

1 15A NCAC 04A .0105 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04A .0105 DEFINITIONS**

4 In addition to the terms defined in G.S. 113A-52, As used in this Chapter, the following terms definitions shall apply  
5 in this Chapter and have these meanings:

6 (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of  
7 land-disturbing activities.

8 (2) "Act" means the Sedimentation Pollution Control Act of 1973 in [G.S. 113A-50] G.S. 113A-50, et  
9 seq.

10 ~~(3)~~(2) "Adequate Erosion Control Measures, Structure, or Device ~~Devices or Structures~~" means one  
11 ~~which that~~ controls the soil material within the land area under responsible control of the person  
12 conducting the land-disturbing activity.

13 (4) "Approving Authority" means the Division or other [state] State or a local government agency that  
14 has been delegated erosion and sedimentation plan review responsibilities in accordance with the  
15 provisions of the Act.

16 ~~(5)~~(14) "Being Conducted" means a land-disturbing activity has been initiated and ~~permanent stabilization~~  
17 ~~of the site has not been completed.~~ not deemed [complete.] complete by the approving authority.

18 ~~(6)~~(3) "Borrow" means fill material ~~which that~~ is required for on-site construction ~~and that~~ is obtained  
19 from other locations.

20 ~~(7)~~(4) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.

21 ~~(8)~~(27) "Coastal counties Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden,  
22 Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow,  
23 Pamlico, Pasquotank, Pender, Perquimans, ~~Tyrrell~~ Tyrrell, and Washington.

24 ~~(9)~~(23) "Completion of Construction or Development" means that no further land-disturbing activity is  
25 required on a phase of a project except that ~~which which,~~ as determined by the approving  
26 authority, is necessary for establishing a permanent ground cover.

27 ~~(10)~~(26) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the  
28 Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality.

29 ~~(11)~~(22) "Discharge Point" ~~[Point] Point~~ or ~~[Point] Point~~ "Point of Discharge" means that point where runoff  
30 leaves a tract of ~~land.~~ land where a land-disturbing activity has occurred or enters a lake or natural  
31 watercourse.

32 ~~(12)~~ "Division" or "DEMLR" means the Division of Energy, Mineral, and Land Resources of the  
33 Department of Environmental Quality.

34 ~~(13)~~(18) "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring  
35 placed at the outlet of pipes or conduits to receive and break down the energy from high velocity  
36 flow.

- 1 (14)(5) "Ground Cover" means any natural vegetative growth or other material ~~which that~~ renders the soil  
2 surface stable against accelerated erosion.
- 3 (15)(24) "High Quality Waters" means those ~~classified as such described~~ in 15A NCAC ~~02B .0101(e(5) –~~  
4 ~~General Procedures, which is incorporated herein by reference to include further amendments.~~  
5 ~~[02B .0224] 02B .0224,~~ which is herein incorporated by reference including subsequent  
6 ~~amendments and editions. editions, and may be accessed at no cost at~~  
7 ~~<http://reports.oah.state.nc.us/>.pdf.~~
- 8 (16) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet  
9 of High Quality Waters and for the remainder of the ~~state~~ State, areas that are within one mile of  
10 and drain to HQW's.
- 11 (17) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run,  
12 branch, canal, waterway, estuary, and any reservoir, lake lake, or pond pond. ~~natural or~~  
13 ~~impounded. in which sediment may be moved or carried in suspension, and which could be~~  
14 ~~damaged by accumulation of sediment.~~
- 15 (18)(7) "Natural Erosion" means ~~erosion~~ "erosion" as defined in G.S. 113A-52(5) under natural  
16 environmental conditions undisturbed by man.
- 17 (19)(9) "Person Conducting the ~~Land Disturbing~~ Land-disturbing Activity" means any person who may be  
18 held responsible for a violation unless ~~expressly~~ provided otherwise by the ~~Sedimentation~~  
19 ~~Pollution Control Act of 1973, G.S. 113A 50 to 66, the North Carolina Administrative Code, Title~~  
20 ~~15A Chapter 4 the Act, the [Rules] rules of this Chapter, or any order or local ordinance adopted~~  
21 ~~pursuant to the these Rules or the Act. Sedimentation Pollution Control Act of 1973, G.S. 113A 50~~  
22 ~~to 69.~~
- 23 (8) "Person Who Violates" as used in G.S. 113A 64, means:  
24 (a) ~~the developer or other person who has or holds himself or herself out as having financial~~  
25 ~~or operational control over the land disturbing activity; or~~  
26 (b) ~~the landowner or person in possession or control of the land when he has directly or~~  
27 ~~indirectly allowed the land disturbing activity or has directly benefitted from it or he has~~  
28 ~~failed to comply with any provision of the Sedimentation Pollution Control Act of 1973,~~  
29 ~~G.S. 113A 50 to 66, the North Carolina Administrative Code, Title 15A, Chapter 4, or~~  
30 ~~any order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act~~  
31 ~~of 1973, G.S. 113A 50 to 66, as imposes a duty upon him.~~
- 32 (20) "Person Who [Violates,] Violates, or [“Violator”,] “Violator,” as used in G.S. 113A-64, means:  
33 any landowner or other person who has financial or operational control over the land-disturbing  
34 activity; or who has directly or indirectly allowed the activity, and who has failed to comply with  
35 any provision of the Act, the [Rules] rules of this Chapter, or any order or local ordinance adopted  
36 pursuant to the Act, as it imposes a duty upon that [person] person.
- 37 (10) "Phase of Grading" means one of two types of grading, rough or fine.

- 1 (21)(11) "Plan" means an erosion and sedimentation control plan.
- 2 (22)(12) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been  
3 or is being transported off the site of the land-disturbing activity or into a lake or natural  
4 watercourse.
- 5 (23) "Storm Drainage Facilities" means the system of inlets, conduits, channels, [~~ditches~~] ditches, and  
6 appurtenances that serve to collect and convey stormwater through and from a given drainage  
7 area.
- 8 (24) ~~"Storm Water~~ "Stormwater Runoff" means the ~~direct~~ runoff of water resulting from precipitation  
9 in any form.
- 10 (25)(20) ~~"Ten-Year~~ "Ten-Year Storm" means ~~the surface runoff resulting from a rainfall~~ of an intensity that,  
11 based on historical data, is expected [~~predicted~~] predicted, by a method acceptable to the  
12 approving authority, to be equaled or exceeded, on the average, once in 10 years, and of a duration  
13 that which will produce the maximum peak rate of runoff ~~for~~ from the watershed of interest under  
14 average antecedent wetness conditions.
- 15 (26)(28) "Twenty-five Year Storm" [~~Storm~~] or [~~Q25~~] "Q25" means ~~the surface runoff resulting from a~~  
16 ~~rainfall of an intensity expected that, based on historical data, is~~ [~~predicted~~] predicted, by a method  
17 acceptable to the approving authority, to be equaled or exceeded, on the average, once in 25 years,  
18 and of a duration that will produce the maximum peak rate of runoff from the watershed of interest  
19 under average antecedent wetness conditions.
- 20 (27)(15) "Uncovered" means ~~the removal of~~ having had ground cover removed from, on, or above the soil  
21 surface.
- 22 (28)(16) "Undertaken" means the initiating of any ~~activity or phase of activity which~~ activity or phase of  
23 activity that results or will result in a change in the ground cover or topography of a tract of land.
- 24 (29)(21) "Velocity" means the ~~average velocity~~ speed of flow through ~~a~~ the cross-section cross-section  
25 perpendicular to the direction of the main channel at the peak flow of the storm of ~~interest.~~ interest  
26 but not exceeding bank full flows. ~~The cross-section of the main channel shall be that area defined~~  
27 ~~by the geometry of the channel plus the area of flow below the flood height defined by vertical~~  
28 ~~lines at the main channel banks.~~ ~~Overload flows are not to be included for the purpose of~~  
29 ~~computing velocity of flow.~~
- 30 (30)(17) "Waste" means surplus materials resulting from on-site construction and to be disposed of at other  
31 locations offsite.

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33 *History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire*  
34 *on July 11, 1992;*  
35 *Filed as a Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire*  
36 *on April 29, 1991;*  
37 *Statutory Authority G.S. 113A-52; 113A-54;*  
38 *Eff. November 1, 1984;*

1                    *Amended Eff. May 1, 1990;*  
2                    *ARRC Objection Lodged November 14, 1990;*  
3                    *ARRC Objection Removed December 20, 1990;*  
4                    *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; April 1, 1992; January*  
5                    *1, 1991;*  
6                    *Readopted Eff. April 1, 2020.*

1 15A NCAC 04B .0106 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES**

4 ~~(a)~~ An erosion and sedimentation control plan developed pursuant to this Chapter shall ~~may be disapproved~~  
5 ~~pursuant to 15A NCAC 4B .0118 if the plan fails~~ be designed to address the ~~following~~ following control objectives:

- 6 (1) Identify Critical ~~Areas~~ Areas. Identify site areas subject to ~~severe~~ accelerated erosion, and off-site  
7 areas ~~especially~~ vulnerable to damage from erosion and sedimentation.
- 8 (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- 9 (3) Limit Time of Exposure. Limit exposure to the shortest ~~feasible time~~ time specified in G.S.  
10 113A-57, the rules of this Chapter, or as directed by the approving authority.
- 11 (4) Control Surface Water. Control surface water ~~run-off~~ originating upgrade of exposed areas in  
12 order to reduce erosion and sediment loss during exposure.
- 13 (5) Control Sedimentation. All land-disturbing activity ~~is to~~ shall be planned ~~and conducted so as to~~  
14 prevent off-site sedimentation damage.
- 15 (6) Manage ~~Storm Water~~ Stormwater Runoff. ~~When the increased~~ Plans shall be designed so that any  
16 increase in velocity of ~~storm water~~ stormwater runoff resulting from a land-disturbing activity  
17 ~~causes will not result in~~ accelerated erosion of the receiving ~~watercourse~~ stormwater conveyance  
18 [within the project boundary,] or at the point of discharge. plans Plans shall include measures to  
19 control the velocity prevent accelerated erosion within the project boundary and at to the point of  
20 discharge.

21 ~~(b) When deemed necessary by the approving authority a preconstruction conference may be required.~~

22  
23 *History Note: Authority G.S. 113A-54(d)(4); 113A-54.1;*

24 *Eff. February 1, 1976;*

25 *Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980;*

26 *Readopted Eff. April 1, 2020.*

1 15A NCAC 04B .0107 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY**

4 (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with ~~the G.S. 113A-~~  
5 ~~57. 113A-57~~ and the standards established in these Rules.

6 (b) ~~Pursuant to G.S. 113A-57(3), Unless where otherwise specified in the Act or the rules of this Chapter,~~  
7 ~~provisions for [for-a] permanent ground cover sufficient to restrain erosion must shall be accomplished within 15~~  
8 ~~working days or 90 calendar days following completion of construction or development, development, whichever~~  
9 ~~period is shorter, except as provided in 15A NCAC 4B .0124(e).~~

10 (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan ~~must shall be both~~  
11 ~~filed and approved by the agency having jurisdiction. approving authority.~~

12 (d) ~~All individuals that obtain a State or locally-approved erosion and sedimentation control [plan,] plan that disturb~~  
13 ~~one acre or more of [land,] land are required by the U.S. Environmental Protection Agency to obtain coverage under~~  
14 ~~the N.C. Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The~~  
15 ~~requirements in NCG01 for temporary or permanent ground cover may differ from the ground cover, or~~  
16 ~~stabilization, requirements in this Chapter. It is the responsibility of the person conducting the land-disturbing~~  
17 ~~activity to ensure compliance with the NCG01.~~

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19 *History Note:* Authority G.S. 113A-54(d)(4); 113A-57; ~~113A-57(3)(4);~~  
20 *Eff. February 1, 1976;*  
21 *Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980;*  
22 *Readopted Eff. April 1, 2020.*  
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1 15A NCAC 04B .0108 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD**

4 Except where otherwise specified in this Chapter, erosion ~~Erosion~~ and sedimentation control measures, structures,  
5 and devices shall be ~~so~~ planned, designed, and constructed to provide protection from the ~~run-off~~ **runoff** of ~~that a 10~~  
6 year ~~10-year~~ storm ~~that~~ **which** produces the maximum peak rate of ~~run-off~~ **runoff** as calculated according to  
7 procedures in the United States Department of ~~Agriculture~~ **Agriculture**, Soil ~~Natural Resources~~ Conservation  
8 Service's "National Engineering Field ~~Manual~~ **Handbook 630** [~~Handbook 630~~] **Handbook 630**." This document  
9 is herein incorporated by reference including subsequent amendments and editions, and may be accessed at no cost  
10 at <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063> ~~or~~  
11 according to procedures adopted by any other agency of this state or the United States or any generally recognized  
12 organization or association. Other methodologies ~~can~~ **may** be used if based on generally accepted engineering  
13 standards that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving  
14 authority shall determine acceptability of an alternative methodology based upon a showing that the runoff model  
15 used was based on observed data in agreement with the predictive model.

16  
17 *History Note: Authority G.S. 113A-54;*  
18 *Eff. February 1, 1976;*  
19 *Amended Eff. November 1, 1984; July 1, 1978;*  
20 *Readopted Eff. April 1, 2020.*  
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1 15A NCAC 04B .0109 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0109 ~~STORM—WATER~~ STORMWATER OUTLET [DISCHARGE—POINT]**  
4 **PROTECTION**

5 (a) Persons shall ~~conduct~~ provide a design for the land-disturbing land-disturbing activity so that the ~~post~~  
6 ~~construction~~ post-construction velocity of the ~~ten-year~~ ten-year storm ~~run-off~~ [run-off] runoff in the receiving  
7 ~~waterecourse~~ stormwater conveyance ~~to, and including,~~ the discharge ~~point~~ point, does not exceed the greater of:

- 8 (1) the velocity established by the table in Paragraph (d) of this Rule; or  
9 (2) the projected velocity of the ~~ten-year~~ ten-year storm ~~run-off~~ runoff in the receiving ~~waterecourse~~  
10 stormwater conveyance prior to development.

11 If the projected conditions in Subparagraphs (1) or (2) of this Paragraph cannot be met, then the receiving  
12 ~~waterecourse~~ stormwater conveyance ~~to, and including~~ and including, the discharge point shall be designed and  
13 constructed to withstand the expected velocity anywhere the velocity exceeds the "~~prior to development~~" velocity  
14 prior to development by ten percent.

15 (b) ~~Acceptable Management Measures.~~ ~~The commission recognizes that management of storm water run-off to~~  
16 ~~control downstream erosion constitutes a developing technology and consequently invites the use of innovative~~  
17 ~~techniques shown to produce successful results. Alternatives include: [The]~~ When conditions of this Rule can be  
18 met, the Commission shall allow alternative measures to control downstream erosion, including:

- 19 (1) ~~Compensate~~ compensation for increased ~~run-off~~ runoff from areas rendered impervious by  
20 designing measures to promote ~~infiltration.~~ Infiltration; infiltration; ~~or~~  
21 (2) ~~Avoid~~ avoiding increases in ~~storm water~~ stormwater discharge velocities by using vegetated or  
22 roughened swales and waterways in place of closed drains and paved ~~sections.~~ sections; ~~or~~  
23 (3) ~~Provide~~ providing energy dissipators at storm drainage outlets to reduce flow velocities to the  
24 discharge ~~points.~~ points; ~~or~~  
25 (4) ~~Protect~~ protecting ~~waterecourses~~ stormwater conveyances subject to accelerated erosion by  
26 improving cross sections ~~and/or~~ or providing erosion-resistant lining.

27 (c) ~~Exceptions.~~ This Rule shall not apply when ~~storm water~~ stormwater discharge velocities will not ~~create an~~  
28 ~~erosion problem~~ result in accelerated erosion in the receiving ~~waterecourse.~~ stormwater conveyance or discharge  
29 point.

30 (d) The following table sets maximum permissible velocity for storm water discharges:

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Material	Maximum Permissible	
	Velocities <del>For</del> in feet and Meters Per Second*	
	F.P.S.	M.P.S.
36 Fine Sand (noncolloidal)	2.5	.8
37 Sandy Loam (noncolloidal)	2.5	.8
38 Silt Loam (noncolloidal)	3.0	.9
39 Ordinary Firm Loam	3.5	1.1
40 Fine Gravel	5.0	1.5
41 Stiff Clay (very colloidal)	5.0	1.5

1	Graded, Loam to Cobbles (noncolloidal)	5.0	1.5
2	Graded, Silt to Cobbles (colloidal)	5.5	1.7
3	Alluvial Silts (noncolloidal)	3.5	1.1
4	Alluvial Silts (colloidal)	5.0	1.5
5	Coarse Gravel (noncolloidal)	6.0	1.8
6	Cobbles and Shingles	5.5	1.7
7	Shales and Hard Pans	6.0	1.8

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9 ~~Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil~~  
10 ~~Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for~~  
11 ~~slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.~~

12  
13 \*For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous  
14 channels, and by 0.8 for highly sinuous channels. Source: Adapted from recommendations by Special Committee on  
15 Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment.

16  
17 *History Note:* Authority G.S. ~~113A-54(b)(e); 113A-54(b); 113A-54(c);~~  
18 *Eff. February 1, 1976;*  
19 *Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978;*  
20 *Readopted Eff. April 1, 2020.*  
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1 15A NCAC 04B .0110 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0110 BORROW AND WASTE AREAS**

4 If the same person conducts the ~~land-disturbing~~ land-disturbing activity and any related borrow or waste activity, the  
5 related borrow or waste activity shall constitute part of the ~~land-disturbing~~ land-disturbing activity, unless  
6 the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated  
7 by the Division of ~~Solid~~ Waste Management. If the ~~land-disturbing~~ land-disturbing activity and any related borrow  
8 or waste activity are not conducted by the same person, they shall be considered by the approving authority as  
9 separate land-disturbing activities.

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11 *History Note:* Authority G.S. ~~74-67;~~ 113A-54(b); 130A-166.21;

12 *Eff. February 1, 1976;*

13 *Amended Eff. May 1, 1990; November 1, 1984;*

14 *Readopted Eff. April 1, 2020.*

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1 15A NCAC 04B .0111 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0111 ACCESS AND HAUL ROADS**

4 Except for public roads, temporary ~~Temporary~~ access and haul roads ~~roads, other than public roads,~~ constructed or  
5 used in connection with any land-disturbing activity shall be considered a part of such the activity.

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7 *History Note: Authority G.S. 113A-54;*

8 *Eff. February 1, 1976;*

9 *Readopted Eff. April 1, 2020.*

1 15A NCAC 04B .0112 is readopted with changes as published in the 34:02 NCR 120-135 as follows:

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3 **15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES**

4 ~~Land-disturbing~~ Land-disturbing activity in connection with construction in, on, over, or under a lake or natural  
5 watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a  
6 stream forms an essential part of the proposed activity, the relocation shall minimize **unnecessary** changes in the  
7 stream flow characteristics.

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9 *History Note: Authority G.S. 113A-54;*

10 *Eff. February 1, 1976;*

11 *Amended Eff. November 1, 1984;*

12 *Readopted Eff. April 1, 2020.*

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1 15A NCAC 04B .0113 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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**15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE**

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the Act, ~~these [Rules]~~ the rules of this Chapter, or any order or local ordinance adopted pursuant to the Act. After site development, the land owner or person in possession or control of the land shall install ~~and/or~~ and maintain all ~~necessary~~ permanent erosion and sediment control measures, except those measures installed within a road or street right of way or easement ~~[easement.]~~ accepted for maintenance by a governmental agency.

*History Note: Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; July 1, 1978;  
Readopted Eff. April 1, 2020.*

1 15A NCAC 04B .0115 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0115 ADDITIONAL MEASURES**

4 Whenever the ~~commission~~ Commission or a local government determines that ~~significant~~ accelerated erosion and  
5 sedimentation continues despite the installation of protective practices, they shall direct the person conducting the  
6 ~~land-disturbing~~ land-disturbing activity ~~will be required to and~~ shall to take additional protective ~~action.~~ action  
7 necessary to achieve compliance with the conditions specified in the Act or the rules of this Chapter.

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9 *History Note: Authority G.S. 113A-54(b); G.S. 113A-54.1(b);*

10 *Eff. February 1, 1976;*

11 *Amended Eff. November 1, 1984;*

12 *Readopted Eff. April 1, 2020.*

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1 15A NCAC 04B .0118 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04B .0118 APPROVAL OF PLANS**

4 (a) Persons conducting land-disturbing activity on a tract ~~which that~~ covers one or more acres shall file ~~three copies~~  
5 ~~of~~ the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission  
6 if no local government has ~~jurisdiction~~, jurisdiction. The approving ~~[agency]~~ authority shall act on the plan at least  
7 30 days prior to beginning such activity and within 30 days of receipt of the plan or the plan shall be deemed approved.  
8 ~~shall keep another A paper~~ copy of the approved plan shall be kept on file at the job site. After approving a plan, if  
9 the Commission or local government determines, either upon review of such plan or ~~on~~ upon inspection of the job  
10 site, that ~~a significant risk of accelerated erosion or off-site sedimentation exists~~, the plan is inadequate to meet the  
11 requirements of the Act and of this Chapter, the Commission or local government shall require a revised plan. Pending  
12 the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate  
13 approving authority.

14 (b) Commission Approval:

15 (1) The Commission shall review plans for all land-disturbing activity over which the Commission has  
16 exclusive jurisdiction ~~by statute pursuant to G.S. 113A-56~~, and all other land-disturbing activity ~~if~~  
17 where no local government has jurisdiction.

18 (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall  
19 notify the person submitting the plan in writing that it has been:

20 (A) ~~approved~~, approved;

21 (B) approved with ~~modification~~, modification: [or,] or

22 (C) ~~approved with performance reservations~~, or

23 (C) ~~(D)~~ disapproved.

24 (3) The Commission's ~~disapproval~~, approval with [modification,] modification or performance  
25 reservations disapproval of any proposed ~~plan~~, plan shall entitle the person submitting the plan to  
26 an administrative hearing in accordance with the provisions of G.S. 150B-23. ~~(This Section does~~  
27 ~~not modify any other rights to a contested case hearing which may arise under G.S. 150B-23).~~

28 (4) Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed  
29 by the Commission ~~[Appeals of local government decisions shall be conducted]~~ pursuant to G.S.  
30 113A-61(e).

31 (5)(4) Any plan submitted for a land-disturbing activity for which an environmental document is required  
32 by the North Carolina Environmental Policy ~~Act~~ Act, G.S. [113] 113, Article 1, [as set forth in  
33 Article 1 or] [G.S. 113] and [the rules of this] the Department rules [as] set forth in 15A NCAC 01C  
34 shall be deemed incomplete until a complete an environmental document is available for review.  
35 The Commission shall promptly notify the person submitting the plan that the ~~30-day~~ 30-day time  
36 limit for review of the plan pursuant to Subparagraph ~~(b)(2)~~ (2) of this Rule Paragraph shall not  
37 begin until a complete the environmental document is available for review.

1 (c) ~~Erosion~~ An erosion and sedimentation control ~~plans may~~ plan shall ~~also~~ be disapproved unless ~~they include the~~  
2 application includes an authorized statement of financial responsibility and documentation of property ownership.  
3 This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her  
4 ~~attorney in fact.~~ attorney-in-fact. The statement shall include the mailing and street addresses of the principal place  
5 of business of the person financially responsible and of the owner of the land or their registered agents.

6 (d) Local Government Approval:

7 (1) Local Governments administering erosion and sedimentation control programs shall develop and  
8 publish procedures for approval of plans. ~~Such~~ The procedures shall ~~respect~~ follow applicable laws,  
9 ordinances, and rules, and shall contain procedures for appeal consistent with the local government's  
10 organization and operations.

11 (2) Appeals of local government decisions shall be conducted pursuant to G.S. 113A-61(c).

12 ~~(2)(3)~~ The ~~secretary~~ Secretary shall appoint ~~such employee(s)~~ employees of the Department as he or she  
13 deems necessary to consider appeals from the local government's final disapproval or modification  
14 of a plan. Within 30 days following receipt of notification of the appeal, ~~such~~ the departmental  
15 employee shall complete the review and shall notify the local government and the person appealing  
16 the local government's decision that the plan ~~should~~ be approved, approved with modifications,  
17 ~~approved with performance reservations,~~ or disapproved.

18 ~~(3)(4)~~ If ~~either the local government or~~ the person submitting the plan disagrees with the decision reached  
19 by ~~an employee of the Department~~ a Departmental employee, ~~then~~ he or she may appeal the decision  
20 to the Commission by filing notice within 15 days with the Director of the Division of Energy,  
21 Mineral, and Land Resources. The ~~director~~ Director shall make the proposed erosion control plan  
22 and the records relating to the local government's and ~~departmental employees'~~ Departmental  
23 employee's review, available to an ~~appeals review~~ erosion and sedimentation control plan review  
24 committee consisting of three members of the Commission appointed by the ~~chairman.~~ Chairman.  
25 Within 10 days following receipt of the notification of appeal, the ~~appeals~~ erosion and sedimentation  
26 control plan review committee shall notify the local government and the person submitting the plan  
27 of a place and time for a hearing for consideration of the ~~appeal,~~ appeal, ~~and shall afford both~~ Both  
28 parties shall be given at least 15 days' notice of the hearing and an opportunity to present written or  
29 oral arguments. The ~~appeals~~ erosion and sedimentation plan review committee shall notify both  
30 parties of its decision concerning the approval, disapproval, or modification of the proposed plan  
31 within 30 days following ~~such~~ the hearing.

32 (e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under  
33 G.S. 113A-54.1(c) gives rise to a right to ~~a contested case under G.S. 150B, Article 3.~~ an appeal to the Commission.  
34 An applicant desiring to appeal the ~~Director's~~ Commission's disapproval of an erosion control plan shall file with the  
35 Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3. ~~The general time limitation~~  
36 ~~for filing a petition, and the commencement of the time limitation, shall be as set out in G.S. 150B 23(f).~~ Contested

1 ~~cases shall be conducted under the procedures of G.S. 150B, Article 3 and applicable rules of the Office of~~  
2 ~~Administrative Hearings. The Commission shall make the final decision on any contested case under G.S. 150B-36.~~

3  
4 *History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire*  
5 *on July 11, 1992;*

6 *Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-57; 113A-60(a); 113A-61(b);*  
7 *113A-61(c);*

8 ~~*150B, Article 3; 150B-23;*~~

9 *Eff. February 1, 1976;*

10 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); June 1, 1995; February 1, 1992; May 1,*  
11 *1990; August 1, 1988;*

12 *Readopted Eff. April 1, 2020.*

13

1 15A NCAC 04B .0120 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS**

4 (a) The Commission, Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality,  
5 or local government may require written ~~statements~~, statements related to items including ~~[but not limited to]~~  
6 [NOVs] Notices of Violation (NOVs) or Stop-Work ~~orders, [orders]~~ or the filing of reports under oath, such as self-  
7 inspection or engineering/design reports, concerning ~~land-disturbing~~ land-disturbing activity-activity, as necessary to  
8 carry out duties specified in the Act.

9 (b) Inspection of sites shall be carried out by the staff of Department of ~~Environment, Health, and Natural~~  
10 ~~Resources~~ Environmental Quality Quality, representatives of a delegated local government, or other qualified  
11 persons authorized by the Commission or Department of ~~Environment, Health, and Natural Resources~~  
12 Environmental Quality as necessary to carry out ~~its~~ its duties ~~under~~ specified in the Act.

13 (c) No person shall refuse entry or access to any ~~representative of~~ person authorized by the Commission or any  
14 representative of a delegated local government who requests entry for purposes of inspection.

15 ~~[(b)](d)When a preconstruction conference is proposed pursuant to G.S. 113A-51, [it shall be specified on the plans.]~~  
16 the request shall be set forth in the plan.

17  
18 *History Note: Authority G.S. 113A-51; 113A-54(b); 113A-58; 113A-61.1;*  
19 *Eff. February 1, 1976;*  
20 *Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984;*  
21 *Readopted Eff. April 1, 2020.*

1 15A NCAC 04B .0124 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS**

4 (a) Uncovered areas in HQW zones shall be limited ~~at any time~~ to a maximum total area of 20 acres within the  
5 boundaries of the ~~tract, tract~~ of 20 acres. Only ~~the portion~~ of the land-disturbing activity within a HQW zone shall  
6 be governed by this Rule. Larger areas may be uncovered within the boundaries of the tract with the written  
7 approval of the ~~Director~~. Director upon providing engineering justification with a construction sequence that  
8 considers phasing, limiting exposure, weekly submitted self-inspection [reports] reports, and [more conservative]  
9 more conservative design than the 25-year storm. The Director may also ~~[include]~~ stipulate the inclusion of other  
10 conditions in the plan as necessary based on specific site conditions.

11 (b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be ~~so~~ planned,  
12 ~~designed~~ designed, and constructed to provide protection from the runoff of the ~~25-year~~ 25-year storm ~~which that~~  
13 produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of  
14 Agriculture Soil Conservation Agriculture, Natural Resources Conservation Service's "National Engineering Field  
15 Manual Handbook 630 for Conservation Practices" Practices. ~~or according to procedures adopted by any other~~  
16 ~~agency of this state or the United States or any generally recognized organization or association. Other~~  
17 methodologies [can] may be used if based on generally accepted engineering standards that are shown to the  
18 Division to be equivalent to or improved over the procedures in Handbook 630. The Division shall determine  
19 acceptability of an alternative methodology based upon a showing that the runoff model used was based on observed  
20 data in agreement with the predictive model.

21 (c) ~~Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling~~  
22 ~~efficiency of at least 70 percent for the 40 micron (0.04mm) size soil particle transported into the basin by the runoff~~  
23 ~~of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the~~  
24 ~~United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for~~  
25 ~~Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or~~  
26 ~~any generally recognized organization or association.~~

27 (c) In order to provide for water quality protection in HQW [Zones,] zones, sediment basins that discharge to those  
28 areas shall be designed and constructed to meet the following criteria:

29 (1) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0  
30 acre;

31 (2) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;

32 (3) have a minimum surface area of 325 square feet per cfs of [Q<sub>25</sub> peak] Q25 peak inflow;

33 (4) have a minimum dewatering time of 48 hours; and [and,]

34 (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles  
35 [are] shall be sufficient.

36 (d) Upon a written request of the applicant, the Director may allow alternative design or control measures in lieu of  
37 meeting the conditions required in Subparagraphs (c)(2) through (c)(5) of this Rule if the applicant demonstrates that

1 meeting all of those conditions will result in design or operational hardships and that the alternative measures will  
2 provide an equal or more effective level of erosion and sedimentation control on the site. Alternative measures may  
3 [include, but are not limited to,] include quicker application of ground cover, use of sediment [floculants]  
4 floculants, and use of enhanced ground cover practices.

5 ~~(c)(4)~~ Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no  
6 steeper than two horizontal to one vertical if a vegetative cover is used for ~~stabilization~~ stabilization, unless soil  
7 conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural ~~devices~~  
8 devices, or other forms of acceptable ditch liners, liners proven to the Division as being effective in restraining  
9 accelerated erosion, [and acceptable to the Division;] ~~In any event, the~~ The angle for side slopes shall be sufficient  
10 to restrain accelerated erosion.

11 ~~(e) Pursuant to G.S. 113A-57(3) provisions for a ground cover sufficient to restrain erosion must be provided for~~  
12 ~~any portion of a land disturbing activity in a HQW zone within 15 working days or 60 calendar days following~~  
13 ~~completion of construction or development, whichever period is shorter.~~

14 *History Note: Authority G.S. 113A-54(b); 113A-54(c)(1);*  
15 *Eff. May 1, 1990;*  
16 *Readopted Eff. April 1, 2020.*  
17  
18

1 15A NCAC 04B .0125 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS**

4 (a) ~~Unless otherwise provided, the~~ The width of a buffer zone ~~is~~ shall be measured from the edge of the water to the  
5 nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing  
6 natural or artificial means of confining visible siltation.

7 (b) ~~The 25-foot~~ A 25-foot minimum ~~width~~ width ~~for an~~ undisturbed buffer ~~zone~~ shall be protected adjacent to  
8 ~~designated~~ designated trout waters designated by the Environmental Management Commission. The 25-foot width buffer zone  
9 shall be measured horizontally from the top of the bank. bank [To] to the nearest area of disturbance.

10 (c) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing  
11 activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ~~ten~~ 10 percent of  
12 the total length of the buffer zone within the tract ~~to be~~ and distributed such that there is not more than 100 linear  
13 feet of disturbance in each 1000 linear feet of buffer zone. ~~Larger areas may be disturbed with the written approval~~  
14 ~~of the Director.~~

15 (d) ~~[If, upon]~~ Upon a written request of the applicant, the Director may allow a larger area of disturbance than  
16 provided in Paragraph (c) of this Rule if the applicant demonstrates that additional measures will be utilized that will  
17 achieve an [equally effective] equal or more effective level of erosion and sedimentation control than would be  
18 achieved had the specifications prescribed in Paragraph (c) of this Rule been followed.

19 ~~(d)(e)~~ (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to ~~designated~~ trout waters that is  
20 predicted by the [plan] approving authority to will cause adverse stream temperature fluctuations, violations in these  
21 waters as set forth in 15A NCAC 2B 02B .0211 "Fresh Surface Water Classification and Standards", [Standards] in  
22 these [for Class C] waters. which is hereby incorporated by reference including subsequent amendments and  
23 editions. [Copies of 15A NCAC 02B .0211 are available at <https://www.oah.state.nc.us/> at no cost.]

24  
25 *History Note: Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);*  
26 *Eff. May 1, 1990;*  
27 *Amended Eff. February 1, 1992;*  
28 *Readopted Eff. April 1, 2020.*  
29

1 15A NCAC 04B .0127 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04B .0127 PLAN APPROVAL CERTIFICATE OF PLAN APPROVAL**

4 ~~(a) Approval of a sedimentation and erosion control plan will be contained in a document called "Certificate of Plan~~  
5 ~~Approval" to be issued by the Commission.~~

6 ~~(b) The Certificate of Plan Approval must be posted at the primary entrance of the job site before construction~~  
7 ~~begins.~~

8 (a) The Commission shall issue a [~~"Certificate of Approval" or a similar written documentation of approval that is~~  
9 ~~provided~~ certificate of plan approval to the applicant by hard copy or electronic submittal. Before construction  
10 begins, that documentation shall be posted at the primary entrance of the job site or other location that is easily  
11 observable to the public and inspectors.

12 ~~(b)(e) No person may initiate a land-disturbing activity until notifying the agency approving authority that issued~~  
13 ~~the Plan Approval of the date that the land-disturbing activity will begin.~~

14

15 *History Note: Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29,*  
16 *1991;*

17 *Authority G.S. 113A-54(b);*

18 *ARRC Objection Lodged November 14, 1990;*

19 *ARRC Objection Removed December 20, 1990;*

20 *Eff. January 1, 1991;*

21 *Amended Eff. July 1, 2000;*

22 *Readopted Eff. April 1, 2020.*

23

1 15A NCAC 04B .0130 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04B .0130 EMERGENCIES**

4 Any person who conducts an emergency repair essential to protect human ~~life~~, life that results in ~~constitutes~~ a  
5 land-disturbing activity within the meaning of G.S. 113A-52(6) and these ~~Rules~~:Rules shall take the following  
6 actions:

7 (1) ~~shall~~ notify the Commission Director, or his or her designee, of ~~such~~ the repair as soon as  
8 ~~reasonably~~ possible, but ~~in no event~~ later than five working days after the emergency ~~ends;~~ [has  
9 ended, as determined by the Division,] and

10 (2) ~~shall~~ take all reasonable measures necessary to protect all public and private property from  
11 damage caused by the ~~such~~ repair as soon as ~~reasonably~~ possible, but ~~in no event~~ later than 15  
12 working days after the emergency ends.

13

14 *History Note: Authority G.S. 113A-52.01(4); 113A-54(b);*

15 *Eff. October 1, 1995;*

16 *Readopted Eff. April 1, 2020*

1 15A NCAC 04B .0131 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0131 SELF-INSPECTIONS**

4 Where inspections are required by G.S. 113A-54.1(e), the following apply:

5 (1) The person who performs the inspection shall make a record of the site inspection by documenting  
6 the following items:

7 (a) ~~all of the erosion and sedimentation control measures, practices and devices, as called for~~  
8 ~~in a construction sequence consistent with the approved erosion and sedimentation~~  
9 ~~control plan, including but not limited to sedimentation control basins, sedimentation~~  
10 ~~traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains,~~  
11 ~~rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage~~  
12 ~~facilities, energy dissipaters, and stabilization methods of open channels, have initially~~  
13 ~~been installed and do not significantly deviate (as defined in Sub item (1)(e) of this Rule)~~  
14 ~~from the locations, dimensions and relative elevations shown on the approved erosion~~  
15 ~~and sedimentation plan. Such documentation shall be accomplished by initialing and~~  
16 ~~dating each measure or practice shown on a copy of the approved erosion and~~  
17 ~~sedimentation control plan or by completing, dating and signing an inspection report that~~  
18 ~~lists each measure, practice or device shown on the approved erosion and sedimentation~~  
19 ~~control plan. This documentation is required only upon the initial installation of the~~  
20 ~~erosion and sedimentation control measures, practices and devices as set forth by the~~  
21 ~~approved erosion and sedimentation control plan or if the measures, practices and devices~~  
22 ~~are modified after initial installation;~~

23 (b) ~~the completion of any phase of grading for all graded slopes and fills shown on the~~  
24 ~~approved erosion and sedimentation control plan, specifically noting the location and~~  
25 ~~condition of the graded slopes and fills. Such documentation shall be accomplished by~~  
26 ~~initialing and dating a copy of the approved erosion and sedimentation control plan or by~~  
27 ~~completing, dating and signing an inspection report;~~

28 (c) ~~the location of temporary or permanent ground cover, and that the installation of the~~  
29 ~~ground cover does not significantly deviate (as defined in Sub item (1)(e) of this Rule)~~  
30 ~~from the approved erosion and sedimentation control plan. Such documentation shall be~~  
31 ~~accomplished by initialing and dating a copy of the approved erosion and sedimentation~~  
32 ~~control plan or by completing, dating and signing an inspection report;~~

33 (d) ~~that maintenance and repair requirements for all temporary and permanent erosion and~~  
34 ~~sedimentation control measures, practices and devices have been performed. Such~~  
35 ~~documentation shall be accomplished by completing, dating and signing an inspection~~  
36 ~~report (the general storm water permit monitoring form may be used to verify the~~  
37 ~~maintenance and repair requirements); and~~

1           ~~(e) any significant deviations from the approved erosion and sedimentation control plan,~~  
2           ~~corrective actions required to correct the deviation and completion of the corrective~~  
3           ~~actions. Such documentation shall be accomplished by initialing and dating a copy of the~~  
4           ~~approved erosion and sedimentation control plan or by completing, dating and signing an~~  
5           ~~inspection report. A significant deviation means an omission, alteration or relocation of~~  
6           ~~an erosion or sedimentation control measure that prevents the measure from performing~~  
7           ~~as intended.~~

8           ~~(2) The documentation, whether on a copy of the approved erosion and sedimentation control plan or~~  
9           ~~an inspection report, shall include the name, address, affiliation, telephone number, and signature~~  
10           ~~of the person conducting the inspection and the date of the inspection. Any relevant licenses and~~  
11           ~~certifications may also be included. Any documentation of inspections that occur on a copy of the~~  
12           ~~approved erosion and sedimentation control plan shall occur on a single copy of the plan and that~~  
13           ~~plan shall be made available on the site. Any inspection reports shall also be made available on~~  
14           ~~the site.~~

15           ~~(3) The inspection shall be performed during or after each of the following phases of a plan:~~

16           ~~(a) installation of perimeter erosion and sediment control measures;~~

17           ~~(b) clearing and grubbing of existing ground cover;~~

18           ~~(c) completion of any phase of grading of slopes or fills that requires provision of temporary~~  
19           ~~or permanent ground cover pursuant to G.S. 113A-57(2);~~

20           ~~(d) completion of storm drainage facilities;~~

21           ~~(e) completion of construction or development; and~~

22           ~~(f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion~~  
23           ~~or until the financially responsible party has conveyed ownership or control of the tract of~~  
24           ~~land for which the erosion and sedimentation control plan has been approved and the~~  
25           ~~agency that approved the plan has been notified. If the financially responsible party has~~  
26           ~~conveyed ownership or control of the tract of land for which the erosion and~~  
27           ~~sedimentation control plan has been approved, the new owner or person in control shall~~  
28           ~~conduct and document inspections quarterly until the establishment of permanent ground~~  
29           ~~cover sufficient to restrain erosion.~~

31 All land-disturbing activities required to have an approved erosion and sedimentation control plan under [G.S.  
32 113A-54.1] G.S. 113A-54.1(e) shall conduct self-inspections for initial installation or modification of any erosion  
33 and sedimentation control devices and practices described in an approved plan. In addition, weekly and rain-event  
34 self-inspections are required by federal regulations, that are implemented through the NPDES Construction General  
35 Permit No. NCG 010000.

1 (1) For self-inspections required pursuant to ~~[G.S. 113A-54.1,]~~ G.S. 113A-54.1(e), the inspection  
2 shall be performed during or after ~~[the implementation of]~~ each of the following ~~[components]~~  
3 phases of ~~[a project;]~~ the plan:

4 (a) initial installation of ~~[land disturbance, perimeter]~~ erosion, erosion and sediment control  
5 measures;

6 (b) clearing and grubbing of existing ground cover;

7 (c) installation completion of ~~[temporary or permanent sediment and erosion control~~  
8 measures to include] any grading that requires ground ~~[cover]~~ cover; ~~[pursuant to G.S.~~  
9 113A-57(2);]

10 ~~[(d)]~~ completion of storm drainage facilities;

11 ~~[(e)]~~ (d) completion of all land-disturbing activity, construction, or development, including  
12 permanent ground cover establishment and removal of all temporary measures; and

13 ~~[(f)]~~ (c) transfer of ownership or control of the tract of land where the erosion and sedimentation  
14 control plan has been approved and work has begun. The new owner or person in control  
15 shall conduct and document inspections until the project is permanently stabilized as set  
16 forth in ~~[Sub-Item (e)]~~ Sub-Item (c) of this Item.

17 (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:

18 (a) ~~[Verification]~~ Visual verification of ~~[all]~~ ground stabilization and other erosion ~~[and]~~  
19 ~~[sedimentation]~~ control ~~[measures,]~~ measures and practices ~~[and devices,]~~ as called for in  
20 the approved ~~[construction sequence and the erosion and sedimentation control]~~ plan;

21 (b) Verification by measurement of settling basins, temporary construction entrances, energy  
22 [dissipators] dissipators, and traps.

23 ~~[(b)]~~ (c) The name, address, organization affiliation, telephone number, and signature of the  
24 person conducting the inspection and the date of the inspection shall be included, whether  
25 on a copy of the approved erosion and sedimentation control plan or an inspection report.  
26 A template for an example of an inspection and monitoring report is provided on the  
27 DEMLR website at: [https://deq.nc.gov/about/divisions/energy-mineral-land-](https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms)  
28 resources/erosion-sediment-control/forms. Any relevant licenses and certifications may  
29 also be included. Any documentation of inspections that occur on a copy of the approved  
30 erosion and sedimentation control plan shall occur on a single copy of the plan and that  
31 plan shall be made available on the site.

32 ~~[(e)]~~ (d) A record of any ~~["significant deviation"]~~ significant deviation from any erosion or  
33 sedimentation control measure ~~[made]~~ from that on the approved plan. For the purpose of  
34 this Rule, a "significant deviation" means an omission, ~~[alteration]~~ alteration, or  
35 relocation of an erosion or sedimentation control measure that ~~[may change the intended~~  
36 performance of the measure,] prevents it from performing as intended. The record shall  
37 include measures required to correct the significant ~~[deviation]~~ deviation, along with

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documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

~~[(d) — All self inspection documentation shall be made available on the site for at least 30 calendar days or maintained until permanent ground cover has been established, whichever is longest.]~~

*History Note: Authority G.S. 113A-54; 113A-54.1(e);  
Eff. October 1, 2010;  
Readopted Eff. April 1, 2020.*

RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04C .0103

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X  Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - X  Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*Staff recommends objection to the Rule for lack of necessity. The Rule states that the Secretary may assess civil penalties. However, both of the statutes cited in the History Note, G.S. 113A-55 and 113A-64, state that the Secretary assesses civil penalties. As this Rule simply repeats statute, staff believes it is unnecessary.*

Amanda J. Reeder  
Commission Counsel  
Issued March 13, 2020

**§ 113A-55. Authority of the Secretary.**

The sedimentation control program developed by the Commission shall be administered by the Secretary under the direction of the Commission. To this end the Secretary shall employ the necessary clerical, technical, and administrative personnel, and assign tasks to the various divisions of the Department for the purpose of implementing this Article. The Secretary may bring enforcement actions pursuant to G.S. 113A-64 and G.S. 113A-65. The Secretary shall make final agency decisions in contested cases that arise from civil penalty assessments pursuant to G.S. 113A-64. (1973, c. 392, s. 6, c. 1417, s. 3; 1993 (Reg. Sess., 1994), c. 776, s. 6.)

**§ 113A-64. Penalties.**

(a) Civil Penalties. -

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

(2) The Secretary or a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request a remission of the civil penalty under G.S. 113A-64.2, the date of the deadline for that person to make the remission request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subdivision (1) of this subsection. The notice of assessment shall be served by any means authorized under G.S. 1A-1. A notice of assessment by the Secretary shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and

sedimentation control program. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. - Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000).

(1973, c. 392, s. 15; 1977, c. 852; 1987, c. 246, s. 3; 1987 (Reg. Sess., 1988), c. 1000, s. 5; 1989, c. 676, s. 6; 1991, c. 412, s. 2; c. 725, s. 5; 1993, c. 539, s. 873; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 776, s. 11; 1998-215, s. 52; 1999-379, s. 4; 2002-165, s. 2.12; 2013-413, s. 33; 2015-241, s. 14.26(b).)

1 15A NCAC 04C .0103 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04C .0103 WHO MAY ASSESS**

4 The ~~director~~ Secretary may assess civil penalties against any person responsible for a violation.

5

6 *History Note:* Authority G.S. 113A-55; 113A-64; ~~143B-10;~~

7 *Eff. February 1, 1976;*

8 *Amended Eff. November 1, 1984;*

9 *Readopted Eff. April 1, 2020.*

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RRC STAFF OPINION

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04C .0106

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*Staff recommends objection to this Rule for lack of statutory authority. Specifically, this Rule purports to set criteria the Secretary will use in assessing civil penalties. The Rule sets these criteria in addition to the criteria set forth in statute.*

*G.S. 113A-64(a)(3) states:*

- (3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with this Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

*None of the criteria set forth in the Rule are included in this statutory list.*

*Staff is not aware of any authority for the agency to add factors that are not included in the statute. As such, staff recommends objection to this Rule for lack of statutory authority.*

Amanda J. Reeder  
Commission Counsel  
Issued March 13, 2020

## § 113A-64. Penalties.

### (a) Civil Penalties. -

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

(2) The Secretary or a local government that administers an erosion and sedimentation control program approved under G.S. 113A-60 shall determine the amount of the civil penalty and shall notify the person who is assessed the civil penalty of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request a remission of the civil penalty under G.S. 113A-64.2, the date of the deadline for that person to make the remission request regarding this particular penalty, and, when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under subdivision (1) of this subsection. The notice of assessment shall be served by any means authorized under G.S. 1A-1. A notice of assessment by the Secretary shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for a contested case under Article 3 of Chapter 150B of the General Statutes. If a violator does not pay a civil penalty assessed by the Secretary within 30 days after it is due, the Department shall request the Attorney General to institute a civil action to recover the amount of the assessment. A notice of assessment by a local government shall direct the violator to either pay the assessment or contest the assessment within 30 days by filing a petition for hearing with the local government as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program. If a violator does not pay a civil penalty assessed by a local government within 30 days after it is due, the local government may institute a civil action to recover the amount of the assessment. The civil action may be brought in the superior court of any county where the violation occurred or the violator's residence or principal place of business is located. A civil action must be filed within three years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(3) In determining the amount of the penalty, the Secretary or a local government shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed

Amanda J. Reeder  
Commission Counsel  
Issued March 13, 2020

willfully and the prior record of the violator in complying or failing to comply with this Article, or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government.

(4) Repealed by Session Laws 1993 (Reg. Sess., 1994), c. 776, s. 11.

(5) The clear proceeds of civil penalties collected by the Department or other State agency or a local government under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(b) Criminal Penalties. - Any person who knowingly or willfully violates any provision of this Article or any ordinance, rule, regulation, or order duly adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor that may include a fine not to exceed five thousand dollars (\$5,000).

(1973, c. 392, s. 15; 1977, c. 852; 1987, c. 246, s. 3; 1987 (Reg. Sess., 1988), c. 1000, s. 5; 1989, c. 676, s. 6; 1991, c. 412, s. 2; c. 725, s. 5; 1993, c. 539, s. 873; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 776, s. 11; 1998-215, s. 52; 1999-379, s. 4; 2002-165, s. 2.12; 2013-413, s. 33; 2015-241, s. 14.26(b).)

1 15A NCAC 04C .0106 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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**15A NCAC 04C .0106 CRITERIA**

In determining the amount of the civil penalty assessment, the ~~director~~ Secretary shall consider the following ~~criteria:~~ criteria, in addition to the factors pursuant to G.S. 113A-64(a)(3):

- (1) severity of the ~~violation;~~ violation;
- ~~(2) — degree and extent of the harm; [harm;]~~
- ~~(3) (2)~~ type of ~~violation;~~ violation;
- ~~(4) (3)~~ ~~duration;~~ duration;
- ~~(5) (4)~~ ~~cause;~~ cause;
- ~~(6) (5)~~ extent of any off-site damage ~~which that~~ may have ~~resulted;~~ resulted;
- ~~(7) (6)~~ effectiveness of action taken by ~~violator;~~ violator;
- ~~(8) (7)~~ adherence to plan submitted by ~~violator;~~ violator;
- ~~(9) (8)~~ effectiveness of plan submitted by ~~violator;~~ violator;
- ~~(10) — cost of rectifying any damage; [damage;]~~
- ~~(11) — the violator's previous record in complying with rules [the Act, or any rule or order] of the~~  
~~commission; [Commission;]~~
- ~~(12) (9)~~ estimated cost of ~~installing and/or maintaining~~ taking corrective sediment control ~~measures;~~  
~~actions; and~~
- ~~(13) (10)~~ staff investigative ~~costs~~ costs; costs.
- ~~[(14) — the amount of money the violator saved by noncompliance; and]~~
- ~~[(15) — whether the violation was committed willfully.]~~

*History Note: Authority G.S. 113A-54(b); 113A-55; 113A-64(a);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; April 1, 1978;  
Readopted Eff. April 1, 2020.*

1 15A NCAC 04C .0107 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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**15A NCAC 04C .0107 PROCEDURES: NOTICES**

(a) The notice of violation shall describe the ~~violation~~ violation, ~~with reasonable particularity~~, request that all illegal activity cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be taken, ~~shall~~ specify a time period for compliance, and ~~shall~~ state that upon failure to comply within the allotted ~~time~~ time, the person shall become subject to the assessment of a civil penalty for each day of the continuing violation beginning with the date of the violation.

(b) The ~~stop-work~~ stop-work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the ~~stop-work~~ stop-work order shall be served upon persons the Department has reason to believe may be responsible for the violation ~~by any means authorized under~~ pursuant to G.S. 1A-1, Rule 4.

*History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;*  
*Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1; ~~143B-10~~;*  
*Eff. February 1, 1976;*  
*Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992; May 1, 1990; November 1, 1984;*  
*Temporary Amendment Eff. August 1, 2000;*  
*Amended Eff. April 1, 2001;*  
*Readopted Eff. April 1, 2020.*

1 15A NCAC 04E .0104 is amended as published in 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04E .0104 COPIES OF RULES: INSPECTION RULES**

4 (a) ~~Anyone desiring to obtain a copy of any or all of the rules of the~~ commission ~~Copies of Commission rules may~~  
5 ~~be requested by contacting the Commission's staff at the Archdale building address~~ may do so by requesting such  
6 ~~from the director [Director] at the address of the~~ commission [Commission] ~~as~~ set forth in 15A NCAC 04A .0101. ~~at~~  
7 ~~Rule .0001 of Subchapter A of this Chapter.~~ The request ~~must~~ shall specify the rules requested, for example, 15A  
8 NCAC 4, 04, Sedimentation Control, or 15A NCAC 4E, ~~Rulemaking Procedures~~. 04B .0113, Responsibility for  
9 Maintenance. ~~The director [Director] may charge reasonable fees~~ A fee may be charged to recover mailing and  
10 duplication costs for requests of more than one copy of the same rule(s).

11 (b) The rules of the ~~commission~~ Commission (15A NCAC ~~4~~NCAC 04) and other documents specified in ~~G.S.~~  
12 ~~150B-11~~ are available for public inspection at the Office of the Director (P.O. Box 27687, 512 N. Salisbury Street,  
13 Raleigh, N.C. ~~27611~~) during regular office hours. can also be found on the website of the NC Office of  
14 Administrative Hearings at: <https://www.oah.state.nc.us/>.

15  
16 *History Note:* Authority G.S. 113A-54; 113A-55; ~~150B-11;~~

17 Eff. March 14, 1980;

18 Amended Eff. August 1, 1988; November 1, 1984;

19 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
20 2, 2016;

21 Amended Eff. April 1, 2020.  
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2 15A NCAC 04E .0201 is amended as published in 34:02 NCR 120-135 with changes as follows:

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4 **15A NCAC 04E .0201 ~~PETITION FOR RULEMAKING HEARINGS~~ PETITION FOR RULEMAKING HEARINGS ~~FORM AND CONTENT OF~~**  
5 **PETITION**

6 Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the commission  
7 shall forward the petition to the director at the address of the commission in Rule .0001 of Subchapter A of this  
8 Chapter. ~~The first page of the petition should clearly bear the notation: RULEMAKING PETITION RE and then~~  
9 ~~the subject area (for example, RE PLAN REQUIREMENTS, RE PENALTIES, RE INSPECTIONS) or an~~  
10 ~~indication of any other area over which the commission may have rulemaking authority.~~

11 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall make the  
12 request in a petition to the Commission addressed to the:

13  
14 Director  
15 Division of Energy, Mineral, and Land Resources  
16 1612 Mail Service Center  
17 Raleigh, North Carolina 27699-1612  
18

19 (b) The petition shall contain the following information:

- 20 (1) the text of the proposed rule(s) for adoption or amendment;  
21 (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an  
22 existing rule(s);  
23 (3) a statement of the effect on existing rules or orders; and  
24 (4) the name(s) and address(es) of the [petitioner(s); and] petitioner(s).

25 ~~[(c) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the~~  
26 ~~effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed~~  
27 ~~rule; and the impact of the rule on the public and regulated entities.]~~

28 (c) The petitioner may include the following information within the request:

- 29 (1) the statutory authority for the agency to promulgate the rules(s);  
30 (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including  
31 cost factors for persons affected by the proposed rule(s);  
32 (3) a statement explaining the computation of the cost factors;  
33 (4) a description, including the names and addresses, if known, of those most likely to be affected by the  
34 proposed rule(s); and  
35 (5) documents and data supporting the proposed rule(s).

36 (d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the  
37 petitioner by the Director on behalf of the Commission.

1 (e) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the  
2 effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed  
3 rule; and the impact of the rule on the public and regulated entities.

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5 *History Note: Authority G.S. 113A-54; ~~150B-16~~; 150B-20;*  
6 *Eff. March 14, 1980;*  
7 *Amended Eff. November 1, 1984;*  
8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
9 *2, 2016;*  
10 *Amended Eff. April 1, 2020.*  
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1 15A NCAC 04E .0501 is amended as published in the 34:02 NCR 120-135 with changes as follows:

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**15A NCAC 04E .0501    ~~SUBJECTS OF DECLARATORY RULINGS~~ RULINGS: GENERALLY**

~~Any person aggrieved by a statute administered or rule promulgated by the commission may request a declaratory ruling as to either the manner in which a statute or rule applies to a given factual situation, if at all, or whether a particular agency rule is valid. For purposes of this Section, an aggrieved person means a person substantially affected by a statute administered by the commission or a rule promulgated by the commission. At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Sedimentation Control Commission may issue a declaratory ruling as provided in [G.S. 150B-4.] G.S. 150B-4 and the rules of this Section.~~

*History Note:    Authority G.S. 113A-54; ~~150B-17~~; 150B-4  
                          Eff. March 14, 1980;  
                          Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
                          2, 2016;  
                          Amended Eff. April 1, 2020.*

1 15A NCAC 04E .0502 is amended as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS SUBMISSION**  
4 **OF REQUEST FOR RULING**

5 ~~All requests for declaratory rulings shall be written and mailed to the director at the address of the commission. The~~  
6 ~~first page of the request should bear the notation: REQUEST FOR DECLARATORY RULING. The request must~~  
7 ~~include the following information:~~

- 8 (1) ~~name and address of petitioner;~~  
9 (2) ~~statute or rule to which petition relates;~~  
10 (3) ~~concise statement of the manner in which petitioner is aggrieved by the rule or statute or its~~  
11 ~~potential application to him;~~  
12 (4) ~~a statement of whether an oral hearing is desired and, if so, the reason therefor.~~

13  
14 (a) All requests for a declaratory ruling shall be filed with the Director, Division of Energy, [Mineral] Mineral, and  
15 Land Resources, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, NC 27699-1612.

16 (b) All requests shall include the following:

- 17 (1) name and address of petitioner(s);  
18 (2) the rule, [statute] statute, or order upon which a ruling is desired;  
19 (3) a statement as to whether the request is for a ruling on the validity of a rule or on the applicability  
20 of a rule, statute, or order [or statute] to a given factual situation;  
21 (4) arguments or data [which] that demonstrate that the petitioner is aggrieved by the rule, [statute]  
22 statute, or order, or its potential application to petitioner;  
23 (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the  
24 petitioner;  
25 (6) a statement of the facts proposed for adoption by the Commission;  
26 (7) a draft of the proposed ruling; and  
27 (8) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an  
28 oral argument.

29 (c) A request for a ruling on the applicability of a rule, order or statute shall include a description of the specific  
30 factual situation on which the ruling is to be based and documentation supporting those facts. A request for a  
31 ruling on the validity of a Commission rule shall state the aggrieved person's reason(s) for questioning the  
32 validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may  
33 ask for both types of declaratory rulings in a single request.

34 (d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for  
35 declaratory ruling. The request to intervene shall be determined by the Chairman.

1 *History Note: Authority G.S. 113A-54; ~~150B-17~~; 150B-4;*  
2 *Eff. March 14, 1980;*  
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
4 *2, 2016;*  
5 *Amended Eff. April 1, 2020.*

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1 15A NCAC 04E .0503 is amended as published in the 34:02 NCR 120-135 with changes as follows:

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3 **15A NCAC 04E .0503 DISPOSITION OF REQUESTS REQUEST**

4 ~~(a) Upon receiving a request, the director is authorized to initiate a declaratory ruling proceeding to receive~~  
5 ~~information concerning the request. A declaratory ruling proceeding may consist of written submissions, an oral~~  
6 ~~hearing, or other procedures as may be appropriate in the circumstances of the particular request. If the proceeding~~  
7 ~~takes the form of an oral hearing the director may direct that the proceeding take place before the commission.~~

8 ~~(b) The director will compile the information collected in the proceeding, along with other relevant information, in~~  
9 ~~a recommendation to the commission on whether to issue the ruling and what the ruling should be.~~

10 ~~(c) A decision whether to issue the ruling will be made by the commission at the next regularly scheduled meeting~~  
11 ~~of the commission within the 60 day period required by 150B-17 and after the director's recommendation is~~  
12 ~~presented. If no meeting is scheduled within that time period, the director will ask the chairman of the commission~~  
13 ~~to call a special meeting so that the commission can comply with the requirements of G.S. 150B-17.~~

14 ~~(d) If the decision of the commission is to issue the ruling, the ruling will be issued by the commission with the 60~~  
15 ~~day period required by G.S. 150B-17. If necessary, the chairman of the commission will call a special meeting so~~  
16 ~~that the commission can comply with this requirement.~~

17 ~~(e) If the decision of the commission is to deny the request, the director will notify the petitioner(s) in writing~~  
18 ~~stating the reasons therefor.~~

19 ~~(f) For purposes of this Rule, the commission will ordinarily refuse to issue a declaratory ruling:~~

20 ~~(1) unless the rule is unclear on its face;~~

21 ~~(2) unless the petitioner shows that the circumstances are so changed since the adoption of the rule~~  
22 ~~that such a ruling would be warranted;~~

23 ~~(3) unless the petitioner shows that the agency did not give to the factors specified in the request for a~~  
24 ~~declaratory ruling a full consideration at the time the rule was issued;~~

25 ~~(4) where there has been a similar controlling factual determination in a contested case or where the~~  
26 ~~factual context being raised for a declaratory ruling was specifically considered upon the adoption~~  
27 ~~of the rule or directive being questioned, as evidenced by the rulemaking record; or~~

28 ~~(5) where the subject matter of the request is involved in pending litigation in any state or federal~~  
29 ~~court in North Carolina.~~

30 (a) The Commission Chairman shall make a determination on the completeness of the request for declaratory  
31 ruling based on the requirements of **Rule .0502** of this Section, and the Chairman shall make a recommendation to  
32 the Commission on whether to grant or deny a request for a declaratory ruling.

33 (b) Before deciding the merits of the request, the Commission may:

34 (1) request additional written submissions from the petitioner(s);

35 (2) request a written response from the Department, or any other person; and

36 (3) hear oral arguments from the petitioner(s) and the Department or their legal counsel.

37 (c) Whenever the Commission believes for **“good cause”** **good cause** that the issuance of a declaratory ruling is

1 undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person  
2 requesting the ruling, stating the reason(s) for the refusal to issue a ruling on the request.

3 (d) “Good cause” as ~~set out~~ the term is used in Paragraph (c) of this Rule shall include:

4 (1) finding that there has been a similar determination in a previous contested case or  
5 declaratory ruling;

6 (2) finding that the matter is the subject of a pending contested case hearing or  
7 litigation in any North Carolina or federal court;

8 (3) finding that no genuine controversy exists as to the application of a rule, statute, or order ~~or~~  
9 rule to the specific factual situation presented; or

10 (4) finding that the factual context put forward as the subject of the declaratory ruling  
11 was ~~specifically~~ considered upon the adoption of the rule being questioned, as  
12 evidenced by the rulemaking record.

13 (e) The Commission, through the Department, shall keep a record of each declaratory ruling, which shall include at a  
14 minimum the following items:

15 (1) the request for a ruling;

16 (2) any written submission by a party;

17 (3) the given state of facts on which the ruling was based;

18 (4) any transcripts ~~or recordings~~ of oral proceedings, or, in the absence of a ~~transcript,~~ transcript or  
19 recording, a summary of all arguments;

20 (5) any other matter considered by the Commission in making the decision; and

21 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, ~~ruling, together with~~  
22 the reasons therefore;

23 (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

24 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant  
25 provisions of the statute or rule are amended or altered;

26 (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or  
27 rule ~~which~~ that is the subject of the declaratory ruling in a manner ~~plainly~~ irreconcilable with  
28 the declaratory ruling;

29 (3) the Commission changes the declaratory ruling prospectively; or ~~or,~~

30 (4) any court sets aside the declaratory ruling in litigation between the Commission or  
31 Department of Environmental Quality and the party requesting the ruling.

32 (g) The party requesting a declaratory ruling may agree to allow the Commission to ~~extend any of the deadlines~~  
33 ~~issue a ruling on the merits of the request~~ beyond the ~~timeframes~~ ~~time allowed by~~ provided in G.S. 150B-4.

34 (h) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a  
35 contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ~~decision or a~~  
36 ruling on the merits within the time ~~allowed by~~ provided in G.S. 150B-4 shall constitute a denial of the request as  
37 well as a denial ~~of~~ on the merits of the request and shall be subject to judicial review.

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*History Note: Authority G.S. 113A-54; 113A-55; ~~150B-17~~; 150B-4  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; June 5, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
2, 2016;  
Amended Eff. April 1, 2020.*



STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

January 16, 2020

Jennifer Everett  
Sedimentation Control Commission  
**Sent via email only to: Jennifer.Everett@ncdenr.gov**

Re: Extension of the Period of Review for Rules 15A NCAC 04A .0101 and .0105; 04B .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0115, .0118, .0120, .0124, .0125, .0126, .0127, .0129, .0130, .0131, and .0132; 04C .0103, .0106, .0107, .0108, .0110, and .0111; 04D .0102; 04E .0101, .0102, .0104, .0201, .0203, .0403, .0405, .0406, .0501, .0502, .0503, and .0504

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the technical change requests and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Amanda J. Reeder  
Commission Counsel

cc: Boyd DeVane, DEQ

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

## Burgos, Alexander N

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**Subject:** FW: Request for Extension- 15A NCAC 04

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**From:** Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>

**Sent:** Wednesday, January 8, 2020 2:34 PM

**To:** Reeder, Amanda J <[amanda.reeder@oah.nc.gov](mailto:amanda.reeder@oah.nc.gov)>

**Cc:** Devane, Boyd <[boyd.devane@ncdenr.gov](mailto:boyd.devane@ncdenr.gov)>; Crawley, Mary <[mcrawley@ncdoj.gov](mailto:mcrawley@ncdoj.gov)>

**Subject:** Request for Extension- 15A NCAC 04

Good afternoon Ms. Reeder,

We are kindly requesting an extension for the period of review concerning 15A NCAC 04 rules submitted for RRC review and approval at its January 2020 meeting.

This extension will allow staff to fully address your technical change requests. Please let us know what date in February you would need the re-written rules for the February 20th RRC agenda.

Thank you!

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

1 15A NCAC 04A .0101 is amended as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04A .0101 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION**

4 Persons may ~~write or visit~~ contact the North Carolina Sedimentation Control Commission offices at the Archdale  
5 Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, North Carolina 27611. Persons may ~~write or visit~~  
6 contact regional offices of the Commission's staff in the Division of Energy, Mineral, and Land Resources at the  
7 following locations:

8 (1) ~~Interchange Building~~  
9 ~~59 Woodfin Place~~  
10 ~~P.O. Box 370~~  
11 ~~Asheville, N.C. 28801~~  
12 Asheville Regional Office  
13 2090 U.S. 70 Hwy.  
14 Swannanoa, NC 28778-8211

15

16 (2) ~~585 Waightown Street~~  
17 Winston-Salem Regional Office  
18 450 W. Hanes Mill Rd., Suite 300  
19 Winston-Salem, N.C. 27107-27105

20

21 (3) ~~919 North Main Street~~  
22 Mooreville Regional Office  
23 610 E. Center Avenue, Suite 301  
24 ~~P.O. Box 950~~  
25 Mooreville, N.C. 28115-28115-2578

26

27 (4) Raleigh Regional Office  
28 3800 Barrett Drive  
29 ~~P.O. Box 27687~~  
30 Raleigh, N.C. 27611-27609-7222

31

32 (5) ~~Wachovia Building~~  
33 ~~Suite 714~~  
34 Fayetteville Regional Office  
35 225 Green Street, Suite 714  
36 ~~Fayetteville, N.C. 28301~~ 28301-5095

37

38 (6) ~~1424 Carolina Avenue~~

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Washington Regional Office  
1424 Carolina Ave.  
P.O. Box 2188 Washington, N.C. 27889- 27889-3314

(7) Wilmington Regional Office  
127 Cardinal Dr., Ext.  
Wilmington, N.C. 28405-3845

*History Note: Authority G.S. 143B-298; 113A-54  
Eff. February 1, 1976;  
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; February 1, 1992;  
May 1, 1990; December 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
2, 2016;  
Amended Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04A .0105

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

***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 (2), line 8, please insert a comma after "113A-50"*

*In (3), line 10, I take it your regulated public knows what "responsible control" means?*

*In (4), line 12, if by "state" you mean NC, please capitalize the term.*

*In (5), line 16, "deemed" by whom? Is this known?*

*In (9), line 24, who determines whether this is "necessary"?*

*In (11), line 28, please state "Discharge Point" or "Point of Discharge" means..." In other words, please show that these are two distinct phrases by putting them in quotation marks separately like you did in Item (12). Please note the same for Item 26.*

*In Items (13), line 32, and (21), Page 2, line 34, please remove the underline from the struck through number. As you published them correctly, you do not need to show it as a change – simply do it.*

*In Item (15), Page 2, line 3, please insert a comma after ".0224"*

*End the sentence after "editions" on line 4. You do not need to state that the copies are in the Code and free.*

*In item (19), please be sure to underline "(19)" As you published it correctly in the Register, you do not need to show it as a change – simply do it.*

*And I take it on line 14 that they "may" be held responsible pursuant to G.S. 113A-64?*

*On line 17, "rules" in "rules of this Chapter" should not be capitalized.*

*In (20), line 28, please move the comma after "Violates" inside the quotation marks.*

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: January 3, 2020

*In (23), Page 3, line 1, please insert a comma after “ditches”*

*In Item (25), line 6, should this be “Ten-Year Storm” (hyphenated?) I note that you hyphenate the term in Rule .0109.*

*In (26), line 11, predicted by whom? Does your regulated public know?*

*In (29), line 19, what is a “storm of interest”? Is this a term known to your regulated public?*

*In the History Note, line 31, the citation to G.S. 113A-54 is not new, so it should not be underlined. Please be sure to remove the underline and re-insert the semicolon after it. Thus, “113A-54;”*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04A .0105 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04A .0105 DEFINITIONS**

4 In addition to the terms defined in G.S. 113A-52, As used in this Chapter, the following terms definitions shall apply  
5 in this Chapter and have these meanings:

6 (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of  
7 land-disturbing activities.

8 (2) "Act" means the Sedimentation Pollution Control Act of 1973 in G.S. 113A-50 et seq.

9 ~~(3)(2)~~ "~~Adequate Erosion Control Measures, Structure, or Device~~ Devices or Structures" means one  
10 ~~which that~~ controls the soil material within the land area under responsible control of the person  
11 conducting the land-disturbing activity.

12 (4) "Approving Authority" means the Division or other state or a local government agency that has  
13 been delegated erosion and sedimentation plan review responsibilities in accordance with the  
14 provisions of the Act.

15 ~~(5)(14)~~ "Being Conducted" means a land-disturbing activity has been initiated and ~~permanent stabilization~~  
16 ~~of the site has not been completed.~~ not deemed complete.

17 ~~(6)(3)~~ "Borrow" means fill material ~~which that~~ is required for on-site construction ~~and that~~ is obtained  
18 from other locations.

19 ~~(7)(4)~~ "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.

20 ~~(8)(27)~~ "Coastal ~~counties~~ Counties" means the following counties: Beaufort, Bertie, Brunswick, Camden,  
21 Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow,  
22 Pamlico, Pasquotank, Pender, Perquimans, ~~Tyrrell~~ Tyrrell, and Washington.

23 ~~(9)(23)~~ "Completion of Construction or Development" means that no further land-disturbing activity is  
24 required on a phase of a project except that which is necessary for establishing a permanent  
25 ground cover.

26 ~~(10)(26)~~ "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the  
27 Department of ~~Environment, Health, and Natural Resources.~~ Environmental Quality.

28 ~~(11)(22)~~ "~~Discharge Point~~" Point or Point of Discharge" means that point where runoff leaves a tract of  
29 ~~land.~~ land where a land-disturbing activity has occurred or enters a lake or natural watercourse.

30 ~~(12)~~ "Division" or "DEMLR" means the Division of Energy, Mineral, and Land Resources of the  
31 Department of Environmental Quality.

32 ~~(13)(18)~~ "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring  
33 placed at the outlet of pipes or conduits to receive and break down the energy from high velocity  
34 flow.

35 ~~(14)(5)~~ "Ground Cover" means any natural vegetative growth or other material ~~which that~~ renders the soil  
36 surface stable against accelerated erosion.

- 1 ~~(15)~~(24) "High Quality Waters" means those ~~classified as such~~ described in 15A NCAC 02B .0101(e)(5) –  
2 ~~General Procedures, which is incorporated herein by reference to include further amendments.~~  
3 02B .0224 which is herein incorporated by reference including subsequent amendments and  
4 editions, and may be accessed at no cost at <http://reports.oah.state.nc.us/.pdf>.
- 5 (16) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet  
6 of High Quality Waters and for the remainder of the ~~state~~ State areas that are within one mile of  
7 and drain to HQW's.
- 8 (17) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run,  
9 branch, canal, waterway, estuary, and any reservoir, lake lake, or pond pond, natural or  
10 impounded. in which sediment may be moved or carried in suspension, and which could be  
11 damaged by accumulation of sediment.
- 12 (18)~~(7)~~ "Natural Erosion" means ~~erosion~~ "erosion" as defined in G.S. 113A-52(5) under natural  
13 environmental conditions undisturbed by man.
- 14 (19)~~(9)~~ "Person Conducting the ~~Land Disturbing~~ Land-disturbing Activity" means any person who may be  
15 held responsible for a violation unless ~~expressly~~ expressly provided otherwise by ~~the~~ the Sedimentation  
16 Pollution Control Act of 1973, G.S. 113A 50 to 66, the North Carolina Administrative Code, Title  
17 15A Chapter 4 the Act, the Rules of this Chapter, or any order or local ordinance adopted pursuant  
18 to the these Rules or the Act, Sedimentation Pollution Control Act of 1973, G.S. 113A 50 to 69.
- 19 (8) ~~—"Person Who Violates" as used in G.S. 113A 64, means:~~
- 20 (a) ~~— the developer or other person who has or holds himself or herself out as having financial~~  
21 ~~or operational control over the land disturbing activity; or~~
- 22 (b) ~~— the landowner or person in possession or control of the land when he has directly or~~  
23 ~~indirectly allowed the land disturbing activity or has directly benefitted from it or he has~~  
24 ~~failed to comply with any provision of the Sedimentation Pollution Control Act of 1973,~~  
25 ~~G.S. 113A 50 to 66, the North Carolina Administrative Code, Title 15A, Chapter 4, or~~  
26 ~~any order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act~~  
27 ~~of 1973, G.S. 113A 50 to 66, as imposes a duty upon him.~~
- 28 (20) "Person Who Violates", or "Violator", as used in G.S. 113A-64, means: any landowner or other  
29 person who has financial or operational control over the land-disturbing activity; or who has  
30 directly or indirectly allowed the activity, and who has failed to comply with any provision of the  
31 Act, the Rules of this Chapter, or any order or local ordinance adopted pursuant to the Act, as it  
32 imposes a duty upon that person
- 33 (10) ~~—"Phase of Grading" means one of two types of grading, rough or fine.~~
- 34 (21)~~(11)~~ "Plan" means an erosion and sedimentation control plan.
- 35 (22)~~(12)~~ "Sedimentation" means the process by which sediment resulting from accelerated erosion has been  
36 or is being transported off the site of the land-disturbing activity or into a lake or natural  
37 watercourse.

1 (23) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches and  
2 appurtenances that serve to collect and convey stormwater through and from a given drainage  
3 area.

4 (24) ~~"Storm Water~~ "Stormwater Runoff" means the ~~direct~~ runoff of water resulting from precipitation  
5 in any form.

6 (25)(20) "Ten Year Storm" means ~~the surface runoff resulting from a rainfall~~ of an intensity that, based on  
7 historical data, is expected predicted to be equaled or exceeded, on the average, once in 10 years,  
8 and of a duration that which will produce the maximum peak rate of runoff ~~for~~ from the watershed  
9 of interest under average antecedent wetness conditions.

10 (26)(28) "Twenty-five Year Storm" ~~Storm or Q25~~ means ~~the surface runoff resulting from~~ a rainfall of an  
11 intensity ~~expected~~ that, based on historical data, is predicted to be equaled or exceeded, on the  
12 average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff  
13 from the watershed of interest under average antecedent wetness conditions.

14 (27)(15) "Uncovered" means ~~the removal of~~ having had ground cover removed from, on, or above the soil  
15 surface.

16 (28)(16) "Undertaken" means the initiating of any ~~activity or phase of activity which~~ activity or phase of  
17 activity that results or will result in a change in the ground cover or topography of a tract of land.

18 (29)(21) "Velocity" means the ~~average velocity-speed~~ of flow through a the cross-section cross-section  
19 perpendicular to the direction of the main channel at the peak flow of the storm of ~~interest.~~ interest  
20 but not exceeding bank full flows. ~~The cross section of the main channel shall be that area defined~~  
21 ~~by the geometry of the channel plus the area of flow below the flood height defined by vertical~~  
22 ~~lines at the main channel banks. Overload flows are not to be included for the purpose of~~  
23 ~~computing velocity of flow.~~

24 (30)(17) "Waste" means surplus materials resulting from on-site construction and to be disposed of at other  
25 locations offsite.

26  
27 *History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire*  
28 *on July 11, 1992;*  
29 *Filed as a Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire*  
30 *on April 29, 1991;*  
31 *Statutory Authority G.S. 113A-52; 113A-54*  
32 *Eff. November 1, 1984;*  
33 *Amended Eff. May 1, 1990;*  
34 *ARRC Objection Lodged November 14, 1990;*  
35 *ARRC Objection Removed December 20, 1990;*  
36 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); October 1, 1995; April 1, 1992; January*  
37 *1, 1991;*  
38 *Readopted Eff. February 1, 2020.*

1 15A NCAC 04B .0105 is readopted as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04B .0105 PROTECTION OF PROPERTY**

4 Persons conducting land-disturbing activity shall ~~take all reasonable~~ follow the measures specified in this Chapter  
5 and the Act to protect all public and private property from sedimentation and erosion damage caused by ~~such~~ the  
6 land-disturbing activities.

7

8 *History Note: Authority G.S. ~~113A-54(b)~~; 113A-54(d)(2);*

9

*Eff. February 1, 1976;*

10

*Amended Eff. August 1, 1988; November 1, 1984;*

11

*Readopted Eff. February 1, 2020.*

12

13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0106

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On line 4, please replace "Chapter 04 of these rules" with "this Chapter" As you published it correctly in the Register, you do not need to show it as a change – simply do it.*

*In (3), line 11, please make "rules" lowercase. As this was published correctly in the Register, you do not need to show it as a change – simply do it.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0106 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0106 BASIC EROSION AND SEDIMENTATION CONTROL PLAN OBJECTIVES**

4 ~~(a) An erosion and sedimentation control plan developed pursuant to Chapter 04 of these rules shall may be~~  
5 ~~disapproved pursuant to 15A NCAC 4B .0118 if the plan fails be designed to address the following: following~~  
6 ~~control objectives:~~

- 7 (1) Identify Critical ~~Areas: Areas.~~ Identify site areas subject to ~~severe~~ accelerated erosion, and off-site  
8 areas ~~especially~~ vulnerable to damage from erosion and sedimentation.
- 9 (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- 10 (3) Limit Time of Exposure. Limit exposure to the shortest ~~feasible time.~~ time specified in G.S.  
11 113A-57, the Rules of this Chapter, or as directed by the approving authority.
- 12 (4) Control Surface Water. Control surface water ~~run-off~~ originating upgrade of exposed areas in  
13 order to reduce erosion and sediment loss during exposure.
- 14 (5) Control Sedimentation. All land-disturbing activity ~~is to~~ shall be planned and conducted so as to  
15 prevent off-site sedimentation damage.
- 16 (6) Manage ~~Storm Water~~ Stormwater Runoff. ~~When the increased~~ Plans shall be designed so that any  
17 increase in velocity of ~~storm water~~ stormwater runoff resulting from a land-disturbing activity  
18 causes will not result in accelerated erosion of the receiving ~~waterecourse,~~ stormwater conveyance  
19 [within the project boundary,] or at the point of discharge. plans Plans shall include measures to  
20 control the velocity prevent accelerated erosion within the project boundary and at to the point of  
21 discharge.

22 ~~(b) When deemed necessary by the approving authority a preconstruction conference may be required.~~

23  
24 *History Note: Authority G.S. 113A-54(d)(4); 113A-54.1;*  
25 *Eff. February 1, 1976;*  
26 *Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980;*  
27 *Readopted Eff. February 1, 2020.*  
28  
29

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0107

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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 (d), line 12, delete the comma after "plan"*

*On line 13, delete the comma after "land"*

*In the History Note, please do not cite to "113A-57" and then again to "113A-57(3)(4)" I think you can just retain the cite to 113A-57, but if you want to retain the specificity, please state "113A-57(3); 113A-57(4);"*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0107 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY**

4 (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with ~~the G.S. 113A-~~  
5 ~~57. 113A-57~~ and the standards established in these Rules.

6 (b) Pursuant to G.S. 113A-57(3), Unless where otherwise specified in the Act or the rules of this Chapter,  
7 provisions **for [for a]** permanent ground cover sufficient to restrain erosion ~~must~~ shall be accomplished within ~~15~~  
8 ~~working days or~~ 90 calendar days following completion of construction or ~~development,~~ development, ~~whichever~~  
9 ~~period is shorter, except as provided in 15A NCAC 4B .0124(e).~~

10 (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan ~~must~~ shall be ~~both~~  
11 filed and approved by the ~~agency having jurisdiction,~~ approving authority.

12 (d) All individuals that obtain a State or locally-approved erosion and sedimentation control plan, that disturb one  
13 acre or more of land, are required by the U.S. Environmental Protection Agency to obtain coverage under the N.C.  
14 Department of Environmental Quality Construction General Permit No. NCG010000 (NCG01). The requirements in  
15 NCG01 for temporary or permanent ground cover may differ from the ground cover, or stabilization, requirements  
16 in this Chapter. It is the responsibility of the person conducting the land-disturbing activity to ensure compliance  
17 with the NCG01.

18

19 *History Note: Authority G.S. 113A-54(d)(4); 113A-57; 113A-57(3)(4);*

20 *Eff. February 1, 1976;*

21 *Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980;*

22 *Readopted Eff. February 1, 2020.*

23

24

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0108

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On line 8, please insert a period after "630)" and inside of the quotation mark. Thus, "... (Handbook 630)."*

*On line 12, please replace "can" with "may"*

*And so that I'm clear – on line 13, will this be "shown" to the approving authority?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0108 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD**

4 Except where otherwise specified in this Chapter, erosion ~~Erosion~~ and sedimentation control measures, structures,  
5 and devices shall be ~~so~~ planned, designed, and constructed to provide protection from the ~~run-off~~ runoff of ~~that a 10~~  
6 year 10-year storm ~~that~~ [which] produces the maximum peak rate of ~~run-off~~ runoff as calculated according to  
7 procedures in the United States Department of ~~Agriculture~~ Agriculture, Soil ~~Natural Resources~~ Conservation  
8 Service's "National Engineering Field ~~Manual~~ Handbook 630 (Handbook 630)" This document is herein  
9 incorporated by reference including subsequent amendments and editions, and may be accessed at no cost at  
10 <https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/water/manage/hydrology/?cid=stelprdb1043063> ~~or~~  
11 according to procedures adopted by any other agency of this state or the United States or any generally recognized  
12 organization or association. Other methodologies can be used if based on generally accepted engineering standards  
13 that are shown to be equivalent to or improved over the procedures in Handbook 630. The approving authority shall  
14 determine acceptability of an alternative methodology based upon a showing that the runoff model used was based  
15 on observed data in agreement with the predictive model.

16  
17 *History Note: Authority G.S. 113A-54;*  
18 *Eff. February 1, 1976;*  
19 *Amended Eff. November 1, 1984; July 1, 1978;*  
20 *Readopted Eff. February 1, 2020.*  
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0109

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 11, should this read "If the projected"?*

*In (b), line 17, how will the Commission determine whether it will allow the alternative measures?*

*In (b)(1), line 20, please make "infiltration" lowercase.*

*Delete the "or" at the end of the line on lines 20 and 22.*

*On Page 2, lines 13-15, what does this mean? What is "slightly" and "moderately" and "highly"? Are these terms defined in the cited study?*

*In the History Note, please separate the serial citations on line 17 like so: "G.S. 113A-54(b); 113A-54(c);"*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0109 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0109 ~~STORM—WATER~~ STORMWATER **OUTLET** **DISCHARGE POINT**  
4 **PROTECTION****

5 (a) Persons shall ~~conduct~~ provide a design for the land-disturbing **land-disturbing** activity so that the ~~post~~  
6 ~~construction~~ post-construction velocity of the ~~ten-year~~ ten-year storm ~~run-off~~ **run-off** runoff in the receiving  
7 ~~waterecourse~~ stormwater conveyance ~~to, and including,~~ the discharge ~~point~~ point, does not exceed the greater of:

- 8 (1) the velocity established by the table in Paragraph (d) of this Rule; or  
9 (2) the projected velocity of the ~~ten-year~~ ten-year storm ~~run-off~~ runoff in the receiving ~~waterecourse~~  
10 stormwater conveyance prior to development.

11 If projected conditions in Subparagraphs (1) or (2) of this Paragraph cannot be met, then the receiving ~~waterecourse~~  
12 stormwater conveyance ~~to, and including~~ and including, the discharge point shall be designed and constructed to  
13 withstand the expected velocity anywhere the velocity exceeds the ~~"prior to development"~~ velocity prior to  
14 development by ten percent.

15 (b) ~~Acceptable Management Measures.~~ The commission recognizes that management of storm water run-off to  
16 ~~control downstream erosion constitutes a developing technology and consequently invites the use of innovative~~  
17 ~~techniques shown to produce successful results. Alternatives include:~~ The Commission **shall** may allow alternative  
18 measures to control downstream erosion, including:

- 19 (1) ~~Compensate~~ compensation for increased ~~run-off~~ runoff from areas rendered impervious by  
20 designing measures to promote ~~infiltration.~~ Infiltration; or  
21 (2) ~~Avoid~~ avoiding increases in ~~storm water~~ stormwater discharge velocities by using vegetated or  
22 roughened swales and waterways in place of closed drains and paved ~~sections.~~ sections; or  
23 (3) ~~Provide~~ providing energy dissipators at storm drainage outlets to reduce flow velocities to the  
24 **discharge** ~~points.~~ points; or  
25 (4) ~~Protect~~ protecting ~~waterecourses~~ stormwater conveyances subject to accelerated erosion by  
26 improving cross sections ~~and/or~~ or providing erosion-resistant lining.

27 (c) ~~Exceptions.~~ This Rule shall not apply when ~~storm water~~ stormwater discharge velocities will not ~~create an~~  
28 ~~erosion problem~~ result in accelerated erosion in the receiving ~~waterecourse.~~ stormwater conveyance or discharge  
29 point.

30 (d) The following table sets maximum permissible velocity for storm water discharges:

31  
32

Material	Maximum Permissible Velocities <del>For</del> in feet and Meters Per Second*	
	F.P.S.	M.P.S.
Fine Sand (noncolloidal)	2.5	.8
Sandy Loam (noncolloidal)	2.5	.8
Silt Loam (noncolloidal)	3.0	.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (very colloidal)	5.0	1.5

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1	Graded, Loam to Cobbles (noncolloidal)	5.0	1.5
2	Graded, Silt to Cobbles (colloidal)	5.5	1.7
3	Alluvial Silts (noncolloidal)	3.5	1.1
4	Alluvial Silts (colloidal)	5.0	1.5
5	Coarse Gravel (noncolloidal)	6.0	1.8
6	Cobbles and Shingles	5.5	1.7
7	Shales and Hard Pans	6.0	1.8

8  
9 ~~Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil~~  
10 ~~Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for~~  
11 ~~slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.~~

12  
13 \*For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous  
14 channels, and by 0.8 for highly sinuous channels. Source: Adapted from recommendations by Special Committee on  
15 Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment.

16  
17 *History Note: Authority G.S. 113A-54(b)(c);*  
18 *Eff. February 1, 1976;*  
19 *Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978;*  
20 *Readopted Eff. February 1, 2020.*  
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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0110

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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 so I am clear – will be considered by whom? The agency?*

*In the History Note, why are you citing to G.S. 74-67? I see that sets exemptions, but I don't see how it confers rulemaking authority.*

*Also in the History Note, I do not see that there is a G.S. 130A-166.21. Please delete the citation.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0110 is readopted as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04B .0110 BORROW AND WASTE AREAS**

4 If the same person conducts the ~~land-disturbing~~ land-disturbing activity and any related borrow or waste activity, the  
5 related borrow or waste activity shall constitute part of the ~~land-disturbing~~ land-disturbing activity activity, unless  
6 the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated  
7 by the Division of ~~Solid~~ Waste Management. If the ~~land-disturbing~~ land-disturbing activity and any related borrow  
8 or waste activity are not conducted by the same person, they shall be considered separate land-disturbing activities.

9

10 *History Note: Authority G.S. 74-67; 113A-54(b); 130A-166.21;*

11 *Eff. February 1, 1976;*

12 *Amended Eff. May 1, 1990; November 1, 1984;*

13 *Readopted Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0111

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*I take it that your regulated public knows what "temporary" means here?*

*On line 5, please replace "such with "the"*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0111 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04B .0111 ACCESS AND HAUL ROADS**

4 Except for public roads, temporary ~~Temporary~~ access and haul roads ~~roads, other than public roads,~~ constructed or  
5 used in connection with any land-disturbing activity shall be considered a part of such activity.

6

7 *History Note: Authority G.S. 113A-54;*

8 *Eff. February 1, 1976;*

9 *Readopted Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0112

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On line 6, what is an "essential part" Who determines this?*

*Also on line 6, what are "unnecessary changes"? How will this be determined?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0112 is readopted as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES**

4 ~~Land-disturbing~~ Land-disturbing activity in connection with construction in, on, over, or under a lake or natural  
5 watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a  
6 stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the  
7 stream flow characteristics.

8

9 *History Note: Authority G.S. 113A-54;*

10 *Eff. February 1, 1976;*

11 *Amended Eff. November 1, 1984;*

12 *Readopted Eff. February 1, 2020.*

13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0113

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On line 6, please either retain only the original language and insert a comma so it reads "these Rules," or state "the rules of this Chapter,"*

*On line 9, please do not insert a comma after "easement"*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0113 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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**15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE**

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the Act, these Rules of this Chapter, or any order or local ordinance adopted pursuant to the Act. After site development, the land owner or person in possession or control of the land shall install ~~and/or~~ and maintain all ~~necessary~~ permanent erosion and sediment control measures, except those measures installed within a road or street right of way or ~~easement~~ easement, accepted for maintenance by a governmental agency.

*History Note: Authority G.S. 113A-54;*  
*Eff. February 1, 1976;*  
*Amended Eff. November 1, 1984; July 1, 1978;*  
*Readopted Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0115

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On line 6, will this necessary action be determined by the person, or will the plan be updated pursuant to G.S. 113A-54.1(b)?*

*On line 7, please make "rules" lowercase. As you published this correctly in the Register, you do not need to show this as a change; simply do it.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0115 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04B .0115 ADDITIONAL MEASURES**

4 Whenever the ~~commission~~ Commission or a local government determines that ~~significant~~ accelerated erosion and  
5 sedimentation continues despite the installation of protective practices, the person conducting the ~~land-disturbing~~  
6 land-disturbing activity ~~will be required to~~ and shall take additional protective ~~action.~~ action necessary to achieve  
7 compliance with the conditions specified in the Act or the Rules of this Chapter.

8

9 *History Note: Authority G.S. 113A-54(b); G.S. 113A-54.1(b);*

10 *Eff. February 1, 1976;*

11 *Amended Eff. November 1, 1984;*

12 *Readopted Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0118

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 13, should "appropriate authority" be "approving authority" as the term is defined in Rule 04A .0105(4)?*

*In (b)(2)(B), line 21, delete the comma after "or"*

*In (b)(3), line 24, delete the comma after "modification"*

*In (b)(5), line 32, consider stating "... Policy Act, G.S. 113, Article 1"*

*On line 33, state "the Department rules set forth in 15A NCAC 01C" I don't read you as implementing these rules, only stating that they control. If you intend to implement the rules, please be sure to incorporate these by reference using G.S. 150B-21.6.*

*In (c), Page 2, line 1, why do you say "also" here?*

*On line 2, what documentation are you seeking for ownership? Are you looking for the consent required by G.S. 113A-54.1 if the applicant is not the owner of the land?*

*On line 4, I believe "attorney-in-fact" is hyphenated.*

*In (d)(2), line 13, please replace "such" with "the"*

*On line 15, please delete "should"*

*In (d)(3), where is your authority to allow the local government to appeal the employee decision? G.S. 113A-61(c) expressly grants the person submitting the plan to appeal but not the local government.*

*On line 24, should "Chairman" be capitalized?*

*In the History Note, Page 3, line 8, please delete the reference to 150B, Article 3"*

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

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0118 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0118 APPROVAL OF PLANS**

4 (a) Persons conducting land-disturbing activity on a tract ~~which~~ that covers one or more acres shall file ~~three copies~~  
5 ~~of~~ the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission  
6 if no local government has ~~jurisdiction~~, jurisdiction. The approving agency shall act on the plan at least 30 days  
7 prior to beginning such activity and within 30 days of receipt of the plan or the plan shall be deemed approved. ~~shall~~  
8 ~~keep another~~ A paper copy of the approved plan shall be kept on file at the job site. After approving a plan, if the  
9 Commission or local government determines, either upon review of such plan or ~~on~~ upon inspection of the job site,  
10 ~~that a significant risk of accelerated erosion or off site sedimentation exists,~~ the plan is inadequate to meet the  
11 requirements of the Act and of this Chapter, the Commission or local government shall require a revised plan.  
12 Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the  
13 appropriate authority.

14 (b) Commission Approval:

15 (1) The Commission shall review plans for all land-disturbing activity over which the Commission  
16 has exclusive jurisdiction ~~by statute~~ pursuant to G.S. 113A-56, and all other land-disturbing  
17 activity ~~if~~ where no local government has jurisdiction.

18 (2) The Commission shall complete its review of any completed plan within 30 days of receipt and  
19 shall notify the person submitting the plan in writing that it has been:

20 (A) ~~approved,~~ approved;

21 (B) approved with modification, modification; or,

22 (C) ~~approved with performance reservations, or~~

23 (C) ~~(D)~~ disapproved.

24 (3) The Commission's ~~disapproval,~~ approval with modification, or ~~performance reservations~~  
25 disapproval of any proposed ~~plan,~~ plan shall entitle the person submitting the plan to an  
26 administrative hearing in accordance with the provisions of G.S. 150B-23. (This Section does not  
27 modify any other rights to a contested case hearing which may arise under G.S. 150B-23).

28 (4) ~~Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed~~  
29 ~~by the Commission~~ Appeals of local government decisions shall be conducted pursuant to G.S.  
30 113A-61(c).

31 (5) Any plan submitted for a land-disturbing activity for which an environmental document is  
32 required by the North Carolina Environmental Policy Act as set forth in Article 1 [or] of G.S. 113  
33 and the rules of this Department as set forth in 15A NCAC 01C shall be deemed incomplete until  
34 a complete an environmental document is available for review. The Commission shall ~~promptly~~  
35 notify the person submitting the plan that the ~~30-day~~ 30-day time limit for review of the plan  
36 pursuant to Subparagraph ~~(b)(2)~~ (2) of this Rule Paragraph shall not begin until ~~a complete~~ the  
37 environmental document is available for review.

1 (c) ~~Erosion~~ An erosion and sedimentation control ~~plans may~~ plan shall also be disapproved unless ~~they include the~~  
2 application includes an authorized statement of financial responsibility and documentation of property ownership.  
3 This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her  
4 attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the  
5 person financially responsible and of the owner of the land or their registered agents.

6 (d) Local Government Approval:

7 (1) Local Governments administering erosion and sedimentation control programs shall develop and  
8 publish procedures for approval of plans. ~~Such~~ The procedures shall ~~respect~~ follow applicable  
9 laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local  
10 government's organization and operations.

11 (2) The ~~secretary~~ Secretary shall appoint ~~such employee(s)~~ employees of the Department as he or she  
12 deems necessary to consider appeals from the local government's final disapproval or modification  
13 of a plan. Within 30 days following receipt of notification of the appeal, such departmental  
14 employee shall complete the review and shall notify the local government and the person  
15 appealing the local government's decision that the plan should be approved, approved with  
16 modifications, ~~approved with performance reservations,~~ or disapproved.

17 (3) If either the local government or the person submitting the plan disagrees with the decision  
18 reached by ~~an employee of the Department~~ a Departmental employee, ~~then~~ he or she may appeal  
19 the decision to the Commission by filing notice within 15 days with the Director of the Division of  
20 Energy, Mineral, and Land Resources. The ~~director~~ Director shall make the proposed erosion  
21 control plan and the records relating to the local government's and ~~departmental employees'~~  
22 Departmental employee's review, available to an ~~appeals review~~ erosion and sedimentation  
23 control plan review committee consisting of three members of the Commission appointed by the  
24 chairman. Within 10 days following receipt of the notification of appeal, the ~~appeals~~ erosion and  
25 sedimentation control plan review committee shall notify the local government and the person  
26 submitting the plan of a place and time for a hearing for consideration of the ~~appeal,~~ appeal. ~~and~~  
27 ~~shall afford both~~ Both parties shall be given at least 15 days' notice of the hearing and an  
28 opportunity to present written or oral arguments. The ~~appeals~~ erosion and sedimentation plan  
29 review committee shall notify both parties of its decision concerning the approval, disapproval, or  
30 modification of the proposed plan within 30 days following ~~such~~ the hearing.

31 (e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan  
32 under G.S. 113A-54.1(c) gives rise to a right to ~~a contested case under G.S. 150B, Article 3.~~ an appeal to the  
33 Commission. An applicant desiring to appeal the ~~Director's~~ Commission's disapproval of an erosion control plan  
34 shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3. ~~The~~  
35 ~~general time limitation for filing a petition, and the commencement of the time limitation, shall be as set out in G.S.~~  
36 ~~150B-23(f). Contested cases shall be conducted under the procedures of G.S. 150B, Article 3 and applicable rules~~

1 of the Office of Administrative Hearings. The Commission shall make the final decision on any contested case  
2 under G.S. 150B-36.

3  
4 *History Note:* Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire  
5 on July 11, 1992;  
6 Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-57; 113A-60(a); 113A-61(b);  
7 113A-61(c);  
8 150B, Article 3; ~~150B-23~~;  
9 Eff. February 1, 1976;  
10 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); June 1, 1995; February 1, 1992; May 1,  
11 1990; August 1, 1988;  
12 Readopted Eff. February 1, 2020.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0120

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 4, insert a comma after "Quality"*

*On line 5, since you state these authorities "may" require this, under what circumstances will this be required?*

*On line 5, delete "but not limited to"*

*Line 5, what are "NOVs"?*

*I note that you initially published to delete Paragraphs (b) and (c), but decided to not do that after publication. Was this change made in response to public comment?*

*In (b), line 9, who are "other qualified persons"? Why not refer to "an employee or agent of the Department" as used in G.S. 113A-61.1?*

*And why does (b) not address local government inspection, when local governments are in Paragraph (a)?*

*On line 10, what are "its duties"? Who is "it" here?*

*In (d), line 14, what do you mean by "specified"? Is the proposed preconstruction conference to be requested through the plans? Or is the request set forth in the plan?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0120 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS**

4 (a) The Commission, Department of ~~Environment, Health, and Natural Resources~~ Environmental Quality or local  
5 government may require written ~~statements,~~ statements related to items including but not limited to NOV's or Stop-  
6 Work orders or the filing of reports under oath, such as self-inspection or engineering/design reports, concerning  
7 ~~land disturbing~~ land-disturbing activity.

8 (b) Inspection of sites shall be carried out by the staff of Department of ~~Environment, Health, and Natural~~  
9 ~~Resources~~ Environmental Quality or other qualified persons authorized by the Commission or Department of  
10 ~~Environment, Health, and Natural Resources~~ Environmental Quality as necessary to carry out its duties under the  
11 Act.

12 (c) No person shall refuse entry or access to any representative of the Commission or any representative of a local  
13 government who requests entry for purposes of inspection.

14 ~~(b)~~(d) When a preconstruction conference is proposed pursuant to G.S. 113A-51, it shall be specified on the plans.

15

16 *History Note: Authority G.S. 113A-51; 113A-54(b); 113A-58; 113A-61.1;*

17 *Eff. February 1, 1976;*

18 *Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984;*

19 *Readopted Eff. February 1, 2020.*

20

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0124

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 5, please insert a period after "tract." As you published this correctly in the Register, do not show it as a change; simply do it.*

*On line 7, what is an "engineering justification"? Does your regulated public know?*

*On line 8, insert a comma after "reports"*

*On line 8, delete the errant hyphen or strike through between "more" and "conservative"*

*On line 9, how will these conditions be included – in the plan?*

*In (b), line 16, please replace "can" with "may"*

*And so that I'm clear – on line 16, will this be "shown" to the Division?*

*In (c), line 26, why is "Zones" in "HQP zones" capitalized? It is not on lines 4 and 10.*

*In (c)(3), line 31, what are "cfs"? Does your regulated public know?*

*In (c)(4), line 32, insert a semicolon after "hours" As you published this correctly in the Register, you will not show this as a change; simply do it.*

*In (c)(5), line 33, consider replacing "are" with "shall be"*

*In (d), Page 2, line 2, delete "but not limited to"*

*On line 2, "quicker" than what? What was approved in the plan?*

*Also on line 2, insert a comma after "flocculants"*

*On line 7, how will these liners be "proven effective" and determined to be "acceptable to the Division"?*

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

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0124 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS**

4 (a) Uncovered areas in HQW zones shall be limited ~~at any time~~ to a maximum total area of 20 acres within the  
5 boundaries of the tract ~~of 20 acres~~. Only ~~the portion of~~ the land-disturbing activity within a HQW zone shall be  
6 governed by this Rule. Larger areas may be uncovered within the boundaries of the tract with the written approval  
7 of the ~~Director~~. Director upon providing engineering justification with a construction sequence that considers  
8 phasing, limiting exposure, weekly submitted self-inspection reports and more-conservative design than the 25-year  
9 storm. The Director may also include other conditions as necessary based on specific site conditions.

10 (b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be ~~so~~ planned,  
11 ~~designed~~ designed, and constructed to provide protection from the runoff of the ~~25-year~~ 25-year storm ~~which that~~  
12 produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of  
13 ~~Agricultural Soil Conservation~~ Agriculture, Natural Resources Conservation Service's "National Engineering Field  
14 Manual Handbook 630 for Conservation Practices" Practices." ~~or according to procedures adopted by any other~~  
15 ~~agency of this state or the United States or any generally recognized organization or association. Other~~  
16 methodologies can be used if based on generally accepted engineering standards that are shown to be equivalent to  
17 or improved over the procedures in Handbook 630. The Division shall determine acceptability of an alternative  
18 methodology based upon a showing that the runoff model used was based on observed data in agreement with the  
19 predictive model.

20 (c) ~~Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling~~  
21 ~~efficiency of at least 70 percent for the 40 micron (0.04mm) size soil particle transported into the basin by the runoff~~  
22 ~~of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the~~  
23 ~~United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for~~  
24 ~~Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or~~  
25 ~~any generally recognized organization or association.~~

26 (c) In order to provide for water quality protection in HQW Zones, sediment basins that discharge to those areas  
27 shall be designed and constructed to meet the following criteria:

- 28 (1) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0  
29 acre;
- 30 (2) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
- 31 (3) have a minimum surface area of 325 square feet per cfs of [~~Q<sub>25</sub> peak~~] Q25 peak inflow;
- 32 (4) have a minimum dewatering time of 48 hours and,
- 33 (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles are  
34 sufficient.

35 (d) Upon a written request of the applicant, the Director may allow alternative design or control measures in lieu of  
36 meeting the conditions required in Subparagraphs (c)(2) through (c)(5) of this Rule if the applicant demonstrates that  
37 meeting all of those conditions will result in design or operational hardships and that the alternative measures will

1 provide an equal or more effective level of erosion and sedimentation control on the site. Alternative measures may  
2 include, but are not limited to, quicker application of ground cover, use of sediment flocculants and use of enhanced  
3 ground cover practices.

4 ~~(c)(4)~~ Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no  
5 steeper than two horizontal to one vertical if a vegetative cover is used for ~~stabilization~~ stabilization, unless soil  
6 conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural ~~devices~~  
7 devices, or other forms of acceptable ditch liners: liners proven effective and acceptable to the Division. ~~In any~~  
8 ~~event, the~~ The angle for side slopes shall be sufficient to restrain accelerated erosion.

9 ~~(e) Pursuant to G.S. 113A-57(3) provisions for a ground cover sufficient to restrain erosion must be provided for~~  
10 ~~any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following~~  
11 ~~completion of construction or development, whichever period is shorter.~~

12  
13 *History Note: Authority G.S. 113A-54(b); 113A-54(c)(1);*  
14 *Eff. May 1, 1990;*  
15 *Readopted Eff. February 1, 2020.*  
16

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0125

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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 (b), I understand the 25-foot minimum width is required by G.S. 113A-57(1). However, that statute also includes this language:*

**§ 113A-57. Mandatory standards for land-disturbing activity.**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater.

*Should this be mentioned within the Rule as well?*

*On line 7, delete the comma after "width"*

*In (c), line 11, please replace "ten" with "10" (See Rule 26 NCAC 02C .0108(9)(b))*

*In (d), delete "If" and just start the sentence, "Upon written..."*

*On line 17, what is "equally effective or more effective"? Does your regulated public know? And should the language be "an equal or more effective level..."?*

*On line 19, please delete the blank line.*

*In (e), line 21, do you need "plan" here, given the definition of "approving authority" in Rule 04A .0105?*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

*On line 23, I recommend deleting the name of the Rule altogether. If you need to retain it, please put the comma within the quotation marks, so it reads "Water," which is ..."*

*You do not need the last sentence on line 24.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0125 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS**

4 (a) ~~Unless otherwise provided, the~~ The width of a buffer zone ~~is~~ shall be measured from the edge of the water to the  
5 nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing  
6 natural or artificial means of confining visible siltation.

7 (b) ~~The 25-foot~~ A 25-foot minimum ~~width~~ width, ~~for an~~ undisturbed buffer zone ~~shall be protected~~ adjacent to  
8 ~~designated~~ trout waters designated by the Environmental Management Commission. The 25-foot width buffer zone  
9 shall be measured horizontally from the top of the ~~bank.~~ bank [To] to the nearest area of disturbance.

10 (c) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing  
11 activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the  
12 total length of the buffer zone within the tract ~~to be~~ and distributed such that there is not more than 100 linear feet of  
13 disturbance in each 1000 linear feet of buffer zone. ~~Larger areas may be disturbed with the written approval of the~~  
14 ~~Director.~~

15 (d) If, upon a written request of the applicant, the Director may allow a larger area of disturbance than provided in  
16 Paragraph (c) of this Rule if the applicant demonstrates that additional measures will be utilized that will achieve an  
17 equally effective or more effective level of erosion and sedimentation control than would be achieved had the  
18 specifications prescribed in Paragraph (c) of this Rule been followed.

19  
20 ~~(d)(e)~~ (e) No land-disturbing activity shall be undertaken within a buffer zone adjacent to ~~designated~~ trout waters that is  
21 predicted by the plan approving authority to will cause adverse stream temperature fluctuations, violations in these  
22 waters as set forth in 15A NCAC 2B 02B .0211 "Fresh Surface Water **Quality** Classification and Standards",  
23 Standards in these for Class C waters. **Waters"**, which is hereby incorporated by reference including subsequent  
24 amendments and editions. Copies of 15A NCAC 02B .0211 are available at <https://www.oah.state.nc.us/> at no cost.

25  
26 *History Note: Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);*  
27 *Eff. May 1, 1990;*  
28 *Amended Eff. February 1, 1992;*  
29 *Readopted Eff. February 1, 2020.*  
30

1 15A NCAC 04B .0126 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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**15A NCAC 04B .0126 PLAN REVIEW APPLICATION FEE**

(a) ~~A~~ The nonrefundable plan review processing application fee, in the amount stated in Paragraph (e) of this Rule, provided in ~~[G.S. 113A-54.2]~~ **G.S. 113A-54.2** shall be paid when an erosion and sedimentation control plan is filed in accordance with ~~15A NCAC 04B .0118~~. Rule .0118 of this Section.

(b) Each plan shall be deemed incomplete until the plan review processing application fee is paid.

~~(c) The plan review processing fee shall be based on the number of acres, or any part of an acre, of disturbed land shown on the plan.~~

~~(c)(d)~~ No plan review processing application fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount ~~stated in Paragraph (e) of the Rule~~ specified in G.S. 113A-54.2 for each additional acre (or any part thereof) disturbed.

~~(e) The nonrefundable plan review processing fee shall be fifty dollars (\$50.00) for each acre or part of any acre of disturbed land.~~

~~(f) Payment of the plan review processing fee may be by check or money order made payable to the "N.C. Department of Environment and Natural Resources". The payment shall refer to the erosion and sedimentation control plan.~~

*History Note: Authority G.S. 113A-54; 113A-54.2;*  
*Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;*  
*AARC Objection Lodged November 14, 1990;*  
*AARC Objection Removed December 20, 1990;*  
*Eff. January 1, 1991;*  
*Amended Eff. August 1, 2002; July 1, 2000;*  
*Readopted Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0127

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 8, I know that "Certificate of Approval" is in G.S. 113A-61.1(a). What is the "similar written documentation of approval"?*

*On lines 8-9, can't you delete "that is provided"? The sentence begins "The Commission shall issue..." so it could state "to the applicant by hard copy..."*

*On line 10, who determines what is the "primary" entrance? The person conducting the land-disturbing activity?*

*On line 10, do you need "easily"?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0127 is readopted as published in the 34:02 NCR 120-135 as follows:

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3 **15A NCAC 04B .0127 PLAN APPROVAL CERTIFICATE**

4 ~~(a) Approval of a sedimentation and erosion control plan will be contained in a document called "Certificate of Plan~~  
5 ~~Approval" to be issued by the Commission.~~

6 ~~(b) The Certificate of Plan Approval must be posted at the primary entrance of the job site before construction~~  
7 ~~begins.~~

8 (a) The Commission shall issue a "Certificate of Approval" or a similar written documentation of approval that is  
9 provided to the applicant by hard copy or electronic submittal. Before construction begins, that documentation shall  
10 be posted at the primary entrance of the job site or other location that is easily observable to the public and  
11 inspectors.

12 ~~(b)(e) No person may initiate a land-disturbing activity until notifying the agency approving authority that issued~~  
13 ~~the Plan Approval of the date that the land-disturbing activity will begin.~~

14

15 *History Note: Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29,*  
16 *1991;*

17 *Authority G.S. 113A-54(b);*

18 *ARRC Objection Lodged November 14, 1990;*

19 *ARRC Objection Removed December 20, 1990;*

20 *Eff. January 1, 1991;*

21 *Amended Eff. July 1, 2000;*

22 *Readopted Eff. February 1, 2020.*

23

1 15A NCAC 04B .0129 is readopted as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE**

4 ~~An erosion control plan shall expire three years following the date of approval, if~~ If no land-disturbing activity has  
5 been ~~undertaken.~~ undertaken on a site, an erosion control plan shall expire three years following the date of  
6 approval.

7

8 *History Note: Authority G.S. 113A-54.1(a);*

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*Eff. October 1, 1995;*

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*Readopted Eff. February 1, 2020.*

11

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0130

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On line 4, I know you are reciting statutory language of "essential to protect human life" I take it your public knows what this means?*

*In (1), line 8, and (2), line 11, please consider replacing "working" with "business"*

*On line 9, please replace the comma after "Division" with a semicolon.*

*In (2), line 10, will the determination of what is "reasonable" be up to the individual?*

*And I take it in both (1) and (2) that it is up to the individual to determine when the emergency ends?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0130 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2

3 **15A NCAC 04B .0130 EMERGENCIES**

4 Any person who conducts an emergency repair essential to protect human ~~life~~, life that ~~results in~~ constitutes a  
5 land-disturbing activity within the meaning of G.S. 113A-52(6) and these ~~Rules~~:Rules shall take the following  
6 actions:

7 (1) ~~shall~~ notify the ~~Commission~~ Director, or his or her designee, of ~~such~~ the repair as soon as  
8 ~~reasonably~~ possible, but ~~in no event~~ later than five working days after the emergency ~~ends~~; has  
9 ended, as determined by the Division, and

10 (2) ~~shall~~ take all reasonable measures to protect all public and private property from damage caused  
11 by ~~the~~ such repair as soon as ~~reasonably~~ possible, but ~~in no event~~ later than 15 working days after  
12 the emergency ends.

13

14 *History Note: Authority G.S. 113A-52.01(4); 113A-54(b);*

15 *Eff. October 1, 1995;*

16 *Readopted Eff. February 1, 2020.*

17

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0131

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On Page 2, lines 33-35, so that I'm clear – the intent here is not to regulate these federal permits, but to give notice to anyone who holds them and are subject to these rules to remind them of the federal requirements?*

*In (1)(a), line 4, please delete the comma after “erosion”*

*In (1)(b), line 6, does your regulated public know what “grubbing” means?*

*In (1)(e), line 16, retain “Item”*

*In (2)(b), was this change made in response to public comments?*

*Line 22, please insert a comma after “dissipators”?*

*In (2)(c), line 28, so that I'm clear – the owner can determine whether to include the licenses and certifications? And that is who will determine what is relevant here?*

*In (2)(d), line 32, please do not put “significant deviation” in quotation marks here. You will retain the quotation marks on line 34, since that is where you are defining the term.*

*On line 34, please insert a comma after “alteration”*

*On line 37, and Page 4, line 1, should the term be “significant deviation” or do you mean any deviation?*

*Also on line 37, consider inserting a comma after “deviation”*

*On Page 4, line 1 – so that I'm clear – the landowner can make these recommendations?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0131 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

2  
3 **15A NCAC 04B .0131 SELF-INSPECTIONS**

4 Where inspections are required by G.S. 113A-54.1(e), the following apply:

5 (1) The person who performs the inspection shall make a record of the site inspection by documenting  
6 the following items:

7 (a) ~~all of the erosion and sedimentation control measures, practices and devices, as called for~~  
8 ~~in a construction sequence consistent with the approved erosion and sedimentation~~  
9 ~~control plan, including but not limited to sedimentation control basins, sedimentation~~  
10 ~~traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains,~~  
11 ~~rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage~~  
12 ~~facilities, energy dissipaters, and stabilization methods of open channels, have initially~~  
13 ~~been installed and do not significantly deviate (as defined in Sub item (1)(e) of this Rule)~~  
14 ~~from the locations, dimensions and relative elevations shown on the approved erosion~~  
15 ~~and sedimentation plan. Such documentation shall be accomplished by initialing and~~  
16 ~~dating each measure or practice shown on a copy of the approved erosion and~~  
17 ~~sedimentation control plan or by completing, dating and signing an inspection report that~~  
18 ~~lists each measure, practice or device shown on the approved erosion and sedimentation~~  
19 ~~control plan. This documentation is required only upon the initial installation of the~~  
20 ~~erosion and sedimentation control measures, practices and devices as set forth by the~~  
21 ~~approved erosion and sedimentation control plan or if the measures, practices and devices~~  
22 ~~are modified after initial installation;~~

23 (b) ~~the completion of any phase of grading for all graded slopes and fills shown on the~~  
24 ~~approved erosion and sedimentation control plan, specifically noting the location and~~  
25 ~~condition of the graded slopes and fills. Such documentation shall be accomplished by~~  
26 ~~initialing and dating a copy of the approved erosion and sedimentation control plan or by~~  
27 ~~completing, dating and signing an inspection report;~~

28 (c) ~~the location of temporary or permanent ground cover, and that the installation of the~~  
29 ~~ground cover does not significantly deviate (as defined in Sub item (1)(e) of this Rule)~~  
30 ~~from the approved erosion and sedimentation control plan. Such documentation shall be~~  
31 ~~accomplished by initialing and dating a copy of the approved erosion and sedimentation~~  
32 ~~control plan or by completing, dating and signing an inspection report;~~

33 (d) ~~that maintenance and repair requirements for all temporary and permanent erosion and~~  
34 ~~sedimentation control measures, practices and devices have been performed. Such~~  
35 ~~documentation shall be accomplished by completing, dating and signing an inspection~~  
36 ~~report (the general storm water permit monitoring form may be used to verify the~~  
37 ~~maintenance and repair requirements); and~~

1           ~~(e) any significant deviations from the approved erosion and sedimentation control plan,~~  
2           ~~corrective actions required to correct the deviation and completion of the corrective~~  
3           ~~actions. Such documentation shall be accomplished by initialing and dating a copy of the~~  
4           ~~approved erosion and sedimentation control plan or by completing, dating and signing an~~  
5           ~~inspection report. A significant deviation means an omission, alteration or relocation of~~  
6           ~~an erosion or sedimentation control measure that prevents the measure from performing~~  
7           ~~as intended.~~

8           ~~(2) The documentation, whether on a copy of the approved erosion and sedimentation control plan or~~  
9           ~~an inspection report, shall include the name, address, affiliation, telephone number, and signature~~  
10           ~~of the person conducting the inspection and the date of the inspection. Any relevant licenses and~~  
11           ~~certifications may also be included. Any documentation of inspections that occur on a copy of the~~  
12           ~~approved erosion and sedimentation control plan shall occur on a single copy of the plan and that~~  
13           ~~plan shall be made available on the site. Any inspection reports shall also be made available on~~  
14           ~~the site.~~

15           ~~(3) The inspection shall be performed during or after each of the following phases of a plan:~~

16           ~~(a) installation of perimeter erosion and sediment control measures;~~

17           ~~(b) clearing and grubbing of existing ground cover;~~

18           ~~(c) completion of any phase of grading of slopes or fills that requires provision of temporary~~  
19           ~~or permanent ground cover pursuant to G.S. 113A-57(2);~~

20           ~~(d) completion of storm drainage facilities;~~

21           ~~(e) completion of construction or development; and~~

22           ~~(f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion~~  
23           ~~or until the financially responsible party has conveyed ownership or control of the tract of~~  
24           ~~land for which the erosion and sedimentation control plan has been approved and the~~  
25           ~~agency that approved the plan has been notified. If the financially responsible party has~~  
26           ~~conveyed ownership or control of the tract of land for which the erosion and~~  
27           ~~sedimentation control plan has been approved, the new owner or person in control shall~~  
28           ~~conduct and document inspections quarterly until the establishment of permanent ground~~  
29           ~~cover sufficient to restrain erosion.~~

31 All land-disturbing activities required to have an approved erosion and sedimentation control plan under [G.S.  
32 113A-54.1] G.S. 113A-54.1(e) shall conduct self-inspections for initial installation or modification of any erosion  
33 and sedimentation control devices and practices described in an approved plan. In addition, weekly and rain-event  
34 self-inspections are required by federal regulations, that are implemented through the NPDES Construction General  
35 Permit No. NCG 010000.

- 1 (1) For self-inspections required pursuant to ~~[G.S. 113A-54.1,]~~ G.S. 113A-54.1(e), the inspection  
2 shall be performed during or after ~~[the implementation of]~~ each of the following components  
3 phases of ~~[a project;]~~ the plan:
- 4 (a) initial installation of ~~[land disturbance, perimeter]~~ erosion, and sediment control  
5 measures;
- 6 (b) clearing and grubbing of existing ground cover;
- 7 (c) installation completion of ~~[temporary or permanent sediment and erosion control~~  
8 ~~measures to include]~~ any grading that requires ground ~~[cover]~~ cover; ~~[pursuant to G.S.~~  
9 ~~113A-57(2);]~~
- 10 ~~[(d)]~~ completion of storm drainage facilities;
- 11 ~~[(e)]~~(d) completion of all land-disturbing activity, construction, or development, including  
12 permanent ground cover establishment and removal of all temporary measures; and
- 13 ~~[(f)]~~(e) transfer of ownership or control of the tract of land where the erosion and sedimentation  
14 control plan has been approved and work has begun. The new owner or person in control  
15 shall conduct and document inspections until the project is permanently stabilized as in  
16 ~~[Sub-Item (e)]~~ Sub-Item(1)(c) of this [Item.] Rule.
- 17 (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
- 18 (a) ~~[Verification]~~ Visual verification of ~~[all]~~ ground stabilization and other erosion ~~[and]~~  
19 ~~[sedimentation]~~ control ~~[measures;]~~ measures and practices ~~[and devices;]~~ as called for in  
20 the approved ~~[construction sequence and the erosion and sedimentation control]~~ plan;
- 21 (b) Verification by measurement of settling basins, temporary construction entrances, energy  
22 dissipators and traps.
- 23 ~~[(b)]~~(c) The name, address, organization affiliation, telephone number, and signature of the  
24 person conducting the inspection and the date of the inspection shall be included, whether  
25 on a copy of the approved erosion and sedimentation control plan or an inspection report.  
26 A template for an example of an inspection and monitoring report is provided on the  
27 DEMLR website at: [https://deq.nc.gov/about/divisions/energy-mineral-land-](https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms)  
28 resources/erosion-sediment-control/forms. Any relevant licenses and certifications may  
29 also be included. Any documentation of inspections that occur on a copy of the approved  
30 erosion and sedimentation control plan shall occur on a single copy of the plan and that  
31 plan shall be made available on the site.
- 32 ~~[(e)]~~(d) A record of any "significant deviation" from any erosion or sedimentation control  
33 measure [made] from that on the approved plan. For the purpose of this Rule, a  
34 "significant deviation" means an omission, alteration or relocation of an erosion or  
35 sedimentation control measure that [may change the intended performance of the  
36 measure.] prevents it from performing as intended. The record shall include measures  
37 required to correct the deviation along with documentation of when those measures were

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taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

~~[(d) — All self inspection documentation shall be made available on the site for at least 30 calendar days or maintained until permanent ground cover has been established, whichever is longest.]~~

*History Note: Authority G.S. 113A-54; 113A-54.1(e);  
Eff. October 1, 2010;  
Readopted Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04B .0132

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*On the Submission for Permanent Rule form, Box 2, please insert the full name of the Rule.*

*In (1), line 9, should "25-year storm" be replaced by "Q25" or "Twenty-five year" to conform to the defined term in Rule .0105?*

*In (1), lines 12-13, and (2), lines 19-20, I take it this language is to conform to SL 2009-486, Section 3(h), which states:*

**SECTION 3.(h) Additional standards for land-disturbing activities in the water supply watershed.** - For purposes of this section, "land-disturbing activity" does not include the land-disturbing activities set out in G.S. 113A-52.01. In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the water supply reservoir to which this section applies shall meet all of the following design standards for sedimentation and erosion control:

(1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of the State or the United States or any generally recognized organization or association.

*In (3), line 26, so that I'm clear – the Division will make this determination based upon the soil conditions?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04B .0132 is readopted as published in the 34:02 NCR 120-135 as follows:

2  
3 **15A NCAC 04B .0132 DESIGN STANDARDS FOR THE UPPER NEUSE RIVER BASIN (FALLS LAKE**  
4 **WATERSHED)**

5 In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the  
6 drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3.(a),  
7 shall meet all of the following design standards for sedimentation and erosion control:

- 8 (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed,  
9 and constructed to provide protection from the runoff of the 25-year storm that produces the  
10 maximum peak rate of runoff as calculated according to procedures set out in the United States  
11 Department of ~~Agriculture~~ Agriculture, Natural Resources Soil Conservation Service's "National  
12 Engineering Field ~~Manual~~ Handbook 630 for Conservation Practices" or according to procedures  
13 adopted by any other agency of the State or the United States.
- 14 (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling  
15 efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by  
16 the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated  
17 according to procedures in the United States Department of ~~Agriculture~~ Agriculture, Natural  
18 Resources Soil Conservation Service's "National Engineering Field ~~Manual~~ Handbook 630 for  
19 Conservation Practices" or according to procedures adopted by any other agency of the State or  
20 the United States.
- 21 (3) Newly constructed open channels shall be planned, designed, and constructed with side slopes no  
22 steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil  
23 conditions permit steeper side slopes or where the side slopes are stabilized by using mechanical  
24 devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle  
25 for side slopes shall be sufficient to restrain accelerated ~~erosion~~ erosion, as determined by the  
26 Division, based on soil conditions.
- 27 (4) For an area of land-disturbing activity where grading activities have been completed, temporary or  
28 permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but  
29 ~~in no case~~ not later than seven days after completion of grading. For an area of land-disturbing  
30 activity where grading activities have not been completed, temporary ground cover shall be  
31 provided as follows:
- 32 (a) For an area with no slope, temporary ground cover shall be provided for the area if it has  
33 not been disturbed for a period of 14 days.
- 34 (b) For an area of moderate slope, temporary ground cover shall be provided for the area if it  
35 has not been disturbed for a period of 10 days. For purposes of this Item, "moderate  
36 slope" means an inclined area, the inclination of which is less than or equal to three units  
37 of horizontal distance to one unit of vertical distance.

1 (c) For an area of steep slope, temporary ground cover shall be provided for the area if it has  
2 not been disturbed for a period of seven days. For purposes of this Item, "steep slope"  
3 means an inclined area, the inclination of which is greater than three units of horizontal  
4 distance to one unit of vertical distance.

5  
6 *History Note:* *Authority S.L. 2009-486; G.S. 113A-54(b)*  
7 *Eff. February 1, 2012;*  
8 *Readopted Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04C .0103

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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 the History Note, why are you citing to G.S. 143B-10?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04C .0103 is readopted as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04C .0103 WHO MAY ASSESS**

4 The ~~director~~ Secretary may assess civil penalties against any person responsible for a violation.

5

6 *History Note: Authority G.S. 113A-55; 113A-64; 143B-10;*

7 *Eff. February 1, 1976;*

8 *Amended Eff. November 1, 1984;*

9 *Readopted Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04C .0106

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*What authority are you relying upon to set these additional criteria not set in G.S. 113A-64(a)(3)?*

*In (5), line 11, please change "which" to "that"*

*Please end (10), line 20, with a period.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04C .0106 is readopted as published in the 34:02 NCR 120-135 with changes as follows:

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**15A NCAC 04C .0106 CRITERIA**

In determining the amount of the civil penalty assessment, the ~~director~~ Secretary shall consider the following ~~criteria:~~ criteria, in addition to the factors pursuant to G.S. 113A-64(a)(3):

- (1) severity of the ~~violation;~~ violation;
- (2) ~~degree and extent of the harm;~~ [harm;]
- (3) (2) type of ~~violation;~~ violation;
- (4) (3) ~~duration;~~ duration;
- (5) (4) ~~cause;~~ cause;
- (6) (5) extent of any off-site damage which may have ~~resulted;~~ resulted;
- (7) (6) effectiveness of action taken by ~~violator;~~ violator;
- (8) (7) adherence to plan submitted by ~~violator;~~ violator;
- (9) (8) effectiveness of plan submitted by ~~violator;~~ violator;
- (10) ~~cost of rectifying any damage;~~ [damage;]
- (11) ~~the violator's previous record in complying with rules~~ [the Act, or any rule or order] ~~of the~~ commission; [Commission;]
- (12) (9) estimated cost of ~~installing and/or maintaining~~ taking corrective sediment control ~~measures;~~ actions; and
- (13) (10) staff investigative ~~costs~~ costs;
- (14) ~~the amount of money the violator saved by noncompliance; and~~
- (15) ~~whether the violation was committed willfully;~~

*History Note: Authority G.S. 113A-54(b); 113A-55; 113A-64(a);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; April 1, 1978;  
Readopted Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04C .0107

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 4, please insert a comma after "violation"*

*On line 7, I recommend deleting "shall" both places.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04C .0107 is readopted as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04C .0107 PROCEDURES: NOTICES**

4 (a) The notice of violation shall describe the violation ~~with reasonable particularity~~, request that all illegal activity  
5 cease, and inform the violator that a civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions  
6 need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be  
7 taken, shall specify a time period for compliance, and shall state that upon failure to comply within the allotted ~~time~~  
8 time, the person shall become subject to the assessment of a civil penalty for each day of the continuing violation  
9 beginning with the date of the violation.

10 (b) The ~~stop-work stop-work~~ order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of  
11 the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the ~~stop-work stop-work~~ order shall be  
12 served upon persons the Department has reason to believe may be responsible for the violation ~~by any means~~  
13 authorized under pursuant to G.S. 1A-1, Rule 4.

14

15 *History Note:* Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July  
16 11, 1992;

17 Authority G.S. 113A-54; 113A-61.1; 113A-64; 113A-65.1; ~~143B-10~~;

18 Eff. February 1, 1976;

19 Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992; May 1, 1990; November 1, 1984;

20 Temporary Amendment Eff. August 1, 2000;

21 Amended Eff. April 1, 2001;

22 Readopted Eff. February 1, 2020.

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24

1 15A NCAC 04C .0108 is repealed through readoption as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING**

4

5 *History Note: Authority G.S. 113A-64; 143B-10; 150B-23;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. October 1, 1995; October 1, 1988; October 5, 1980; April 1, 1978;*

8 *Repealed Eff. February 1, 2020.*

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1 15A NCAC 04C .0110 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04C .0110 ADMINISTRATIVE HEARING**

4

5 *History Note: Authority G.S. 113A-55; 150B-22 et seq.;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. October 1, 1995; August 1, 1988; November 1, 1984; October 5, 1980;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
9 *2, 2016;*

10 *Repealed Eff. February 1, 2020.*

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1 15A NCAC 04C .0111 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04C .0111 FURTHER REMEDIES**

4

5 *History Note: Authority G.S. 113A-54; 113A-60; 113A-64 through 113A-66;*

6 *Eff. February 1, 1976;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
8 *2, 2016;*

9 *Repealed Eff. February 1, 2020.*

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1 15A NCAC 04D .0102 is repealed through readoption as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04D .0102 MODEL ORDINANCE**

4

5 *History Note: Authority G.S. 113A-54(d); 113A-60;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. March 14, 1980; February 23, 1979;*

8 *Summary Rule Filed January 26, 1982;*

9 *Amended Eff. October 1, 1995; May 1, 1990; August 1, 1988; November 1, 1984;*

10 *Repealed Eff. February 1, 2020.*

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1 15A NCAC 04E .0101 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04E .0101 GENERAL PURPOSE**

4

5 *History Note: Authority G.S. 113A-54; 113A-55; 150B;*

6

*Eff. March 14, 1980;*

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*Amended Eff. November 1, 1984;*

8

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*

9

*2, 2016;*

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*Repealed Eff. February 1, 2020.*

11

1 15A NCAC 04E .0102 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04E .0102 DEFINITIONS**

4

5 *History Note: Authority G.S. 113A-54; 113A-55;*

6 *Eff. March 14, 1980;*

7 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); May 1, 1990;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
9 *2, 2016;*

10 *Repealed Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04E .0104

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*Do you even need (a), given the language in Paragraph (b)? Does the Commission receive written requests for copies of its rules?*

*If so, consider simplifying the language in (a), lines 4-6 by stating "Copies of Commission rules may be requested by contacting the Director at the address set forth in Rule 15A NCAC 04A .0101"? And do you mean any of the addresses, or the Archdale address?*

*On line 8, what are "reasonable fees"? Do you mean to rely upon "minimal cost" in G.S. 132-1? Or are you relying upon G.S. 150B-19(5)(b)?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04E .0104 is amended as published in 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04E .0104 COPIES OF RULES: INSPECTION RULES**

4 (a) Anyone desiring to obtain a copy of any or all of the rules of the ~~commission~~ Commission may do so by  
5 requesting such from the ~~director~~ Director at the address of the ~~commission~~ Commission as set forth in 15A NCAC  
6 04A .0101. at Rule .0001 of Subchapter A of this Chapter. The request ~~must~~ shall specify the rules requested, for  
7 example, 15A NCAC 4, 04, Sedimentation Control, or 15A NCAC 4E, ~~Rulemaking Procedures.~~04B .0113,  
8 Responsibility for Maintenance. The ~~director~~ Director may charge reasonable fees to recover mailing and  
9 duplication costs for requests of more than one copy of the same rule(s).

10 (b) The rules of the ~~commission~~ Commission (15A NCAC ~~4~~NCAC 04) ~~and other documents specified in G.S.~~  
11 ~~150B-11 are available for public inspection at the Office of the Director (P.O. Box 27687, 512 N. Salisbury Street,~~  
12 ~~Raleigh, N.C. 27611) during regular office hours.~~ can also be found on the website of the NC Office of  
13 Administrative Hearings at: <https://www.oah.state.nc.us/>.

14

15 *History Note: Authority G.S. 113A-54; 113A-55; ~~150B-11;~~*

16 *Eff. March 14, 1980;*

17 *Amended Eff. August 1, 1988; November 1, 1984;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
19 *2, 2016;*

20 *Amended Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04E .0201

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*Consider making lines 25-27 Paragraph (e). That way, the rule states where the petition must be sent, what the petition must include, what it may include, notice that incomplete petitions shall be returned, and then what the Commission will consider in reviewing the petition. If you do that, I suggest breaking it further into a list.*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1  
2 15A NCAC 04E .0201 is amended as published in 34:02 NCR 120-135 with changes as follows:

3  
4 **15A NCAC 04E .0201 ~~PETITION FOR RULEMAKING HEARINGS~~ PETITION FOR RULEMAKING HEARINGS ~~FORM AND CONTENT OF~~**  
5 **PETITION**

6 ~~Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the commission~~  
7 ~~shall forward the petition to the director at the address of the commission in Rule .0001 of Subchapter A of this~~  
8 ~~Chapter. The first page of the petition should clearly bear the notation: RULEMAKING PETITION RE and then~~  
9 ~~the subject area (for example, RE PLAN REQUIREMENTS, RE PENALTIES, RE INSPECTIONS) or an~~  
10 ~~indication of any other area over which the commission may have rulemaking authority.~~

11 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall make the  
12 request in a petition to the Commission addressed to the:

13  
14 Director  
15 Division of Energy, Mineral, and Land Resources  
16 1612 Mail Service Center  
17 Raleigh, North Carolina 27699-1612  
18

19 (b) The petition shall contain the following information:

- 20 (1) the text of the proposed rule(s) for adoption or amendment;  
21 (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an  
22 existing rule(s);  
23 (3) a statement of the effect on existing rules or orders; and  
24 (4) the name(s) and address(es) of the petitioner(s); and petitioner(s).

25 (c) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule;  
26 the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the  
27 proposed rule; and the impact of the rule on the public and regulated entities. The petitioner may include the  
28 following information within the request:

- 29 (1) the statutory authority for the agency to promulgate the rules(s);  
30 (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including  
31 cost factors for persons affected by the proposed rule(s);  
32 (3) a statement explaining the computation of the cost factors;  
33 (4) a description, including the names and addresses, if known, of those most likely to be affected by the  
34 proposed rule(s); and  
35 (5) documents and data supporting the proposed rule(s).

36 (d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the  
37 petitioner by the Director on behalf of the Commission.

1 *History Note: Authority G.S. 113A-54; ~~150B-16~~; 150B-20;*  
2 *Eff. March 14, 1980;*  
3 *Amended Eff. November 1, 1984;*  
4 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
5 *2, 2016;*  
6 *Amended Eff. February 1, 2020.*  
7

1 15A NCAC 04E .0203 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04E .0203 DISPOSITION OF PETITIONS**

4

5 *History Note: Authority G.S. 113A-54; 113A-55; 150B-16;*

6

*Eff. March 14, 1980;*

7

*Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981;*

8

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*

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*2, 2016;*

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*Repealed Eff. February 1, 2020.*

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1 15A NCAC 04E .0403 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04E .0403 WRITTEN SUBMISSIONS**

4

5 *History Note: Authority G.S. 113A-54; 150B-12(e);*

6 *Eff. March 14, 1980;*

7 *Amended Eff. June 5, 1981;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
9 *2, 2016;*

10 *Repealed Eff. February 1, 2020.*

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1 15A NCAC 04E .0405 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION**

4

5 *History Note: Authority G.S. 113A-54; 150B-12(e);*

6 *Eff. March 14, 1980;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
8 *2, 2016;*

9 *Repealed Eff. February 1, 2020.*

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1 15A NCAC 04E .0406 is repealed as published in the 34:02 NCR 120-135 as follows:

2

3 **15A NCAC 04E .0406 RECORD OF PROCEEDINGS**

4

5 *History Note: Authority G.S. 113A-54; 150B-11(2);*

6

*Eff. March 14, 1980;*

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*Amended Eff. August 1, 1988; November 1, 1984;*

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*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*

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*2, 2016;*

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*Repealed Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04E .0501

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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:

*What is the point of this Rule? What are you regulating or establishing here?*

*I suggest saying on line 9, "as provided in G.S. 150B-4 and the rules of this Section."*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04E .0501 is amended as published in the 34:02 NCR 120-135 as follows:

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**15A NCAC 04E .0501 ~~SUBJECTS OF DECLARATORY RULINGS~~ RULINGS: GENERALLY**

~~Any person aggrieved by a statute administered or rule promulgated by the commission may request a declaratory ruling as to either the manner in which a statute or rule applies to a given factual situation, if at all, or whether a particular agency rule is valid. For purposes of this Section, an aggrieved person means a person substantially affected by a statute administered by the commission or a rule promulgated by the commission. At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Sedimentation Control Commission may issue a declaratory ruling as provided in G.S. 150B-4.~~

*History Note: Authority G.S. 113A-54; ~~150B-17~~; 150B-4  
Eff. March 14, 1980;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;  
Amended Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04E .0502

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 14, insert a comma after "Mineral":*

*In (b)(1), line 18 and (b)(4), line 21, insert a comma after "statute"*

*In (b)(3), line 20, why does the order go "rule, order or statute" when elsewhere it's "rule, statute, or order"? If you want to retain the current order, please insert a comma after "order"*

*In (b)(4), line 21, replace "which" with "that"*

*What is (b)(5)? What do you mean here?*

*In (b)(7), so that I'm clear – you are requiring a draft of the proposed ruling to be submitted before the Commission will even decide whether to grant the request?*

*In (c), line 29, what is "specific" here?*

*In (d), so that I'm clear – you are allowing third party intervention in a declaratory judgment ruling, even though those will only be binding upon the Department and the petitioner?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04E .0502 is amended as published in the 34:02 NCR 120-135 as follows:

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3 **15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS SUBMISSION**  
4 **OF REQUEST FOR RULING**

5 ~~All requests for declaratory rulings shall be written and mailed to the director at the address of the commission. The~~  
6 ~~first page of the request should bear the notation: REQUEST FOR DECLARATORY RULING. The request must~~  
7 ~~include the following information:~~

- 8 (1) ~~name and address of petitioner;~~  
9 (2) ~~statute or rule to which petition relates;~~  
10 (3) ~~concise statement of the manner in which petitioner is aggrieved by the rule or statute or its~~  
11 ~~potential application to him;~~  
12 (4) ~~a statement of whether an oral hearing is desired and, if so, the reason therefor.~~

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14 (a) All requests for a declaratory ruling shall be filed with the Director, Division of Energy, Mineral and Land  
15 Resources, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, NC 27699-1612.

16 (b) All requests shall include the following:

- 17 (1) name and address of petitioner(s);  
18 (2) the rule, statute or order upon which a ruling is desired;  
19 (3) a statement as to whether the request is for a ruling on the validity of a rule or on the applicability  
20 of a rule, order or statute to a given factual situation;  
21 (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule, statute or order,  
22 or its potential application to petitioner;  
23 (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the  
24 petitioner;  
25 (6) a statement of the facts proposed for adoption by the Commission;  
26 (7) a draft of the proposed ruling; and  
27 (8) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an  
28 oral argument.

29 (c) A request for a ruling on the applicability of a rule, order or statute shall include a description of the specific  
30 factual situation on which the ruling is to be based and documentation supporting those facts. A request for a  
31 ruling on the validity of a Commission rule shall state the aggrieved person's reason(s) for questioning the  
32 validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may  
33 ask for both types of declaratory rulings in a single request.

34 (d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for  
35 declaratory ruling. The request to intervene shall be determined by the Chairman.

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1 *History Note: Authority G.S. 113A-54; ~~150B-17~~; 150B-4;*  
2 *Eff. March 14, 1980;*  
3 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
4 *2, 2016;*  
5 *Amended Eff. February 1, 2020.*

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REQUEST FOR TECHNICAL CHANGE

AGENCY: Sedimentation Control Commission

RULE CITATION: 15A NCAC 04E .0503

**DEADLINE FOR RECEIPT: Friday, January 10, 2020**

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), line 31, when you refer to the "requirements of this Section" don't you actually mean the requirements of Rule .0502?*

*In (b), under what circumstances will the Commission request these? Will this be determined by the Commission on a case-by-case basis?*

*In (b)(2), who is this "other person" here?*

*In (c), line 37, please don't put "good cause" in quotation marks here.*

*In (d), line 3, state "Good cause" as the term is used in Paragraph (c) of this Rule..."*

*In (d)(1), line 4, what is "similar" here? Will this be determined by the Commission?*

*In (d)(3), line 8, what is "genuine controversy"?*

*Also on line 3, please insert a comma after "order"*

*In (d)(4), line 11, do you need "specifically" here?*

*In (e), lines 13-14, why do you need "at a minimum"?*

*In (e)(6), if you are saying that the record will contain the declaratory ruling or the decision and reason for denying the request as set forth in Paragraph (c) of the Rule, then I think you can clarify this language.*

*In (f), line 23, I am just checking - by "Section" do you mean all of Section .0500?*

*In (f)(2), line 27, replace "which" with "that"*

*On line 27, what is "plainly"? Who will determine this?*

*What authority are you relying upon for the statement in Paragraph (g)?*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

*What is the purpose of Paragraph (h)? What does it add that is not addressed by G.S. 150B-4?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: January 3, 2020

1 15A NCAC 04E .0503 is amended as published in the 34:02 NCR 120-135 as follows:

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3 **15A NCAC 04E .0503 DISPOSITION OF REQUESTS REQUEST**

4 ~~(a) Upon receiving a request, the director is authorized to initiate a declaratory ruling proceeding to receive~~  
5 ~~information concerning the request. A declaratory ruling proceeding may consist of written submissions, an oral~~  
6 ~~hearing, or other procedures as may be appropriate in the circumstances of the particular request. If the proceeding~~  
7 ~~takes the form of an oral hearing the director may direct that the proceeding take place before the commission.~~

8 ~~(b) The director will compile the information collected in the proceeding, along with other relevant information, in~~  
9 ~~a recommendation to the commission on whether to issue the ruling and what the ruling should be.~~

10 ~~(c) A decision whether to issue the ruling will be made by the commission at the next regularly scheduled meeting~~  
11 ~~of the commission within the 60 day period required by 150B-17 and after the director's recommendation is~~  
12 ~~presented. If no meeting is scheduled within that time period, the director will ask the chairman of the commission~~  
13 ~~to call a special meeting so that the commission can comply with the requirements of G.S. 150B-17.~~

14 ~~(d) If the decision of the commission is to issue the ruling, the ruling will be issued by the commission with the 60~~  
15 ~~day period required by G.S. 150B-17. If necessary, the chairman of the commission will call a special meeting so~~  
16 ~~that the commission can comply with this requirement.~~

17 ~~(e) If the decision of the commission is to deny the request, the director will notify the petitioner(s) in writing~~  
18 ~~stating the reasons therefor.~~

19 ~~(f) For purposes of this Rule, the commission will ordinarily refuse to issue a declaratory ruling:~~

20 ~~(1) unless the rule is unclear on its face;~~

21 ~~(2) unless the petitioner shows that the circumstances are so changed since the adoption of the rule~~  
22 ~~that such a ruling would be warranted;~~

23 ~~(3) unless the petitioner shows that the agency did not give to the factors specified in the request for a~~  
24 ~~declaratory ruling a full consideration at the time the rule was issued;~~

25 ~~(4) where there has been a similar controlling factual determination in a contested case or where the~~  
26 ~~factual context being raised for a declaratory ruling was specifically considered upon the adoption~~  
27 ~~of the rule or directive being questioned, as evidenced by the rulemaking record; or~~

28 ~~(5) where the subject matter of the request is involved in pending litigation in any state or federal~~  
29 ~~court in North Carolina.~~

30 (a) The Commission Chairman shall make a determination on the completeness of the request for declaratory  
31 ruling based on the requirements of this Section, and the Chairman shall make a recommendation to the  
32 Commission on whether to grant or deny a request for a declaratory ruling.

33 (b) Before deciding the merits of the request, the Commission may:

34 (1) request additional written submissions from the petitioner(s);

35 (2) request a written response from the Department, or any other person; and

36 (3) hear oral arguments from the petitioner(s) and the Department or their legal counsel.

37 (c) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable,

1 the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the  
2 ruling, stating the reason(s) for the refusal to issue a ruling on the request.

3 (d) "Good cause" as set out in Paragraph (c) of this Rule shall include:

4 (1) finding that there has been a similar determination in a previous contested case or  
5 declaratory ruling;

6 (2) finding that the matter is the subject of a pending contested case hearing or  
7 litigation in any North Carolina or federal court;

8 (3) finding that no genuine controversy exists as to the application of a statute, order or rule to the  
9 specific factual situation presented; or

10 (4) finding that the factual context put forward as the subject of the declaratory ruling  
11 was specifically considered upon the adoption of the rule being questioned, as  
12 evidenced by the rulemaking record.

13 (e) The Commission, through the Department, shall keep a record of each declaratory ruling, which shall include at a  
14 minimum the following items:

15 (1) the request for a ruling;

16 (2) any written submission by a party;

17 (3) the given state of facts on which the ruling was based;

18 (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary  
19 of all arguments;

20 (5) any other matter considered by the Commission in making the decision; and

21 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling,  
22 together with the reasons therefore.

23 (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:

24 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant  
25 provisions of the statute or rule are amended or altered;

26 (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or  
27 rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the  
28 declaratory ruling;

29 (3) the Commission changes the declaratory ruling prospectively; or,

30 (4) any court sets aside the declaratory ruling in litigation between the Commission or  
31 Department of Environmental Quality and the party requesting the ruling.

32 (g) The party requesting a declaratory ruling may agree to allow the Commission to issue a ruling on the merits of  
33 the request beyond the time allowed by G.S. 150B-4.

34 (h) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a  
35 contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the  
36 merits within the time allowed by G.S. 150B-4 shall constitute a denial of the request as well as a denial of the  
37 merits of the request and shall be subject to judicial review.

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*History Note: Authority G.S. 113A-54; 113A-55; ~~150B-17~~; 150B-4  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; June 5, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February  
2, 2016;  
Amended Eff. February 1, 2020.*

1 15A NCAC 04E .0504 is repealed as published in the 34:02 NCR 120-135 as follows:

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3 **15A NCAC 04E .0504 RECORD OF DECISION**

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5 *History Note: Authority G.S. 113A-54; 150B-11;*

6 *Eff. March 14, 1980;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*  
8 *2, 2016;*

9 *Repealed Eff. February 1, 2020.*

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