

G.S. 150B-21.3A Report for 15A NCAC 05F, CIVIL PENALTIES

Agency - Mining Commission

Comment Period - January 30 -April 4, 2023

Date Submitted to APO - Filled in by RRC staff

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 05F .0101	PURPOSE AND SCOPE	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
	15A NCAC 05F .0102	DEFINITIONS	Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d))	Unnecessary	No		No	Unnecessary	RRC not required to review comment(s)	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	15A NCAC 05F .0103	WHO MAY ASSESS	Eff. May 1, 1982	Necessary	No		No	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
	15A NCAC 05F .0105	CIVIL PENALTY FOR MINING WITHOUT A PERMIT	Amended Eff. December 1, 1988	Necessary	No		No	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
	15A NCAC 05F .0106	CIVIL PENALTY FOR VIOLATING OPERATING PERMIT	Amended Eff. November 1, 1984	Necessary	No		No	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
	15A NCAC 05F .0107	CRITERIA FOR DETERMINING AMOUNT OF PENALTY	Eff. May 1, 1982	Unnecessary	No		Yes	Unnecessary	No comments with merit	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	15A NCAC 05F .0108	ADMINISTRATIVE REMEDIES	Amended Eff. August 1, 1988	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary and must be readopted	Agency must readopt
	15A NCAC 05F .0109	HEARING PROCEDURES	Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d))	Unnecessary	No		No	Unnecessary	RRC not required to review comment(s)	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	15A NCAC 05F .0110	TENDERS OF PAYMENT	Eff. May 1, 1982	Unnecessary	No		No	Unnecessary	RRC not required to review comment(s)	Unnecessary and should expire on the first day of the month following the consultation	Rule expired - remove from Code
	15A NCAC 05F .0111	REFERRAL TO ATTORNEY GENERAL	Eff. May 1, 1982	Necessary	No		No	Necessary	RRC not required to review comment(s)	Necessary and must be readopted	Agency must readopt
	15A NCAC 05F .0112	FURTHER REMEDIES	Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1. (d))	Unnecessary	No		Yes	Unnecessary	One or more comments with merit	Necessary and must be readopted	Agency must readopt

Agency	Rule	Name	Type of Comment
Mining Program	15A NCAC 005F .0107	CRITERIA FOR DETERMINING AMOUNT OF PENALTY	Public Coment as defined in G.S. 150B-21.3A(a)(5)
Mining Program	15A NCAC 005F .0108	ADMINISTRATIVE REMEDIES	Public Coment as defined in G.S. 150B-21.3A(a)(5)

Mining Program

15A NCAC 005F .0112

FURTHER REMEDIES

Public Coment as defined
in G.S. 150B-21.3A(a)(5)

Mining Program

15A NCAC 005F .0112

FURTHER REMEDIES

Public Coment as defined
in G.S. 150B-21.3A(a)(5)

Agency Response

Comment

From: Mark Langan

Sent: April 4, 2023

To: NCMiningProgram <NCMiningProgram@ncdenr.gov>

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.

The Commission recommended this rule is un-necessary because it is redundant with the statute, N.C. Gen. Stat. § 74-64(a)(1)(c).

From: Dr. Jean Spooner, Chair

The Umstead CoaFrom: Dr. Jean Spooner, Chair

The Umstead Coalition

April 4, 2023

To: NCMiningProgram <NCMiningProgram@ncdenr.gov>

The Commission recommended this rule is un-necessary because it is redundant with the statute, N.C. Gen. Stat. § 74-61.

Two of the Rules proposed to be "Unnecessary" we would recommend keeping as "Necessary." Both of these Rules were recommended by DEMLR staff to be kept. We concur. They are:

- 15A NCAC 05F .0108, Administrative Remedies. Within 60 days after receipt of notification of any civil penalty assessment, the person against whom the civil penalty is assessed may contest the decision of the department by filing a petition as described in G.S. 74-61 and G.S. 150B-23.
- 15A NCAC 05F .0112, Further Remedies. No provision of this Subchapter shall be construed to restrict or impair the right of the director or the Mining and Energy Commission to pursue any other remedy provided by law for violations of the Mining Act of 1971 or the rules of this Chapter.

Neither of these current Rules are duplicative of the Mining Act, but add clarity.

The Commission recommended this rule is un-necessary because it is redundant with the statute, N.C. Gen. Stat. § 74-64(a)(5).

From: Dr. Jean Spooner, Chair
The Umstead Coalition
April 4, 2023
To: NCMiningProgram <NCMiningProgram@ncdenr.gov>

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Neither of these current Rules are duplicative of the Mining Act, but add clarity.

FROM: WILLIAM DOUCETTE

April 3, 2023

To: To: NCMiningProgram NCMiningProgram@ncdenr.gov

Eliminating text overlap between the rules and legislation is a disservice to the public. Researching both the rule and the general statutes is cumbersome, can lead to confusion and may inhibit the public from understanding what is required of the mining industry. Most of the “unnecessary” classifications are such.

Eliminating 15A NCAC 05F.0112 “further remedies” is not warranted and

The Commission recommended this rule is un-necessary because it is redundant with the statute, N.C. Gen. Stat. § 74-64(a)(5).

RRC Staff Recommendation

**RRC Determination [150B-
21.3A(c)(2)]**

Select One

Select One

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