



REGULATORY IMPACT ANALYSIS

for

Proposed Rule Revisions for 15A NCAC Chapter 04, Sedimentation Control

05/14/19

A. General Information

Agency: Department of Environmental Quality, Division of Energy, Mineral, and Land Resources (DEMLR)

Commission: N.C. Sedimentation Control Commission

Chapter Title: Sedimentation Control

Citation: 15A NCAC Chapter 04 (See attached APPENDIX for proposed rule changes.)

Rulemaking Authority: GS 113A-54; 113A-56

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Impact Summary:

State government:	Minor
Local government:	None
Federal government:	None
Regulated entities	Minor
Substantial economic impact:	No

B. Purpose of the Sedimentation Control Rules in Chapter 04

The purpose of the Sedimentation Control Rules, codified in 15A NCAC Chapter 04, are to help implement the Sedimentation Pollution Control Act of 1973 (The Act). In the Act, the North Carolina state legislature recognized that “sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem” and control of this pollution “is deemed vital to the public interest and necessary to public health and welfare.” The rules in Chapter 04 were adopted in 1976 and have been modified several times during those 43 years. The rules established a program where a state, or delegated local agency, requires erosion and sedimentation control plans be prepared for all development sites with over one acre of disturbed soils. These plans include measures to control erosion, like seeding areas for ground cover, and those that cause sediment to be settled, like silt fences and detention basins.

C. Purpose of Revising the Sedimentation Control Rules in Chapter 04

S.L. 2013-413 requires a periodic review of all of the rules used by state agencies. The DEMLR staff has initiated the review of the rules of the Sedimentation Control Commission codified in Title 15A, Chapter 04 of the North Carolina Administrative Code. An ad hoc committee, the Sediment Rules Review Workgroup, met 10 times over a one-year period to review and update the rules of Chapter 04. The draft rules were sent to the staff of the Rules Review Commission for a “pre-review.” As a result of the comments provided, the DEMLR staff, with the help of the Workgroup, proposed numerous additional changes. The DEMLR staff does not believe that any of the proposed rule modifications will alter the daily operations of the sedimentation control program. There were 39 rules reviewed in Chapter 04: thirteen are proposed to be deleted with many of those due to statutory changes in the NC Administrative Procedure Act (APA). A majority of the changes were administrative in nature or involved revising language to add clarity for the understanding of the rule requirements.

D. More-Notable Rule Change Proposals

As discussed in Section C above, most of the changes are administrative in nature or to provide clarity in the presentation of the requirements and do not affect the operation of the State or local sediment control programs. A summary of the impacts of each rule change is provided in the **Table E** below. Although no changes are expected to have any programmatic impacts on the sedimentation control programs in this state, there are six listed below, that deal with the substance of a rule and deserve greater attention.

- 1. In rule 04B .0107, removed “15 working days” and specified that the “90 calendar days” applied only to “permanent” ground cover.** This seems like a substantive change but in reality, very little, if any, changes in program implementation will be felt. The change in rule 04B .0107 addresses concern voiced by regulated entities that in many instances, permanent stabilization cannot be achieved within the 15 working days or 90 calendar days specified in the existing rule. Although we believe that most approving authorities have allowed extensions of time, for example, where a permanent seed will not be viable until later in a season, the proposed changes to the rules specifically allow for that extended time. Therefore, we do not see any fiscal impact of the rule change nor do we see any adverse environmental impact from the change. In fact, the added reference to the federal Construction General Permit in this rule which clearly specifies 7 or 14-day temporary ground cover, provides assurance that was not previously specified.
- 2. In rule 15A NCAC 04B .0124, Design Standards in Sensitive Watersheds, the existing provisions for requiring basin sizing based on settling the “70% of the 40-micron particle” in HQW zones was replaced by specific sizing and design criteria.** Although the specifications of “70% of the 40-micron particle” had been considered for years to be an appropriately protective criterion for High Quality Waters, determining if it would be achieved in the field was practically impossible for an approving authority or the plan design technician. It was concluded by the Rules Review Workgroup that codifying the basin design criteria would provide a more reliable predictor of the treatment level that would be achieved. Having the specific criteria for how to design a sediment basin codified in the rules will not affect very many who design these basins. Almost all designers already use this design criterion which has been available in DEMLR’s Erosion and Sediment Control Planning and

Design Manual for years. Designers use this criterion because it provides greater certainty for getting plan approvals and often shortens the time needed for approval. DEMLR estimates the difference in cost between the current specifications and the proposed design criterion to be minor.

The proposed rules also provide written criteria to get a deviation from the specified criteria. Although data on how many alternative basin designs have been approved is not available, staff estimate the number of designs using the standard criteria in the Manual vastly outnumber designs that use alternative criteria. Although we don't have any of estimate how many alternative designs have been approved in the past, we do not anticipate any major differences in costs. There is no cheap or easy short-cut to achieve erosion control on a site. Therefore, we would consider the economic impact of the rule change as minor.

3. **In rule 15A NCAC 04B .0124, Design Standards in Sensitive Watersheds, removed “15 working days or 60 calendar days.”** The provisions for ground cover within “15 working days or 60 calendar days” was removed as applied to HQW zones. The rule wording seems to state that these requirements were “pursuant G.S. 113A-57(3).” G.S. 113A-57(3) only allows the Commission to adopt rules. Also, the statute applies to the application of final ground cover which as explained in #1 above, has also been confusing and not implemented for final ground without exception as the rule seems to specify. We do not see any fiscal impact of the rule change nor do we see any adverse environmental impact from the change. In fact, the added reference to the federal Construction General Permit in the rules, which clearly specifies 7 or 14-day temporary ground cover, within 7 or 14 days, provides assurance that was not previously specified.
4. **Rule 15A NCAC 04B .0131 was rewritten for clarity.** Most of the changes made were to make the rule more consistent with the state statutes and to clarify some areas of uncertainty. Sentences were added to provide clarity on issues such as “significant deviation” from a plan. Sentences were also added to explain that “visual verification” was allowed in some practices and measurement was required for others. These changes were made for clarity and should not have any noticeable effect on the techniques applied. However, it has been reported that some local governments have been requiring field measurements for silt fences, which was not required by most local governments or by the DEMLR. Because some local agencies may voluntarily change their ordinances to comply with this rule clarification, there could be some additional, one-time costs to the agencies. However, any local government can enforce a more-stringent requirement than the minimum provided on the state level.
5. **15A NCAC 04E .0201 ~~PETITIONS FOR RULEMAKING~~ PETITION FORM AND CONTENT OF PETITION**
Late in the preparation of draft rule changes, it was determined that the Commission should adopt a rule with details on submitting and adopting petitions for rulemaking as required by the Administrative Procedure Act (APA). Rule 04E .0201 was rewritten to provide those specifics.

Paragraph 04E.0201(b) is all information that an individual seeking a petition for a ruling would reasonably expect to provide and should not create significant additional workload or time investments for the petitioner.

Paragraph 04E .0201(c) of the proposed rule lists information that the petitioner may provide in support of a rulemaking petition. Because the petitioner is not required to provide this information, the rule change will not result in any additional costs or benefits.

The DEMLR staff in providing assistance to the Commission has always had some expense considering petitions for rulemaking and the modifications made by this rule are envisioned by the statute and are not unusual for Declaratory Ruling Requests in this state. Also, the time spent by staff on petitions is already factored into their salaries, and no additional staff will need to be hired. Any additional workload is expected to be minor because rule petitions are not frequent.

6. **In rule 15A NCAC 04E .0503, Disposition of Requests for Declaratory Ruling, there has been a proposal by the Workgroup to change the rule to specify that third-party interventions are allowed for requests for declaratory rulings.** The proposal is expected to have only minor, administrative impacts. The statutes dictate a set timeframe for the Commission to make a decision on a request for a declaratory ruling. Adding the option for third-party interventions will require the Division staff to notice the request on their webpage in case an outside party wants to join in the request for a ruling. This will require some additional, although minor, effort by the staff which can easily be covered by existing staff. Also, since the Sediment Commission has had only one request for a Declaratory Ruling in the past 40 years, any additional expenditures because of this change is not likely.

E. Table of All Proposed Rule Changes and Regulatory Impacts

Rules With Proposed Changes (cross-out = recommended deletion.)	Action	Impact of Action
15A NCAC 04A .0101	Updated DEMLR office addresses.	No regulatory impact
15A NCAC 04A .0105 DEFINITIONS	Added a definition of “The Act” Added definition of “Approving Authority” Modified definition of “Lake or Natural Watercourse” Modified definition of “Person who violates.”	Administrative in nature. No regulatory impact. Done for rule clarity. No regulatory impact. Done for rule clarity. No regulatory impact. Term was incompatible with the statue. No regulatory impact.

	<p>Eliminated definition of “Phase of Grading”</p> <p>Modified definition of “Velocity.”</p>	<p>Done for rule clarity. No regulatory impact.</p> <p>Definition was confusing. No regulatory impact.</p>
15A NCAC 04B .0105 PROTECTION OF PROPERTY	Removed the unenforceable and “aspirational” modifier “all reasonable.”	Done for rule clarity. No regulatory impact.
15A NCAC 04B .0106 BASIC EROSION <u>AND</u> <u>SEDIMENTATION</u> CONTROL <u>PLAN</u> OBJECTIVES	Removed and/or replaced some vague terminology.	No regulatory impact.
15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND- DISTURBING ACTIVITY	<p>Removed “15 working days” and clarified that the 90 calendar days applied only to “permanent” ground cover.</p> <p>Added a reference to the Construction General Permit.</p>	<p>Because of the more-stringent federal stormwater requirements, the 15 working days in the rule had not been used for years. Although it seems like a relaxation in the rules, it should have no effect on environmental protection. For practical purposes, final stabilization on some sites cannot be achieved within the 15 days and maintaining the temporary ground cover will provide adequate protection until the final stabilization is complete. There should be no adverse environmental impact.</p> <p>Done to provide information to the regulated public to refer them to these separate requirements. The General Permit is not implemented or enforced through these rules: no regulatory impact.</p>
15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD	Revised language for storm event calculations, including acceptance of different methodologies.	Done in response to RRC staff comments to provide clarity. No regulatory impact.
15A NCAC 04B .0109 STORMWATER OUTLET PROTECTION	<p>Removed the “aspirational” statement regarding “Acceptable Management Measures.”</p> <p>Clarified “sinuous channels” language.</p>	<p>Done in response to RRC staff comments to provide clarity. No regulatory impact.</p> <p>No regulatory impact.</p>

Rules With Proposed Changes	Action	Impact of Action
15A NCAC 04B .0110 BORROW AND WASTE AREAS	Made minor grammar corrections.	No regulatory impact.
15A NCAC 04B .0111 ACCESS AND HAUL ROADS	Revised wording for clarity	Done in response to RRC staff comments. No regulatory impact.
15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES	Proposed deleting the rule.	Done in response to RRC staff comments that rule had no impact. No regulatory impact.
15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE	Eliminated the unclear adjective “necessary” and made minor format changes.	Done in response to RRC staff comments. No regulatory impact.
15A NCAC 04B .0115 ADDITIONAL MEASURES	Made revisions for clarity and removed unclear adjective “necessary.”	Done in response to RRC staff comments. No regulatory impact.
15A NCAC 04B .0118 APPROVAL OF PLANS	<p>Made changes to clarify the requirement that an approving agency must act within 30 days of receipt of a plan.</p> <p>Removed provisions for approval with “performance reservations,” which was not provided in the statutes and a statement on “rights to a contested case” and other provisions deemed inconsistent with the APA. (Administrative. Procedure Act)</p>	<p>Done in response to RRC staff comments. No regulatory impact.</p> <p>Done in response to RRC staff comments. No regulatory impact.</p>
15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS	Two paragraphs related to staff inspections were deleted because wording in the statutes made them unnecessary. A statement on “preconstruction conferences” was rewritten to make it consistent with the statute.	The two paragraphs were removed in response to RRC staff comments about repeating statutory requirements in rules. The language change related to conferences was made because the RRC staff indicated that the agency did not have authority to regulate who received “preconstruction conferences.” No regulatory impact.

Rules With Proposed Changes	Action	Impact of Action
<p>15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS</p>	<p>Wording changes were made in the references to the NRCS Handbook 630 and options for substituting other criteria for runoff calculations. They could appear to be a reduction in flexibility for the plan designer although we don't expect any regulatory impact from the change.</p> <p>In paragraph (c), the existing provisions for requiring basin sizing based on "70% of the 40-micron particle" in HQW zones was replaced by specific sizing and design criteria</p> <p>Paragraph (d) was inserted to allow substitutions to the specific criteria assigned in paragraph (c).</p> <p>In paragraph (e), the provision for ground cover within "15 working days or 60 calendar days" was removed as applied to HQW zones.</p>	<p>Done in response to RRC staff comments. The provisions in the rule were very vague and needed clarification.</p> <p>It was concluded that the "40-micron" criteria had little if any effect on basin sizing and the guidance that is proposed for adoption has been used in most projects and is very clear. It is possible that for some projects, the flexibility in the existing processes allowed greater choice in E&SC control practices. However, there is no evidence that the alternative controls provided any savings and therefor the projected impacts of the rule changes are considered minor.</p> <p>The flexibility included in Paragraph (d) does help the project applicant but it must provide "equal or more effective" level of treatment so the change should not adversely affect the environment.</p> <p>Because of the federal stormwater permit, the ground cover requirements had no application to existing control requirements. Those conditions had not affected ground cover for over 8 years.</p>
<p>15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS</p>	<p>Several changes were made to address administrative comments made by the RRC staff. These provided better-written rules but did not result</p>	<p>Done in response to RRC staff comments. No regulatory impact.</p>

	in any substantive changes in rule implementation.	
15A NCAC 04B .0126 PLAN REVIEW APPLICATION FEE	Several changes were made for administrative purposes or to eliminate outdated provisions.	Done for clarity, no regulatory impact.
15A NCAC 04B .0127 PLAN APPROVAL CERTIFICATE	Several changes were made for administrative purposes or to eliminate outdated provisions.	Done for clarity, no regulatory impact.
15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE	Only one minor change was made.	Done for clarity, no regulatory impact.
15A NCAC 04B .0130 EMERGENCIES	A few minor administrative changes were made.	No regulatory impact.
15A NCAC 04B .0131 SELF-INSPECTIONS	<p>Much of the text of the rule was rewritten. Most of the changes made were to make the rule more consistent with the statutes and the existing federal stormwater permit. Sentences were added to provide clarity on issues such as “significant deviation” from a plan. Sentences were also added to explain that “visual verification” was allowed in some practices and measurement was required for others.</p> <p>Added a reference to the NCG01 General Permit requirements.</p>	<p>These changes were made for clarity and should not have any effect on the sedimentation and erosion control techniques applied. An issue related to measurement of silt fences was specifically addressed. It had been reported that some local governments have been requiring field measurements for silt fences, which was not required by most local governments or the DEMLR. Since local governments can still have more-stringent requirements, this change is not mandatory and the impact negligible.</p> <p>Reference to General Permit added for informational purposes to refer the regulated community to these separate requirements. The General Permit is not implemented or enforced through these rules: no regulatory impact.</p>
15A NCAC 04C .0103 WHO MAY ASSESS	No changes proposed.	No regulatory impact
15A NCAC 04C .0106 CRITERIA	No changes proposed.	No regulatory impact

Rules With Proposed Changes	Action	Impact of Action
15A NCAC 04C .0107 PROCEDURES: NOTICES	Minor change. Removed a vague term “reasonable particularity.”	No regulatory impact
15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING	Recommend removing the rule. The DEMLR staff noted that it repeats the statute and is not needed.	No regulatory impact
15A NCAC 04C .0110 ADMINISTRATIVE HEARING	Recommend removing the rule. The RRC staff noted that it repeats the statute, is misleading, and is not necessary.	No regulatory impact
15A NCAC 04C .0111 FURTHER REMEDIES	Recommend removing the rule. The RRC staff noted that it is confusing and is not necessary.	No regulatory impact
15A NCAC 04D .0102 MODEL ORDINANCE	Recommend removing the rule. The RRC staff noted that it is confusing and is not necessary.	No regulatory impact
15A NCAC 04E .0101 GENERAL PURPOSE	Recommend removing the rule. The DEMLR staff noted that it is confusing and not necessary.	No regulatory impact
15A NCAC 04E .0102 DEFINITIONS	Recommend removing the rule. The definitions are provided in the Act or in rule 04B .0105 and are not needed here.	No regulatory impact
15A NCAC 04E .0104 COPIES OF RULES: INSPECTIONS	Minor administrative changes.	No regulatory impact
15A NCAC 04E .0201 <u>PETITIONS FOR RULEMAKING FORM AND CONTENT OF PETITION</u>	The existing rules 04E .0201 was rewritten at the advice of Department counsel. The existing rule was outdated and inaccurate. The procedures are more-clearly outlined in the revised rule and should help the petitioner and the Commission in dealing with rulemaking petitions.	The rules do not add any specifications that are not supported by statute or that are considered unusual for a regulatory agency in the Department.

Rules With Proposed Changes	Action	Impact of Action
15A NCAC 04E .0203 DISPOSITION OF PETITIONS	The proposed rule changes have the rule deleted and rule 04E .0201 is modified to include both form and content and disposition of petitions for rulemaking.	No regulatory impact. The requirements relating to addressing petitions are consistent with the statute and similar to those that other agencies in the Department use.
15A NCAC 04E .0403 WRITTEN SUBMISSIONS	Because these procedures are specified in NCGS 150B, the DEQ attorney recommended that this rule be repealed.	The statute dictates how written requests for rulemaking hearings are handled and the rule is not needed. The rule is outdated and eliminating it should have no regulatory impact.
15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION	Because these procedures are specified in NCGS 150B, the DEQ attorney recommended that this rule be repealed.	No regulatory impact.
15A NCAC 04E .0406 RECORD OF PROCEEDINGS	Because these procedures are specified in NCGS 150B, the RRC staff said that the rule could be repealed.	No regulatory impact.
15A NCAC 04E .0501 SUBJECTS OF DECLARATORY RULINGS	Because a part of this rule is stated in NCGS 150B and the RRC staff said that the second sentence of the rule is unnecessary, the rule is proposed for repeal.	No regulatory impact.
15A NCAC 04E .0502 SUBMISSION OF REQUEST FOR RULING	Minor changes were made for clarity.	No regulatory impact.
15A NCAC 04E .0503 DISPOSITION OF REQUESTS FOR <u>DECLARATORY RULING</u>	The rule is proposed for a total revision. Most of the changes are in updating the rule wording to be consistent with the Administrative Procedure Act (APA) and will not make any significant change in the way the Commission addresses declaratory rulings. However, there has been a proposal to change the rule to specify that third-party	The proposal is expected to have only minor regulatory impacts. The statutes dictate a set timeframe for the Commission to make a decision on a request for a declaratory ruling. Adding the option for third-party interventions will require the Division staff to notice the request on their webpage in case an outside party wants to

	interventions are allowed in a request for declaratory rulings.	join in the request for a ruling. This will require some additional, although minor, effort by the staff which can easily be covered by existing staff.
15A NCAC 04E .0504 RECORD OF DECISION	Based on the RRC staff comments about the role of the Department's retention schedule and the absence of a statutory mandate to include this information, it was recommended that this rule be deleted.	Since the Director's office will still be required to store all Records of Decision, even though theoretically, this rule deletion could change the timing of storage in the Division offices, the cost to the Division, and the availability of the records, should not be affected.

F. What Will Be the Fiscal Costs Resulting from the Rule Changes?

- **To State government: No increase in costs.** None of the changes will require additional expenditures to state government agencies
- **To local governments: No increase in costs.** Some local governments may want to make changes to their local government ordinances to include the improved, sediment and erosion control language. However, none will be required to any changes.
- **To federal government: No increase in costs.** Some activities of the federal government are required to develop an erosion and sediment control plan but the changes in the rules will not require additional expenditures on any project.
- **Private entities: No increase in costs.** None of the proposed rule changes will add any additional requirements from what is required at this time.

G. Potential Fiscal Benefits of Revised Rules

The proposed rules do not include any explicit changes to provide a benefit to the regulator or the regulated development entities. However, many out-of-date rules have been updated, made more clear and in many cases deleted. These changes should result in less time spent by personnel trying to comply with or implement the erosion and sedimentation rules. There are over 50 local governments with responsibility for implementing the rules and having the more-clear and more, legally-accurate rules should result in efficiencies in governing and savings for the municipal governments. Similar time savings should be seen by the thousands of individuals in the state trying to understand and abide by the Chapter 04 rules.