

## Burgos, Alexander N

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**Subject:** FW: [External] RE: Request from the Mining Commission and the Oil and Gas Commission in re 05C rules

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**From:** Young, Elizabeth <esyoun@NCDOJ.GOV>

**Sent:** Wednesday, October 18, 2023 4:30 PM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Cc:** Zambon, Sarah <szambon@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] RE: Request from the Mining Commission and the Oil and Gas Commission in re 05C rules

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Hi Mr. Liebman,

Thank you for passing this on to me today. Have a good evening.

Elly



**Elly S. Young** (she/her)

Assistant Attorney General

Environmental Division

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>

**Sent:** Wednesday, October 18, 2023 4:22 PM

**To:** Young, Elizabeth <[esyoun@NCDOJ.GOV](mailto:esyoun@NCDOJ.GOV)>

**Cc:** Zambon, Sarah <[szambon@ncdoj.gov](mailto:szambon@ncdoj.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** RE: [External] RE: Request from the Mining Commission and the Oil and Gas Commission in re 05C rules

Hi Ms. Young,

Just to explain the circumstances and the underlying law and rules, I've drafted a staff opinion regarding the request for an extension. It basically says what I said in my email on Tuesday. I've attached a courtesy copy here for your review, and it should be up on our online agenda soon.

Thanks,

Brian

Brian Liebman

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## Burgos, Alexander N

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**From:** Liebman, Brian R  
**Sent:** Wednesday, October 18, 2023 9:37 AM  
**To:** Young, Elizabeth S  
**Cc:** Zambon, Sarah; Burgos, Alexander N  
**Subject:** RE: [External] RE: Request from the Mining Commission and the Oil and Gas Commission in re 05C rules

Hi Ms. Young,

I appreciate that the January 20 deadline would be a tight timeline, but for the reasons I stated earlier, I'm not inclined to recommend to my client any further delays than necessary. However, you're more than welcome to attend the meeting and make your argument to the Commission tomorrow.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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**From:** Young, Elizabeth <esyong@NCDOJ.GOV>  
**Sent:** Tuesday, October 17, 2023 3:55 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Zambon, Sarah <szambon@ncdoj.gov>  
**Subject:** [External] RE: Request from the Mining Commission and the Oil and Gas Commission in re 05C rules

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Mr. Liebman,

Thank you for your consideration of our request and your receptiveness to allowing the 05C rules to be transferred from the Mining Commission to the Oil and Gas Commission. Sarah Zambon (Oil and Gas Commission Counsel and cc'd here) and I discussed the February 2024 deadline you are currently recommending, and while it may be doable for the Oil and Gas Commission to complete step one of the Periodic Review by the January 20, 2024 deadline, it will be very tight. The schedule would look as follows:

- November 1 – next Oil and Gas Commission meeting. Commission reviews and approves report with initial necessary/unnecessary designations for public comment.
- November 2 – DEQ Rules Coordinator files the report with OAH for publication on OAH's website. OAH has five business days to publish.
- November 9, 2023-January 9, 2024 – Public Comment Period
- January 20 – final reports due to RRC

That timeline gives the Oil and Gas Commission about 10 days to review and respond to any public comments received, revise initial necessary/unnecessary designations based on public comments as needed, and hold a public meeting with a quorum of commissioners. If numerous public comments are received such that the Commission believes it will need additional time to respond, an extension request would have to be filed in the midst of the public comment period, just before Christmas. While we recognize that this timeline is possible, and the Oil and Gas Commission is already working on the initial designations, would you consider recommending that the 05C rules be due to the RRC in March 2024, rather than February 2024, so that the Commission's deadline to file the final report with the RRC is February 20 rather than January 20?

Again, we appreciate your consideration of our initial request and understand that our requested deadline is well beyond what is feasible in the 10-year rule review cycle. If it is possible for the Oil and Gas Commission to have a bit more breathing room to complete its necessary tasks with a March, rather than February, 2024 deadline, it would be greatly appreciated. Please feel free to reach out by email or phone if you would like to discuss further. I will also be at the RRC meeting on Thursday should there be any questions.

Thanks,  
Elly



**Elly S. Young** (she/her)  
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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Monday, October 16, 2023 11:54 AM  
**To:** Young, Elizabeth <[esyoud@NCDOJ.GOV](mailto:esyoud@NCDOJ.GOV)>; Reynolds, Phillip <[PREynolds@ncdoj.gov](mailto:PREynolds@ncdoj.gov)>; Morehead, Travis <[travis.morehead@deq.nc.gov](mailto:travis.morehead@deq.nc.gov)>; Lister, James C. <[james.lister@deq.nc.gov](mailto:james.lister@deq.nc.gov)>; Vinson, Toby <[toby.vinson@deq.nc.gov](mailto:toby.vinson@deq.nc.gov)>; Everett, Jennifer <[jennifer.everett@deq.nc.gov](mailto:jennifer.everett@deq.nc.gov)>; Zambon, Sarah <[szambon@ncdoj.gov](mailto:szambon@ncdoj.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: Request from the Mining Commission and the Oil and Gas Commission in re 05C rules

Good morning,

Thank you for your request to transfer the 05C rules from the Mining Commission and reassign them to the Oil and Gas Commission. The transfer itself should be no issue, but the request to extend the due date on the Periodic Rules Review report to November 2024 is problematic. Under G.S. 150B-21.3A(c), the review must occur at least once every 10 years. The 2014-2023 periodic review process began in July 2014. Therefore, the latest we can push the deadline out would be June 2024. I am not inclined to recommend to the Commission that they grant an extension that long. These rules were originally on the schedule for January 2017 and have already been extended several times. It seems that the determination that the 05C rules belonged to the Oil and Gas Commission could have been reached at some point in the last 6 years, as opposed to weeks before the December 2023 due date. Moreover, under 26 NCAC 05C .0203, the agency has 10 business days after the report is sent to review it for accuracy and completeness. We're well past that 10 business day period.

That said, the correct agency should have an opportunity to review its rules and submit its report, and the Commission has broad authority to modify the schedule and extend the time for review in appropriate circumstances. Given that a 60 day comment period is required, I will suggest to the Commission that these rules be reassigned to the Oil and Gas Commission, and that the date for the report be extended to the February 2024 meeting. That means the report must be filed with us by January 20, 2024.

Please let me know if you have any further questions or concerns, and if anyone would like to appear at the meeting on Thursday to speak on this issue.

Best,

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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(984)236-1948  
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**From:** Liebman, Brian R  
**Sent:** Monday, October 16, 2023 11:12 AM  
**To:** [esyong@NCDOJ.GOV](mailto:esyong@NCDOJ.GOV)  
**Cc:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Subject:** Request from the Mining Commission and the Oil and Gas Commission in re 05C rules

Good morning Ms. Young,

I just wanted to let you know that Mr. Peaslee has referred this matter to me, as I'm the rulemaking coordinator for RRC. I will review the request and get back to you shortly.

Thanks,  
Brian

Brian Liebman  
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