

G.S. 150B-21.3A Report for 15A NCAC 05B, PERMITTING AND REPORTING

Agency - Mining Commission

Comment Period - January 30 - April 4, 2023

Date Submitted to APO - December 18, 2023

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Implements or Conforms to Federal Regulation [150B-21.3A(e)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]	RRC Determination of Public Comments [150B-21.3A(c)(2)]	RRC Final Determination of Status of Rule for Report to APO [150B-21.3A(c)(2)]	OAH Next Steps
		15A NCAC 05B .0103	BONDING REQUIREMENTS	Amended Eff. January 1, 1994	Necessary	No		No	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
		15A NCAC 05B .0104	INFORMATION REQUIRED IN PERMIT APPLICATION	Amended Eff. April 1, 1990	Necessary	No		Yes	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
		15A NCAC 05B .0105	CONDITIONS WHICH MAY BE INCLUDED IN PERMIT	Amended Eff. May 1, 1992	Necessary	No		Yes	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
		15A NCAC 05B .0106	STANDARDS FOR DENYING AN APPLICATION	Amended Eff. November 1, 1984	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary and must be readopted	Agency must readopt
		15A NCAC 05B .0110	MINING RECLAMATION REPORTS	Amended Eff. November 1, 1984	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary and must be readopted	Agency must readopt
		15A NCAC 05B .0111	PUBLIC HEARINGS	Eff. May 1, 1982	Necessary	No		Yes	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
		15A NCAC 05B .0112	PERMIT APPLICATION PROCESSING FEES	Amended Eff. December 1, 1991	Necessary	No		No	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
		15A NCAC 05B .0113	RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)	Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d))	Necessary	No		No	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt

Agency	Rule	Name	Type of Comment	Comment	Agency Response	RRC Staff Recommendation	RRC Determination [150B-21.3A(c)(2)]
Mining Program	15A NCAC 05B .0104	INFORMATION REQUIRED IN PERMIT APPLICATION	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Marcia McNally Sent: April 4, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: public comment on 10-year review of mining rules</p> <p>I agree that this rule should remain. However I believe the list of information required falls short. The applicant should be required to show (1) that it has control of the site and (2) that all permits required by the local jurisdiction in which the site resides have been obtained. This is critical for meeting the section of The Mining Act § 74-65 which states, "No provision of this Article shall be construed to supersede or otherwise affect or prevent the enforcement of any zoning regulation or ordinance duly adopted by an incorporated city or county or by any agency or department of the State of North Carolina, except insofar as a provision of said regulation or ordinance is in direct conflict with this Article."</p> <p>I therefore recommend that rule 15A NCAC 05B.0104 be reviewed and expanded to require demonstration of control of site and evidence that all local permits have been obtained.</p>	The Commission has recommended retaining this rule. The public comment agrees with that recommendation.	Select One	Select One
Mining Program	15A NCAC 05B .0105	CONDITIONS WHICH MAY BE INCLUDED IN PERMIT	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Cody Jones Sent: March 8, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: Rules and Determinations for Mining Commission - Public Comment</p> <p>Specifically regarding the section on erosion control, there does not seem to be any enforcement powers or routine check-ups at mines throughout the state for erosion issues. In part two of the Carolina Public Press story (https://carolinapublicpress.org/59453/mining-in-your-backyard-the-story-of-mountain-mist-mine-and-the-neighbors-contesting-it-part-two/), the Mountain Mist Mine in McDowell County has a history of known erosion issues spanning at least back over a decade that continue to this day. Specifically regarding the section on erosion control, there does not seem to be any enforcement powers or routine check-ups at mines throughout the state for erosion issues. In part two of the Carolina Public Press story (https://carolinapublicpress.org/59453/mining-in-your-backyard-the-story-of-mountain-mist-mine-and-the-neighbors-contesting-it-part-two/), the Mountain Mist Mine in McDowell County has a history of known erosion issues spanning at least back over a decade that continue to this day. It doesn't seem that the state is doing much of anything to make sure these issues are corrected and prevented from happening in the future.</p> <p>Part three of the Carolina Public Press story (https://carolinapublicpress.org/59454/mining-in-your-backyard-the-story-of-mountain-mist-mine-and-the-neighbors-contesting-it-part-three/) also shows just how out of touch the state is regarding how it handles mining applications and permits. The actions listed above, if anything else, should be mandated and brought up to some sort of standard that is more equal and fair to everyone, not just mine operators.</p> <p>The rules should be written and enforced in such a way that they place more emphasis on harm reduction in the areas that mines operate. As it stands, there is a clear bias and preference toward the mine operators, leaving an undue burden on residents and the general public to be the ones to look for potential issues and then, if found, simply hope that the state takes some sort of corrective action.</p> <p>Thanks for your consideration regarding these important issues.</p>	The Commission has recommended retaining this rule. The public comment agrees with that recommendation.	Select One	Select One
Mining Program	15A NCAC 05B .0106	STANDARDS FOR DENYING AN APPLICATION	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Mark Langan Sent: April 4, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: Comments on two rules</p> <p>You are seeking to deem these two rules as unnecessary. I strongly disagree with this change. These are long-standing rules that are a necessary protection that help to ensure companies don't pollute waterways and fisheries and that they receive a commensurate penalty as a deterrent to operating in such a way as to cause a deleterious effect to wildlife, waterways, and fisheries. There are too many recent incidents in North Carolina that show the extent of damage a company can do to wildlife, fisheries, and the human population, especially when rules such as the two above aren't in place.</p>	The Commission recommended this rule is unnecessary because it is redundant with the statute, N.C. Gen. Stat. § 74-51(d).	Select One	Select One
Mining Program	15A NCAC 05B .0106	STANDARDS FOR DENYING AN APPLICATION	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Marcia McNally Sent: April 4, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: public comment on 10-year review of mining rules</p> <p>I therefore object to rule 15A NCAC 05B.0106 being considered "Unnecessary" and ask that it remain in the mining rules. I also ask that each of the seven criteria in Section 7-74-51 (d) of The Mining Act be evaluated to ensure that adequate criteria for permit review are in place in the rules.</p>	The Commission recommended this rule is unnecessary because it is redundant with the statute, N.C. Gen. Stat. § 74-51(d).	Select One	Select One
Mining Program	15A NCAC 05B .0106	STANDARDS FOR DENYING AN APPLICATION	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Cody Jones Sent: March 8, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: Rules and Determinations for Mining Commission - Public Comment</p> <p>Regarding 15A NCAC 05B.0106 STANDARDS FOR DENYING AN APPLICATION:</p> <p>This section seems to focus solely on wildlife and strangely omits potential impacts on human life. There was a recent article which discusses the potential impact on a water source for residents in a neighborhood adjacent to a mine: https://carolinapublicpress.org/59448/mining-in-your-backyard-the-story-of-mountain-mist-mine-and-the-neighbors-contesting-it-part-one/</p> <p>Humans should be factored into these decisions and it seems astounding that, at least according to in,</p>	The Commission recommended this rule is unnecessary because it is redundant with the statute, N.C. Gen. Stat. § 74-51(d).	Select One	Select One
Mining Program	15A NCAC 05B .0110	MINING RECLAMATION R	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Marcia McNally Sent: April 4, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: public comment on 10-year review of mining rules</p> <p>Mining Reclamation Reports (15A NCAC 05B.0110). Prior to 2017 and the "life-of-site" legislation, a mining operation was required to renew through application its permit every 10 years. From the beginning of the operation through the end of restoration. Now, no permit renewal is required. If the rule covering annual reporting is removed, there will be no scrutiny of the operation. Annual reporting is the only sure way that the public (and DEMLR for that matter) can monitor operation of the mine.</p> <p>I therefore object to rule 15A NCAC 05B.0110 being considered "Unnecessary" and ask that it remain in the mining rules.</p>	The Commission recommended this rule is unnecessary because it is redundant with the statute, N.C. Gen. Stat. § 74-55.	Select One	Select One
Mining Program	15A NCAC 05B .0111	PUBLIC HEARINGS	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Marcia McNally Sent: April 4, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: public comment on 10-year review of mining rules</p> <p>Public Hearings (15A NCAC 05B.0111). I agree that this rule should remain. However I believe it should be expanded. My comments are based on the permitting process for Carolina Sunrock's Proposed Hill mine.</p> <p>After a long and contentious process the permit was approved in late 2021. With an inconsistent and questionable process of involving the public. In the beginning the permitting process DEMLR appeared to be open to public input. For example, in November of 2023 Division staff issued a letter requesting that Sunrock re-perform the pump test because the procedures were flawed. This did not happen, however, because the concern over the pump test came from public comments rather than from a state reviewer. Sunrock refused to comply, stating that since the comments did not come from a NC Licensed Geologist, they were not valid. This is an assertion is fundamentally flawed as the basic purpose of public comment is to identify concerns observed or noted by the public. There is no requirement for public comments to come from licensed professionals.</p> <p>Then, despite several years of regular contact with concerned citizens, the mining permit was issued (1) without any notice to them, (2) without Sunrock's final submissions being placed on the Internet for public access, and (3) without prior release of a draft permit, which DEMLR staff admits is typical procedure. During mediation that resulted from the mining permit being appealed by the public, appellants complained to the representatives from the NC Attorney General's office that substantive changes were made to the project that were allowed without public input. The appellants were told it didn't matter, the State had satisfied the public meeting requirement. DEMLR is supposed to be protecting the interests of the public. The decisions regarding the manner in which the permit was issued ignored that mission. Meaningful and timely input from the public on projects is an essential component of North Carolina's environmental review process. Ultimately, the public was ignored and kept in the dark. Transparency and engagement should never be compromised.</p> <p>I therefore recommend that rule 15A NCAC 05B.0111 be reviewed and expanded to address how and when additional hearings should be held. At a minimum, the public offer comment that is substantive. DEMLR requires the permit applicant to perform additional tests, studies, and so on based on substantive input from the public as well as departments reviewing the permit, and during the permitting process if projects change in a substantive way. Further, and so as to not build false expectations, I ask that at the outset of each public process, the public be informed that North Carolina is a "first-come, first-served" state, such that the selection of the mining permit review process is ultimately to approve, not deny permits.</p>	The Commission has recommended retaining this rule. The public comment agrees with that recommendation.	Select One	Select One
Mining Program	15A NCAC 05B .0111	PUBLIC HEARINGS	Public Comment as defined in G.S. 150B-21.3A(a)(5)	<p>From: Cody Jones Sent: March 8, 2023 To: NCMiningProgram <NCMiningProgram@ncdent.gov> Subject: Rules and Determinations for Mining Commission - Public Comment</p> <p>Regarding 15A NCAC 05B.0111 PUBLIC HEARINGS:</p> <p>This section states that if there is "a significant public interest" then a public hearing will be held. In the story by Carolina Public Press linked above, transparency regarding a public hearing and information from the state in general is obviously lacking and almost nonexistent. "Significant public interest" is not defined. If multiple land/homeowners living adjacent to the mine respond to the notice of permit approval — and not just people within the community but the very land and home owners who have to deal with the brunt of the mining operation — and they state they are opposed and this does not result in a public hearing at minimum, then what does it take? Is there a threshold number or percentage requirement? The lack of specificity allows the state to simply ignore legitimate concerns from the public, which is only going to erode trust and goodwill from the public, particularly residents directly impacted by mines.</p>	The Commission has recommended retaining this rule. The public comment agrees with that recommendation.	Select One	Select One