

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0101

DEADLINE FOR RECEIPT: Friday, December 11, 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:

What is the overall intent of this Rule? I'm a bit concerned because "Rules... [that] are not codified" appear to be Policies. When exactly would this Rule apply? Is it necessary?

Please add any additional relevant statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

1 15A NCAC 02I .0101 is readopted as published in 35:02 NCR 106 with changes as follows:

2
3 15A NCAC 02I .0101 PURPOSE OF THIS SUBCHAPTER

4 ~~These rules and regulations. In instances where Rules related to hearings conducted by a Division are not codified,~~
5 ~~these Rules authorize the designation of certain employees of the Department of Natural Resources and Community~~
6 ~~Development as hearing officers, sets set out the types of hearings which the designated employees are authorized to~~
7 ~~conduct, and delineates delineate and references reference the rules of procedure for conducting rule-making,~~
8 ~~rulemaking or other hearings, administrative, and special hearings.~~

9
10 *History Note: Authority G.S. 143-215.3(a)(1),(3);*

11 *Eff. February 1, 1976;*

12 *Amended Eff. November 1, 1978;*

13 *Readopted Eff. January 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0102

DEADLINE FOR RECEIPT: Friday, December 11, 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:

Please confirm that you intend to use the definitions set forth in G.S. 143-213. The changes in this Rule appear to expand the applicability in this Rule, so I want to be sure that this is the only cross-reference you intend to include (it's very possible that it is.)

In Items (3) and (4), please add a comma after "water resources"

Please add any additional relevant statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

1 15A NCAC 02I .0102 is readopted as published in 35:02 NCR 106 as follows:

2
3 15A NCAC 02I .0102 DEFINITIONS

4 The terms used herein shall be as defined in G.S. 143-213 and 150B-2 and as follows:

- 5 (1) "Commission" means the North Carolina Environmental Management Commission.
- 6 (2) "Department" means the Department of Environmental Quality, Natural Resources and
7 Community Development, and its successor.
- 8 (3) "Director" means ~~the Director, Division of Environmental Management,~~ Director of the Division
9 of Air Quality, Director of the Division of Energy, Mineral, and Land Resources, Director of the
10 Division of Mitigation Services, Director of the Division of Water Resources or Director of the
11 Division of Waste Management and their successors.
- 12 (4) "Division" means the Division of ~~environmental management~~ Air Quality, the Division of Energy,
13 Mineral, and Land Resources, the Division of Mitigation Services, the Division of Water
14 Resources or the Division of Waste Management and its their successor, successors.

15
16 *History Note:* *Authority G.S. 143-215.3(a)(1);*
17 *Eff. February 1, 1976;*
18 *Amended Eff. July 1, 1988; November 1, 1978;*
19 *Readopted Eff. January 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0103

DEADLINE FOR RECEIPT: Friday, December 11, 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:

Why have you included G.S. 150-32 in the History Note? This does not appear to give you all any authority.

Please add any additional relevant statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

1 15A NCAC 02I .0103 is readopted as published in 35:02 NCR 106 as follows:

2
3 15A NCAC 02I .0103 DELEGATIONS

4 ~~Unless otherwise directed by the Chair of the Commission, pursuant to Rule .0105 of this Section, the~~ The Director
5 is authorized to designate hearing officers, establish the hearings, issue notices and perform other administrative
6 functions in accordance with these ~~Rules, regulations.~~ The Director shall advise the Commission at its regularly
7 scheduled meetings of any public hearings held or scheduled since the Commission's last meeting.

8
9 *History Note: Authority G.S. 143-215.3(a)(3),(4); 150B-32;*

10 *Eff. February 1, 1976;*

11 *Readopted Eff. January 1, 2021.*

1 **15A NCAC 02I .0104 is repealed as published in 35:02 NCR 106 as follows:**

2

3 **15A NCAC 02I .0104 AUTHORIZED HEARING OFFICERS**

4

5 *History Note: Authority G.S. 143-215.4(e); 150B-32;*

6 *Eff. February 1, 1976;*

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

8 *16, 2019;*

9 *Repealed Eff. January 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0105

DEADLINE FOR RECEIPT: Friday, December 11, 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:

Under what circumstances will the Chair designate a Commission member as a hearing officer? What factors will be used in making this determination?

Please add any additional relevant statutory authority.

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

1 15A NCAC 02I .0105 is amended as published in 35:02 NCR 106 as follows:

2
3 15A NCAC 02I .0105 REQUIREMENTS OF HEARING OFFICER OR PANEL

4 ~~One or more hearing officers may be designated to sit as a hearing panel for all hearings. Notwithstanding Rule~~
5 ~~.0103 of this Section, the Chair of the Commission may designate one or more of Commission members as hearing~~
6 ~~officer(s) for any hearing. The Commission may, in its discretion, sit as a whole or designate one or more of its~~
7 ~~members to sit as hearing officers for any hearing.~~

8
9 *History Note: Authority G.S. 143-215.3(a)(3);*

10 *Eff. February 1, 1976;*

11 *Amended Eff. July 1, 1988;*

12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*
13 *16, 2019;*

14 *Amended Eff. January 1, 2021.*

1 **15A NCAC 02I .0106 is repealed through readoption as published in 35:02 NCR 106 as follows:**

2

3 **15A NCAC 02I .0106 DEPARTMENT HEARING RULES**

4

5 *History Note:* *G.S. 87-87; 87-92; 143-215.3(a)(1); 143-215.4; 150B-14;*

6 *Eff. May 1, 1986;*

7 *Repealed Eff. January 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0203

DEADLINE FOR RECEIPT: Friday, December 11, 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:

When would this Rule be applicable? Overall, I think this Rule is unclear without some additional information as to when this would apply.

In your History Note, 150B-12 has been repealed. Please remove it.

In your History Note, why is G.S. 87-87 included here?

In your History Note, why is 143-215.13 included here?

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

1 **15A NCAC 02I .0203 is readopted as published in 35:02 NCR 106 as follows:**

2
3 **15A NCAC 02I .0203 PROCEDURES**

4 (a) Any person desiring to comment on the proposed action may do so either in writing or by oral presentation. Any
5 person may file a written statement or argument concerning the proposed action prior to the close of the hearing
6 record.

7 (b) The hearing officer(s) shall consider all written and oral submissions and submit recommendations concerning
8 the proposed action to the Commission following the close of the hearing record.

9 ~~(c) Requests for reasons for or against adoption shall be responded to in accordance with G.S. 150B-12(e).~~

10
11 *History Note: Authority G.S. 150B-12; 143-214.1(e); 143-215.13(c); 87-87;*

12 *Eff. February 1, 1976;*

13 *Amended Eff. July 1, 1988;*

14 *Readopted Eff. January 1, 2021.*

15A NCAC 02I .0301 is repealed as published in 35:02 NCR 106 as follows:

15A NCAC 02I .0301 OPPORTUNITY FOR HEARING

History Note: Authority G.S. 87-87; 87-92; 143-215.3(a); 143-215.4; 150B-2;

Eff. February 1, 1976;

Amended Eff. July 1, 1988; May 1, 1986; June 15, 1980;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;

Repealed Eff. January 1, 2021.

1 **15A NCAC 02I .0302 is repealed through readoption as published in 35:02 NCR 106 as follows:**

2

3 **15A NCAC 02I .0302 REQUEST FOR HEARING**

4

5 *History Note: Authority G.S. 143-215.3(a)(1); 150B-23;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. September 1, 1988;*

8 *Repealed Eff. January 1, 2021.*

9

1 15A NCAC 02I .0402 is repealed as published in 35:02 NCR 106 as follows:

2
3 15A NCAC 02I .0402 WATER QUALITY DISCHARGE PERMITS: NOTICE: PROCEDURES
4

5 *History Note: Authority G.S. 143-215.1(c)(3);*

6 *Eff. February 1, 1976;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*
8 *16, 2019;*

9 *Repealed Eff. January 1, 2021.*
10

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0501

DEADLINE FOR RECEIPT: Friday, December 11, 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 (a), who is the "Recording Clerk of the Commission"?

In (c), is this in determining whether to grant or deny the petition for rulemaking?

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

15A NCAC 02I .0501 is readopted as published in 35:02 NCR 106 as follows:

15A NCAC 02I .0501 FORM AND CONTENTS OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the ~~Environmental Management Commission (hereinafter referred to as the Commission)~~ shall make the request in a petition addressed to the Director of the appropriate division of the Department of Environmental Quality, and a copy in electronic ~~or digital~~ form shall also be sent to the Recording Clerk of the Commission:

Director
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

Director
Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

Director
Division of Mitigation Services
1652 Mail Service Center
Raleigh, North Carolina 27699-1652

Director
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Director
Division of Water Resources
1611 Mail Service Center
Raleigh, North Carolina 27699-1611

Recording Clerk of the Commission
Directors Office
Division of Water Resources
1611 Mail Service Center

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) the name(s) and address(es) of the petitioner(s); and
- (5) a request to present the petition to the committee in accordance with Rule .0502 of this Section, if desired.

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

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

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

*History Note: Authority G.S. 143B-282; 150B-20;
Eff. April 1, 2003;
Amended Eff. December 1, 2016; November 1, 2012;
Readopted Eff. January 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0502

DEADLINE FOR RECEIPT: Friday, December 11, 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:

Some of this Rule appears to be internal management and is therefore unnecessary. Please review and revise if necessary.

In (a), since you've changed "shall" to "may", how will the Chair determine whether to refer petitions?

What is the difference between (e) of this Rule and Paragraph (b) of .0503? Do you need both? If so, please clarify the difference between the two.

In (e), line 15, how will the Chair determine whether to allow additional people? What factors will be used in making this determination?

In (e), line 16, by "shall make oral presentations" do you mean "may"?

In (e), should lines 16-18 ("at least 10 days... supporting materials") be a separate Paragraph?

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

1 15A NCAC 02I .0502 is readopted as published in 35:02 NCR 106 as follows:

2
3 15A NCAC 02I .0502 REVIEW BY A COMMITTEE OF THE COMMISSION

4 (a) The ~~Chairman~~ Chair of the Commission ~~shall~~ may refer complete petitions to the appropriate subject area
5 committee of the Commission for review and recommended action. Copies of ~~Petitions~~ petitions for ~~Rulemaking~~
6 rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

7 (b) Within 10 days of the assignment of the complete petition, the ~~chairman~~ Chair of the ~~committee~~ Committee
8 assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition.

9 (c) At least 15 days before the committee meeting, notice of the committee meeting shall be sent to the petitioner,
10 members of the Commission, and persons who have requested notice of petitions for rulemaking.

11 (d) ~~If the petition is referred to a Committee, The~~ the petitioner shall be afforded the opportunity to present the
12 petition for rulemaking to the committee. The ~~Director, Director, division staff or their legal counsel~~ through staff,
13 may make a presentation to the ~~committee~~ Committee.

14 (e) The ~~Chairman~~ Chair of the ~~committee~~ Committee shall allow one interested person to present the viewpoint of
15 those who oppose initiating rulemaking. The ~~Chairman~~ Chair of the ~~committee~~ Committee may determine whether
16 additional interested persons shall make oral presentations before the ~~committee~~ Committee. At least 10 days
17 before the Committee meeting, interested ~~Interested~~ persons ~~must~~ shall request the opportunity to make a
18 presentation to the ~~committee~~ Committee through the Director. The request shall:

- 19 (1) state the interest of the person;
20 (2) state the person's position on the petition for rulemaking; and
21 (3) be accompanied by supporting materials.

22 (f) During the ~~committee's~~ Committee's review, members of the Commission, other than committee members, who
23 are present may participate as a member of the ~~committee~~ Committee in discussions of the petition but may not vote
24 on the recommended action on the petition.

25
26 *History Note: Authority G.S. 143B-282; 150B-20;*
27 *Eff. April 1, 2003;*
28 *Readopted Eff. January 1, 2021.*
29
30

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0503

DEADLINE FOR RECEIPT: Friday, December 11, 2020

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

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

Some of this Rule appears to be internal management and is therefore unnecessary. Please review and revise if necessary.

What is the difference between Paragraph (b) and Paragraph (e) of .0502? Do you need both?

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

15A NCAC 02I .0503 is readopted as published in 35:02 NCR 106 as follows:

15A NCAC 02I .0503 PRESENTATION TO THE COMMISSION

(a) Petitions for ~~rulemaking~~ Rulemaking, after review by the appropriate committee under 15A NCAC 02I .0502, shall be presented to the ~~Environmental Management~~ Commission for its consideration and determination at a ~~regularly scheduled~~ meeting of the Commission within 120 days following the date of ~~referral~~ submittal of the petition to the appropriate ~~committee~~ Division pursuant to Rule .0501 of this Section. If the petition for rulemaking was reviewed by a Committee pursuant to Rule .0502 of this Section, the ~~The Petition~~ petition for Rulemaking and the ~~committee's~~ Committee's recommended action shall be presented through the ~~committee chairman~~ Chair of the Committee or other designated member of the ~~committee~~ Committee during the business session of the Commission. Unless the ~~Chairman~~ Chair of the Commission rules otherwise, discussion on the petition shall be limited to the members of the Commission, counsel to the Commission, ~~and the Director.~~ Director, or the Division's legal counsel and the petitioner or its legal counsel.

(b) For petitions not referred to a Committee, the Chair of the Commission shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Chair of the Commission may determine whether additional interested persons shall make oral presentations before the Commission. At least 10 days before the Commission meeting, interested persons shall request the opportunity to make a presentation to the Commission through the Director. The request shall:

- (1) state the interest of the person;
- (2) state the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials.

~~(b)(c)~~ Within 120 days following submittal referral of the petition to the appropriate ~~committee~~ Division the ~~Environmental Management~~ Commission shall:

- (1) grant the petition in writing, notify the petitioner and initiate rulemaking proceedings in accordance with G.S. 150B-20; and notify the person(s) who submitted the petition of the decision in writing;
or
- (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) who submitted the petition.

History Note: Authority G.S. 143B-282; 150B-20;

Eff. April 1, 2003;

Readopted Eff. January 1, 2021.

1 **15A NCAC 02I .0504 is repealed through readoption as published in 35:02 NCR 106 as follows:**

2

3 **15A NCAC 02I .0504 RECOURSE TO DENIAL OF PETITION**

4

5 *History Note: Authority G.S. 143B-282; 150B-20;*

6 *Eff. April 1, 2003;*

7 *Repealed Eff. January 1, 2021.*

8

9

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0601

DEADLINE FOR RECEIPT: Friday, December 11, 2020

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

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

Is this Rule necessary? What is it doing that is not already covered by G.S. 150B-4.

On line 5, capitalize "rules" in "rules of this Section"

Please add any additional relevant statutory authority. Perhaps G.S. 143B-282?

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

1 15A NCAC 02I .0601 is readopted as published in 35:02 NCR 106 as follows:

2
3 15A NCAC 02I .0601 ISSUANCE OF DECLARATORY RULING

4 At the request of any person aggrieved, as defined in G.S. 150B-2(6), the ~~Environmental Management Commission~~
5 ~~shall~~ may issue a declaratory ruling as provided in G.S. ~~150B-4.~~ 150B-4 and the rules of this Section.

6
7 *History Note: Authority G.S. 150B-4;*
8 *Eff. August 1, 2004;*
9 *Readopted Eff. January 1, 2021.*
10

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0602

DEADLINE FOR RECEIPT: Friday, December 11, 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 (a), who is the "recording clerk of the Commission"?

In (b)(3), delete or define "concise"

Please add any additional relevant statutory authority. Perhaps G.S. 143B-282?

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

15A NCAC 02I .0602 is readopted as published in 35:02 NCR 106 as follows:

15A NCAC 02I .0602 PROCEDURE FOR SUBMISSION OF PETITION

(a) All requests for a declaratory ruling shall be filed with the Director of the appropriate Division of the Department of Environment and Natural Resources, and ~~25 complete copies shall also be sent to the~~ and a copy in electronic or digital form shall also be sent to the Recording Clerk of the Commission:

Director

Division of Air Quality

1641 Mail Service Center

Raleigh, NC 27699-1641

Director

Division of Energy, Mineral, and Land Resources

1612 Mail Service Center

Raleigh, North Carolina 27699-1612

Director

Division of ~~Water Quality~~ Mitigation Services

~~1617~~ 1652 Mail Service Center

Raleigh, NC ~~27699-1617~~ 27699-1652

Director

Division of Waste Management

1646 Mail Service Center

Raleigh, North Carolina 27699-1646

Director

Division of Water Resources

1611 Mail Service Center

Raleigh, NC 27699-1611

~~EMC Recording Clerk~~

~~1617 Mail Service Center~~

~~Raleigh, NC 27699-1617~~

Recording Clerk of the Commission

Directors Office
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611
EMCclerk@ncdenr.gov

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute or order upon which a ruling is desired;
- (3) a concise statement as to whether the request is for a ruling ~~on~~ on:
 - (A) the validity of a ~~rule or rule or~~ rule or rule or;
 - (B) ~~on~~ the applicability of a rule, order or statute to a given factual situation; or
 - (C) a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission;
- (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to ~~him~~ the petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a draft of the proposed ruling; and
- (7) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an oral argument.

(c) A request for a ruling on the applicability of a rule, order, or statute ~~must~~ shall include a statement of the specific facts to a given factual situation and documentation supporting those facts. A request for a ruling on the validity of a Commission rule ~~must~~ shall state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A request for a ruling to resolve a conflict or inconsistency within the Commission or the Department regarding interpretation of a law or rule adopted by the Commission shall include a written description identifying the conflict or inconsistency, the relevant Division(s) and program area(s), the interpretation provided by the agency, and the law or rule in question. A person may ask for ~~multiple or both~~ types of declaratory rulings in a single request.

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

History Note: Authority G.S. 150B-4;
Eff. August 1, 2004;
Readopted Eff. January 1, 2021.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Environmental Management Commission

RULE CITATION: 15A NCAC 02I .0603

DEADLINE FOR RECEIPT: Friday, December 11, 2020

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

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

In (c)(5), add a comma after "order"

In (c)(5), delete "specific"

In (c)(6), delete "specifically"

In (c)(7), add a comma after "Department"

In (c)(7), should "and" be "or"?

Would it make sense to switch (c) and (d)?

In (f)(2), change "shall construe" to "construes"

In (f)(2), change "plainly" to "that is"

Please add any additional relevant statutory authority. Perhaps G.S. 143B-282?

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

Amber May
Commission Counsel
Date submitted to agency: November 30, 2020

15A NCAC 02I .0603 is readopted as published in 35:02 NCR 106 as follows:

15A NCAC 02I .0603 DISPOSITION OF REQUEST

(a) ~~The Commission Chairman~~ Chair of the Commission shall make a determination on the completeness of the request for declaratory ruling based on the requirements of this ~~Section, Section.~~ and he shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.

(b) Before ~~the Commission decides~~ deciding the merits of the request, the Chair of the Commission may:

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the Department ~~staff~~ or any other person; ~~and~~
- (3) allow the petitioner to file a reply to the response submitted in Subparagraph (2) of this Paragraph; or
- ~~(3)(4)~~ request ~~hear~~ oral arguments from the petitioner(s) and Department staff or their legal counsel.

(c) The Commission shall deny the request upon making any of the following findings:

- (1) the request is not complete;
- (2) the petitioner is not a person aggrieved;
- (3) there has been a similar determination in a previous contested case or declaratory ruling;
- (4) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
- (5) no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented;
- (6) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
- (7) the information provided by the petitioner, the Department and any interveners does not support a determination that a rule is invalid; or
- (8) there is no material conflict or inconsistency within the Commission or Department regarding the law or rule identified by the petitioner.

~~(e) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.~~

~~(d) "Good cause" as set out in Paragraph (e) of this Rule shall include:~~

- ~~(1) finding that there has been a similar determination in a previous contested case or declaratory ruling;~~
- ~~(2) finding that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;~~
- ~~(3) finding that no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented; or~~
- ~~(4) finding that the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.~~

~~(e) The Commission shall respond to a request of a declaratory ruling in accordance with G.S. 150B-4(a1).~~

1 (d) The Commission shall make a decision to grant or deny the request according to G.S. 150B-4.

2 (e) The Commission shall keep a record of each declaratory ruling, which shall include ~~at a minimum~~ the following
3 items:

- 4 (1) the request for a ruling;
5 (2) any written submission by a party;
6 (3) the given state of facts on which the ruling was based;
7 (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
8 (5) any other matter considered by the Commission in making the decision; and
9 (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons
10 therefore.

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

- 12 (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the
13 statute or rule are amended or altered;
14 (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule
15 which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory
16 ruling;
17 (3) the Commission changes the declaratory ruling prospectively; or,
18 (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of
19 Environment and Natural Resources and the party requesting the ruling.

20 ~~(h) The requesting party may agree to allow the Commission to issue a ruling on the merits of the request beyond the~~
21 ~~60 days allowed by G.S. 150B-4.~~

22 ~~(i) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a~~
23 ~~contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the~~
24 ~~merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the~~
25 ~~merits of the request and shall be subject to judicial review.~~

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27 *History Note: Authority G.S. 150B-4;*
28 *Eff. August 1, 2004;*
29 *Readopted Eff. January 1, 2021.*
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1 15A NCAC 02J .0101 is repealed as published in 35:02 NCR 106 as follows:

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3 **15A NCAC 02J .0101 PURPOSE AND SCOPE**

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5 *History Note: Authority G.S. 143-215.3(a)(1);*

6 *Eff. February 1, 1976;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February*
8 *16, 2019;*

9 *Repealed Eff. January 1, 2021.*
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1 15A NCAC 02J .0102 - .0104 are repealed through readoption as published in 35:02 NCR 106 as follows:

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3 **15A NCAC 02J .0102 DEFINITIONS**

4 **15A NCAC 02J .0103 WHO MAY ASSESS**

5 **15A NCAC 02J .0104 WHEN ASSESSABLE**

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7 *History Note: Filed as a Temporary Amendment Eff. September 9, 1988 for a Period of*
8 *180 Days to Expire on March 8, 1989;*
9 *Statutory Authority G.S. 87-87; 87-94, 143-212(6); 143-213(18); 143-214.2; 143-215.3(a)(1);*
10 *143-215.3(a)(4); 143-215.6(A); 143-215.17(b); 143-215.36(b); 143-215.88A; 143-215.91(a);*
11 *143-215.114(a);*
12 *Eff. February 1, 1976;*
13 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); January 1, 1991; March 1, 1989; May 1,*
14 *1986; November 1, 1978; September 10, 1976;*
15 *Repealed Eff. January 1, 2021.*
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15A NCAC 02J .0106 - .0111 are repealed through readoption as published in 35:02 NCR 106 as follows:

15A NCAC 02J .0106 STANDARDS

15A NCAC 02J .0107 PROPOSED ASSESSMENT: ASSESSMENT: MODIFICATION

15A NCAC 02J .0108 PAYMENT: HEARING: REMISSION/MITIGATION

15A NCAC 02J .0109 TENDERS OF PAYMENT: REMISSION/MITIGATION:-HEARING REQUEST

15A NCAC 02J .0110 REFERRAL

15A NCAC 02J .0111 REPORTS TO THE COMMISSION

*History Note: Authority G.S. 87-87; 87-94; 143-215.3(a)(1),(3); 143-215.6(a);
143-215.17(b); 143-215.36(b); 143-215.91(a); 143-215.114(a);
Eff. February 1, 1976;
Amended Eff. May 1, 1986; June 15, 1980; May 31, 1979.
Repealed Eff. January 1, 2021.*

1 15A NCAC 02O .0504 is readopted as published in 35:4 NCR 426 as follows:

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3 **15A NCAC 02O .0504 REPLENISHMENT**

4 (a) ~~The provisions for "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" contained in 40 CFR~~
5 ~~280.111 are hereby~~280.115 entitled "Replenishment of Guarantees, Letters of Credit, or Surety Bonds" is
6 incorporated by ~~reference including any~~reference, ~~excluding~~ subsequent amendments and editions. ~~Locations where~~
7 ~~this material is available are specified in Rule .0102 of this Subchapter.~~This document may be accessed at
8 www.ecfr.gov/cgi-bin/ECFR?page=browse at no charge.

9 (b) If ~~at any time after~~ a standby trust (40 CFR 280.103) is funded upon the instruction of the Department with
10 funds drawn from a ~~guarantee,~~guarantee (40 CFR 280.96), letter of ~~credit,~~credit (40 CFR 280.99), or surety
11 ~~bond,~~bond (40 CFR 280.98), and the amount in the standby trust is reduced to less than the amount for which the
12 owner or operator is responsible per occurrence for third party claims, the owner or operator shall within 60 days
13 from which the funds were drawn:

- 14 (1) ~~Replenish~~replenish the value of financial assurance to equal the full amount of coverage ~~required,~~
15 ~~or~~required pursuant to Rule .0204 of this Subchapter; or
16 (2) ~~Acquire~~acquire another financial assurance mechanism for ~~the full amount of coverage provided~~
17 ~~by the Standby Trust,~~the amount by which funds in the standby trust fund have been reduced.

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19 *History Note:* Authority G.S. 143-215.94H; 143-215.94T; 150B-21.6;
20 Eff. July 1, ~~1992,~~1992;
21 Readopted Eff. January 1, 2021.