

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

In reviewing these Rules, the staff recommends the following technical changes be made:

In the Submission for Permanent Rule form, please confirm the date of the public hearing. According to the Notice of Text published in the Register, the public hearing was held on 11/20/19. However, the form submitted with each Rule says the hearing was held on 11/1/19.

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules, 15A NCAC 07H Section .1100

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

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

Does G.S. 113-229 apply to this Section? If so, should it be included in your history notes?

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

Brian Liebman
Commission Counsel
Date submitted to agency: January 4, 2022

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1101

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

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

At line 8, what type of permit are you referring to? I understand the permit type is specified in the Section title, but rule names and Section titles do not govern interpretation of rules. Please specify the type of permit you are referring to in the rule text.

On line 9, for my knowledge, what is an AEC? If this is defined elsewhere, this is fine, but if this is the first use of the acronym in the section, consider spelling out the term and introducing the acronym in a parenthesis.

At line 9, please compare this rule with .1801. In that rule you use the language "subject to the procedures in..." Did you wish to mirror that language here?

Also on line 9, please clarify the cross-reference to "Subchapter 07J .1100." I think this means "Subchapter 07J, Section .1100" but please correct if I am wrong.

On lines 11-12, shorelines that "feature characteristics of the Estuarine Shoreline AEC" are included in this category of permit. Who makes the determination as to whether a particular shoreline meets these characteristics, and when? Does your regulated public know?

At line 13, please add a comma after "energy."

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

1 15A NCAC 07H .1101 is readopted as published in 34:09 NCR 758 as follows:

2
3 **SECTION .1100 - GENERAL PERMIT FOR CONSTRUCTION OF BULKHEADS AND RIPRAP**
4 **REVTMENTS FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS**
5 **AND OCEAN HAZARD AREAS**
6

7 **15A NCAC 07H .1101 PURPOSE**

8 A permit under this Section shall allow the construction of bulkheads and riprap revetments for shoreline protection
9 in the public trust waters and estuarine waters AECs according to authority provided in Subchapter 07J .1100 and
10 according to the Rules in this Section. This permit shall not apply to shoreline protection along the oceanfront or to
11 waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature
12 characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave
13 energy and lower erosion rates than the adjoining Ocean Erodible Area.
14

15 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
16 *Eff. March 1, 1984;*
17 *Amended Eff. July 1, 2009; April 1, 2003;*
18 *Readopted February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1102

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

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

Throughout, please be consistent with the acronym "DCM" and spelling out "Division of Coastal Management." Please spell out the word in its first use, and use the acronym thereafter.

Also, generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.

In (a), line 4, is there a difference between the "General Permit" and other kinds of permits referenced in this Subchapter?

I have some concerns with the organization of the Rule. First, the last sentence of (a) seems like it would fit better in (b), considering that these are all things that "the applicant shall provide." Second, it seems to me that everything after "The Division of Coastal Management shall review" on lines 13-14 in (b)(2) should be broken out as a separate paragraph, as this text does not relate to what the "applicant shall provide." I would suggest moving the last sentence of (a) into (b) as (b)(1), and then breaking off the last two sentences of (b)(2) as a separate paragraph, either a continuation of (b) or a new (c).

In current (b)(1), line 8, add "and" between "obtained" and "signed."

In (b)(1), can this be rewritten in the active tense? For example: "confirmation that the applicant has obtained a written statement, signed by the adjacent riparian property owners, stating that they have no objections to the proposed work; or"

Similarly, can (b)(2), be rewritten in the active tense? As written, it is unclear who notifies the adjacent riparian property owners.

In (b)(2), line 13, delete the commas surrounding "and."

In (b)(2), line 14-15, what does "based on their relevance to the potential impacts of the proposed project" mean? What factors will the DCM or CRC use to determine whether the project can be approved by a General Permit?

Brian Liebman
Commission Counsel
Date submitted to agency: January 4, 2022

In (b)(2), lines 16-17, what are the “guidelines established by the General Permit Process,” and how would an applicant know whether or not his or her project exceeds them? Are these contained in another Rule?

In (b)(2), line 17, how will DCM notify the applicant? Certified Mail? E-mail? Phone call?

In (c), line 19, just to be clear, this is a meeting and not an inspection, correct?

In (c), line 20, what is an “alignment”? Does your regulated public understand?

In (c), line 20, is the “written authorization” different than the General Permit? Also what are the relevant requirements of “this Subchapter? Subchapter 07H seems to deal with several different kinds of permits. Do you mean the “application” has to meet the requirements of this Rule?

In (c), line 23 is “the general authorization” different than the “General Permit”? What does it mean to “re-examine the alignment?” Does this mean the applicant goes back to the start and has to re-submit an application and notify/get consent from his or her neighbors?

In the History Note, would references to G.S. 113A-118 and G.S. 113A-120 be appropriate, given their relevance to the General Permit?

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

1 15A NCAC 07H .1102 is readopted as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1102 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and the applicant's name and address.

7 (b) The applicant shall provide:

8 (1) confirmation that a written statement has been obtained signed by the adjacent riparian property
9 owners indicating that they have no objections to the proposed work; or

10 (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the
11 proposed work. The notice shall instruct adjacent property owners to provide written comments on
12 the proposed development to the Division of Coastal Management within 10 days of receipt of the
13 notice, and, indicate that no response shall be interpreted as no objection. The Division of Coastal
14 Management shall review all comments and determine, based on their relevance to the potential
15 impacts of the proposed project, if the proposed project can be approved by a General Permit. If the
16 Division of Coastal Management determines that the project exceeds the guidelines established by
17 the General Permit Process, DCM shall notify the applicant that an application for a major
18 development permit shall be required.

19 (c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
20 representative so that the proposed alignment may be marked. Written authorization to proceed with the proposed
21 development shall be issued if the Division representative finds that the application meets all the requirements of this
22 Subchapter. Construction of the bulkhead or riprap revetment shall be completed within 120 days of the issuance of
23 the general authorization or the authorization shall expire and it shall be necessary to re-examine the alignment to
24 determine if the general authorization may be reissued.

25
26 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

27 *Eff. March 1, 1984;*

28 *Amended Eff. July 1, 2009; October 1, 2007; September 1, 2006; January 1, 1990; December 1,*
29 *1987;*

30 *Readopted February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1103

DEADLINE FOR RECEIPT: January 14, 2022

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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 call our office to inquire concerning the staff recommendation.

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

Just to be clear, is this fee a "permit fee" or an "application fee?" In other words, is the fee due at the time of application or only upon issuance of the permit?

What is "normal high water" or "normal water level"? Does your regulated public know?

Please confirm the fees in this Rule do not exceed thirty-three and one-third percent of the total personnel and administrative costs incurred by the Department as required by G.S. 113A-119.1.

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

Brian Liebman
Commission Counsel
Date submitted to agency: January 4, 2022

1 15A NCAC 07H .1103 is readopted as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1103 PERMIT FEE**

4 The applicant shall pay a permit fee of two hundred dollars (\$200.00) for riprap revetments sited at or above normal
5 high water or normal water level, or a permit fee of four hundred dollars (\$400.00) for riprap revetments sited below
6 normal high water or normal water level. The applicant shall pay a permit fee of four hundred dollars (\$400.00) for
7 bulkheads. Permit fees shall be paid by check or money order payable to the Department.

8
9 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124;*
10 *Eff. March 1, 1984;*
11 *Amended Eff. October 5, 2009; September 1, 2006; August 1, 2000; March 1, 1991;*
12 *Readopted Eff. February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1104

DEADLINE FOR RECEIPT: January 14, 2022

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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 call our office to inquire concerning the staff recommendation.

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

Throughout this Rule, please delete and revise any sentence using "herein" as this term is imprecise. Instead, please use a direct reference to "this Rule," or the appropriate Rules, subchapter, chapter, or section that you are intending to cross-reference.

In (b), please update the Department's name.

In (b), please delete or define the terms "periodic" and "deemed necessary."

In (c), what does "interference" mean? How can your regulated public know whether their project is "interfering" with use of the waters by the public? Who makes that determination?

In (c), line 10, did you intend to refer to "this Rule" or "this Section?"

Do the two sentences in (c) have the same meaning? If so, please avoid repetition. If not, please clarify.

*In (d), you say that the permit "shall not be applicable to proposed construction where the Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary..." G.S 113A-119 states that the **Secretary of DEQ**, not the Commission, "**shall** issue public notice" "upon receipt of **any** application..." I am having a hard time reconciling the statute and the Rule here. Is there other statutory authority for this provision? Assuming that there is statutory authority, what factors does the DCM use to make the determination that notice and review is necessary?*

In (d), line 15, please use commas, rather than semi-colons, between the items in the in-line list.

In (e), please capitalize "State" if you are only referring to North Carolina.

In (f), line 18, what are "AEC rules?" Does your regulated public know?

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

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022

1 15A NCAC 07H .1104 is readopted as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1104 GENERAL CONDITIONS**

4 (a) This permit authorizes only the construction of bulkheads and riprap revetments conforming to the standards
5 herein.

6 (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to
7 make periodic inspections at any time deemed necessary in order to ensure that the activity being performed under
8 authority of this general permit is in accordance with the terms and conditions prescribed herein.

9 (c) There shall be no interference with the use of the waters by the public by the existence of the bulkhead or the
10 riprap revetment authorized herein. Bulkheads and riprap revetments authorized in this Rule shall not interfere with
11 the established or traditional rights of navigation of the waters by the public.

12 (d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has
13 determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is
14 necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or
15 on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust
16 rights.

17 (e) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

18 (f) Development carried out under this permit shall be consistent with all local requirements, AEC rules, and local
19 land use plans current at the time of authorization.

20
21 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
22 *Eff. March 1, 1984;*
23 *Amended Eff. May 1, 1990; December 1, 1987;*
24 *RRC Objection due to ambiguity Eff. May 19, 1994;*
25 *Amended Eff. July 1, 2009; August 1, 1998; July 1, 1994;*
26 *Readopted Eff. February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1105

DEADLINE FOR RECEIPT: January 14, 2022

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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 call our office to inquire concerning the staff recommendation.

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

In (a)(3), line 16, please use either "original and existing" or "original or existing."

In (c), please delete the "or" after "vinyl" since you have an "or" at the end of the list.

In (c) and (d), what do the terms "suitable" mean, and what factors does DCM use to determine whether the materials are "suitable"?

In (e), what is a "pollutant"?

In (f), what does "sufficient size" mean? Who makes this determination?

In (g), line 27, what does "take into consideration" mean? Also, please omit the parenthetical on lines 27-28 and include the parenthetical material into the text of the Rule.

In (h), what is an "upland source"? I examined 15A NCAC 07H .0208 and I did not see a definition there, other than a provision that allows the CRC to approve an upland source "pursuant to this Subchapter."

In (j), line 35, what does "visibly increase" mean? Who makes that determination, and is there any objective measure?

In (j), line 36, delete or define "appropriate." Also on line 36, add an oxford comma after "measures."

In (j), p 2., lines 1-2, omit the parenthetical and include the material into the text of the Rule.

What is the difference between the "appropriate sedimentation and erosion control devices" required in (j) and the "erosion and sedimentation control plan" required by (k)?

Who "shall" approve the plan required by (k)? The Division of Energy, Mineral, and Land Resources, the "appropriate local government having jurisdiction," or CRC? Does CRC set the conditions for approval? If so, what is required? Is this addressed in another rule?

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022

In (k), line 4, omit “appropriate.”

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

1 15A NCAC 07H .1105 is readopted as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1105 SPECIFIC CONDITIONS**

4 (a) Along shorelines void of wetland vegetation:

- 5 (1) New bulkheads shall have an average approximation of normal high water or normal water level.
6 The bulkhead position shall not exceed a distance of five feet waterward of normal high water or
7 normal water level at any point along its alignment.
- 8 (2) New bulkheads or riprap revetments on shorelines within manmade upland basins, canals, and
9 ditches, shall be positioned so as not to exceed an average distance of two feet and maximum
10 distance of five feet waterward of normal high water or normal water level.
- 11 (3) When replacing an existing bulkhead, the new alignment shall be positioned so as not to exceed a
12 maximum distance of two feet waterward of the current bulkhead alignment. To tie into a like
13 structure on the adjacent property, replacement bulkhead position shall not exceed a maximum
14 distance of five feet waterward of the current bulkhead alignment. When replacing a bulkhead
15 where lands landward of the bulkhead were lost in the last year, bulkheads shall be positioned a
16 maximum of two feet waterward of the original/existing alignment.
- 17 (4) Riprap revetments shall be positioned so as not to exceed a maximum distance of 10 feet waterward
18 of the normal high water or normal water level at any point along its alignment.

19 (b) Along shorelines with wetland vegetation, bulkheads and riprap revetments shall be positioned so that all
20 construction is to be accomplished landward of such vegetation.

21 (c) Bulkheads shall be constructed of vinyl, or steel sheet pile, concrete, stone, timber, or other suitable materials
22 approved by the Division of Coastal Management.

23 (d) Riprap revetments shall be constructed of granite, marl, concrete without exposed rebar, or other suitable materials
24 approved by the Division of Coastal Management.

25 (e) Revetment material shall be free from loose dirt or other pollutants.

26 (f) Revetment material shall be of sufficient size to prevent movement from the site by wave action or currents.

27 (g) Construction design for riprap revetments shall take into consideration the height of the area to be protected (i.e.
28 bulkhead height, escarpment height, water depth) and the alignment shall allow for a slope no flatter than three feet
29 horizontal per one foot vertical and no steeper than 1½ feet horizontal per one foot vertical.

30 (h) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead
31 or riprap revetment shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent
32 seepage of backfill materials through the structure.

33 (i) No excavation, grading or fill shall be permitted except for that which may be required for the construction of the
34 bulkhead or riprap revetment. This permit shall not authorize any excavation waterward of the approved alignment.

35 (j) Runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters.
36 Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that

1 eroded materials do no enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms,
2 sand fence, etc.).

3 (k) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan
4 shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate local government having
5 jurisdiction. This plan shall be approved prior to commencing the land-disturbing activity.

6 (l) For the purposes of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline.

7 (m) Construction authorized by this general permit shall be limited to a maximum shoreline length of 500 feet.

8
9 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*

10 *Eff. March 1, 1984;*

11 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); July 1, 2009; April 1, 2005; December 1,*
12 *1991; January 1, 1989; December 1, 1987;*

13 *Readopted Eff. February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1801

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

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

Please clarify in the rule text which permit you are referring to. Section titles do not govern the interpretation of a rule.

On line 7, the term "dune systems" is referenced "as defined in Rule .0305." Rule .0305 does not define the term "dune systems," but does refer to Primary Dunes and Frontal Dunes. Please clarify what is meant by "dune systems" in this Rule.

On line 10, "general permit" is not capitalized, but in other Rules (ex. Rule .1102), it is. Please be consistent with capitalization.

On line 10, please clarify the cross-reference to "Subchapter 07J .1100." I think this means "Subchapter 07J, Section .1100" but please correct if I am wrong.

What is an AEC, and will your regulated public know?

Is the last sentence necessary since you already stated the general permit only applies to the Ocean Erodible AEC?

In the History Note, there is a reference to "G.S. 113-229(c)." There's a paragraph "(c1)" in G.S. 113-229, is that what this is in reference to?

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

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022

1 15A NCAC 07H .1801 is readopted as published in 34:09 NCR 759 as follows:

2
3 **SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING IN THE OCEAN HAZARD**
4 **AEC**
5

6 **15A NCAC 07H .1801 PURPOSE**

7 This permit will allow beach bulldozing needed to reconstruct or repair dune systems, as defined in Rule .0305 of this
8 Subchapter. For the purpose of this general permit, "beach bulldozing" is defined as the process of moving natural
9 beach material from any point seaward of the first line of stable vegetation to repair damage to frontal or primary
10 dunes. This general permit is subject to the procedures outlined in Subchapter 07J .1100 and shall apply only to the
11 Ocean Erodible AEC. This general permit shall not apply to the Inlet Hazard AEC.
12

13 *History Note: Authority G.S. 113-229(cl); 113A-107;113A-113(b); 113A-118.1;*
14 *Eff. December 1, 1987;*
15 *Amended Eff. September 1, 2016;*
16 *Readopted Eff. February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1802

DEADLINE FOR RECEIPT: January 14, 2022

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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 call our office to inquire concerning the staff recommendation.

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

Generally to this Rule, I do not see anything telling the applicant how and when the application will be approved, or what factors CSC will consider in deciding to approve or deny a permit.

At line 5, please add a space between ".0101" and "and."

I have some concerns with the organization of the Rule. First, the last sentence of (a) seems like it would fit better in (b), considering that these are all things that "the applicant shall provide." Second, it seems to me that everything after "DCM staff shall review" on lines 13-14 in (b)(2) should be broken out as a separate paragraph, as this text does not relate to what the "applicant shall provide." I would suggest moving the last sentence of (a) into (b) as (b)(1), and then breaking off the last two sentences of (b)(2) as a separate paragraph, either a continuation of (b) or a new (c).

In (b)(1), can this be rewritten in the active tense? For example: "confirmation that the applicant has obtained a written statement, signed by the adjacent riparian property owners, stating that they have no objections to the proposed work; or"

Similarly, can (b)(2), be rewritten in the active tense? As written, it is unclear who notifies the adjacent riparian property owners.

In (b)(2), line 13, where is your statutory authority for the 10 day objection period? G.S. 113-229(d) allows owners to file objections with the Department for 30 days after service.

In (b)(2), line 14-15, what does "based on their relevance to the potential impacts of the proposed project" mean? What factors will the DCM or CRC use to determine whether the project can be approved by a General Permit?

In (b)(2), lines 16-17, what are the "Rules established for the General Permit process," and how would an applicant know whether or not his or her project exceeds them? Please cross reference them here.

In (b)(2), line 17, how will DCM notify the applicant? Certified Mail? E-mail? Phone call?

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022

In (c), just to confirm, this is a meeting and not an inspection, correct?

In the History Note, there is a reference to "G.S. 113-229(c)." There's a paragraph "(c1)" in G.S. 113-229, is that what this is in reference to?

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

1 15A NCAC 07H .1802 is readopted as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1802 APPROVAL PROCEDURES**

4 (a) The applicant shall contact the Division of Coastal Management at the address provided in 15A NCAC 07A
5 .0101 and complete an application requesting approval for development. The applicant shall provide information on
6 site location, dimensions of the project area, and their name and address.

7 (b) The applicant shall provide:

8 (1) confirmation that a written statement, signed by the adjacent riparian property owners, stating that
9 they have no objections to the proposed work, has been obtained; or

10 (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the
11 proposed work. Such notice shall instruct adjacent property owners to provide any comments on
12 the proposed development in writing for consideration by permitting officials to the DCM within
13 10 days of receipt of the notice, and state that no response shall be interpreted as no objection. DCM
14 staff shall review all comments and determine, based upon their relevance to the potential impacts
15 of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff
16 determines that the project exceeds the Rules established for the General Permit process, DCM shall
17 notify the applicant that an application for a major permit shall be required.

18 (c) No work shall begin until an on-site meeting is held with the applicant and DCM representative. All bulldozing
19 shall be completed within 30 days of the date of permit issuance.

20
21 *History Note: Authority G.S. 113-229(c); 113A-107; 113A-113(b); 113A-118.1;*
22 *Eff. December 1, 1987;*
23 *Amended Eff. September 1, 2016; January 1, 1990;*
24 *Readopted Eff. February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1803

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

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

Just to be clear, is this fee a "permit fee" or an "application fee?" In other words, is the fee due at the time of application or only upon issuance of the permit?

Please confirm the fees in this Rule do not exceed thirty-three and one-third percent of the total personnel and administrative costs incurred by the Department as required by G.S. 113A-119.1.

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

1 15A NCAC 07H .1803 is readopted as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1803 PERMIT FEE**

4 The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the
5 Department.

6
7 *History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1;*

8 *Eff. December 1, 1987;*

9 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

10 *Readopted Eff. February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1804

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

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

*In (a), you say that the permit “shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary...” G.S. 113A-119 states that the **Secretary of DEQ** “shall issue public notice” “upon receipt of **any** application...” I am having a hard time reconciling the statute and the Rule here. Is there other statutory authority for this provision? Assuming that there is statutory authority, what factors does “the Department” use to make the determination that notice and review is necessary? Who is “the Department”? I could not find a Rule in this Subchapter defining “the Department,” although I assume it’s DEQ. If so, please make clear.*

For (a), G.S. 113A-118.1(b) says that general permits are not subject to the notice provisions in 113A-119, but here these permits may be subject to 113A-119. In (a), is there a determination that the permit is not a general permit? If not, where is your statutory authority? Please clarify.

In (a), line 8, please define or delete “immediately.”

In (b), please capitalize “State” if you are only referring to North Carolina.

In (b), please add a comma after “local.”

In (c), line 10, what does “be consistent with” mean? Also, please omit “Commission Rules” and include a cross reference to the relevant Chapter, Subchapter, or Section of the NCAC.

In the History Note, there is a reference to “G.S. 113-229(c).” There’s a paragraph “(c1)” in G.S. 113-229, is that what this is in reference to?

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

Brian Liebman
Commission Counsel
Date submitted to agency: January 4, 2022

1 15A NCAC 07H .1804 is readopted as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1804 GENERAL CONDITIONS**

4 (a) This permit shall not be applicable to proposed construction where the Department has determined, based on an
5 initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are
6 unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality,
7 coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights. If a shipwreck is
8 unearthed, all work shall stop and the Division of Coastal Management shall be contacted immediately.

9 (b) This permit shall not eliminate the need to obtain any other required state, local or federal authorization.

10 (c) Development carried out under this permit shall be consistent with all local requirements, Commission rules, and
11 local Land Use Plans in effect at the time of authorization.

12
13 *History Note: Authority G.S. 113-229(cl); 113A-107;113A-113(b); 113A-118.1;*
14 *Eff. December 1, 1987;*
15 *Amended Eff. May 1, 1990;*
16 *RRC Objection due to ambiguity Eff. May 19, 1994;*
17 *Amended Eff. September 1, 2016; August 1,1998; July 1, 1994;*
18 *Readopted Eff. February 1, 2022.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1805

DEADLINE FOR RECEIPT: January 14, 2022

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 call our office to inquire concerning the staff recommendation.

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

In (a), please clarify what you are referring to by "this activity."

In (a), line 4, what are "pre-emergency slopes"? Who determines when they are followed "as closely as possible?"

In (d), how is the increase of erosion determined? Who makes the determination, and when? During or after completion of the bulldozing?

In (e), line 12, what does "in such a manner that the damage to existing vegetation is minimized" mean? What is the acceptable level of damage?

In (f), line 16, does the requirement that the applicant get "prior approval" of the DCM between 4/1 and 11/15 mean another level of approval other than the permit? If so, how is that obtained?

In (f), line 16-18, what does "in coordination with" mean in this context? Does the applicant have to receive permits from the listed agencies as well as from CRC? When does the "coordination" have to take place? Prior to or before obtaining the permit from CRC?

In (f), line 18, what does "significant adverse impact" mean?

Who "shall" approve the plan required by (g)? The Division of Energy, Mineral, and Land Resources, the "appropriate local government having jurisdiction," or CRC? Does CRC determine under what circumstances this plan will or will not be approved? If so, is that process in another rule?

In (g), line 21, omit "appropriate."

In the History Note, there is a reference to "G.S. 113-229(c)." There's a paragraph "(c1)" in G.S. 113-229, is that what this is in reference to?

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

Brian Liebman
Commission Counsel
Date submitted to agency: January 4, 2022

1 15A NCAC 07H .1805 is readopted as published in 34:09 NCR 759 as follows:

2
3 **15A NCAC 07H .1805 SPECIFIC CONDITIONS**

4 (a) The area where this activity is being performed shall maintain a slope that follows the pre-emergency slopes as
5 closely as possible so as not to endanger the public or the public's use of the beach. The movement of material by a
6 bulldozer, front-end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed
7 one foot in depth measured from the pre-activity surface elevation.

8 (b) The activity shall not exceed the lateral bounds of the applicant's property without the written permission of the
9 adjoining landowner(s).

10 (c) The permit shall not authorize movement of material from seaward of the mean low water line.

11 (d) The activity shall not increase erosion on neighboring properties.

12 (e) Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized.
13 Upon completion of the project, the fill areas shall be replanted with native vegetation, such as Sea Oats (*Uniola*
14 *paniculata*), or if outside the planting season, shall be stabilized with sand fencing until planting can occur.

15 (f) In order to minimize adverse impacts to nesting sea turtles, no bulldozing shall occur within the period of April 1
16 through November 15 of any year without the prior approval of the Division of Coastal Management, in coordination
17 with the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, and the United
18 States Army Corps of Engineers, that the work can be accomplished without significant adverse impact to sea turtle
19 nests or suitable nesting habitat.

20 (g) If one contiguous acre or more of oceanfront property is to be excavated or filled, an erosion and sedimentation
21 control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate local government
22 having jurisdiction. This plan must be approved prior to commencing the land disturbing activity.

23
24 *History Note: Authority G.S. 113-229(c); 113A-107; 113A-113(b); 113A-118.1;*

25 *Eff. December 1, 1987;*

26 *Temporary Amendment Eff. September 2, 1998;*

27 *Amended Eff. September 1, 2016; August 1, 2012 (see S.L. 2012-143, s.1.(f)); August 1, 2000;*

28 *Readopted Eff. February 1, 2022.*