



## REGULATORY IMPACT ANALYSIS

for

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

05/14/19 (Contains 7/15/19 version of draft rules)

#### 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**

<b>Rules With Proposed Changes</b> ( <del>cross-out</del> = recommended deletion.)	<b>Action</b>	<b>Impact of Action</b>
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 statute. 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.
<del>15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES</del>	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	Made changes to clarify the requirement that an approving agency must act within 30 days of receipt of a plan.  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)	Done in response to RRC staff comments. No regulatory impact.  Done in response to RRC staff comments. No regulatory impact.
15A NCAC 04B .0120 <del>INSPECTIONS AND INVESTIGATIONS</del>	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
15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS	<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&amp;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>
15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS	Several changes were made to address administrative comments made by the RRC staff. These provided better-written rules but did not result	Done in response to RRC staff comments. No regulatory impact.

	in any substantive changes in rule implementation.	
15A NCAC 04B .0126 <del>PLAN REVIEW APPLICATION FEE</del>	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
<del>15A NCAC 04C .0108</del> <del>REQUESTS FOR</del> <del>ADMINISTRATIVE</del> <del>HEARING</del>	Recommend removing the rule. The DEMLR staff noted that it repeats the statute and is not needed.	No regulatory impact
<del>15A NCAC 04C .0110</del> <del>ADMINISTRATIVE</del> <del>HEARING</del>	Recommend removing the rule. The RRC staff noted that it repeats the statute, is misleading, and is not necessary.	No regulatory impact
<del>15A NCAC 04C .0111</del> <del>FURTHER REMEDIES</del>	Recommend removing the rule. The RRC staff noted that it is confusing and is not necessary.	No regulatory impact
<del>15A NCAC 04D .0102</del> <del>MODEL ORDINANCE</del>	Recommend removing the rule. The RRC staff noted that it is confusing and is not necessary.	No regulatory impact
<del>15A NCAC 04E .0101</del> <del>GENERAL PURPOSE</del>	Recommend removing the rule. The DEMLR staff noted that it is confusing and not necessary.	No regulatory impact
<del>15A NCAC 04E .0102</del> <del>DEFINITIONS</del>	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: <del>INSPECTIONS</del>	Minor administrative changes.	No regulatory impact
15A NCAC 04E .0201 <u>PETITIONS FOR</u> <u>RULEMAKING FORM</u> <u>AND CONTENT OF</u> <u>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
<del>15A NCAC 04E .0203</del> <del>DISPOSITION OF PETITIONS</del>	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.
<del>15A NCAC 04E .0403</del> <del>WRITTEN SUBMISSIONS</del>	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.
<del>15A NCAC 04E .0405</del> <del>STATEMENT OF REASONS FOR DECISION</del>	Because these procedures are specified in NCGS 150B, the DEQ attorney recommended that this rule be repealed.	No regulatory impact.
<del>15A NCAC 04E .0406</del> <del>RECORD OF PROCEEDINGS</del>	Because these procedures are specified in NCGS 150B, the RRC staff said that the rule could be repealed.	No regulatory impact.
<del>15A NCAC 04E .0501</del> <del>SUBJECTS OF DECLARATORY RULINGS</del>	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.
<del>15A NCAC 04E .0504</del> <del>RECORD OF DECISION</del>	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.

## APPENDIX

### TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

*Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Sedimentation Control Commission intends to amend the rules cited as 15A NCAC 04A .0101; 04E .0104, .0201, .0501-.0503, repeal the rules cited as 15A NCAC 04C .0110, .0111; 04E .0101, .0102, .0203, .0403, .0405, .0406, .0504, readopt with substantive changes the rules cited as 15A NCAC 04A .0105; 04B .0105-.0110, .0112, .0115, .0118, .0120, .0124-.0127, .0129-.0132; 04C .0103, .0106, .0107, readopt without substantive changes the rules cited as 15A NCAC 04B .0111, .0113, and repeal through readoption the rules cited as 15A NCAC 04C .0108 and 04D .0102.*

*Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be published. The text of the rules are available on the OAH website: <http://reports.oah.state.nc.us/ncac.asp>.*

**Link to agency website pursuant to G.S. 150B-19.1(c):** <https://deq.nc.gov/permits-regulations/rules-regulations/proposed-rules>

**Proposed Effective Date:** *January 1, 2020*

**Public Hearing:**

**Date:** *August 1, 2019*

**Time:** *3:00 p.m.*

**Location:** *Ground floor conference room, Archdale Building, 512 N. Salisbury Street, Raleigh, NC 27604*

**Reason for Proposed Action:** *S.L. 2013-413 requires a periodic review of all rules used by state agencies. The Division of Energy, Mineral and Land Resources and the Sedimentation Control Commission have initiated the review of the rules codified in 15A NCAC 04. Most of the proposed rule changes are administrative in nature and add clarity to the rules.*

*In addition to the proposed changes, the Sedimentation Control Commission is requesting comments on:*

*Rule 04A .0105(29), regarding 'bank full flows', for example changing to 'bank flow height' or 'bank flow elevation'.*

*Rule 04B .0107, regarding permanent ground cover considerations for restraining erosion, for example including 7-14 day temporary ground cover.*

*Rule 04B .0124, regarding potential for future measurement for meeting design standards for turbidity, for example adding flocculants or settling efficiencies standards and maintaining the existing, 40-micron requirement until changes are made.*

**Comments may be submitted to:** *Boyd DeVane, NC Division of Energy, Mineral and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612; phone (919) 707-9212; email [boyd.devane@ncdenr.gov](mailto:boyd.devane@ncdenr.gov)*

**Comment period ends:** *September 13, 2019*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact. Does any rule or combination of rules in this notice create an economic impact?**  
**Check all that apply.**

- ☐ State funds affected  
☐ Local funds affected  
☐ Substantial economic impact ( $\geq$  \$1,000,000)  
☐ Approved by OSBM  
☒ No fiscal note required

## CHAPTER 04 - SEDIMENTATION CONTROL

### SUBCHAPTER 04A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

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

Persons may ~~write or visit~~ 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 ~~write or visit~~ contact regional offices of the Commission's staff in the Division of Energy, Mineral, and Land Resources at the following locations:

- (1) ~~Interchange Building~~  
~~59 Woodfin Place~~  
~~P.O. Box 370~~  
~~Asheville, N.C. 28801~~  
Asheville Regional Office  
2090 U.S. 70 Hwy.  
Swannanoa, NC 28778-8211
- (2) ~~585 Waightown Street~~  
Winston-Salem Regional Office  
450 W. Hanes Mill Rd., Suite 300  
Winston-Salem, N.C. 27107 27105
- (3) ~~919 North Main Street~~  
Mooresville Regional Office  
610 E. Center Avenue, Suite 301  
~~P.O. Box 950~~  
Mooresville, N.C. 28115 - 28115-2578
- (4) Raleigh Regional Office  
 3800 Barrett Drive  
~~P.O. Box 27687~~  
Raleigh, N.C. 27611 27609-7222
- (5) ~~Wachovia Building~~  
~~Suite 714~~  
Fayetteville Regional Office  
225 Green Street, Suite 714  
Fayetteville, N.C. 28301 28301-5095
- (6) ~~1424 Carolina Avenue~~  
Washington Regional Office  
1424 Carolina Ave.  
~~P.O. Box 2188~~ Washington, N.C. ~~27889~~ 27889-3314
- (7) Wilmington Regional Office  
 127 Cardinal Dr., Ext.  
 Wilmington, N.C. 28405-3845

*History Note:* Authority G.S. 143B-298; 113A-54;  
 Eff. February 1, 1976;  
 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; February 1, 1992;  
 May 1, 1990; December 1, 1988;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest  
Eff. February 2, 2016;  
Amended Eff. XX, 1, 20XX.*

#### 15A NCAC 04A .0105 DEFINITIONS

In addition to the terms defined in G.S. 113A-52, ~~As used in this Chapter,~~ the following ~~terms~~ 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)(2)~~ "Adequate Erosion Control ~~Measures, Structure, or Device~~ Devices or Structures " means one ~~which~~ 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)(14)~~ "Being Conducted" means a land-disturbing activity has been initiated and ~~permanent stabiliztion of the site has not been completed.~~ not deemed complete.
- ~~(6)(3)~~ "Borrow" means fill material ~~which~~ that is required for on-site construction ~~and~~ that is obtained from other locations.
- ~~(7)(4)~~ "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.
- ~~(8)(27)~~ "Coastal ~~counties~~ 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~~ Tyrrell, and Washington.
- ~~(9)(23)~~ "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- ~~(10)(26)~~ "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality.
- ~~(11)(22)~~ "Discharge ~~Point~~" Point or Point of Discharge " means that point where runoff leaves a tract of ~~land.~~ 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)(18)~~ "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)(5)~~ "Ground Cover" means any natural vegetative growth or other material ~~which~~ that renders the soil surface stable against accelerated erosion.
- ~~(15)(24)~~ "High Quality Waters" means those ~~classified as such~~ described in 15A NCAC 02B-.0101(c)(5) ~~—General Procedures, which is incorporated herein by reference to include further amendments.~~ 02B .0224 which is herein incorporated by reference including subsequent amendments and editions, and may be accessed at no cost at <http://reports.oah.state.nc.us/.pdf>.
- (16) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the ~~state~~ 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 lake, or pond pond. ~~natural or impounded. in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.~~
- ~~(18)(7)~~ "Natural Erosion" means ~~erosion~~ "erosion" as defined in G.S. 113A-52(5) under natural environmental conditions undisturbed by man.
- ~~(19)(9)~~ "Person Conducting the ~~Land Disturbing~~ Land-disturbing Activity" means any person who may be held responsible for a violation unless ~~expressly~~ expressly provided otherwise by the ~~Sedimentation Pollution Control Act of 1973, G.S. 113A 50 to 66, the North Carolina Administrative Code, Title 15A Chapter 4 the Act, the Rules of this Chapter,~~ or any order or local ordinance adopted

pursuant to ~~the these Rules or the Act~~, Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to 69.

- (8) ~~"Person Who Violates"~~ as used in G.S. 113A-64, means:
- (a) ~~the developer or other person who has or holds himself or herself out as having financial or operational control over the land-disturbing activity; or~~
  - (b) ~~the landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has directly benefitted from it or he has failed to comply with any provision of the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to 66, the North Carolina Administrative Code, Title 15A, Chapter 4, or any order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to 66, as imposes a duty upon him.~~
- (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
- (10) ~~"Phase of Grading" means one of two types of grading, rough or fine.~~
- (21)(11) "Plan" means an erosion and sedimentation control plan.
- (22)(12) "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)(19) "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)(13) ~~"Storm Water"~~ "Stormwater Runoff" means the direct runoff of water resulting from precipitation in any form.
- (25)(20) "Ten Year Storm" means the surface runoff resulting from a rainfall of an intensity that, based on historical data, is expected predicted to be equaled or exceeded, on the average, once in 10 years, and of a duration that which will produce the maximum peak rate of runoff for from the watershed of interest under average antecedent wetness conditions.
- (26)(28) "Twenty-five Year Storm" Storm or Q25" means the surface runoff resulting from a rainfall of an intensity expected that, based on historical data, is predicted 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)(15) ~~"Uncovered" means the removal of~~ having had ground cover removed from, on, or above the soil surface.
- (28)(16) ~~"Undertaken" means the initiating of any activity or phase of activity which 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)(21) "Velocity" means the average velocity speed of flow through a the cross-section cross-section perpendicular to the direction of the main channel at the peak flow of the storm of interest. interest but not exceeding bank full flows. The cross-section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- (30)(17) "Waste" means surplus materials resulting from on-site construction and to be disposed of at other locations offsite.

*History Note:* Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;  
Filed as a Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire on April 29, 1991;  
Statutory Authority G.S. 113A-52; 113A-54  
Eff. November 1, 1984;  
Amended Eff. May 1, 1990;  
ARRC Objection Lodged November 14, 1990;

*ARRC Objection Removed December 20, 1990;  
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); October 1, 1995; April 1, 1992;  
January 1, 1991;  
Readopted Eff. XX, 1, 20XX.*

## SUBCHAPTER 04B - EROSION AND SEDIMENT CONTROL

### 15A NCAC 04B .0105 PROTECTION OF PROPERTY

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

*History Note: Authority G.S. ~~113A-54(b)~~; 113A-54(d)(2);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1988; November 1, 1984;  
Readopted Eff. XX, 1, 20XX.*

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

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

- (1) Identify Critical ~~Areas~~; Areas. Identify site areas subject to ~~severe~~ accelerated erosion, and off-site areas ~~especially~~ 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 ~~feasible time~~; 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 ~~run-off~~ originating upgrade of exposed areas in order to reduce erosion and sediment loss during exposure.
- (5) Control Sedimentation. All land-disturbing activity ~~is to~~ shall be planned ~~and conducted so as to~~ prevent off-site sedimentation damage.
- (6) Manage ~~Storm Water~~ Stormwater Runoff. ~~When the increased~~ Plans shall be designed so that any increase in velocity of storm water stormwater runoff resulting from a land-disturbing activity causes will not result in accelerated erosion of the receiving watercourse, stormwater conveyance within the project boundary, or at the point of discharge. plans shall include measures to control the velocity to the point of discharge.

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

*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. XX, 1, 20XX.*

### 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 ~~the G.S. 113A-57; 113A-57 and the standards established in these Rules.~~

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

(c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan ~~must shall~~ be ~~both~~ filed and approved by the ~~agency having jurisdiction~~; 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; 113A-57(3)(4);  
Eff. February 1, 1976;  
Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980;  
Readopted Eff. XX, 1, 20XX.

#### 15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD

Except where otherwise specified in this Chapter, erosion ~~Erosion~~ and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed to provide protection from the run off of ~~that a 10-year~~ 10-year storm ~~that which~~ produces the maximum peak rate of run off as calculated according to procedures in the United States Department of Agriculture ~~Agriculture~~, Soil ~~Natural Resources~~ Conservation Service's "National Engineering Field ~~Manual~~ 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> ~~or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.~~ Other methodologies can 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. XX, 1, 20XX.

#### 15A NCAC 04B .0109 ~~STORM—WATER~~ STORMWATER ~~OUTLET~~ DISCHARGE POINT PROTECTION

(a) Persons shall ~~conduct~~ provide a design for the land-disturbing activity so that the ~~post-construction~~ post-construction velocity of the ~~ten-year~~ 10-year storm ~~run-off~~ run-off in the receiving ~~waterecourse~~ stormwater conveyance ~~to to~~, and including, the discharge ~~point 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~~ 10-year storm ~~run-off~~ runoff in the receiving ~~waterecourse~~ stormwater conveyance prior to development.

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

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

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

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

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

Material	Maximum Permissible Velocities <del>For</del> 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

Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. 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.

\* 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)(c);  
Eff. February 1, 1976;  
Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978;  
Readopted Eff. XX, 1, 20XX.

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

If the same person conducts the ~~land-disturbing~~ land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the ~~land-disturbing~~ 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 Solid Waste Management. If the ~~land-disturbing~~ land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered separate land-disturbing activities.

*History Note:* Authority G.S. 74-67; 113A-54(b); 130A-166.21;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1990; November 1, 1984;  
Readopted Eff. XX, 1, 20XX.

#### **15A NCAC 04B .0111 ACCESS AND HAUL ROADS (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

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

~~Land-disturbing~~ 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 unnecessary changes in the stream flow characteristics.

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

*Amended Eff. November 1, 1984;  
Readopted Eff. XX, 1, 20XX.*

## **15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE (READOPTION WITHOUT SUBSTANTIVE CHANGES)**

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

Whenever the ~~commission~~ Commission or a local government determines that ~~significant~~ accelerated erosion and sedimentation continues despite the installation of protective practices, the person conducting the ~~land-disturbing~~ land-disturbing activity ~~will be required to and~~ shall take additional protective ~~action~~ 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. XX, 1, 20XX.*

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

(a) Persons conducting land-disturbing activity on a tract ~~which that~~ covers one or more acres shall file ~~three copies of~~ the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has ~~jurisdiction, jurisdiction.~~ The approving agency shall act on the plan at least 30 days prior to beginning such activity and within receipt of the plan or the plan shall be deemed approved. ~~shall keep another~~ 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 ~~on~~ upon inspection of the job site, that ~~a significant risk of accelerated erosion or off site sedimentation exists, 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 appropriate authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction ~~by statute pursuant to G.S. 113A-56,~~ and all other land-disturbing activity ~~if 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,~~ approved;
  - (B) approved with modification, modification; or,
  - (C) approved with performance reservations, or
  - (C)(D) ~~disapproved.~~
- (3) The Commission's ~~disapproval,~~ approval with modification, or ~~performance reservations~~ disapproval of any proposed ~~plan,~~ plan shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23. (This Section does not modify any other rights to a contested case hearing which may arise under G.S. 150B-23).
- (4) ~~Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed by the Commission~~ Appeals of local government decisions shall be conducted pursuant to G.S. 113A-61(c).
- (5) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act as set forth in Article 1 or G.S. 113 and the rules of this Department as set forth in 15A NCAC 01C shall be deemed incomplete until ~~a complete an~~ an environmental document is available for review. The Commission shall ~~promptly~~ notify the person submitting the plan that the ~~30-day~~ 30-day time limit for review of the plan pursuant to Subparagraph ~~(b)(2)(2)~~ (2) of this ~~Rule~~ Paragraph shall not begin until ~~a complete the~~ the environmental document is available for review.

(c) ~~Erosion~~ An erosion and sedimentation control ~~plans may~~ plan shall also be disapproved unless ~~they include~~ 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. ~~Such~~ The procedures shall ~~respect~~ follow applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) The ~~secretary~~ Secretary shall appoint ~~such employee(s)~~ 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, such departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan should be approved, approved with modifications, ~~approved with performance reservations~~, or disapproved.
- (3) If either the local government or the person submitting the plan disagrees with the decision reached by ~~an employee of the Department~~ a Departmental employee, then 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~~ Director shall make the proposed erosion control plan and the records relating to the local government's and ~~departmental employees'~~ Departmental employee's review, available to an ~~appeals review~~ 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 ~~appeals~~ 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~~, appeal, and ~~shall afford both~~ Both parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or oral arguments. The ~~appeals~~ 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 ~~such~~ 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 ~~a contested case under G.S. 150B, Article 3; an appeal to the Commission.~~ An applicant desiring to appeal the ~~Director's~~ 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. ~~The general time limitation for filing a petition, and the commencement of the time limitation, shall be as set out in G.S. 150B 23(f). Contested cases shall be conducted under the procedures of G.S. 150B, Article 3 and applicable rules of the Office of Administrative Hearings. The Commission shall make the final decision on any contested case under G.S. 150B 36.~~

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

## 15A NCAC 04B .0120 ~~INSPECTIONS AND INVESTIGATIONS~~

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

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

- (e) ~~No person shall refuse entry or access to any representative of the Commission or any representative of a local government who requests entry for purposes of inspection.~~
- (b) When a preconstruction conference is proposed pursuant to G.S. 113A-51, it shall be specified on the plans.

*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. XX, 1, 20XX.*

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

- (a) Uncovered areas in HQW zones shall be limited ~~at any time~~ to a maximum total area of 20 acres within the boundaries of the tract, ~~tract of 20 acres.~~ Only the portion of 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.~~ 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 include other conditions as necessary based on specific site conditions.
- (b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be ~~so~~ planned, ~~designed~~ designed, and constructed to provide protection from the runoff of the ~~25-year~~ 25-year storm ~~which that~~ produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of ~~Agricultural Soil Conservation~~ Agriculture, Natural Resources Conservation Service's "National Engineering Field Manual Handbook 630 for Conservation ~~Practices~~" Practices. ~~or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.~~ Other methodologies can 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 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) ~~Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04mm) size soil particle transported into the basin by the runoff of that two year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.~~
- (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 Q<sub>25</sub> 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 are 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, but are not limited to, quicker application of ground cover, use of sediment flocculants and use of enhanced ground cover practices.
- ~~(e)(d)~~ 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~~ stabilization, unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural ~~devices~~ devices, or other forms of ~~acceptable~~ ditch liners. liners proven effective and acceptable to the Division. ~~In any event, the~~ The angle for side slopes shall be sufficient to restrain accelerated erosion.
- ~~(e) Pursuant to G.S. 113A-57(3) provisions for a ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.~~

*History Note:* Authority G.S. 113A-54(b); 113A-54(c)(1);  
Eff. May 1, 1990;  
Readopted Eff. XX, 1, 20XX.

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

- (a) ~~Unless otherwise provided, the~~ The width of a buffer zone ~~is 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) ~~The 25 foot~~ A 25-foot minimum width ~~width, for an~~ undisturbed buffer zone shall be protected adjacent to ~~designated~~ designated 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 ten percent of the total length of the buffer zone within the tract ~~to be and~~ distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. ~~Larger areas may be disturbed with the written approval of the Director.~~
- (d) If, 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 equally effective 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.
- ~~(d)(e)~~ (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to ~~designated~~ trout waters that is predicted by the plan approving authority to ~~will cause adverse stream temperature fluctuations, violations in these waters as set forth in 15A NCAC 2B .02B .0211 "Fresh Surface Water Classification and Standards", Standards in these for Class C waters, which is hereby incorporated by reference including subsequent amendments and editions. Copies of 15A NCAC 02B .0211 are available at <https://www.oah.state.nc.us/> at no cost.~~

*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. XX, 1, 20XX.

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

- (a) ~~A~~ The nonrefundable ~~plan review processing application fee~~, in the amount ~~stated in Paragraph (e) of this Rule, provided in G.S. 113A-54.2 shall be paid when an erosion and sedimentation control plan is filed in accordance with 15A NCAC 04B .0118. Rule .0118 of this Section.~~
- (b) Each plan shall be deemed incomplete until the ~~plan review processing application~~ fee is paid.
- ~~(c)~~ (e) ~~The plan review processing fee shall be based on the number of acres, or any part of an acre, of disturbed land shown on the plan.~~
- ~~(c)(d)~~ (d) No ~~plan review processing 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 ~~stated in Paragraph (e) of the Rule specified in G.S. 113A-54.2~~ for each additional acre (or any part thereof) disturbed.
- ~~(e)~~ (f) ~~The nonrefundable plan review processing fee shall be fifty dollars (\$50.00) for each acre or part of any acre of disturbed land.~~
- ~~(f)~~ (g) ~~Payment of the plan review processing fee may be by check or money order made payable to the "N.C. Department of Environment and Natural Resources". The payment shall refer to the erosion and sedimentation control plan.~~

*History Note:* Authority G.S. 113A-54; 113A-54.2;  
Filed as a 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. XX, 1, 20XX.

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

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

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

(a) The Commission shall issue a "Certificate of Approval" or a similar written documentation of approval that is provided 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 easily observable to the public and inspectors.

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

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

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

*ARRC Objection Lodged November 14, 1990;*

*ARRC Objection Removed December 20, 1990;*

*Eff. January 1, 1991;*

*Amended Eff. July 1, 2000;*

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

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

~~An erosion control plan shall expire three years following the date of approval, if If no land-disturbing activity has been undertaken.~~ 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. XX, 1, 20XX.*

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

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

- (1) ~~shall~~ notify the Commission of ~~such~~ the repair as soon as ~~reasonably~~ possible, but ~~in no event~~ later than five working days after the emergency ~~ends~~; has ended, as determined by the Division, and
- (2) ~~shall~~ take all reasonable measures to protect all public and private property from damage caused by ~~the~~ such repair as soon as ~~reasonably~~ possible, but ~~in no event~~ 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. XX, 1, 20XX.*

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

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

- (1) ~~The person who performs the inspection shall make a record of the site inspection by documenting the following items:~~
  - (a) ~~all of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains,~~

- rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub item (1)(c) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
- (b) the completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
  - (c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in Sub item (1)(c) of this Rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
  - (d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
  - (e) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.
- (2) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. 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. Any inspection reports shall also be made available on the site.
  - (3) The inspection shall be performed during or after each of the following phases of a plan:
    - (a) installation of perimeter erosion and sediment control measures;
    - (b) clearing and grubbing of existing ground cover;
    - (c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
    - (d) completion of storm drainage facilities;
    - (e) completion of construction or development; and
    - (f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall



~~conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.~~

All land-disturbing activities required to have an approved erosion and sedimentation control plan under G.S. 113A-54.1 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, the inspection shall be performed after the implementation of each of the following components of a project:
  - (a) installation of land-disturbance, perimeter erosion, and sediment control measures;
  - (b) clearing and grubbing of existing ground cover;
  - (c) installation of temporary or permanent sediment and erosion control measures to include ground cover pursuant to G.S. 113A-57(2);
  - (d) completion of storm drainage facilities;
  - (e) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
  - (f) 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 in Sub-Item (c) of this Item.
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
  - (a) Verification of all erosion and sedimentation control measures, practices, and devices, as called for in the approved construction sequence and the erosion and sedimentation control plan;
  - (b) 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.
  - (c) A record of any "significant deviation" from any erosion or sedimentation control measure made from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alteration or relocation of an erosion or sedimentation control measure that may change the intended performance of the measure. The record shall include measures required to correct the 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.
  - (d) All self-inspection documentation shall be made available on the site for at least 30 calendar days or maintained until permanent ground cover has been established, whichever is longest.

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

#### **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~~ Agriculture, Natural Resources Soil Conservation Service's "National Engineering Field ~~Manual~~ 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~~ Agriculture, Natural Resources Soil Conservation Service's "National Engineering Field ~~Manual~~ 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~~. 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 ~~in no case 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. XX, 1, 20XX.

## SUBCHAPTER 04C - SEDIMENTATION CONTROL CIVIL PENALTIES

### 15A NCAC 04C .0103 WHO MAY ASSESS

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

*History Note:* Authority G.S. 113A-55; 113A-64; 143B-10;  
 Eff. February 1, 1976;  
 Amended Eff. November 1, 1984;  
Readopted Eff. XX, 1, 20XX.

### 15A NCAC 04C .0106 CRITERIA

In determining the amount of the civil penalty assessment, the ~~director~~ Secretary shall consider the following criteria:

- (1) severity of the ~~violation~~, violation;
- (2) degree and extent of the ~~harm~~, harm;
- (3) type of ~~violation~~, violation;

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

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

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

- (a) The notice of violation shall describe the violation ~~with reasonable particularity,~~ 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, shall specify a time period for compliance, and shall state that upon failure to comply within the allotted ~~time~~ 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~~ 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~~ stop-work order shall be served upon persons the Department has reason to believe may be responsible for the violation ~~by any means authorized under~~ pursuant to G.S. 1A-1, Rule 4.

*History Note:* Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;  
 Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1; ~~143B-10;~~  
 Eff. February 1, 1976;  
 Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992; May 1, 1990; November 1, 1984;  
 Temporary Amendment Eff. August 1, 2000;  
 Amended Eff. April 1, 2001;  
Readopted Eff. XX, 1, 20XX.

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

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

- (1) ~~tender payment; or~~
- (2) ~~file a petition for an administrative hearing in accordance with G.S. 150B-23.~~

*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. XX, 1, 20XX.

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

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

*History Note:* Authority G.S. 113A-55; 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. XX, 1, 20XX.

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

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

*History Note:* Authority G.S. 113A-54; 113A-60; 113A-64 through 113A-66;  
 Eff. February 1, 1976;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Repealed Eff. XX, 1, 20XX.

### **SUBCHAPTER 04D - LOCAL ORDINANCES**

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

~~The commission has adopted a model ordinance. Local governmental units wishing to establish a local erosion and sedimentation control program may obtain a copy of the model ordinance upon writing to:  
 North Carolina Department of Environment, Health, and Natural Resources  
 Land Quality Section  
 P.O. Box 27687  
 Raleigh, North Carolina 27611~~

*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. XX, 1, 20XX.

### **SUBCHAPTER 04E - RULEMAKING PROCEDURES**

#### **SECTION .0100 - GENERAL PROVISIONS**

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

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

*History Note:* Authority G.S. 113A-54; 113A-55; 150B;  
 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;  
Repealed Eff. XX, 1, 20XX.

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

~~As used in this Subchapter:~~

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

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

*History Note:* Authority G.S. 113A-54; 113A-55;  
 Eff. March 14, 1980;  
 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); May 1, 1990;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
 Repealed Eff. XX, 1, 20XX.

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

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

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

*History Note:* Authority G.S. 113A-54; 113A-55; ~~150B-11~~;  
 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. XX, 1, 20XX.

### **SECTION .0200 - PETITIONS FOR RULEMAKING**

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

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

(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;
- (4) the name(s) and address(es) of the petitioner(s); and

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

- (1) the statutory authority for the agency to promulgate the rule(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.

*History Note: Authority G.S. 113A-54; ~~150B-16~~; 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. XX, 1, 20XX.*

#### **15A NCAC 04E .0203 DISPOSITION OF PETITIONS**

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

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

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

- ~~(1) accept the petition and initiate a rulemaking proceeding; or~~
- ~~(2) Ask the chairman of the commission to call a special meeting of the commission so that a decision can be made by the commission within the 30 day time period required by 150B-16 and in accordance with the procedures set out in (b) of this Rule.~~

*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. XX, 1, 20XX.*

### **SECTION .0400 – RULEMAKING HEARINGS**

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

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

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

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

*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. XX, 1, 20XX.*

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

~~(a) Any interested person desiring a concise statement of the principal reasons for and against the adoption of a rule by the commission and the factors that led to overruling the considerations urged for or against its adoption may submit a request to the director of the address of the commission.~~  
~~(b) The request must be made in writing and submitted prior to adoption of the rule or within 30 days thereafter.~~

*History Note: Authority G.S. 113A-54; 150B-12(e);*  
*Eff. March 14, 1980;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;*  
*Repealed Eff. XX, 1, 20XX.*

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

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

*History Note: Authority G.S. 113A-54; 150B-11(2);*  
*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. XX, 1, 20XX.*

### **SECTION .0500 - DECLARATORY RULINGS**

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

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

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

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

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

- ~~(1) name and address of petitioner;~~
- ~~(2) statute or rule to which petition relates;~~
- ~~(3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;~~

- (4) ~~a statement of whether an oral hearing is desired and, if so, the reason therefor.~~
- (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, order or statute to a given factual situation;
  - (4) arguments or data which 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-17~~; 150B-4;  
Eff. March 14, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Amended Eff. XX, 1, 20XX.*

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

- (a) ~~Upon receiving a request, the director is authorized to initiate a declaratory ruling proceeding to receive information concerning the request. A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedures as may be appropriate in the circumstances of the particular request. If the proceeding takes the form of an oral hearing the director may direct that the proceeding take place before the commission.~~
- (b) ~~The director will compile the information collected in the proceeding, along with other relevant information, in a recommendation to the commission on whether to issue the ruling and what the ruling should be.~~
- (c) ~~A decision whether to issue the ruling will be made by the commission at the next regularly scheduled meeting of the commission within the 60 day period required by 150B-17 and after the director's recommendation is presented. If no meeting is scheduled within that time period, the director will ask the chairman of the commission to call a special meeting so that the commission can comply with the requirements of G.S. 150B-17.~~
- (d) ~~If the decision of the commission is to issue the ruling, the ruling will be issued by the commission with the 60 day period required by G.S. 150B-17. If necessary, the chairman of the commission will call a special meeting so that the commission can comply with this requirement.~~
- (e) ~~If the decision of the commission is to deny the request, the director will notify the petitioner(s) in writing stating the reasons therefor.~~
- (f) ~~For purposes of this Rule, the commission will ordinarily refuse to issue a declaratory ruling:~~
- (1) ~~unless the rule is unclear on its face;~~
  - (2) ~~unless the petitioner shows that the circumstances are so changed since the adoption of the rule that such a ruling would be warranted;~~
  - (3) ~~unless the petitioner shows that the agency did not give to the factors specified in the request for a declaratory ruling a full consideration at the time the rule was issued;~~
  - (4) ~~where there has been a similar controlling factual determination in a contested case or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or~~



- (5) ~~where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.~~
- (a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements 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 set out 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 statute, order or rule to the specific factual situation presented; or
  - (4) finding that the factual context put forward as the subject of the declaratory ruling was specifically 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 of oral proceedings, or, in the absence of a transcript, 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, together with the reasons therefore.
- (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 which is the subject of the declaratory ruling in a manner plainly 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 issue a ruling on the merits of the request beyond the time allowed by 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 ruling on the merits within the time allowed by G.S. 150B-4 shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

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

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

*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. XX, 1, 20XX.*