

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: January 14, 2022

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

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

DEADLINE FOR RECEIPT: January 14, 2022

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1101

DEADLINE FOR RECEIPT: January 14, 2022

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

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

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

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

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1102

DEADLINE FOR RECEIPT: January 14, 2022

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

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

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

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

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

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

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

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

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

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

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

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022

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

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

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

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1103

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

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1104

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

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

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

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

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

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

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

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

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1105

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

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

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

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

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

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

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

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

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

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

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

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

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

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022

In (k), line 4, omit “appropriate.”

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1801

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

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

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

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

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1802

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

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

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

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

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

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

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

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

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

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

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1803

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1804

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

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

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

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

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

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

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

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

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

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

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1805

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

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

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

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

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

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

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

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

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

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

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

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

Brian Liebman
Commission Counsel

Date submitted to agency: January 4, 2022