout waters that is predicted by the approving authority to cause stream temperature violations in these waters as set forth in 15A NCAC 02B .0211 which is hereby incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);
Eff. May 1, 1990;
Amended Eff. February 1, 1992;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0126 APPLICATION FEE

- (a) The nonrefundable application fee, in the amount provided in G.S. 113A-54.2, shall be paid when an erosion and sedimentation control plan is filed in accordance with Rule .0118 of this Section.
- (b) Each plan shall be deemed incomplete until the application fee is paid.
- (c) No application fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount specified in G.S. 113A-54.2 for each additional acre (or any part thereof) disturbed.

History Note: Authority G.S. 113A-54; 113A-54.2;
Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;
AARC Objection Lodged November 14, 1990;
AARC Objection Removed December 20, 1990;
Eff. January 1, 1991;
Amended Eff. August 1, 2002; July 1, 2000;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0127 CERTIFICATE OF PLAN APPROVAL

- (a) The Commission shall issue a certificate of plan approval to the applicant by hard copy or electronic submittal. Before construction begins, that documentation shall be posted at the primary entrance of the job site or other location that is observable to the public and inspectors.
- (b) No person may initiate a land-disturbing activity until notifying the approving authority of the date that the land-disturbing activity will begin.

History Note: Authority G.S. 113A-54(b);
Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;
ARRC Objection Lodged November 14, 1990;

ARRC Objection Removed December 20, 1990;
Eff. January 1, 1991;
Amended Eff. July 1, 2000;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0128 RAILROAD COMPANIES

History Note: Authority G.S. 113A-52(6); 113A-54(b); 113A-54(c); 113A-54(d)(4); 113A-57(1);
Eff. August 1, 1995;
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

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

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

History Note: Authority G.S. 113A-54.1(a);
Eff. October 1, 1995;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0130 EMERGENCIES

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

- (1) notify the Director, or his or her designee, of the repair as soon as possible, but no later than five working days after the emergency ends; and
- (2) take all measures necessary to protect all public and private property from damage caused by the repair as soon as possible, but no later than 15 working days after the emergency ends.

History Note: Authority G.S. 113A-52.01(4); 113A-54(b);
Eff. October 1, 1995;
Readopted Eff. April 1, 2020.

15A NCAC 04B .0131 SELF-INSPECTIONS

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

- (1) For self-inspections required pursuant to G.S. 113A-54.1(e), the inspection shall be performed during or after each of the following phases of the plan:
 - (a) initial installation of erosion and sediment control measures;
 - (b) clearing and grubbing of existing ground cover;
 - (c) completion of any grading that requires ground cover;
 - (d) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
 - (e) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (c) of this Item.
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
 - (a) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
 - (b) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
 - (c) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the

DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

- (d) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

History Note: Authority G.S. 113A-54; 113A-54.1(e);
Eff. October 1, 2010;
Readopted Eff. April 1, 2020.

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

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

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

History Note: Authority G.S. 113A-54(b); S.L. 2009-486;

Eff. February 1, 2012;
Readopted Eff. April 1, 2020.

SUBCHAPTER 4C - SEDIMENTATION CONTROL CIVIL PENALTIES

15A NCAC 04C .0101 PURPOSE AND SCOPE

History Note: Authority G.S. 113A-54(b); 113A-64(a);
Eff. February 1, 1976;
Amended Eff. November 1, 1984; October 5, 1980;
Repealed Eff. August 1, 1988.

15A NCAC 04C .0102 DEFINITIONS

History Note: Authority G.S. 143B-10;
Eff. February 1, 1976;
Amended Eff. January 31, 1979; September 3, 1976;
Repealed Eff. November 1, 1984.

15A NCAC 04C .0103 WHO MAY ASSESS

History Note: Authority G.S. 113A-55; 113A-64; 143B-10;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. June 1, 2020.

15A NCAC 04C .0104 WHEN ASSESSABLE

History Note: Authority G.S. 113A-64;
Eff. February 1, 1976;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.

15A NCAC 04C .0105 AMOUNT OF ASSESSMENT

History Note: Authority G.S. 113A-64;
Eff. February 1, 1976;
Repealed Eff. November 1, 1984.

15A NCAC 04C .0106 CRITERIA

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;
Repealed Eff. June 1, 2020.

15A NCAC 04C .0107 PROCEDURES: NOTICES

(a) The notice of violation shall describe the violation, request that all illegal activity cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be taken, specify a time period for

compliance, and state that upon failure to comply within the allotted time, the person shall become subject to the assessment of a civil penalty for each day of the continuing violation beginning with the date of the violation.

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

History Note: Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1;
Eff. February 1, 1976;
Amended Eff. May 1, 1990; November 1, 1984;
Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;
Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2001;
Readopted Eff. April 1, 2020.

15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING

History Note: Authority G.S. 113A-64; 143B-10; 150B-23;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; October 1, 1988; October 5, 1980; April 1, 1978;
Repealed Eff. April 1, 2020.

15A NCAC 04C .0109 TENDER OF PAYMENT

History Note: Authority G.S. 113A-55; 143B-10;
Eff. February 1, 1976;
Amended Eff. October 5, 1980; April 1, 1978;
Expired Eff. March 1, 2016 pursuant to G.S. 150B-21.3A.

15A NCAC 04C .0110 ADMINISTRATIVE HEARING

15A NCAC 04C .0111 FURTHER REMEDIES

History Note: Authority G.S. 113A-54; 113A-55; 113A-60; 113A-64 through 113A-66; 150B-22 et seq.;
Eff. February 1, 1976;
Amended Eff. October 1, 1995; August 1, 1988; November 1, 1984; October 5, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

SUBCHAPTER 4D - LOCAL ORDINANCES

15A NCAC 04D .0101 SUBMISSION AND APPROVAL OF PROPOSED LOCAL ORDINANCES

History Note: Authority G.S. 113A-54; 113A-60;
Eff. February 1, 1976;
Repealed Eff. August 1, 1988.

15A NCAC 04D .0102 MODEL ORDINANCE

History Note: Authority G.S. 113A-54(d); 113A-60;
Eff. February 1, 1976;
Amended Eff. March 14, 1980; February 23, 1979;
Summary Rule Filed January 26, 1982;

*Amended Eff. October 1, 1995; May 1, 1990; August 1, 1988; November 1, 1984;
Repealed Eff. April 1, 2020.*

15A NCAC 04D .0103 REVISIONS TO APPROVED LOCAL ORDINANCES

*History Note: Authority G.S. 113A-54(d); 113A-60;
Eff. May 1, 1990;
Amended Eff. January 4, 1993;
Repealed Eff. October 1, 1995.*

SUBCHAPTER 04E - RULEMAKING PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 04E .0101 GENERAL PURPOSE

15A NCAC 04E .0102 DEFINITIONS

*History Note: Authority G.S. 113A-54; 113A-55; 150B;
Eff. March 14, 1980;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); May 1, 1990; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February
2, 2016;
Repealed Eff. April 1, 2020.*

15A NCAC 04E .0103 ADDRESS

*History Note: Authority G.S. 113A-54;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.*

15A NCAC 04E .0104 COPIES OF RULES

(a) Copies of Commission rules may be requested by contacting the Commission's staff at the Archdale building address set forth in 15A NCAC 04A .0101. The request shall specify the rules requested, for example, 15A NCAC 04, Sedimentation Control, or 15A NCAC 04B .0113, Responsibility for Maintenance. A fee may be charged to recover mailing and duplication costs for requests of more than one copy of the same rule(s).

(b) The rules of the Commission (15A NCAC 04) can also be found on the website of the NC Office of Administrative Hearings at: <https://www.oah.nc.gov>.

*History Note: Authority G.S. 113A-54; 113A-55;
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February
2, 2016;
Amended Eff. April 1, 2020.*

15A NCAC 04E .0105 DELEGATIONS OF AUTHORITY TO THE DIRECTOR

*History Note: Authority G.S. 113A-54; 113A-55; 150B;
Eff. March 14, 1980;
Amended Eff. November 1, 1984; June 5, 1981;
Repealed Eff. August 1, 1988.*

SECTION .0200 - PETITIONS FOR RULEMAKING

15A NCAC 04E .0201 FORM AND CONTENT OF PETITION

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

Director
Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

(b) The petition shall contain the following information:

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

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

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

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

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

*History Note: Authority G.S. 113A-54; 150B-20;
Eff. March 14, 1980;
Amended Eff. November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.*

15A NCAC 04E .0202 CONTENTS OF PETITION

*History Note: Authority G.S. 113A-54; 150B-16;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.*

15A NCAC 04E .0203 DISPOSITION OF PETITIONS

*History Note: Authority G.S. 113A-54; 113A-55; 150B-16;
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.*

SECTION .0300 - NOTICE OF RULEMAKING HEARINGS

15A NCAC 04E .0301 TIMING OF NOTICE

*History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.*

15A NCAC 04E .0302 NOTICE MAILING LIST

History Note: Authority G.S. 113A-54; 150B-12(b);
Eff. March 14, 1980;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.

15A NCAC 04E .0303 ADDITIONAL INFORMATION

History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

SECTION .0400 - RULEMAKING HEARINGS

15A NCAC 04E .0401 REQUEST TO PARTICIPATE

15A NCAC 04E .0402 CONTENTS OF REQUEST: GENERAL TIME LIMITATIONS

History Note: Authority G.S. 113A-54; 150B-12(d),(e);
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0403 WRITTEN SUBMISSIONS

History Note: Authority G.S. 113A-54; 150B-12(e);
Eff. March 14, 1980;
Amended Eff. June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

15A NCAC 04E .0404 PRESIDING OFFICER: POWERS AND DUTIES

History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

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

15A NCAC 04E .0406 RECORD OF PROCEEDINGS

History Note: Authority G.S. 113A-54; 150B-11(2); 150B-12(e);
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

SECTION .0500 - DECLARATORY RULINGS

15A NCAC 04E .0501 DECLARATORY RULINGS: GENERALLY

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 and the rules of this Section.

History Note: Authority G.S. 113A-54; 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. April 1, 2020.

15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

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

(b) All requests shall include the following:

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

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

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

History Note: Authority G.S. 113A-54; 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. April 1, 2020.

15A NCAC 04E .0503 DISPOSITION OF REQUEST

(a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0502 of this Section, and the Chairman shall make a recommendation to the Commission on whether to grant or deny a request for a declaratory ruling.

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

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

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

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

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

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

- (1) the request for a ruling;

- (2) any written submission by a party;
 - (3) the given state of facts on which the ruling was based;
 - (4) any transcripts or recordings of oral proceedings, or, in the absence of a transcript or recording, a summary of all arguments;
 - (5) any other matter considered by the Commission in making the decision; and
 - (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling.
- (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
 - (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule that is the subject of the declaratory ruling in a manner irreconcilable with the declaratory ruling;
 - (3) the Commission changes the declaratory ruling prospectively; or
 - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environmental Quality and the party requesting the ruling.
- (g) The party requesting a declaratory ruling may agree to allow the Commission to extend any of the deadlines beyond the timeframes provided in G.S. 150B-4.
- (h) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a decision or a ruling on the merits within the time provided in G.S. 150B-4 shall constitute a denial of the request as well as a denial on the merits of the request and shall be subject to judicial review.

History Note: Authority G.S. 113A-54; 113A-55; 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. April 1, 2020.

15A NCAC 04E .0504 RECORD OF DECISION

History Note: Authority G.S. 113A-54; 150B-11;
Eff. March 14, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.