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STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

REPLY TO:
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September 28, 2023

North Carolina Rules Review Commission
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, North Carolina 27609

Via Email to Bill.Peaslee@oah.nc.gov

Re: Joint Request from Mining Commission and Oil and Gas Commission regarding rules 15A NCAC 05C .0101 through 15A NCAC 05C .0128

Dear Chair Doran and Commission Members:

Please find enclosed a joint letter from the Chairs of the Mining Commission and the Oil and Gas Commission requesting that the Rules under 15A NCAC Subchapter 05C, "Geophysical Exploration" be reassigned from the Mining Commission to the Oil and Gas Commission for the purposes of the Periodic Review and Readoption schedule. Should you have any questions, please contact me at preynolds@ncdoj.gov or 919-716-6971.

Sincerely,

s/ Phillip Reynolds
Phillip Reynolds
Mining Commission Counsel

cc: Travis Morehead, Mining Commission Chair, *electronically*
James Lister, Oil and Gas Commission Chair, *electronically*
Elizabeth Young, Mining Commission Counsel, *electronically*
Sarah Zambon, Oil and Gas Commission Counsel, *electronically*
Toby Vinson, DEMLR Director, *electronically*
Jennifer Everett, EMC Rulemaking Coordinator, *electronically*
Alex Burgos, Paralegal, Office of Administrative Hearings, *electronically*



NORTH CAROLINA
Environmental Quality

NORTH CAROLINA
MINING COMMISSION

TRAVIS MOREHEAD
CHAIR

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

WILLIAM E. TOBY VINSON, JR.
Interim Director

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Via Email to Bill.Peaslee@oah.nc.gov

Re: Joint Request from Mining Commission and Oil and Gas Commission regarding rules 15A NCAC 05C .0101 through 15A NCAC 05C .0128

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Mining Commission and the North Carolina Oil and Gas Commission (OGC), please accept this letter as the joint request of the Commissions that the rules under 15A NCAC Subchapter 05C, "Geophysical Exploration" be reassigned from the Mining Commission to the OGC for the purposes of the Periodic Review and Readoption schedule.

In 2014, the former Mining and Energy Commission was divided into the Mining Commission and the Oil and Gas Commission. The former Mining and Energy Commission generally had authority over all of the rules contained in 15A NCAC, Chapter 5, including those contained in Subchapter 05C.¹ When the former Mining and Energy Commission was divided into the two successor commissions, the rules were also split between the two commissions but there was uncertainty as to which commission had responsibility for certain subchapters.

In 2016, the General Assembly transferred the rules contained in 05H to the OGC, and it appears that the remaining rules, including Subchapter 05C, were assumed to be within the authority of the Mining Commission for the purposes of the rule review process. These remaining rules were included in the RRC's schedule of review but were subsequently removed from the schedule "until these Commissions have members." 26 NCAC 05 .0211. However, because neither commission had been fully reconstituted at the time and were not meeting, neither body could review or take any action with respect to the designation and assignment of the rules.

Once the OGC began meeting in March 2018, it was not necessary for it to undertake the Periodic Review process due to legislative action with respect to its rules. The OGC rules are now scheduled for their first periodic review in June 2027. It was not until after the Mining Commission began meeting in June 2022 that the remaining rules in Chapter 5 were returned to the RRC's review schedule and the Mining Commission's report is currently scheduled to be reviewed by the RRC at its December 2023 meeting.

¹ The rules contained in Subchapters 05D and 05E were repealed separately at different times.



As part of its “Step 1” review, the Mining Commission determined that the majority of the rules contained in 05C are predicated in whole or in part on the authority provided in N.C. Gen. Stat. §113-391, which is part of the Oil and Gas Conservation Act (“Act”). Section 113-391 also gives authority to the OGC to adopt rules under the Act, either independently or in conjunction with other agencies, such as the Environmental Management Commission. The Mining Commission alerted the OGC as to the issue and both bodies agree that the rules should be assigned to the OGC, instead of the Mining Commission.

The Commissions respectfully request that the Rules Review Commission remove 05C rules from the Mining Commission’s authority and Periodic Review schedule and that they be reassigned to the Oil and Gas Commission’s authority and Periodic Review schedule hereafter. The Commissions further request a waiver from the current Periodic Review and Expiration of Existing Rules schedule so that the OGC will have the necessary time to review the rules appropriately. The OGC respectfully requests that its Periodic Rules Review report for Subchapter 05C be completed and filed to the RRC for consideration at its November 2024 meeting.

The Commissions appreciate the opportunity to continue working with the RRC to ensure necessary rules are reviewed in a timely manner by the most appropriate entity.

Sincerely,
s/ Travis Morehead
Travis Morehead
Mining Commission Chair

s/ James Lister
James Lister
Oil and Gas Commission Chair

cc: Phillip Reynolds, Mining Commission Counsel, *electronically*
Elizabeth Young, Mining Commission Counsel, *electronically*
Sarah Zambon, OGC Counsel, *electronically*
Toby Vinson, DEMLR Director, *electronically*
Jennifer Everett, EMC Rulemaking Coordinator, *electronically*
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