

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01V .0101

**DEADLINE FOR RECEIPT: Wednesday, March 12, 2025**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), line 12, please add a comma after "4".*

*In (b), lines 26-27, what is meant by "to the satisfaction of the Department"? How does the Department determine if they are satisfied? Is there a vote? Are certain standards or criteria used?*

*Why does subparagraph (4) not constitute a substantial change under 150B-21.2(g)?*

Please retype the rule accordingly and resubmit it either to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609 or via email.

Travis C. Wiggs  
Commission Counsel  
Date submitted to agency: February 26, 2025

1 15A NCAC 01V .0101 is adopted with changes as published in 39:08 NCR 489-506 as follows:

2  
3 **SUBCHAPTER 01V — DECOMMISSIONING AND FINANCIAL ASSURANCE REQUIREMENTS FOR**  
4 **UTILITY-SCALE SOLAR PROJECTS**

5  
6 **SECTION .0100 — DECOMMISSIONING AND FINANCIAL ASSURANCE REQUIREMENTS FOR**  
7 **UTILITY-SCALE SOLAR PROJECTS**

8  
9 **15A NCAC 01V .0101 APPLICABILITY AND DEFINITIONS**

10 (a) The project owners of a utility-scale solar project (USSP) shall comply with Part 2J of Article 9 of Chapter 130A  
11 of the General Statutes, "Management of Solar Energy Equipment," in accordance with the applicability and effective  
12 dates of S.L. 2023-58, s. 2.(e) and s. 4 and the requirements of this Section. Non-compliance shall be addressed through  
13 penalties issued in accordance with Part 2 of Article 1 of Chapter 130A of the General Statutes, as provided in G.S.  
14 130A-309.243, including G.S. 130A-22 for the issuance of penalties and G.S. 130A-24 for the appeal of enforcement  
15 decisions.

16 (b) The definitions found in G.S. 130A-290, G.S. 130A-309.240(a), and the following definitions shall apply to the  
17 rules of this Section:

18 (1) "Corporation," "fiscal year," "parent," and "subsidiary" mean these terms as defined in G.S. 105-  
19 130.2.

20 (2) "Project Owner" means the legal entity or entities that own the personal property that has been  
21 constructed or assembled for a USSP, which may be a different legal entity than the owner of the  
22 real property (landowner) on which the USSP has been constructed.

23 (3) "Substantial Business Relationship" means the extent of a business relationship necessary under  
24 applicable State law to make a guarantee contract issued incident to that relationship valid and  
25 enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing  
26 business transactions, in addition to the guarantee itself, that demonstrates to the satisfaction of the  
27 Department that a business relationship between the guarantor and the project owner exists.

28 (4) "USSP" means utility-scale solar project as defined in G.S. 130A-309.240(a). The Department's  
29 determination of whether a USSP meets the threshold in the statute definition of being "capable of  
30 generating 2 megawatts AC" shall be consistent with the determination made by the NC Utilities  
31 Commission as to whether a generating facility meets the two-megawatt capacity threshold for  
32 certification requirements pursuant to G.S. 62-110.1(g).

33 (A) "Existing USSP" means a USSP for which an application for a certificate of public  
34 convenience and necessity (CPCN) was submitted to the NC Utilities Commission  
35 (NCUC) pursuant to G.S. 62-110.1 before June 26, 2023.

36 (B) "New USSP" means a USSP for which an application for a CPCN was submitted to the  
37 NCUC pursuant to G.S. 62-110.1 on or after June 26, 2023, or a USSP that was generating

1                   solar energy or was interconnected to a transmission facility on June 26, 2023, but was  
2                   later rebuilt or expanded after June 26, 2023.

3

4   *History Note:*    *Authority G.S. 130A-309.240(j);*  
5                    *Eff. April 1, 2025.*

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7

8

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01V .0102

**DEADLINE FOR RECEIPT: Wednesday, March 12, 2025**

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In reviewing this Rule, the staff recommends the following technical changes be made:

*In the title (lines 3-4), and all other uses in this Rule, how does the addition of “new” and/or “existing” post-publication not constitute a substantial change under 150B-21.2(g)?*

*In (a), lines 9-14, how is adding all this language post-publication not a substantial change under 150B-21.2(g)?*

*On pg. 2, in (f), line 5, add a comma after “established” and after “(6)”.*

Please retype the rule accordingly and resubmit it either to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609 or via email.

Travis C. Wiggs  
Commission Counsel  
Date submitted to agency: February 26, 2025

1 15A NCAC 01V .0102 is adopted with changes as published in 39:08 NCR 489-506 as follows:

2  
3 **15A NCAC 01V .0102 REGISTRATION AND FEE REQUIREMENTS FOR NEW AND EXISTING**  
4 **USSPS**

5 (a) ~~In accordance with the applicability and effective dates established in S.L. 2023-58, s. 4, the~~ The project owner  
6 of a USSP shall submit the registration information, periodic updates, and registration fee required by G.S. 130A-  
7 309.240(e) and (h) in a registration form prescribed by the Department. The registration form may be accessed from  
8 the Department's USSP Management Program website at [https://www.deq.nc.gov/about/divisions/waste-](https://www.deq.nc.gov/about/divisions/waste-management/utility-scale-solar-management-program)  
9 [management/utility-scale-solar-management-program](https://www.deq.nc.gov/about/divisions/waste-management/utility-scale-solar-management-program). The initial registration and fee shall be submitted to the  
10 Department by the following deadlines:

11 (1) by November 1, 2025, or

12 (2) at least 90 days prior to the commencement of construction if the project is constructed after  
13 November 1, 2025; and

14 (3) at least 90 days prior to commencement of rebuild or expansion of a USSP.

15 (b) ~~The initial registration and fee shall be submitted by the deadlines established in S.L. 2023-58, s. 4.~~ The subsequent  
16 registration updates and fees shall be submitted to the Department every five years in accordance with G.S. 130A-  
17 309.240(e) and (h). The deadline for submittal of the five-year registration updates and registration fee shall be the  
18 last day of the month in which the five-year anniversary of the due date for the initial submittal occurs in accordance  
19 with Paragraph (a) of this Rule for each USSP.

20 (c) The Department shall not be required to provide notice to the project owner that the initial registration, periodic  
21 updates, or registration fee are due. The project owner shall be responsible for submittal of the registration, periodic  
22 updates, and fees by the deadlines established in this Rule.

23 (d) In accordance with ~~G.S. 130A-309.240(e) and the effective dates and applicability of S.L. 2023-58, s. 4,~~ G.S.  
24 130A-309.240(c), the project owner of a new USSP shall submit a decommissioning plan, and subsequent updates to  
25 the plan, with the registration required to be submitted by this Rule. The Department shall review the plan and shall  
26 inform the project owner in writing of deficiencies in the plan, if any, within 60 days of submittal. The project owner  
27 shall correct the deficiencies identified by the Department and submit the corrected decommissioning plan to the  
28 Department no more than 30 days after the Department issued the notification of deficiencies. The project owner shall  
29 not commence construction, rebuild, or expansion of the project until the Department has received the  
30 decommissioning plan that complies with the requirements of G.S. 130A-309.240 and the rules of this Section.

31 (e) In accordance with G.S. 130A-309.240(d) ~~in accordance with the effective dates and applicability of S.L. 2023-~~  
32 ~~58, s. 4,~~ the project owner of a new USSP shall submit a draft copy of the financial mechanism, or updates to the  
33 mechanism, with the registration required to be submitted by this Rule. The Department shall review the draft  
34 mechanism and shall inform the project owner in writing of deficiencies in the draft mechanism, if any, within 60 days  
35 of submittal. The project owner shall correct the deficiencies identified by the Department and submit the corrected  
36 and executed financial mechanism to the Department no more than 30 days after the Department issued the notification  
37 of deficiencies. The project owner shall not commence construction, rebuild, or expansion of the ~~project~~ new USSP

1 until the Department has received the executed financial assurance mechanism that complies with the requirements of  
2 G.S. 130A-309.240 and the rules of this Section.

3 ~~(f) In accordance with G.S. 130A-309.240(e)(6) and the effective dates and applicability of S.L. 2023-58, s. 4, project~~  
4 ~~Project owners of existing USSPs shall submit copies of any the decommissioning plans plan executed, and~~  
5 ~~documentation of financial assurance established documentation in accordance with G.S. 130A-309.240(e)(6)~~  
6 ~~required by G.S. 130A-309.240 and the rules of this Section~~ with the registration required to be submitted by this  
7 Rule.

8 (g) In accordance with ~~G.S. 130A-309.240(g) and the effective dates and applicability of S.L. 2023-58, s. 4, G.S.~~  
9 ~~130A-309.240(g)~~, the project owner shall also upload with the registration a copy of any additional documentation  
10 required by the local government to comply with any more stringent local government requirements.

11 (h) The project owner of a USSP that is constructed on more than one parcel of land shall include with the registration  
12 the following information for each parcel on which the project is or will be constructed:

- 13 (1) landowner name, address, and contact information;
- 14 (2) parcel identification number; and
- 15 (3) copies of agreements with the landowner as required by G.S. 130A-309.240(e)(6) for each parcel.

16  
17 *History Note: Authority G.S. 130A-309.240(j);*  
18 *Eff. April 1, 2025.*  
19

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01V .0103

**DEADLINE FOR RECEIPT: Wednesday, March 12, 2025**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In the title, line 3, and all other uses in this Rule, how does the addition of “new” and/or “existing” post-publication not constitute a substantial change under 150B-21.2(g)?*

*In (a), lines 4-5, add a comma after “(h)” and after “Section”.*

*In (a)(2), line 10, add a comma after “fee” and after “USSP”.*

*In (b), lines 12-13, add a comma after “(h)” and after “Section”.*

*In (b), lines 18 and 23, add commas after “fee” and after “fees”.*

*In (c), line 30, add a comma after “Rule” and after “schedule”.*

*In (d), line 36, add a comma after “month” and after “USSP”.*

*In the History Note, why is G.S. 143B-279.18 not listed as “Authority”?*

Please retype the rule accordingly and resubmit it either to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609 or via email.

Travis C. Wiggs  
Commission Counsel  
Date submitted to agency: February 26, 2025

1 15A NCAC 01V .0103 is adopted with changes as published in 39:08 NCR 489-506 as follows:

2  
3 **15A NCAC 01V .0103 REGISTRATION FEE AMOUNT FOR NEW AND EXISTING USSPS**

4 (a) Existing USSPs. The amount of the registration fee required by G.S. 130A-309.240(h) submitted to the Department  
5 in accordance with Rule .0102 of this Section for each existing USSP ~~that was required to be included in the report~~  
6 ~~submitted to the General Assembly in accordance with S.L. 2023-58, s. 2.(f)(2)~~ shall be as follows, and shall be  
7 adjusted in accordance with Paragraph (c) of this Rule:

8 (1) The amount of the first registration fee for an existing USSP shall be one hundred and seventy-five  
9 dollars (\$175.00) per megawatt alternating current (MW AC) of nameplate capacity.

10 (2) The amount of the second registration fee and all subsequent registration fees for an existing USSP  
11 shall be twenty-five dollars (\$25.00) per MW AC of nameplate capacity.

12 (b) New USSPs. The amount of the registration fees required by G.S. 130A-309.240(h) submitted to the Department  
13 in accordance with Rule .0102 of this Section for each new USSP ~~that is not subject to the fee established in Paragraph~~  
14 ~~(a) of this Rule~~ shall be as follows, and shall be adjusted in accordance with Paragraph (c) of this Rule:

15 (1) New USSPs capable of generating 20 MW AC or less:

16 (A) The amount of the first registration fee shall be five hundred dollars (\$500.00) per MW AC  
17 of nameplate capacity.

18 (B) The amount of the second registration fee and all subsequent registration fees shall be fifty  
19 dollars (\$50.00) per MW AC of nameplate capacity.

20 (2) New USSPs capable of generating more than 20 MW AC:

21 (A) The amount of the first registration fee shall be the lesser of three hundred dollars (\$300.00)  
22 per MW AC of nameplate capacity or fifty thousand dollars (\$50,000).

23 (B) The amount of the second registration fee and all subsequent registration fees shall be the  
24 lesser of twenty-five dollars (\$25.00) per MW AC of nameplate capacity for the USSP or  
25 twenty-five thousand dollars (\$25,000).

26 (c) Adjustment for Legislatively Mandated Salaries and Benefits Consistent with G.S. 143B-279.18 (see S.L. 2023-  
27 134, s. 12.14.(p)). Beginning July 1, 2029, and every five years thereafter, the Department may adjust the fee amounts  
28 in Paragraphs (a) and (b) of this Rule in accordance with the Consumer Price Index computed by the Bureau of Labor  
29 Statistics during the prior two bienniums. The Department may also increase or decrease the fees or adjust the fee  
30 structures in Paragraphs (a) and (b) of this Rule on the same five-year schedule to meet the requirements in G.S. 130A-  
31 309.240(h) and G.S. 130A-309.242 that the fees be used to fund program administration. No amendment to this Rule  
32 shall be necessary for the Department to adjust the fees in accordance with this Paragraph. The adjustment to the fee  
33 amounts shall be rounded to the nearest dollar (\$1.00). No less than 180 days prior to a registration fee adjustment,  
34 the Department shall publish the adjusted fee amounts on the Department's website at  
35 <https://www.deq.nc.gov/about/divisions/waste-management/utility-scale-solar-management-program>.

36 (d) The Department may charge the project owner a late fee of seventy-five dollars (\$75.00) per month per USSP for  
37 every month or partial month that payment of the registration fee is delinquent.



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*History Note: Authority G.S. 130A-309.240(j);  
Eff. April 1, 2025.*

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01V .0104

**DEADLINE FOR RECEIPT: Wednesday, March 12, 2025**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In the title (lines 3-4), and all other uses, why does the addition of “new” and/or “existing” not constitute a substantial change under 150B-21.2(g)?*

*In (a), line 6, add a comma after “Section”.*

*In (a), line 7, add a comma after “plan”.*

*In (b)(1), line 11, this Rule was published to say, “estimate shall be based on costs for a third-party to conduct the decommissioning.” Your agency has removed “a third-party to conduct” from the Rule. Why does this removal not constitute a substantial change under 150B-21.2(g)? This question also applies to the removal of the same language in (3).*

*In (4), lines 26-27, what does “shall be managed in a manner that prevents breakage” mean in this context?*

*In (4), lines 31-32, please comply with the requirements in 150B-21.6 to properly incorporate the cited law by reference. Also, on line 31, add a comma after “Statutes” and after “13B”.*

*In (c), line 34, add a comma after the first use of “estimate”.*

*In (e), line 18, there appears to be too many spaces between “(e)” and “If”.*

*In (e), line 20, what does “shall increase the amount of financial assistance accordingly” mean? Does it mean a proportional increase based on an increase in the cost estimate?*

*In (h), line 6, “owner” should not be capitalized.*

Please retype the rule accordingly and resubmit it either to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609 or via email.

Travis C. Wiggs  
Commission Counsel

Date submitted to agency: February 26, 2025

1 15A NCAC 01V .0104 is adopted with changes as published in 39:08 NCR 489-506 as follows:

2  
3 **15A NCAC 01V .0104 DECOMMISSIONING COST ESTIMATE REQUIREMENTS FOR NEW AND**  
4 **EXISTING USSPS**

5 (a) The project owner of a new or existing USSP shall submit a cost estimate for decommissioning with the registration  
6 required by Rule .0102 of this Section in accordance with G.S. 130A-309.240(e)(4). The project owner of a new USSP  
7 shall also include the cost estimate ~~shall also be included~~ in the decommissioning plan in accordance with G.S. 130A-  
8 309.240(c)(5). ~~G.S. 130A-309.240(c)(5), if a decommissioning plan is required to be submitted in accordance with~~  
9 ~~the applicability and effective dates of S.L. 2023-58, s. 4.~~

10 (b) The calculation of the cost estimate for decommissioning shall meet the following requirements:

11 (1) The cost estimate shall be based on costs for ~~a third party to conduct the~~ decommissioning of the  
12 USSP project in accordance with G.S. 130A-309.240(b) and the rules of this Section for new and  
13 existing USSPs, and the decommissioning plan required for a new USSP pursuant to G.S. 130A-  
14 309.240(c), and any decommissioning plan submitted with the registration for existing USSPs  
15 pursuant to G.S. 130A-309.240(c)(6), the USSP, where required in accordance with the applicability  
16 ~~and effective dates of S.L. 2023-58, s. 4.~~

17 (2) The cost estimate shall be based on the costs at the time of submittal of the estimate.

18 (3) The cost estimate for new USSPs shall be based on costs for a third party to conduct  
19 decommissioning, and shall be itemized to show how the total amount was determined, including  
20 itemizing costs for:

21 (A) personnel time and expenses;

22 (B) transportation of materials to the receiving facility or location, such as the nearest existing  
23 recycling or disposal facility; and

24 (C) the fees charged by the receiving facility or location to accept the materials, such as the  
25 nearest existing recycling or disposal facility.

26 (4) During decommissioning, photovoltaic modules shall be managed in a manner that prevents  
27 breakage, and shall not be disassembled, deconstructed, or removed from the frame at the USSP  
28 location or at a facility or location other than the facility or location that receives the modules for  
29 management, such as the recycling or disposal facility. Decommissioning activities and the  
30 management of all equipment, materials, and waste from the USSP shall comply with Article 9 of  
31 Chapter 130A of the General Statutes and 15A NCAC 13A and 13B which are incorporated by  
32 reference including subsequent amendments.

33 (5) The cost estimate shall be adjusted in accordance with Paragraphs (d) and (e) of this Rule.

34 (c) The project owner of a new USSP shall also include with the decommissioning cost estimate a separate estimate  
35 of the salvage value of the project equipment in accordance with G.S. 130A-309.240(c)(3). The salvage value estimate  
36 shall meet the following requirements:

1 (1) The salvage value estimate shall be based on values for a third party to salvage the equipment. If  
2 salvage values were considered in the cost estimate provided by a third party as provided in  
3 Subparagraph (b)(1) of this Rule, the salvage value estimate shall refer to the estimate from the third  
4 party.

5 (2) The salvage value estimate shall be based on the current values at the time of each submittal of the  
6 decommissioning cost estimate.

7 (3) The salvage value estimate shall clarify which tasks required for decommissioning would be  
8 completed by the third-party salvage company, and whether that company would also be providing  
9 the transportation costs and paying the fees, if any, for the receiving facility or location in accordance  
10 with Paragraph (b) of this Rule.

11 An estimate of salvage value shall not be required for equipment, or a subset of equipment, if the value is not included  
12 in ~~the~~ a request to reduce the amount of financial assurance for new USSPs based on salvage value in accordance with  
13 Paragraph (g) of this Rule.

14 (d) The project owner of a new or existing USSP shall update the decommissioning cost estimate every five years to  
15 reflect changes in costs over time, even if there are no other changes to the status, size, or operation of the USSP. The  
16 adjusted decommissioning cost estimate shall be submitted with the registration submitted in accordance with Rule  
17 .0102 of this Section.

18 (e) If changes to the decommissioning plan or ~~project~~ USSP conditions or circumstances increase the  
19 decommissioning cost estimate at any time during the active life of the USSP, ~~project~~, the project owner of a new  
20 USSP shall increase the amount of financial assurance accordingly and shall submit the adjusted financial mechanism  
21 to the Department during their next scheduled registration update in accordance with Rule .0102 of this Section.

22 (f) The project owner of a new USSP may request to decrease the amount of financial assurance if changes to the  
23 decommissioning plan or project conditions over time decrease the decommissioning cost estimate during the active  
24 life of the project. The request shall comply with Paragraph (h) of this Rule.

25 (g) The project owner of a new USSP may request to reduce the amount of financial assurance based on the salvage  
26 value of the equipment submitted in accordance with Paragraph (c) of this Rule. The request shall comply with  
27 Paragraph (h) of this Rule. Beginning at 20 years after the project begins operation or five years prior to the end of the  
28 initial power purchase agreement, whichever is earlier, and through the end-of-life of the project, a reduction based  
29 on salvage value shall not cause the amount of financial assurance to be less than the total cost estimate to:

30 (1) detach the photovoltaic modules from the base;

31 (2) transport the photovoltaic modules and any hazardous waste from the USSP to the receiving facility  
32 or location; and

33 (3) pay the fees charged by the receiving facility or location to accept the photovoltaic modules and any  
34 hazardous waste from the USSP.

35 (h) If the project owner of a new USSP requests to decrease the amount of financial assurance in accordance with  
36 Paragraphs (f) or (g) of this Rule, the request and a written justification shall be submitted with the registration  
37 submitted in accordance with Rule .0102 of this Section. The reduction to the financial assurance amount shall not be

1 executed until the Department has issued a written approval that the adjusted cost estimates, financial assurance  
2 amount, and financial assurance mechanism comply with G.S. 130A-309.240 and the rules of this Section. No  
3 reduction of the amount of financial assurance shall be approved until the project owner of a new USSP has resolved  
4 any unresolved violations issued by the Department for non-compliance with Article 9 of Chapter 130A of the General  
5 Statutes, 15A NCAC 13B or 13C, or the rules of this Section. If the Department approves the request to reduce the  
6 amount of financial assurance, the Department shall provide written notice of the approval to the project ~~owner~~. Owner  
7 of a new USSP. Upon receipt of approval, the project owner may adjust the amount of financial assurance and submit  
8 the adjusted financial assurance mechanism to the Department.

9  
10 *History Note: Authority G.S. 130A-309.240(j);*  
11 *Eff. April 1, 2025.*  
12

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01V .0105

**DEADLINE FOR RECEIPT: Wednesday, March 12, 2025**

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In reviewing this Rule, the staff recommends the following technical changes be made:

*In the title (line 3), and all other uses, why does the addition of “new” and/or “existing” not constitute a substantial change under 150B-21.2(g)?*

*In (a), line 6, add a comma after “Section”.*

*In (d), lines 27-28, add a comma after “corporation”, delete “or” before “grandparent” and add a comma after “grandparent”. Also, add a comma after “relationship”.*

*In (f), lines 35-36, add a comma after “USSP” and after “USSP”.*

*In (g), line 3, consider replacing “for approval that” with “to determine if”.*

*In (j), line 17, is it necessary to include “the financial assurance mechanism as part of”?*

*On line 25, add an “s” to end of “mechanism”.*

Please retype the rule accordingly and resubmit it either to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609 or via email.

Travis C. Wiggs  
Commission Counsel  
Date submitted to agency: February 26, 2025

1 15A NCAC 01V .0105 is adopted with changes as published in 39:08 NCR 489-506 as follows:

2  
3 **15A NCAC 01V .0105 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE FOR NEW USSPS**

4 (a) Project owners of a new USSP ~~that are required by G.S. 130A-309.240 to establish financial assurance in~~  
5 ~~accordance with the effective dates and applicability of S.L. 2023-58, s. 4~~ shall establish, submit, and update an  
6 allowable financial mechanism, or a combination of mechanisms, provided in Rule .0106 of this Section to ensure  
7 sufficient funds are available to cover the cost of decommissioning in accordance with G.S. 130A-309.240(d)(1).

8 (b) The language of the mechanism shall be identical to the instrument templates provided in Rule .0107 of this  
9 Section, and shall ensure that the instruments satisfy the following criteria:

- 10 (1) the financial assurance mechanism shall ensure that the amount of funds assured is sufficient to  
11 cover the cost of decommissioning at any time;  
12 (2) the financial assurance mechanism shall ensure that the funds will be available to the Department at  
13 the time of decommissioning; and  
14 (3) the financial assurance mechanism shall be legally valid, binding, and enforceable in accordance  
15 with State and federal law.

16 The project owner of a new USSP may submit a request in writing to the Department to revise the language of the  
17 mechanism if it is necessary to accommodate USSP-specific circumstances. The request shall be submitted to the  
18 Department in the draft mechanism for approval by the Department prior to submittal of the executed mechanism.

19 (c) The project owner of a new USSP may use one financial assurance mechanism to ensure sufficient funds are  
20 available for decommissioning of more than one new USSP located in North Carolina and owned by the same project  
21 owner.

22 (d) A project owner of a new USSP may demonstrate financial assurance for decommissioning by establishing more  
23 than one mechanism per project. The mechanism shall be as specified in Rule .0106 of this Section, except that  
24 financial assurance for an amount no less than the current cost estimate for decommissioning may be provided by a  
25 combination of mechanisms rather than a single mechanism. When multiple financial assurance mechanisms are  
26 established, no more than one allowable mechanism shall be provided by the same financial institution or its corporate  
27 entities. The financial test provided by a corporation and the corporate guarantee provided by a corporate parent,  
28 sibling, or grandparent or a substantial business relationship shall not be combined if the financial statements of the  
29 two firms are consolidated.

30 (e) The amount of the financial mechanism shall be the amount of the cost estimate calculated in accordance with  
31 Rule .0104 of this Section.

32 (f) In accordance with G.S. 130A-309.240(d)(2), the project owner of a new USSP shall not be released from the  
33 requirement to provide continuous financial assurance for decommissioning until the Department has provided the  
34 project owner of a new USSP with written notification that the decommissioning and restoration requirements for the  
35 USSP set forth in Part 2J of Article 9 of Chapter 130A of the General Statutes, the requirements of this Section, and  
36 the requirements of the decommissioning plan for the USSP have been met.

1 (g) If the project owner of a new USSP elects to change the type of financial mechanism selected at any time, the  
2 project owner shall submit a proposal for the new mechanism and a draft copy of the new financial assurance  
3 mechanism to the Department for approval that the mechanism complies with the rules of this Section. The existing  
4 executed mechanism for a new USSP shall not be cancelled until after the Department issues written notice to the  
5 project owner that the new mechanism complies with the requirements of the rules of this Section and the project  
6 owner has executed the new mechanism.

7 (h) If there is a change in ~~project ownership~~, ownership of a new USSP, the new project owner shall establish financial  
8 assurance for the new USSP and submit the executed financial assurance mechanism to the Department no more than  
9 30 days after the change in ownership. The prior project owner shall maintain the financial assurance mechanism until  
10 the Department releases them from the requirement in writing, and upon confirmation that the financial assurance  
11 established by the new project owner meets the requirements of Part 2J of Article 9 of Chapter 130A of the General  
12 Statutes and the rules of this Section.

13 (i) Maintenance of financial assurance in the amounts required by the rules of this Section does not limit the  
14 responsibility of project owners for the full cost of decommissioning of the USSP, the expenses of any on-site or off-  
15 site environmental restoration necessitated by activities at the USSP, or liability for all damages to third parties or  
16 private or public properties caused by the establishment and operation of the USSP.

17 (j) A corporate seal shall be required to complete the financial assurance mechanism as part of the certification of  
18 acknowledgement required in the mechanism language in Rule .0107 of this Section for a corporate project owner  
19 using a trust fund, surety bond guaranteeing payment, financial test, and corporate guarantee as set forth in Rule .0106  
20 of this Section. When a corporate seal is required to certify a financial assurance mechanism but the corporation does  
21 not have a corporate seal, a member of the corporation's senior management or a representative of the board of  
22 directors shall submit to the Department a copy of the corporation's bylaws, a corporate ownership organization chart  
23 describing the relationship of the project owner to the corporation and its parent companies, contact information for  
24 the board of directors or senior management for the corporation, and a statement on corporate letterhead stating the  
25 signee has the authority to execute correspondence and financial assurance mechanism on behalf of the corporation,  
26 pursuant to G.S. 130A-309.240. The documentation shall be submitted to the Department of Environmental Quality,  
27 care of the Division of Waste Management at 1646 Mail Service Center, Raleigh, NC 27699. Senior management for  
28 the corporation shall be one of the following positions: the Chief Executive Officer or President, the Chief Operating  
29 Officer or Vice President, or the Chief Financial Officer or Treasurer.

30 (k) The executed mechanism shall be submitted to the Department as original signed hard copies.

31 (l) Financial assurance established for a USSP shall be an environmental liability for accounting purposes.

32 (m) If ~~the a~~ local government requires financial assurance, the project owner of a new USSP may request that the  
33 Department accept evidence of executed financial assurance provided to and approved by the local government, in  
34 lieu of making the financial assurance accessible directly to the Department, to satisfy the explanation as to how the  
35 funds will be available to the Department in accordance with G.S. 130A-309.240(c)(6). In making such a request, the  
36 project owner of a new USSP shall demonstrate that the local government financial assurance mechanism otherwise  
37 meets the requirements of G.S. 130A-309.240 and Rules .0101 through .0105 of this Section. The project owner of a



1 new USSP shall submit the request and demonstration with the registration required by Rule .0102 of this Section,  
2 and the request shall include a copy of the local government financial assurance mechanism and a written justification  
3 for Department approval that the local government financial assurance mechanism meets the requirements of G.S.  
4 130A-309.240 and Rules .0101 through .0105 of this Section.

5  
6 *History Note:* Authority G.S. 130A-309.240(j);  
7 Eff. April 1, 2025.  
8

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01V .0106

**DEADLINE FOR RECEIPT: Wednesday, March 12, 2025**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In the title (lines 3-4), and all other uses, why does the addition of “new” and/or “existing” not constitute a substantial change under 150B-21.2(g)?*

*On line 5, Rule .0105 appears to require project owners to use financial assurance mechanisms. Thus, please change to say, “shall use any combination of the following mechanisms to....”.*

*In (1)(a), line 8, which specific rules are being referenced by the “rules of this Section”?*

*In (1)(a), line 9, must the trustee always “be an entity”? If not, please add “or person”.*

*In (1)(g), lines 31-32, consider moving “as specified” to say, “The trust agreement shall be accompanied by a certification of acknowledgement following the language of the trust agreement, as specified in Rule .0107(1) of this Section.”*

*In (2)(b), line 7, add a comma after “mechanism”.*

*In (2)(b)(i)-(iv), capitalize the first word of each for consistency in this Rule.*

*In (3)(b), lines 20-21, delete “and” before “address”, add a comma after “USSP” and after “assured”.*

*In (3)(c), line 22, consider adding a comma after “year”.*

*In (5)(a-d)(i)-(iv), capitalize the first word of each for consistency in this Rule.*

*In (5)(c)(iii), lines 4-5, delete “an”, add a comma after “procedures”, delete “engagement”, and add a comma after “standards”.*

Travis C. Wiggs  
Commission Counsel  
Date submitted to agency: February 26, 2025

*In (c)(i), line 31, add a comma after "guarantee". Add "and" before "the decommissioning plan,".*

Please retype the rule accordingly and resubmit it either to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609 or via email.

Travis C. Wiggs  
Commission Counsel  
Date submitted to agency: February 26, 2025

1 15A NCAC 01V .0106 is adopted with changes as published in 39:08 NCR 489-506 as follows:

2  
3 **15A NCAC 01V .0106 ALLOWABLE MECHANISMS FOR FINANCIAL ASSURANCE FOR NEW**  
4 **USSPS**

5 Project owners of a new USSP may use the ~~The following mechanisms may be used~~ to meet the requirements of this  
6 Section for financial assurance.

7 (1) Trust Fund.

- 8 (a) A project owner of a new USSP may satisfy the rules of this Section by establishing a trust  
9 fund that conforms to the requirements of this Item. The trustee shall be an entity that has  
10 the authority to act as a trustee and whose trust operations are regulated and examined by  
11 a federal or State agency.
- 12 (b) The trust fund shall be fully funded for the entire amount of decommissioning established  
13 by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section.
- 14 (c) The trust agreement shall be effective prior to submittal of the initial executed financial  
15 mechanism pursuant to Rule .0102(e) of this Section.
- 16 (d) The project owner or a third party authorized by the Department to conduct  
17 decommissioning may request reimbursement from the trustee for these expenditures.  
18 Requests for reimbursement shall be granted only if sufficient funds are remaining in the  
19 trust fund to cover the remaining costs of decommissioning, and if justification and  
20 documentation of the cost is submitted to the Department and approved by the Department  
21 as complying with G.S. 130A-309.240, the rules of this Section, and the decommissioning  
22 plan.
- 23 (e) The trust fund may be terminated by the project owner only if the project owner has  
24 substituted alternate financial assurance as specified in this Rule, or if the project owner  
25 receives written notice from the Department that they are no longer required to provide  
26 continuous financial assurance for decommissioning in accordance with the requirements  
27 of Rule .0105(f) of this Section.
- 28 (f) The trust fund may be elected as a standby trust mechanism to accompany the surety bond  
29 mechanism in Item (2) of this Rule, or the letter of credit mechanism in Item (3) of this  
30 Rule; or may be elected as a standalone funded trust mechanism.
- 31 (g) The trust agreement shall be accompanied by a certification of acknowledgement as  
32 specified following the language of the trust agreement in Rule .0107(1) of this Section.
- 33 (h) Schedule A of the trust agreement shall be updated no less than 60 days after any change  
34 in the amount of the current cost estimate covered by the agreement.

35 (2) Surety Bond Guaranteeing Payment into a Trust Fund.

- 36 (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning  
37 by obtaining a payment surety bond that conforms to the requirements of this Item. The

surety bond shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and shall be licensed to do business in North Carolina.

(b) The project owner who uses a surety bond to satisfy the requirements of the rules of this Section shall also establish a standby trust fund prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. Under the terms of the bond, all payments shall be deposited by the surety directly into the standby trust fund. An originally signed duplicate of the trust agreement shall be submitted to the Department with the surety bond. This standby trust fund shall meet the requirements specified in Item (1) of this Rule, except that the following are not required until the standby trust fund is funded pursuant to the requirements of this Item:

- (i) payment into the trust fund as specified in Sub-Item (1)(b) of this Rule;
- (ii) updating of Schedule A of the trust agreement as specified in Sub-Item (1)(h) of this Rule;
- (iii) annual valuations as required by the trust agreement outlined in Rule .0107(1) of this Section; and
- (iv) notices of nonpayment as required by the trust agreement outlined in Rule .0107(1) of this Section.

(c) The bond shall guarantee that the project owner shall:

- (i) Fund the standby trust fund in an amount equal to the penal sum of the bond prior to initiating final decommissioning of the USSP, and no more than one year after cessation of operations of the USSP;
- (ii) Fund the standby trust fund in an amount equal to the penal sum of the bond within 15 days after an order to decommission the USSP is issued by a U.S. district court or other court of competent jurisdiction; or
- (iii) Provide alternate financial assurance that complies with the rules of this Section within 90 days after receipt by both the project owner and the Department of a notice of cancellation of the bond from the surety.

(d) Under the terms of the bond, the surety shall become liable on the bond obligation when the project owner fails to perform as guaranteed by the bond.

(e) The penal sum of the bond shall be in an amount equal to the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section.

(f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the project owner and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice

of cancellation by both the project owner and the Department, as evidenced by the certified mail return receipts. If the surety cancels the bond, the project owner shall obtain alternate financial assurance that complies with the rules of this Section prior to cancellation.

(g) The penal sum of the surety bond shall be adjusted for any increase or decrease in the amount of financial assurance in accordance with Rule .0104 of this Section.

(h) The surety bond may be terminated by the project owner only if the project owner has substituted alternate financial assurance that complies with the rules of this Section, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with Rule .0105(f) of this Section.

(3) Letter of Credit.

(a) A project owner of a new USSP may satisfy the requirements of this ~~section~~ Section by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Item. The letter of credit shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.

(b) A letter from the project owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: name, project identification number, and address of the USSP and the amount of funds assured shall be included with the letter of credit submitted to the Department.

(c) The letter of credit shall be irrevocable and issued for a period of no less than one year in an amount no less than the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section. The letter of credit shall provide that the expiration date will be automatically extended for a period of no less than one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the project owner and to the Department 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the project owner shall obtain alternate financial assurance prior to cancellation.

(d) The project owner of a new USSP shall establish a standby trust fund. The standby trust fund shall meet the requirements of Item (1) of this Rule, except for the requirement to fully fund the trust as specified in Sub-Item (1)(b) of this Rule. Payments made under the terms of the letter of credit shall be deposited by the financial institution directly into the standby trust fund.

(e) No payments shall be made from the trust fund unless approved by the trustee and the Department.

1 (f) The letter of credit shall be adjusted for any increase or decrease in the amount of financial  
2 assurance in accordance with Rule .0104 of this Section.

3 (g) The letter of credit and standby trust fund may be terminated by the project owner only if  
4 the project owner has substituted alternate financial assurance as specified in this Rule, or  
5 if the project owner receives written notice from the Department that they are no longer  
6 required to provide continuous financial assurance for decommissioning in accordance  
7 with the requirements of Rule .0105(f) of this Section.

8 (4) Insurance.

9 (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning  
10 by obtaining insurance that conforms to the requirements of this Item. The insurance shall  
11 be effective prior to submittal of the initial executed financial mechanism pursuant to Rule  
12 .0102(e) of this Section. The insurer shall be licensed to transact the business of insurance,  
13 or eligible to provide insurance as an excess or surplus lines insurer, in North Carolina.

14 (b) The decommissioning insurance policy shall guarantee that funds will be available to  
15 decommission the USSP by cessation of operations. The policy shall also guarantee that  
16 once decommissioning begins, the insurer shall be responsible for the paying out of funds  
17 to the project owner or a third party authorized by the Department to conduct  
18 decommissioning, up to an amount equal to the face amount of the policy.

19 (c) The insurance policy shall be issued for a face amount no less than the entire amount of  
20 decommissioning established by Rule .0104 of this Section, except as provided in Rule  
21 .0105(d) of this Section. The term face amount means the total amount the insurer is  
22 obligated to pay under the policy. Actual payments by the insurer shall not change the face  
23 amount, although the insurer's future liability will be lowered by the amount of the  
24 payments.

25 (d) A project owner or a third party authorized by the Department to conduct decommissioning  
26 may receive reimbursements for decommissioning expenditures. Requests for  
27 reimbursement shall be granted by the insurer only if the remaining value of the policy is  
28 sufficient to cover the remaining costs of decommissioning, and if justification and  
29 documentation of the itemized cost is submitted to the Department, and the Department  
30 provides written approval that this requirement has been met. The project owner or third  
31 party shall notify the Department that reimbursement has been received.

32 (e) Each policy shall contain a provision allowing assignment of the policy to a successor  
33 project owner.

34 (f) The insurance policy shall provide that the insurer shall not cancel, terminate, or fail to  
35 renew the policy except for failure to pay the premium. The automatic renewal of the policy  
36 shall provide the insured with the option of renewal at the face amount of the expiring  
37 policy. If there is a failure to pay the premium, the insurer may cancel, terminate, or fail to

1 renew the policy by sending notice by certified mail to the project owner and to the  
2 Department 120 days in advance of cancellation, termination, or failure to renew the policy.  
3 If the insurer cancels the policy, the project owner shall obtain alternate financial assurance  
4 as specified in this Rule prior to cancellation.

- 5 (g) The insurance policy may be terminated by the project owner only if the project owner has  
6 substituted alternate financial assurance as specified in this Rule, or if the project owner  
7 receives written notice from the Department that they are no longer required to provide  
8 continuous financial assurance for decommissioning in accordance with the requirements  
9 of Rule .0105(f) of this Section.

- 10 (5) Financial Test. A project owner of a new USSP that satisfies the requirements of this Item may  
11 demonstrate financial assurance using a financial test. To pass this test the project owner shall meet  
12 the criteria of either Sub-Item (a) or (b) of this Item.

- 13 (a) The project owner of a new USSP shall have:

- 14 (i) two of the following three ratios: a ratio of total liabilities to net worth less than  
15 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization  
16 to total liabilities greater than 0.1; and a ratio of current assets to current liabilities  
17 greater than 1.5;  
18 (ii) net working capital and tangible net worth each no less than six times the sum of  
19 the decommissioning cost estimate established by Rule .0104 of this Section;  
20 (iii) tangible net worth of no less than 10 million dollars (\$10,000,000); and  
21 (iv) assets located in the United States amounting to no less than 90 percent of their  
22 total assets or no less than six times the sum of the decommissioning cost estimate  
23 established by Rule .0104 of this Section.

- 24 (b) The project owner of a new USSP shall have:

- 25 (i) a current rating for their most recent bond issuance of AAA, AA, A, or BBB as  
26 issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;  
27 (ii) tangible net worth no less than six times the sum of the decommissioning cost  
28 estimate established by Rule .0104 of this Section;  
29 (iii) tangible net worth of no less than 10 million dollars (\$10,000,000); and  
30 (iv) assets located in the United States amounting to no less than 90 percent of their  
31 total assets or no less than six times the sum of the decommissioning cost estimate  
32 established by Rule .0104 of this Section.

- 33 (c) To pass this test, the project owner shall submit the following items to the Department with  
34 the registration and subsequent updates required by Rule .0102 of this Section:

- 35 (i) a letter signed by the project owner's chief financial officer and as specified in  
36 Rule .0107(5) of this Section;



- (ii) a copy of the independent certified public accountant's report of the project owner's financial statements for the latest completed fiscal year; and
- (iii) a special report from the project owner's independent certified public accountant to the project owner. The special report shall be based upon an agreed upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
- (d) The project owner is no longer required to submit the documentation specified in Sub-Item (c) of this Item or comply with the requirements of this Item when:
- (i) the project owner substitutes alternate financial assurance as specified in the rules of this Section; or
- (ii) the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.
- (e) If at any time the project owner of a new USSP no longer meets the requirements of Sub-Item (a) or (b) of this Item, the project owner shall send notice to the Department of intent to establish alternate financial assurance as specified in the rules of this Section. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the project owner no longer meets the requirements. The project owner shall provide the alternate financial assurance that meets the rules of this Section to the Department within 120 days after the end of such fiscal year.
- (f) The Department may, based on a reasonable belief that the project owner may no longer meet the requirements of Sub-Item (a) or (b) of this Item, require reports of financial condition at any time from the project owner in addition to the documentation specified in Sub-Item (c) of this Item. If the Department finds, on the basis of such reports and documentation, that the project owner no longer meets the requirements of Sub-Item (a) or (b) of this Item, the Department shall provide written notice to the project owner of this determination. The project owner shall obtain alternate financial assurance that meets the requirements of this Rule and submit that alternate financial assurance that complies with the rules of this Section to the Department within 90 days of the issuance of the written notice from the Department.
- (g) When calculating the amount of financial assurance, the project owner shall include the cost estimates for all USSPs owned by the project owner and for which they are required to obtain financial assurance. The amount of financial assurance for the financial test shall be adjusted in accordance with Rule .0104 of this Section.

(h) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in their report on examination of the project owner's financial statements pursuant to Sub-Item (c)(ii) of this Item. An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department may evaluate other qualifications on an individual basis. The project owner shall provide alternate financial assurance that complies with the rules of this Section within 90 days of the issuance of the written notice from the Department.

(6) Corporate Guarantee:

(a) A project owner of a new USSP may also meet the requirements of the financial test in Item (5) of this Rule by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the project owner, a firm whose parent corporation is also the parent corporation of the project owner, or a firm with a substantial business relationship with the project owner. The guarantor shall meet the requirements for project owners in Item (5) of this Rule and shall comply with the terms of the guarantee. A certified copy of the guarantee shall be submitted to the Department with the copies of the letter from the guarantor's chief financial officer and the independent certified public accountant's opinion for the guarantor as required by Item (5) of this Rule. If the guarantor's parent corporation is also the parent corporation of the project owner, the letter from the guarantor's chief financial officer shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the project owner, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The project owner shall submit a corporate ownership organization chart describing the relationship of the project owner to the guarantor with the submittal of the initial executed financial mechanism, and during periodic registration updates thereafter.

(b) The guarantee shall be effective prior to submittal of the initial executed financial mechanism and all submissions required pursuant to this Item and Rule .0102(e) of this Section.

(c) The terms of the guarantee shall provide that:

(i) If the project owner fails to perform decommissioning of a USSP covered by the corporate guarantee in accordance with the requirements and timelines of G.S. 130A-309.240, the rules of this Section, the decommissioning plan, the guarantor shall either perform, or pay a third party to perform, decommissioning; or establish a fully funded trust fund as specified in Item (1) of this Rule in the name of the project owner.

(ii) The corporate guarantee shall remain in force for as long as the project owner is required to comply with the applicable financial assurance requirements in the

1 rules of this Section unless the guarantor sends prior notice of cancellation by  
2 certified mail to the project owner and to the Department. Cancellation shall not  
3 occur, however, during the 120 days beginning on the date of receipt of the notice  
4 of cancellation by both the project owner and the Department, as evidenced by  
5 the return receipts.

- 6 (iii) If notice of cancellation is given, the project owner shall, within 90 days following  
7 receipt of the cancellation notice by the project owner and the Department, obtain  
8 alternate financial assurance that complies with the rules of this Section and obtain  
9 written approval from the Department that the alternate financial assurance  
10 complies with the rules of this Section. If the project owner fails to provide  
11 alternate financial assurance within the 90-day period, the guarantor shall obtain  
12 alternate financial assurance in the name of the project owner that complies with  
13 the rules of this Section within 120 days of the cancellation notice and obtain  
14 written approval from the Department that the alternate financial assurance  
15 complies with the rules of this Section.

16  
17 *History Note: Authority G.S. 130A-309.240(j);*  
18 *Eff. April 1, 2025.*  
19

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Department of Environmental Quality

RULE CITATION: 15A NCAC 01V .0107

### **DEADLINE FOR RECEIPT:**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*On pg. 2, (b), line 7, capitalize “upon”.*

*In line 15, add “or her” after “his”.*

*On pg. 3, (e), line 15, add commas to say, “against, or in respect of,”.*

*On pg. 4, lines 9-10, add a comma after “act” and after “acting”.*

*In line 16, please move “Section 16” down a line for consistency.*

Please retype the rule accordingly and resubmit it either to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609 or via email.

Travis C. Wiggs  
Commission Counsel  
Date submitted to agency: February 26, 2025

1 15A NCAC 01V .0107 is adopted with changes as published in 39:08 NCR 489-506 as follows:

2  
3 **15A NCAC 01V .0107 REQUIRED LANGUAGE FOR FINANCIAL ASSURANCE MECHANISMS FOR**  
4 **NEW USSPS**

5 The financial assurance mechanisms set forth in Rule .0106 of this Section for new USSPs shall use the language  
6 provided in this Rule unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, and  
7 shall be in accordance with the rules of this Section.

- 8 (1) Trust Agreement. A trust agreement for a trust fund, as specified in Rule .0106(1) of this Section,  
9 shall be worded as follows unless otherwise approved by the Department as provided in Rule  
10 .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant  
11 information and the brackets deleted:

12 **TRUST AGREEMENT**

13 Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the project owner], a [name of  
14 State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate  
15 trustee], [insert "incorporated in the State of [name of state]" or "a national bank"], the "Trustee."

16 Whereas, the Department of Environmental Quality, the "Department," an agency of the State of North Carolina, has  
17 established certain regulations applicable to the Grantor, requiring that a project owner of a utility-scale solar project  
18 (USSP) shall provide assurance that funds shall be available when needed for decommissioning of the USSP,

19 Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the USSPs  
20 identified herein,

21 Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this  
22 agreement, and the Trustee is willing to act as trustee.

23 Now, therefore, the Grantor and the Trustee agree as follows:

24 Section 1. Definitions. As used in this Agreement:

25 (a) The term "Grantor" means the project owner who enters into this Agreement and any successors or assigns of the  
26 Grantor.

27 (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

28 Section 2. Identification of Projects and Cost Estimates. This Agreement pertains to the USSPs and cost estimates  
29 identified on schedule A [on schedule A, for each USSP list the name, address, project identification number, and the  
30 current decommissioning, or portions thereof, for which financial assurance is demonstrated by this Agreement].

31 Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit  
32 of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein  
33 provided. The Fund is established initially as consisting of the property that is acceptable to the Trustee described in  
34 Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund,  
35 together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this  
36 Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be

1 responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the  
2 Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

3 Section 4. Payment for Decommissioning. The Trustee shall make payments from the Fund as the Department shall  
4 direct, in writing, to provide for the payment of the costs of decommissioning of the USSPs covered by this Agreement.  
5 The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for  
6 decommissioning expenditures in such amounts as the Department shall direct in writing. In addition, the Trustee shall  
7 refund to the Grantor such amounts as the Department specifies in writing. upon refund, such funds shall no longer  
8 constitute part of the Fund as defined herein.

9 Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or  
10 securities acceptable to the Trustee.

11 Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep  
12 the Fund invested as a single fund, without distinction between principal and income, in accordance with general  
13 investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time,  
14 subject to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the  
15 Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the  
16 care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like  
17 capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like  
18 aims; except that:

- 19 (i) Securities or other obligations of the Grantor, or any other project owners, or any of their affiliates  
20 as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be  
21 acquired or held, unless they are securities or other obligations of the Federal or State government;
- 22 (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent  
23 insured by an agency of the Federal or State government; and
- 24 (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a  
25 reasonable time and without liability for the payment of interest thereon.

26 Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

27 (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust  
28 fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be  
29 commingled with the assets of other trusts participating therein; and

30 (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C.  
31 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered  
32 or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

33 Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the  
34 Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

35 (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No  
36 person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the  
37 validity or expediency of any such sale or other disposition;

1 (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all  
2 other instruments that may be necessary or appropriate to carry out the powers herein granted;

3 (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security  
4 in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same  
5 issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a  
6 qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the  
7 name of the nominee of such depository with other securities deposited therein by another person, or to deposit or  
8 arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality  
9 thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such  
10 securities are part of the Fund;

11 (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the  
12 Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent  
13 insured by an agency of the Federal or State government; and

14 (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

15 Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund  
16 and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the  
17 Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee,  
18 the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and  
19 disbursements of the Trustee shall be paid from the fund.

20 Section 10. Annual Valuation. The Trustee shall annually, no less than 30 days prior to the anniversary date of  
21 establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust.  
22 Any securities in the fund shall be valued at market value as of no more than 60 days prior to the anniversary date of  
23 establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the  
24 statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the  
25 Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed  
26 in the statement.

27 Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the  
28 Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken  
29 hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

30 Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed  
31 upon in writing from time to time with the Grantor.

32 Section 13. Successor Trustee. The Trustee may resign, or the Grantor may replace the Trustee, but such resignation  
33 or replacement shall not be effective until the Grantor has appointed a successor Trustee, and this successor accepts  
34 the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee  
35 hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay  
36 over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot  
37 or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction

1 for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it  
2 assumes administration of the trust in writing sent to the Grantor, the Department, and the present Trustee by certified  
3 mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the  
4 acts contemplated by this Section shall be paid as provided in section 9.

5 Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in  
6 writing, signed by such persons as are designated in the exhibit or such other designees as the Grantor may designate  
7 by amendment to Exhibit A. The trustee shall be fully protected in acting without inquiry in accordance with the  
8 Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee  
9 shall be in writing, signed by the Department, or his designee, and the Trustee shall act and shall be fully protected in  
10 acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the  
11 absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any  
12 person to act on behalf of the Grantor or Department hereunder has occurred. The trustee shall have no duty to act in  
13 the absence of such orders, requests, and instructions from the grantor or Department, except as provided for herein.

14 Section 15. Notice of Payment. The Trustee shall notify the Grantor and the Department of payment to the Trust by  
15 certified mail within 10 days following receipt of said payment. The notice shall contain the name of the Grantor, the  
16 date of payment, the amount of payment, and the current value of the trust fund. Section 16. Amendment of Agreement.

17 This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the  
18 Department, or by the Trustee and the Department if the Grantor ceases to exist.

19 Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in  
20 section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor,  
21 the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination  
22 of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

23 Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection  
24 with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by  
25 the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved  
26 harmless by the Grantor or from the Trust fund, or both, from and against any personal liability to which the Trustee  
27 may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred  
28 in its defense in the event the Grantor fails to provide such defense.

29 Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of  
30 the State of North Carolina.

31 Section 20. Interpretation. As used in this agreement, words in the singular include the plural and words in the plural  
32 include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or  
33 the legal efficacy of this Agreement.

34 In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized  
35 and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify  
36 that the wording of this agreement is identical to the wording specified in 15A NCAC 01V .0107(1) [if wording is



otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]" as were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest: [insert name of Corporation's Senior Management]

[Title]

[Seal]

State of North Carolina

County of [Name of County]

On this [date], before me personally came [name of project owner] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

[Or for no corporate seal, see 15A NCAC 01V .0105(j) and utilize the certification of acknowledgement below]

State of North Carolina

County of [Name of County]

I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

[Signature of Trustee]

[Title]

1 Attest: [insert name]  
2 [Title]  
3 [Seal]  
4 State of North Carolina  
5 County of [Name of County]  
6 I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that  
7 [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate  
8 Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being  
9 authorized to do so, executed the foregoing on behalf of the corporation.  
10 Witness my hand and official seal this [Day] day of [Month], 20[Year].  
11 [insert Signature of Notary]  
12 Official Signature of Notary  
13 [Notary's printed or typed name]  
14 Notary Public  
15 [Official Seal]  
16 My commission expires: [insert Date of Commission Expiration]  
17 Schedule A for Trust Agreement  
18 [For Each Utility-Scale Solar Project (USSP):]  
19 Project Name: [Project Name]  
20 Project Address: [Project Address]  
21 Project ID Number: [Project ID Number]  
22 Total Amount of Decommissioning Costs to be Funded by this Trust: \$ [Amount]  
23 Schedule B for Trust Agreement  
24 [For Standby Trust]  
25 Trust Property: This Fund shall consist of funds drawn from [insert type of mechanism; ex. Letter of credit] No. [insert  
26 number] dated [date] issued by [name of bank] at such time said funds are directly deposited into the Trust account.  
27 [For Funded Trust]  
28 Trust Property: This Fund shall consist of cash in the amount of \$[insert cash amount]. [Aggregate full amount of  
29 decommissioning from Schedule A.]  
30 Account Information:  
31 Account Number assigned to this Trust Agreement: [Account Number]  
32 Amount of Deposit: [Amount of Deposit (zero dollars if used for a standby trust)]  
33 Date: [Date]  
34 Bank/Branch location for this trust account:  
35 Bank/Branch Name: [Bank/Branch Name]  
36 Location Address: [Location Address]  
37 City & State: [City & State]

1 Contact Person at Bank:

2 Name: [Name]

3 Title: [Title]

4 Phone Number: [Phone Number]

5 Exhibit A for Trust Agreement

6 The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant  
7 to Section 14 of the Agreement:

8 Name: [insert name]

9 Position: [insert position]

10 (2) A surety bond guaranteeing payment of decommissioning as specified in Rule .0106(2) of this  
11 Section shall be worded as follows unless otherwise approved by the Department as provided in  
12 Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant  
13 information and the brackets deleted:

14 FINANCIAL GUARANTEE BOND

15 Date bond executed: [insert date of bond execution]

16 Effective date: [insert effective date]

17 Principal: [legal name and business address of project owner]

18 Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

19 State of incorporation: [insert state of incorporation]

20 Surety(ies): [name(s), business address(es), and contact information]

21 [For Each Utility-Scale Solar Project (USSP)]

22 Project ID number: [insert project ID number]

23 Project name: [insert project name]

24 Project address: [insert project address]

25 Decommissioning cost: [insert dollar amount for decommissioning]

26 Total penal sum of bond: \$[insert total cost of the bond]

27 Liability Limit: \$[insert underwriting limit of the surety company]

28 Surety's bond number: [insert bond number issued by surety]

29 Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the N.C.  
30 Department of Environmental Quality (hereinafter called the Department), in the above penal sum for the payment of  
31 which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided  
32 that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly  
33 and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other  
34 purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set  
35 forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full  
36 amount of the penal sum.

1 Whereas, said Principal is required by G.S. 130A-309.240 and 15A NCAC 01V to provide financial assurance for  
2 decommissioning for each utility-scale solar project (USSP) identified above, and

3 Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such  
4 financial assurance;

5 Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of  
6 final decommissioning of each USSP identified above, fund the standby trust fund in the amount(s) identified above  
7 for the USSP,

8 Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin  
9 decommissioning is issued by the Department or a U.S. district court or other court of competent jurisdiction,

10 Or, if the Principal shall provide alternate financial assurance and obtain the Department's written approval of such  
11 assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department  
12 from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

13 The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions  
14 described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this  
15 bond, the Surety(ies) shall place funds in the amount guaranteed for the USSP(s) into the standby trust fund as directed  
16 by the Department.

17 The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless  
18 and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall  
19 the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

20 The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the  
21 Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt  
22 of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

23 The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such  
24 notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the  
25 Department.

26 [The following paragraph is an optional rider that may be included but is not required.]

27 Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new  
28 decommissioning amount, provided that the penal sum does not increase by more than 20 percent in any one year, and  
29 no decrease in the penal sum takes place without the written permission of the Department.

30 In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their  
31 seals on the date set forth above.

32 The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on  
33 behalf of the Principal and Surety(ies) and that the wording of this bond is identical to the wording specified in 15A  
34 NCAC 01V .0107(2) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b),  
35 then state here: "except as approved by the Department on [date]" ] as were constituted on the date this bond was  
36 executed.

37 Principal

1 [Signature(s)]

2 [Name(s)]

3 [Title(s)]

4 [Corporate seal]

5 [For no corporate seal, see Rule .0105(j)]

6 Corporate Surety(ies)

7 [Name and address]

8 State of incorporation: [Surety's state of incorporation]

9 Liability limit: \$[Surety's liability limit]

10 [Signature(s)]

11 [Name(s) and title(s)]

12 [Corporate seal]

13 [For no corporate seal, see Rule .0105(j)]

14 [For each co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety  
15 above.]

16 Bond premium: \$[bond premium]

17 (3) A letter of credit, as specified in Rule .0106(3) of this Section, shall be worded as follows unless  
18 otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that  
19 instructions in brackets are to be replaced with the relevant information and the brackets deleted:

20 **IRREVOCABLE STANDBY LETTER OF CREDIT**

21 N.C. Department of Environmental Quality

22 c/o Division of Waste Management

23 1646 Mail Service Center

24 Raleigh, N.C. 27699-1646

25 Dear Sir/Madam:

26 We hereby establish our Irrevocable Standby Letter of Credit No. [insert mechanism number] in your favor, at the  
27 request and for the account of [project owner's name and address] up to the aggregate amount of [in words] U.S.  
28 dollars \$[insert U.S. dollar amount], available upon presentation of

29 (1) your sight draft, bearing reference to this letter of credit No. [insert mechanism number], and

30 (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to requirements  
31 of N.C.G.S. 130A-309.240 and 15A NCAC 01V because the applicant has failed to properly decommission the utility-  
32 scale solar project (USSP) in accordance with applicable statutes and rules."

33 This letter of credit is effective as of [date] and shall expire on [date no less than 1 year], but such expiration date shall  
34 be automatically extended for a period of [no less than 1 year] on [date] and on each successive expiration date, unless,  
35 no less than 120 days before the current expiration date, we notify both you and [project owner's name] by certified  
36 mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so

1 notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the  
2 date of receipt by both you and [project owner's name], as shown on the signed return receipts.

3 Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor  
4 such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of  
5 [project owner's name] in accordance with your instructions.

6 We certify that the wording of this letter of credit is identical to the wording specified in 15A NCAC 01V .0107(3) [if  
7 wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except  
8 as approved by the Department on [date]" as were constituted on the date shown immediately below.

9 [Signature(s) and title(s) of official(s) of issuing institution], [Date]

10 This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits,  
11 published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

12 (4) A certificate of insurance, as specified in Rule .0106(4) of this Section, shall be worded as follows  
13 unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except  
14 that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

15 CERTIFICATE OF INSURANCE FOR DECOMMISSIONING

16 Name and Address of Insurer

17 (herein called the "Insurer");

18 Name and Address of Insured

19 (herein called the "Insured");

20 Projects Covered: [List for each utility-scale solar project (USSP): the name, address, project identification number,  
21 and the amount of insurance for decommissioning (these amounts for all USSPs covered shall total the face amount  
22 shown below).]

23 Face Amount: [insert dollar amount of face value]

24 Policy Number: [insert insurance policy number]

25 Effective Date: [insert effective date]

26 The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial  
27 assurance for decommissioning for the utility-scale solar projects (USSPs) identified above.

28 The Insurer further warrants that such policy conforms in all respects with the requirements of G.S. 130A-309.240  
29 and 15A NCAC 01V, as applicable and as such regulations were constituted on the date shown immediately below. It  
30 is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such  
31 inconsistency.

32 Whenever requested by the N.C. Department of Environmental Quality (hereinafter called the Department), the  
33 Insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements  
34 thereon.

35 I hereby certify that the wording of this certificate is identical to the wording specified in 15A NCAC 01V .0107(4)  
36 [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except  
37 as approved by the Department on [date]" as were constituted on the date shown immediately below.

1 [Authorized signature for Insurer]

2 [Name of person signing]

3 [Title of person signing]

4 Signature of witness or notary:

5 [Date]

- 6 (5) A letter from the chief financial officer for a financial test, as specified in Rule .0106(5) of this  
7 Section, shall be worded as follows unless otherwise approved by the Department as provided in  
8 Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant  
9 information and the brackets deleted:

10 FINANCIAL TEST

11 LETTER FROM THE CHIEF FINANCIAL OFFICER

12 [Date]

13 N.C. Department of Environmental Quality

14 c/o Division of Waste Management

15 1646 Mail Service Center

16 Raleigh, NC 27699-1646

17 Dear Sir/Madam:

18 I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial  
19 test to demonstrate financial assurance for decommissioning of a utility-scale solar project (USSP) as specified in  
20 N.C.G.S. 130A-309.240 and 15A NCAC 01V.

21 [Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities  
22 that belong in a particular paragraph, write "None" in the space indicated. For each USSP, including its project  
23 identification number, name, address, and decommissioning cost estimates.]

- 24 1. This firm is the project owner of the following USSPs for which financial assurance for  
25 decommissioning is demonstrated through the financial test as specified in N.C.G.S. 130A-309.240 and  
26 15A NCAC 01V. The current cost estimates for decommissioning covered by the test are shown for each  
27 USSP:

28 Name: [insert legal entity /principal name]

29 Office Address: [insert physical address of legal entity/principal]

30 Project Address: [insert physical address of project]

31 Project ID Number: [insert project ID number]

32 Decommissioning Cost Estimate: [insert dollar amount for decommissioning]

33 [Repeat the information above for each USSP included in the corporate test]

- 34 2. This firm guarantees, through the corporate guarantee as specified in Rule .0106(6) of this Section, the  
35 current cost estimates for decommissioning of the following facilities owned or operated by the  
36 guaranteed party. The current cost estimates for decommissioning so guaranteed are shown for each  
37 USSP: \_\_\_\_\_. The firm identified above is [insert one or more: (1) The direct or higher-tier parent

corporation of the project owner; (2) owned by the same parent corporation as the parent corporation of the project owner, and receiving the following value in consideration of this guarantee \_\_\_\_\_; or (3) engaged in the following substantial business relationship with the project owner \_\_\_\_\_, and receiving the following value in consideration of this guarantee \_\_\_\_\_. [Attach a written description of the substantial business relationship or a copy of the contract establishing such relationship to this letter].

3. This firm is the project owner or guarantor of the following USSPs, or projects substantially similar to USSPs, for which they are demonstrating financial assurance for decommissioning in other states through the use of a financial test specified in Rule .0106(5) of this Section or a mechanism substantially equivalent to the financial test, the current decommissioning cost estimates covered by such a test are shown for each USSP: \_\_\_\_\_.

4. This firm is the project owner of the following USSPs, or projects substantially similar to USSPs for which financial assurance for decommissioning is not demonstrated either to EPA or another state through the financial test or any other financial assurance mechanism specified in Rule .0106 of this Section or substantially equivalent mechanism. The current decommissioning cost estimates not covered by such financial assurance are shown for each USSP: \_\_\_\_\_.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of Rule .0106(5)(a) of this Section is used to pass the test.

[Fill in Alternative II if the criteria of Rule .0106(5)(b) of this Section is used to pass the test.

#### Alternative I

1. Sum of current decommissioning cost estimate [total of all cost estimates shown in the five paragraphs above] \$ \_\_\_\_\_

\*2. Total liabilities [if any portion of the decommissioning cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$ \_\_\_\_\_

\*3. Tangible net worth \$ \_\_\_\_\_

\*4. Net worth \$ \_\_\_\_\_

\*5. Current assets \$ \_\_\_\_\_

\*6. Current liabilities \$ \_\_\_\_\_

7. Net working capital [line 5 minus line 6] \$ \_\_\_\_\_

\*8. The sum of net income plus depreciation, depletion, and amortization \$ \_\_\_\_\_

\*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

10. Is line 3 no less than \$10 million? (Yes/No) \_\_\_\_\_

11. Is line 3 no less than 6 times line 1? (Yes/No) \_\_\_\_\_



12. Is line 7 no less than 6 times line 1? (Yes/No) \_\_\_\_\_

\*13. Are no less than 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) \_\_\_\_\_

14. Is line 9 no less than 6 times line 1? (Yes/No) \_\_\_\_\_

15. Is line 2 divided by line 4 less than 2.0? (Yes/No) \_\_\_\_\_

16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) \_\_\_\_\_

17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) \_\_\_\_\_

Alternative II

1. Sum of current decommissioning cost estimates [total of all cost estimates shown in the five paragraphs above]  
\$ \_\_\_\_\_

2. Current bond rating of most recent issuance of this firm and name of rating service \_\_\_\_\_

3. Date of issuance of bond \_\_\_\_\_

4. Date of maturity of bond \_\_\_\_\_

\*5. Tangible net worth [if any portion of the decommissioning cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ \_\_\_\_\_

\*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ \_\_\_\_\_

7. Is line 5 no less than \$10 million? (Yes/No) \_\_\_\_\_

8. Is line 5 no less than 6 times line 1? (Yes/No) \_\_\_\_\_

\*9. Are no less than 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) \_\_\_\_\_

10. Is line 6 no less than 6 times line 1? (Yes/No) \_\_\_\_\_

[Signature]

[Name]

[Title]

[Date]

(6) A corporate guarantee, as specified in Rule .0106(6) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

#### CORPORATE GUARANTEE

Corporate Guarantee Terms for Decommissioning

For [Project Owner], [Project ID Number]

Guarantee made this [date] by [name of guaranteeing entity], [address and state of guaranteeing entity], herein referred to as Guarantor. The guarantee is made on behalf of the [project owner name] of [business address], which is [one of the following: "our subsidiary"; a subsidiary of [name and address of common parent corporation] or "an entity with which the Guarantor has a substantial business relationship"] to the N.C. Department of Environmental Quality (hereinafter called the Department).

Recitals:

1. Guarantor meets or exceeds the Financial Test criteria and agrees to comply with the reporting requirements for guarantors, as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V.

2. [Project owner] owns the following USSPs covered by this guarantee: List for each USSP the following information

Name: [insert project name]

Project Address: [insert project address]

Project ID No.: [insert Department-issued project number]

Decommissioning Cost Estimate: [insert dollar amount for decommissioning]

3. Decommissioning Cost Estimate as used above refers to the plans maintained as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V for decommissioning cost estimate of USSPs identified above.

4. For value received from [insert project owner name], pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V, Guarantor guarantees to the Department that in the event that [insert project owner name] fails to perform decommissioning of the above USSPs in accordance with the G.S. 130A-309.240, 15A NCAC 01V, and the decommissioning plan whenever required to do so, the Guarantor shall perform the required activities, or pay a third party to do so, or establish a fully-funded trust fund in conformance with G.S. 130A-309.240 and 15A NCAC 01V, in the name of the project owner in the amount of the current decommissioning cost estimate as specified in 15A NCAC 01V .0104.

5. Pursuant to G.S. 130A-309.240, Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the Guarantor fails to meet the Financial Test criteria the Guarantor shall, within 90 days, send by certified mail notice to the Department and to [project owner name] that the Guarantor is providing alternate financial assurance in accordance with 15A NCAC 01V in the name of [project owner name]. Within 120 days after the end of such fiscal year, the Guarantor shall establish such financial assurance unless [project owner name] has done so.

6. Guarantor agrees to notify the Department by certified mail of voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that Guarantor no longer meets the Financial Test criteria or that they are disallowed from continuing as a Guarantor for decommissioning of a USSP, they shall establish alternate financial assurance as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V, as applicable, in the name of [project owner name] unless [project owner name] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: modification or amendment of the decommissioning plan, the extension or reduction of the time of performance of the decommissioning of a USSP, or any other modification or alteration of an obligation of the project owner pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V.

9. Pursuant to 15A NCAC 01V .0106(6)(c)(ii), Guarantor agrees to remain bound under this guarantee for as long as [project owner name] shall comply with N.C.G.S. 130A-309.240 and 15A NCAC 01V for the above-listed USSP(s), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the Guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the project owner]:

Guarantor may terminate this guarantee by sending noticed by certified mail to the Department and to [project owner name], provided that this guarantee may not be terminated unless and until [project owner name] obtains, and the Department approves, alternate financial assurance as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V.

[Insert the following language if the Guarantor is a firm qualifying as a Guarantor due to its substantial business relationship with the project owner]:

Guarantor may terminate this guarantee 120 days following the receipt of notification of its intended cancellation by certified mail by both the Department and by [project owner name].

11. Guarantor agrees that if [project owner name] fails to provide alternate financial assurance as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation from the Guarantor is received by the Department, Guarantor shall provide such alternate financial assurance in the name of [project owner name].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [project owner name]. Guarantor also expressly waives notice of amendments or modifications of the decommissioning plan, and of rebuilding or expansion of the project.

Effective date: [insert mechanism effective date]

[Name of Guarantor]

[Corporate Seal]

[For no corporate seal, see Rule .0105(j)]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

[Telephone Number]

[Email Address]

State of North Carolina

County of [Name of County]

On this [day] day of [month], [year], before me personally came [name signing for Guarantor] to me known, who, being by me duly sworn, did depose and say that she/he resides at [Guarantor address], that she/he is [title at Guarantor Firm] described in and that executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

(7) A special report from an independent certified public accountant (CPA) is a supplemental report mechanism to the financial test mechanism as specified in Rule .0106(5) and the corporate guarantee mechanism as specified in Rule .0106(6) of this Section, and shall be worded as follows unless

1 otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that  
2 instructions in brackets are to be replaced with the relevant information and the brackets deleted:

3 SPECIAL REPORT

4 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S REPORT

5 ON APPLYING AGREED-UPON PROCEDURES

6 The Board of Directors

7 [Name of Company]

8 [Mailing and location address]

9 [Project No.]

10 We have performed the procedures enumerated below that were agreed to by management of [Name of Company]  
11 pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V with respect to the letter dated [insert date] from the [insert  
12 Corporate Official name and title] to the N.C. Department of Environmental Quality (hereinafter called the  
13 Department), solely to assist you in filing the Letter (prepared in accordance with the criteria specified therein) for the  
14 year ended [insert date of end of corporate fiscal year]. [Name of Company] is responsible for this Letter. This agreed-  
15 upon procedures engagement was conducted in accordance with attestation standards established by the American  
16 Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of [Name of  
17 Company] and the Department. Consequently, we make no representation regarding the sufficiency of the procedures  
18 described below either for the purpose for which this report has been requested or for any other purpose.

19 The procedures, which were limited solely to the identified item numbers, are as follows:

20 We compared the amounts in Item Nos. [insert applicable item numbers based on Alternative I or II] of the Financial  
21 Test in the Chief Financial Officer's (CFO) Letter to corresponding amounts reported as total liabilities [amount],  
22 Tangible Net Worth [amount], and total assets [amount], respectively, in the audited financial statement as of [insert  
23 date of end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

24 We computed the amounts in Item Nos. [insert applicable item numbers based on Alternative I or II] of the Financial  
25 Test in the CFO's Letter as of [insert date of end of corporate fiscal year] based on amounts reported as Net Worth  
26 [amount] and the net income plus depreciation, depletion, and amortization [amount] in the audited financial  
27 statements as of [insert date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and  
28 found them [insert either, "not to be in agreement" or "to be in agreement"].

29 We computed the amount of environmental obligations (as determined by current decommissioning cost estimate or  
30 guarantees) that are recognized as liabilities in the amount of [amount] in the audited financial statement as of [insert  
31 date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and found them [insert either,  
32 "not to be in agreement" or "to be in agreement"].

33 We compared the amount in Item No. [insert applicable item number based on Alternative I or II] of the Financial  
34 Test in the CFO's Letter and the Company's total assets located in the United States in the amount of [insert amount]  
35 in the audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not  
36 to be in agreement" or "to be in agreement"].

[If not in agreement, describe the procedures performed in comparing the data in the CFO's letter derived from the audited financial year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.]

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the selected financial information included in the Letter. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report is intended solely for the use of management of the Company and is not intended to be and should not be used by anyone other than these specified parties.

[Date]

[Name of Accounting Firm]

*History Note:* Authority G.S. 130A-309.240(j);

*Eff. April 1, 2025.*