

**INTERNAL OPERATING PROCEDURES  
OF THE SEDIMENTATION CONTROL COMMISSION OF  
NORTH CAROLINA**

**ARTICLE I**

**Authority**

These procedures are adopted pursuant to the authority contained in North Carolina General Statute § 143B-298.

**ARTICLE II**

**Purpose**

The purpose of the Commission shall be to fulfill the duties prescribed for it in the General Statutes of North Carolina, particularly those provided at N.C.G.S. § 143B-298, § 143B-299, and § 113A-50, et seq.

**ARTICLE III**

**Membership**

The membership of this Commission shall be as set forth in N.C.G.S. § 143B-299.

**ARTICLE IV**

**Officers and Staff**

**Section 1.** Officers of this Commission shall be a Chairperson and Vice Chairperson.

(a). The Chairperson shall be designated by the Governor from among the members of the Commission pursuant to N.C.G.S. § 143B-299.

(b). The Vice Chairperson shall be elected from and by the members of the Commission and shall serve for a term of two years or until his or her regular term expires, whichever comes first.

**Section 2.** The staff of the Commission and all administrative services of the Commission shall be supplied by the Secretary of the Department of Environmental Quality as provided by North Carolina General Statutes, Chapters 143B and 113A.

**ARTICLE V**

**Meetings**

**Section 1.** The Commission shall meet at the call of the Chairperson and shall hold special meetings at the call of a majority of the members pursuant to N.C.G.S. § 143B-299. The Chairperson shall set the dates of regular meetings. Regular meetings shall generally convene in the Ground Floor Hearing Room, Archdale Building, Raleigh, North Carolina.

**Section 2.** The Chairperson may call special meetings as he or she deems necessary. Timely notice in advance of all special meetings must be given to each member of the Commission in accordance with the requirements of the North Carolina General Statutes. The notice requirement may be adequately discharged by mailings to the members of the Commission by letter or comparable electronic means to the members of the Commission at their last known address.

**Section 4.** A majority of duly appointed members of the Commission shall constitute a quorum.

**Section 5.** Meetings of the Commission shall be open to the public; provided, the Commission may hold an executive session where allowed by N.C.G.S. § 143-318.11.

## **ARTICLE VI**

### **Records**

**Section 1.** Minutes and other records of all Commission meetings shall be kept under the direction of the Director of the Division of Energy, Mineral, and Land Resources, said record to be supplemented, where possible, by electronic recording. Minutes shall be maintained according to the retention schedule approved by the Division of Archives and History.

**Section 2.** The Secretary of the Department of Environmental Quality, or his or her designee, shall be responsible for filing all rules (as defined in N.C.G.S. § 150B-2) of the Commission in proper form as required by Chapter 150B, Articles 2 and 5, of the North Carolina General Statutes.

## **ARTICLE VII**

### **Standard Order of Business**

**Section 1.** The Sedimentation Control Commission adopts the following as its Standard Order of Business, provided that order of business may be altered by the Chairperson in his or her discretion in order to more efficiently carry out the Commission's business or for the convenience of the public:

1. Preliminary Matters
  - a. Call to Order
  - b. Ethics statement and member's disclosure of conflicts of interest
  - c. Recognition of those attending
  - d. Swearing in of New Members, if present
  - e. Approval of minutes of previous meeting
2. Action Items
3. Informational Items and Reports
4. Concluding Remarks
  - a. By Division of Energy, Mineral, and Land Resources Director
  - b. By Commission members
  - c. By Chairperson
5. Adjournment

## ARTICLE VIII

### Notice Requirements

**Section 1.** In accordance with the North Carolina General Statutes, Chapters 113A, 143, 143B and 150B, the Secretary of the Department of Environmental Quality, or an appropriate designee shall be responsible for the timely issuance of any applicable notices to those parties upon whom the right of legal notice of Commission hearings, meetings, committee meetings, decisions, and official actions is conferred.

**Section 2.** Notice to the public in advance of all meetings and committee meetings shall be given in accordance with N.C.G.S. § 143-318.12.

**Section 3.** The Commission may adopt special notice procedures as it deems necessary, subject to the requirements of the North Carolina General Statutes.

## ARTICLE IX

### Committees

**Section 1.** The Commission Chairperson shall appoint such committees, standing or special, as the Commission Chairperson shall from time to time deem necessary. The Commission Chairperson shall appoint all members of committees, standing or special. The Commission Chairperson shall designate the chairperson and vice-chairperson of each committee, standing or special, from among its members and shall be an ex officio member of all committees. However, the Commission Chairperson shall not be an ex-officio member of the Civil Penalty Remissions Committee when the Commission Chairperson is the chairperson of the Committee. A majority of duly appointed members of each committee shall constitute a quorum.

**Section 2.** Duly appointed committees may adopt at their discretion any internal procedures necessary to the discharge of their business; provided, no procedures adopted by any committee shall be inconsistent with these procedures or any other rules adopted by the Commission, or with any statutes applicable to the Commission. The committee chairperson shall report the committee's recommendation.

**Section 3.** A Steering Committee composed of the Commission Chairperson, the Commission Vice-Chairperson and the chairperson of each of the Commission's standing committees shall be appointed by the Commission Chairperson. The Commission Chairperson shall be the chairperson of the Steering Committee and the Commission Vice-Chairperson shall be the vice-chairperson of the Steering Committee. The Steering Committee shall carry out such administrative functions as the Commission Chairperson may direct and may make recommendations to the full Commission on any matters it deems relevant to the Commission's work.

**Section 4.** The following committees are established as standing committees of the Commission:

Erosion and Sedimentation Control Plan Review Committee  
Civil Penalty Remissions Committee

The Commission Chairperson shall appoint all members of each such committee, and shall designate the chairperson and vice-chairperson of each committee. Additional one-issue special committees may be appointed by the Commission Chairperson as needed.

The Erosion and Sedimentation Control Plan Review Committee shall consist of three members of the Commission as prescribed in N.C.G.S. § 113A-61(c).

The Commission Chairperson shall be the chairperson of the Civil Penalty Remissions Committee, unless the Commission Chairperson, in his or her discretion, designates another member the chairperson of the Civil Penalty Remissions Committee. When the Commission Chairperson designates another member the chairperson of the Civil Penalty Remissions Committee, the Commission Chairperson shall be an ex-officio member of the Civil Penalty Remissions Committee.

**Section 5.** The following committees are established as advisory committees to the Commission:

Education Advisory Committee  
Commission Technical Committee

The Commission Chairperson shall appoint all members of each such committee, and shall designate the chairperson and vice-chairperson of each committee. Additional one-issue special advisory committees may be appointed by the Commission Chairperson as needed.

The Commission Chairperson shall appoint members of the Commission Technical Committee as prescribed in N.C.G.S. § 113A-54(e). The Commission Technical Committee shall consist of eight to twelve members. Members shall serve terms of three years. Members may serve any number of terms but may not serve more than two consecutive terms and may be re-appointed after a one-year break in service.

## **ARTICLE X**

### **Parliamentary Authority**

**Section 1.** The rules contained in the current edition of Robert's Rules of Order shall govern the Commission in all meetings, where applicable and not inconsistent with these procedures and any special rules of order the Commission may adopt, or with any statutes applicable to the Commission.

**Section 2.** The Commission Chairperson and the chairperson of any committee may or may not vote on any issue before the body over which that person is presiding. If a tie occurs, the motion fails.

## ARTICLE XI

### Hearings

**Section 1.** The Chairperson shall appoint any Commission member or members, or appropriate qualified employee or employees of the Department of Environmental Quality, as hearing officer for any required public hearing to receive comments on regulations or to preside over any public hearing conducted under any statutes applicable to the Commission.

**Section 2.** In making hearing officer appointments, the Chairperson shall consider the geographic location of the hearing, the technical complexity of the matter being considered, the public interest in the matter, and the necessity of having an impartial hearing officer without personal bias.

**Section 3.** All hearing officers appointed pursuant to this Article shall report their recommendations, along with the record of the hearing, to the full Commission for decision or action, and may recommend adoption thereof.

**Section 4.** The Commission at its regularly scheduled meetings will frequently hear reports and recommendations for the adoption of rules which have been subjected to public notice, comment period and hearing. The Commission will refrain from allowing additional public comment at the meeting, since the matter is not then in public hearing; but the Commission may allow limited public discussion if the circumstances warrant and all positions appear to be adequately represented by those present.

**Section 5.** With respect to any quasi-judicial matter pending before the Commission, including requests for declaratory rulings, special orders on consent, and remissions, all members of the Commission and hearing officers shall refrain from directly or indirectly communicating outside of the formal hearing proceedings with any person, party or their representative regarding issues of fact or law pertaining to the pending matter unless all parties are provided notice of the communication and given an opportunity to participate therein. This section shall not be deemed to limit discussion with State employees whose function is to assist the Commission in fulfilling its duties, and who are not directly involved in investigating or prosecuting the pending matter or with other Commission members, provided that no factual information not part of the record is transmitted, and such communication does not abrogate each member's responsibility to personally decide the matter.

**Section 6.** It is each member's responsibility to review and become familiar with the facts and written submissions of the parties prior to the meeting at which a quasi-judicial decision is to be made. Parties to the proceeding, but not the general public, will be given the opportunity to address the Commission or the standing committee making the final decision, after the recommendation of the staff hearing officer or panel is received. Oral presentations are limited to issues of record, and will not exceed 15 minutes unless the Chairperson or the chairperson of the standing

committee rules otherwise. After all presentations, discussion and voting shall proceed. A decision shall be made based upon the record as a whole or such portion as may be cited by any party to the proceeding. No Commission member shall investigate the facts independently, but in making his or her decision shall consider only the evidence presented in the record. Pursuant to N.C.G.S. § 143- 318.11, executive sessions may be called for discussions of legal questions.

**Section 7.** Motions filed with the Commission by persons seeking leave to file amicus curiae briefs in pending quasi-judicial matters shall state the nature of the applicant’s interest, the reasons why the brief is desirable, the questions of law to be addressed in the brief and the applicant’s position on those questions. The proposed brief may be conditionally filed with the motion for leave. The motion shall be referred to the Chairperson who shall rule on the motion. The Chairperson’s ruling shall be served upon the applicant, the Department, and parties of record.

**Section 8.** Motions filed with the Commission by persons seeking leave to intervene in pending proceedings for declaratory rulings shall be referred, with any response timely filed by the Department or parties, to the Chairperson who shall rule on the motion. The Chairperson’s ruling shall be served upon the applicant, the Department and parties of record.

**Section 9.** Any written argument, memorandum, or brief submitted to the Commission or any of its Committees pursuant to any section of Article XI, shall be limited to thirty-five pages if the font used is a non-proportional type and to 8,750 words if proportional type is used.

## **ARTICLE XII**

### **Remission Requests**

**Section 1.** The Civil Penalty Remissions Committee will meet as necessary to consider requests for remission and make the final decisions.

**Section 2.** When the Commission Chairperson has allowed a violator's request for oral presentation, the Committee will hear oral presentations by the violator and by the entity that issued the penalty. If the Department issued the penalty, the Department shall make the oral presentation. If a local government issued the penalty, the local government shall make the oral presentation. The violator shall be notified of the date, time and location of the meeting when his or her oral presentation on the remission request will be heard and the matter decided.

**Section 3.** When a request to make an oral presentation is allowed, parties to the proceeding, but not the general public, will be given the opportunity to address the Committee, after the recommendation of the staff of the assessing entity is received. Oral presentations are limited to issues of record, and should not exceed 5 minutes per side unless the Committee chairperson rules otherwise. When a local government makes an oral presentation, the Committee, in its discretion, may also request an oral presentation by DEMLR staff limited to issues of record, and should not exceed 5 minutes unless the Committee chairperson rules otherwise.

**Section 4.** By submitting a request for remission of a civil penalty assessed by the Department or a local government under N.C.G.S. § 113A-64(a), the Committee recognizes that the violator has agreed that an evidentiary hearing is unnecessary, that all facts alleged in the assessment are

stipulated, and that the only issue for resolution is the reasonableness of the penalty imposed. The amount of the penalty will be determined by the Committee in accordance with N.C.G.S. § 113A-64.2 and the Internal Operating Procedures of the Sedimentation Control Commission. The assessing entity's recommendation on the remission request shall be the final decision unless it is modified by the Committee through a motion and vote of a majority of the Committee members in attendance. The Committee may order the full penalty be paid, accept the recommendation of the Department or local government, or reduce the penalty in accordance with N.C.G.S. § 113A-64.2(d). Pursuant to N.C.G.S. § 143-318.11, executive sessions may be called for discussion of legal questions.

### **ARTICLE XIII**

#### **Attendance**

**Section 1.** Regular attendance at Commission meetings is a duty of each member. Commission members recognize that, pursuant to N.C.G.S. § 143B-13(b)(iv), their membership becomes vacant by their ceasing to discharge the duties of their office over a period of three consecutive meetings except when prevented by sickness.

### **ARTICLE XIV**

#### **Conflicts of Interest**

**Section 1.** The Commission is subject to the State Government Ethics Act, N.C.G.S. § 138A-1, et. seq., establishing the State Ethics Commission, as amended and as it may later be amended. The members of the Commission, regardless of appointing authority, are bound by the standards enunciated in the State Government Ethics Act and the interpretations of the standards as developed through promulgations and advisory opinions of the State Ethics Commission.

**Section 2.** Members of the Commission must police themselves against actual and potential conflicts in the discharge of their statutory duties. In circumstances involving actual conflict of interest, the member must publically announce their conflict and immediately discontinue any involvement in the matter including discussions of it with other members of the Commission or staff to the Commission. Members who disqualify themselves for actual conflict of interest must also file a written statement with the Chairperson. Members of the Commission may appear to defend themselves if regulatory actions are initiated against them by the State Ethics Commission.

**Section 3.** Unless a member of the Commission with a potential conflict of interest places it in the public record, the member must withdraw from participation in the matter. When a member publically withdraws from a matter due to a potential conflict of interest, no further explanation is required. Should the potential conflict of interest be disclosed in a written document, it must be read into the minutes of the Commission before deliberation or discussion of the matter begins. A member with a potential conflict of interest who decides to participate in the pending matter must disclose, in the Commission meeting when the matter is called as an agenda item, the nature of the potential conflict of interest and the reason it does not cause them to withdraw from further participation in the matter.

## ARTICLE XV

### **Amendments to Internal Operating Procedures**

**Section 1.** These procedures may be amended at any regular or special meeting of the Commission by a three-fourths vote of the members present; provided that a copy of the amendment must be sent by first- class mail or electronically mailed to each Commission member seven days prior to the adoption of the amendment or otherwise be made available to each Commission member five days prior to the adoption of the amendment.

Effective: February 20, 2020

Dr. Susan White, Chairperson  
Sedimentation Control Commission