

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: Mining and Energy Commission

RULE CITATION: All Rules

RECOMMENDED ACTION:

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

COMMENT:

Background:

In Session Law 2012-143, the General Assembly created the Mining and Energy Commission (MEC) to create a modern regulatory program for the management of oil and gas exploration, including the use of horizontal drilling and hydraulic fracturing. In Section 2.(m), the General Assembly gave the MEC until October 1, 2014 to adopt all rules required for the program. That deadline was extended through later Session Laws, and in the most recent session, the MEC was given until January 1, 2015 to adopt rules. (See Session Law 2014-4, Section 1.)

The MEC is governed by G.S. 143B-293.1, *et seq.* The statutory framework for the regulatory program is located in G.S. Chapter 113, Subchapter V, Article 27, the Oil and Gas Conservation Act. Within that Act, G.S. 113-391 is one of the statutes that grants the MEC rulemaking authority to establish rules for the regulatory framework. That statute also grants rulemaking authority over specific parts of this program to the Environmental Management Commission, the Department of Labor, and the Commission for Public Health.

Amanda J. Reeder
Commission Counsel

Overview of the Rules Being Presented for Review:

The Secretary of the Department of Environment and Natural Resources had rulemaking authority in the Act. The rulemaking authority was transferred to the MEC in 2012, and the MEC is repealing the 10 existing rules in 15A NCAC, Subchapter 05D.

The MEC is adopting 124 rules in 15 NCAC, Subchapter 05H. It is organizing these Rules into 22 Sections. The Sections cover several topics, ranging from administrative matters (including petitions for rulemaking, declaratory rulings, and variances) to well construction, water and waste treatment, and permitting.

Standards for RRC Review:

Pursuant to G.S. 150B-21.9(a), the RRC reviews rules to ensure they meet four statutory standards. Those standards are:

- (1) The rule is within the authority delegated to the agency by the General Assembly.
- (2) The rule is clear and unambiguous.
- (3) The rule is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) The rule was adopted in accordance with Part 2 of this Article.

Ambiguity:

Staff asked the agency multiple questions in the Requests for Technical Corrections about the meaning of terms and the agency's interpretation of the law. It was not staff's intention to require all terms of art to be defined or specific technical details be explained to staff's understanding within the Rule. Rather, these questions are intended to ensure that the Rules are clear to the regulated public. Further, consistent with Commission staff practice, staff asked the agency to address issues relating to clarity within the Requests for Technical Correction, rather than recommending objection at this time.

Compliance with the APA:

Part of the review for the fourth standard requires the Commission to ensure the agency adopted rules pursuant to the Administrative Procedure Act. This includes ensuring the agency follows the requirements in G.S. 150B-21.2, "Procedure for adopting a permanent rule."

G.S. 150B-21.2(g) states, in relevant part:

(g) Adoption. - An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons who, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

Therefore, part of the Commission's review in order to ensure compliance with the APA will be to determine whether changes made to any of the Rules after publication are "substantial" and require further public comment through republication before becoming part of the NC Administrative Code.

The MEC received over 200,000 comments during the public comment period. Following the public comment period, the agency changed several of its rules. Many of the changes were minor, such as clarifying terminology or language. Some changes go beyond that to change the substance of the rule language. Staff believes that most of the changes made to the substance of the Rules do not constitute substantial change as defined in G.S. 150B-21.2(g), but clarify the requirements already in the rule language.

Staff issued three Staff Opinions for rules that staff believes were substantially changed following publication and after receipt of public comments. (Rules .1307, .1504 and .1616.)

Amanda J. Reeder
Commission Counsel

Given the time constraints of the review, staff did not write Staff Opinions for every rule where the substance was changed after publication, as staff believed that most of the changes made were not substantial. However, staff issued a Staff Opinion for Rule .1601 to opine that a change made after publication is not substantial. Staff did this because it appeared substantial in the initial review.

Staff notes that the APA mandates an agency solicit public comment, and it is clear that agencies are required to review and consider all comments before adopting rules. Staff anticipates the agency will argue that the changes made were either not substantial or are imperative to ensuring that the solicited public comment was incorporated.

An agency would ordinarily be able to revise rules following the public comment period and republish any text that was substantially changed (as defined in 150B-21.2(g)). However, in this circumstance, Session Law 2014-4 included language to require the MEC to adopt rules by January 1, 2015. The Session Law also added language that entry of the rules into the North Carolina Administrative Code that address the rulemaking required in 113-391(a) by July 1, 2015, will create a rebuttable presumption that the rules are sufficient to meet the requirements for development of a modern regulatory program for hydraulic fracking. (See Session Law 2014-4, Section 7.(a).) Therefore, it appears that the agency does not have time at this point to republish any rules with substantial changes and adopt them by January 1, 2015. Of course, the agency may go through rulemaking in the future, but the set of rules before you is the set the agency was able to adopt by the statutory deadline.

The Effective Date of All Rules is Stayed Pending Legislative Review:

Regarding the 124 rules adopted by the MEC, Session Law 2013-365, Section 1(a) states that all rules adopted pursuant to Section 2.(m) of Session Law 2012-143 shall be treated as if the rules received 10 or more written objections pursuant to G.S. 150B-21.3(b2), and will be subject to legislative review and a delayed effective date under G.S. 150B-21.3(b1). Further, Session Law 2014-4 Section 2.(a) states that all rules approved by the RRC are subject to legislative review during the session beginning January 1, 2015.

The MEC further requested that the repeal of the 10 existing rules in Subchapter 05D be delayed pending legislative review of the adoption of Subchapter 05H. This is allowed pursuant to G.S. 150B-21.3(b).

It is staff's opinion that all rules being adopted by the MEC and reviewed by the RRC are therefore automatically subject to legislative review.

Amanda J. Reeder
Commission Counsel

1 15A NCAC 05D .0101 is repealed as published in 29:02 NCR 107 as follows:

2
3 **15A NCAC 05D .0101 GENERAL PROVISIONS**

4
5 *History Note: Authority G.S. 113-391;*

6 *Eff. February 1, 1976;*

7 *Amended Eff. October 1, 1984; January 31, 1979.*

8 *Repealed Eff. [pending legislative review of 15A NCAC 05H]*

1 15A NCAC 05D.0103-.0111 are repealed as published in 29:02 NCR 107-110 as follows:

2
3 **15A NCAC 05D .0103 DEFINITIONS**

4 **15A NCAC 05D .0104 REGISTRATION**

5 **15A NCAC 05D .0105 DRILLING PERMITS**

6 **15A NCAC 05D .0106 WELL SPACING**

7 **15A NCAC 05D .0107 DRILLING AND COMPLETION**

8 **15A NCAC 05D .0108 COMPLETION REPORT**

9 **15A NCAC 05D .0109 PLUGGING OF WELLS**

10 **15A NCAC 05D .0110 FILING OF THE LOG OF DRILLING**

11 **15A NCAC 05D .0111 LIMITATION OF PRODUCTION AND ALLOCATION**

12
13 *History Note: Authority G.S. 113-391; 113-395;*

14 *Eff. February 1, 1976;*

15 *Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); August 1, 1988; October 1, 1984;*
16 *January 31, 1979.*

17 *Repealed Eff. [pending legislative review of 15A NCAC 05H]*

1 15A NCAC 05H .0101 has been adopted as published in 29:02 NCR 110 as follows:

2
3 **SUBCHAPTER 05H – OIL AND GAS CONSERVATION**

4
5 **SECTION .0100 – TERMS OF REFERENCE**

6
7 **15A NCAC 05H .0101 PURPOSE AND SCOPE**

8 The rules of this Subchapter regulate the management of oil or gas exploration and development to protect public
9 health, welfare, and the environment.

10
11 *History Note: Authority G.S. 113-391(a);*

12 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0102

DEADLINE FOR RECEIPT: Friday, December 12, 2014

NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On Page 1, Item (1), insert a comma after "flow" on line 6, so it reads, "7Q10 flow," when used..."

In Item (2), does your regulated public know what "temporarily" means in this context?

In Item (4), does your regulate public know what "may be significantly affected" means?

In Item (7), line 17, shouldn't "a" be "the unique, permanent"? And I think it should read, "the unique and permanent American Petroleum Institute..."

Also in Item (7), how is this assigned?

In Item (14), does the change to delete "steel" now mean any material pipe may be used?

On Page 2, Item (17), does your regulated public know what "staves" are?

In Item (20), insert a comma after "identity" on line 16.

In Item (22), how does one learn the CAS number? Is that generally readily available to the public?

In Item (24), what is the website address? Please include the URL.

In Item (26), what are "unconsolidated surface deposits"?

In Item (29), please replace "which" on line 35 with "that". Also, since these rules are the standards of another agency (the Environmental Management Commission), they must be properly incorporated pursuant to G.S. 150B-21.6. I know they are incorporated in other Rules, but you may wish to just incorporate them in this Rule by reference here and not have to repeat elsewhere.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

On Page 3, Item (30), I take it your regulated public knows what “stratigraphic traps” are?

In Item (34), what is the DLIS? I see you say what the acronym stands for, but what is this? Does your regulated public know? Is this a standard you are using, such that it needs to be incorporated by reference pursuant to G.S. 150B-21.6?

In Item (36), line 13, insert a comma after “surface” Does your regulated public know what the pressure recording devices are?

Item (37), line 14, please delete the comma after “Commission” and replace “which” with “that.” Does your regulated public know what the terms “efficiently and economically” means? Will they determine that, or the Commission?

In Item (38), I take it your regulated public knows what “commercial quantities” are?

In Item 40, please provide the citation to the Act. Do you wish to incorporate this by reference? In addition, I think this would better as a list:

“and may include the following:

(A) produced brine, sand and water;

(B) drill cuttings;...

In Item (42), you are changing the term to “down hole” and that is the term in (79). However, I note in Item 72 and elsewhere, the term is “downhole.” Please be consistent in the usage of the term.

In Item (43), what is “drilling fluid”? (I see that proppants is defined in 113-389, but I don’t see this term defined in the statute.)

Please incorporate Items (44) and (45) by reference, using G.S. 150B-21.6. Also, please state, “Floodplain” means” or “Floodplain” is” and make similar changes elsewhere where referring to a statute or CFR. (See Items (52), (58), (104), (109), (110), (111) and (118).)

On Page 4, Item (46), should it read, “volume per unit of time...”?

In Item (47), I take it your regulated public knows what “formation” means?

In Item (48), shouldn’t it state “less than or equal to”?

In Item (49), what does “Financial Responsibility Ownership” mean?

In Item (50), what is “other useful purpose” on line 11? Does your regulated public know?

In Item (52), this is not the correct citation. I think you mean 29 CFR 1910.1200.

In Item (53), what is an “industrial hygienist”? Also, on line 16, delete “or” before nurse practitioner, and delete the semicolon after the term. Instead, state, “...nurse anesthetist, nurse practitioner, or a local health director.”

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

In Item (54), line 19, do you mean “serves” rather than “served”? When is the timeline for it to have served? Do you mean “has the capacity to serve”?

In Item (58), how does one get this? Where is it in other rule or law?

In Item (60), what is a “kelly”?

In Item (62), what is the Log ASCII Standard? I see you say what the acronym stands for, but what is this? Does your regulated public know? Should the standard be incorporated by reference?

On Page 5, Item 65, what is the “Log Information Standard”? I see you say what the acronym stands for, but what is this? Does your regulated public know? Should this standard be incorporated by reference?

In Item (68), what is a “plug mandrel”? I take it your regulated public knows?

In Item (69), does your regulated public know what “temporarily” means in this context?

In Item (70), please include a citation to the law.

In Item (71), line 21, please insert a comma after “located”

In Item (73), line 25, please hyphenate “year round.” On line 27, where are these maps found?

In Item (80), I take it your regulated public knows what equipment is “directly associated” with the wells?

On Page 6, Item (81), what are you saying? Does your regulated public know?

I note for Item (82), you state the licensing board, but you do not do so for the term “licensed geologist” in Item (63). Is there a reason for this?

In Item (89), this is not the correct citation. I believe you mean to reference 29 CFR .1910.1200” Also, how is this sheet provided? Or does someone create it, using the CFR?

In Item (94), please provide the statutory citation for the Act. Also, you may wish to incorporate the rules promulgated under the law by reference here, so that you do not need to do in later Rules.

On Page 7, Item (98), delete the comma after “diameter” on line 5, and insert a comma after “shallow” and “competent” on line 5. Also, please insert a comma after “strings” on line 7. And should the line read, “and pressure integrity to contain pressures anticipated to be at the next...”? If not, should it read, “integrity to contain anticipated pressures”?

In Item (99), I note that line 9 states this is “any agreement” and that is repeated on line 11. I think that is repetitive. Also, on line 13, you state “oil and gas” twice, while the rest of the rule refers to “oil or gas”

In item (105), please delete the “or” after “anesthetist” on line 24.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In Item (110), I believe you mean “Water” or “waters of this State” to be the defined terms, rather than saying the term you are using is “water or waters of this State.”

On Page 8, in Item (118), do you wish to incorporate this citation by reference using G.S. 150B-21.6?

In Item (122), I take it your regulated public knows what the “variety of operations” encompass?

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: December 1, 2014

1 15A NCAC 05H .0102 has been adopted with changes as published in 29:02 NCR 110-114 as follows:

2
3 **15A NCAC 05H .0102 TERMS OF REFERENCE AND DEFINITIONS**

4 The terms as used in this Subchapter shall have the definitions in G.S. 113-389. In addition, the following terms
5 shall have the following meaning:

- 6 (1) "7Q10 flow" when used in reference to surface water, refers to the minimum average flow for a
7 period of seven consecutive days that has an average occurrence of once in 10 years.
- 8 (2) "Abandon" means to temporarily or permanently cease production from an oil or gas well or to
9 cease further drilling operations.
- 10 (3) "Additive(s)" means any chemical substance or mixture of substances.
- 11 (4) "Affected reach" means the portion of a stream channel where the hydrology may be significantly
12 affected by the cumulative effects of the proposed water withdrawal in combination with existing
13 water withdrawals and point source discharges.
- 14 (5) "Annular flow" means the flow of formation fluids from the formation into a space or pathway in
15 an annulus within an oil or gas well.
- 16 (6) "Annulus" means the space around a pipe in a wellbore, sometimes termed the annular space.
- 17 (7) "API number" means a unique, permanent, American Petroleum Institute numeric identifier
18 assigned by the North Carolina Geological Survey to each well drilled for oil or gas production.
- 19 (8) "Applicant" means the person who submits an Oil or Gas Well Permit Application.
- 20 (9) "Barrel" means 42 U.S. gallons at 60° F at atmospheric pressure.
- 21 (10) "Blowout" means an uncontrolled flow of gas, oil, or other wellbore fluids from the oil or gas
22 well.
- 23 (11) "Blowout preventer (BOP)" means one or more valves installed at the wellhead to prevent the
24 escape of pressure from the annular space or the escape of pressure from the ~~open or cased~~
25 ~~hole or wellbore:~~ wellbore:
- 26 (a) "Annular blowout preventer" means a large valve that forms a seal in the annular space
27 between the pipe and wellbore.
- 28 (b) "Shear ram blowout preventer" means a closing element fitted with hardened tool steel
29 blades designed to cut the drill pipe when closed.
- 30 (12) "Brine" means a liquid solution with a concentration of dissolved salts greater than 35 grams of
31 dissolved constituents per kilogram of water.
- 32 (13) "Bull plug" means a ~~pressure containing closure for a female threaded end or outlet connection,~~
33 ~~which may have an internal counter bore or test port.~~ or flanged pipe designed to seal an open-
34 ended pipe.
- 35 (14) "Casing" means ~~steel pipe placed in a wellbore to prevent the wall of the wellbore from caving in~~
36 ~~and to prevent movement of fluids from one formation to another.~~ provide hole stability, isolate

- 1 and protect groundwater, enhance wellbore integrity, isolate oil and gas formations, and provide
2 pressure integrity.
- 3 (15) "Casing string" means the entire length of all the connected joints of casing inserted into the
4 wellbore.
- 5 (16) "Cellar" means ~~a dug-out~~ an excavated area below the drill rig floor that provides additional height
6 ~~between the drilling rig floor and the wellhead to accommodate the installation of blowout~~
7 ~~preventers, allows placement of wellhead components at or below ground level.~~
- 8 (17) "Cement basket" means a slip-on style device made of high strength, flexible steel staves, mounted
9 on a steel slip-on ring with heavy-duty canvas liners riveted to staves.
- 10 (18) "Cement bond log (CBL)" means an acoustic ~~survey~~ or sonic-logging method run inside casing
11 ~~that records the quality or hardness of the cement used in the annulus to bond the~~ measures the
12 transmissibility of sound between cemented casing and the formation.
- 13 (19) "Centralizer" means a mechanical device used to position the casing concentrically in the
14 wellbore.
- 15 (20) "Chemical(s)" means any element, chemical compound, or mixture of elements or compounds that
16 has its own specific name or identity such as a Chemical Abstracts Service Registry Number.
- 17 (21) "Chemical Abstracts Service" is a division of the American Chemical Society.
- 18 (22) "Chemical Abstracts Service Registry Number" or "CAS Registry Number" means the unique
19 identification number assigned to a chemical by the Chemical Abstracts Service.
- 20 (23) "Chemical classification" means a grouping that relates a chemical to others with
21 similar ~~features~~ features, functions, or reactive properties.
- 22 (24) "Chemical disclosure registry" means the chemical registry website known as FracFocus.org
23 developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact
24 Commission.
- 25 (25) "Christmas tree" means a set of valves, spools, gauges, and fittings connected to the top of the
26 well to direct and control the flow of formation fluids from the well.
- 27 ~~(25)(26)~~ "Conductor casing" means a casing string used to support unconsolidated surface deposits.
- 28 ~~(26)(27)~~ "Completion" means the activities that render an oil or gas well capable of producing oil or gas
29 through the wellhead equipment from a producing zone after the production casing string has been
30 set.
- 31 ~~(27)(28)~~ "Containment system" means a synthetic liner, coating, storage structure, other material, or
32 structure used in conjunction with a primary container that prevents any spills onto the ground or
33 spills from leaving the drilling site.
- 34 ~~(28)(29)~~ "Contaminant" means any substance occurring in groundwater, surface water, or soil in
35 concentrations which exceed the standards specified in 15A NCAC 02B, 15A NCAC 02L .0202,
36 or 15A NCAC 02L .0411.

1 ~~(29)~~(30) "Conventional reservoir" means an accumulation of hydrocarbons that are localized in structural
2 or stratigraphic traps.

3 ~~(30)~~(31) "Deepen" means an operation where an oil or gas well is drilled beyond the originally permitted
4 depth of the oil or gas well.

5 ~~(31)~~(32) "Deviated well" means an oil or gas well that is purposely deviated from the vertical using
6 directional drilling methods to reach the objective location other than directly below the surface
7 location.

8 ~~(32)~~(33) "Director" means the Director of the Division of Energy, Mineral, and Land Resources of the
9 Department of Environment and Natural Resources.

10 ~~(33)~~(34) "DLIS" means Digital Log Information Standard.

11 ~~(34)~~(35) "Drill pipe" means the pipe used to rotate the drill bit and circulate the drilling fluid.

12 ~~(35)~~(36) "Drill stem test" means a method of formation testing consisting of a packer or packers, valves, or
13 ports that may be opened or closed from the surface and two or more pressure recording devices.

14 ~~(36)~~(37) "Drilling unit" means an area established by the Commission, which can be efficiently and
15 economically drained by one or more oil or gas wells.

16 ~~(37)~~(38) "Dry hole" means any oil or gas well that does not produce oil or gas in commercial quantities.

17 ~~(38)~~(39) "Emergency responder" means an emergency medical technician, fire fighter, law enforcement
18 officer, public works employee, emergency manager, fire marshal, HAZMAT coordinator,
19 technical specialist, incident commander, fire chief, or a member of State Emergency Management
20 who provides, plans, or directs emergency health or safety services.

21 ~~(39)~~(40) "Exploration and production (E & P) waste" means wastes associated with the exploration,
22 development, and production of oil or gas, which are not regulated by the Subtitle C of the Federal
23 Resource Conservation and Recovery Act, and may include the following: produced brine, sand,
24 and water; drill cuttings; water-based drilling fluids; flowback fluids; stormwater in secondary
25 containment and pits at the well site; and any other deposits or residuals from exploration and
26 production activities.

27 ~~(40)~~(41) "Float collar" means a component that is installed near the bottom of the casing string on which
28 wiper plugs land during the primary cementing operation.

29 ~~(41)~~(42) "Float shoe" means a rounded profile component attached to the ~~down hole~~down hole end of the
30 production casing string to prevent reverse flow of cement slurry into the casing string.

31 ~~(42)~~(43) "Flowback fluid" means liquids, and mixtures thereof, consisting of drilling fluid, silt, sand and
32 other proppants, debris, water, brine, oil, paraffin, produced water, or other materials that are
33 removed from the wellbore during the completion or recompletion of an oil or gas well, other
34 additives that flow from an oil or gas well following well stimulation, or during production of an
35 oil or gas well.

36 ~~(43)~~(44) "Floodplain" as defined in 44 CFR 59.1.

37 ~~(44)~~(45) "Floodway" as defined in 44 CFR 59.1.

1 ~~(45)~~(46) "Flow rate" means the volume per unit time of a fluid moving past a fixed point.

2 ~~(46)~~(47) "Formation Integrity Test (FIT)" means a pressure test applied to the formation directly below the

3 base of the casing string to determine the maximum pressure that may be applied without risk of

4 formation breakdown.

5 ~~(47)~~(48) "Fresh groundwaters" means those groundwaters having a chloride concentration equal to or less

6 than 250 milligrams per liter.

7 ~~(48)~~(49) "FRO" means Financial Responsibility Ownership.

8 ~~(49)~~(50) "Green completion" means an oil or gas well completion following ~~fracturing or~~

9 ~~refracturing stimulation or restimulation~~ where gas flowback that is otherwise vented is captured,

10 cleaned, and routed to the flow line or collection system, re-injected into the oil or gas well or

11 another oil or gas well, used as an on-site fuel source, or used for other useful purpose that a

12 purchased fuel or raw material would serve, with no direct release to the atmosphere.

13 ~~(50)~~(51) "Groundwaters" means those waters occurring in the subsurface under saturated conditions.

14 ~~(51)~~(52) "Hazardous chemicals" as defined in 29 CFR 1900.1200(c).

15 ~~(52)~~(53) "Health professional" means a licensed physician, physician's assistant, industrial hygienist,

16 toxicologist, epidemiologist, nurse, nurse anesthetist, or nurse practitioner; or a local health

17 director.

18 ~~(53)~~(54) "High occupancy building" means any operating public school, nursing facility, hospital, life care

19 institution, or correctional facility, provided that the facility or institution served 50 or more

20 persons, or an operating child care center as defined in G.S. 110-86.

21 ~~(54)~~(55) "Hydraulic fracturing" means oil or gas well stimulation by the application of hydraulic pressure

22 using fluids, proppants, and additives under pressure to create artificial fractures or to open

23 existing fracture networks in the formation for the purpose of improving the capacity to produce

24 hydrocarbons.

25 ~~(55)~~(56) "Hydraulic fracturing stage" means the portion of a wellbore that is isolated by setting packers or

26 plugs during well stimulation operations.

27 ~~(56)~~(57) "Intermediate casing" means a casing string that is set in place after the surface casing and before

28 the production casing.

29 ~~(57)~~(58) "Intermittent stream" as determined by North Carolina Division of Water Quality Methodology for

30 Identification of Intermittent and Perennial Streams and Their Origins, Version 4.11, Effective

31 Date: September 1, ~~2010~~2010, including subsequent amendments and editions.

32 ~~(58)~~(59) "Joint" means a length of drill pipe or casing.

33 ~~(59)~~(60) "Kelly bushing" means a device that is fitted to the rotary table through which the kelly passes and

34 the means by which the torque of the rotary table is transmitted to the kelly and the drill string.

35 ~~(60)~~(61) "Kickoff point" means the depth in a vertical wellbore in which a deviation is initiated.

36 ~~(61)~~(62) "LAS" means Log ASCII Standard.

1 ~~(62)~~(63) "~~Licensed Geologist~~" "Licensed geologist" means a person who has been duly licensed as a
2 geologist in accordance with the requirements of G.S. 89E.

3 ~~(63)~~(64) "LiDAR" means Light Detection And Ranging.

4 ~~(64)~~(65) "LIS" means Log Information Standard.

5 ~~(65)~~(66) "Lost hole" means an oil or gas well that could not be drilled to the originally permitted total
6 depth.

7 ~~(66)~~(67) "Master valve" means a large valve located on the wellhead and used to control the flow of oil or
8 gas from a well.

9 ~~(67)~~(68) "Mechanical bridge plug" means a downhole tool, composed primarily of slips, a plug mandrel,
10 and a ~~rubber~~ sealing element, that is run and set in casing to isolate ~~a lower zone while an upper~~
11 ~~section is being tested or cemented.~~ that portion of the well below the plug.

12 ~~(68)~~(69) "Mousehole" means a shallow boring under the drilling rig floor, lined with casing, in which joints
13 of drill pipe are temporarily suspended for future connection to the drill string.

14 ~~(69)~~(70) "NC UCC" means the North Carolina Uniform Commercial Code.

15 ~~(70)~~(71) "Occupied dwelling" means a private residence, existing inhabited structure, or a public building
16 that may be used as a place of assembly, education, entertainment, lodging, trade, manufacture,
17 repair, storage, or occupancy by the public, including any outdoor recreational facility, State Park
18 as defined in G.S. 113-44.9, or historic property acquired by the State pursuant to G.S. 121-9 or
19 listed in the North Carolina Register of Historic Places pursuant to G.S. 121-4.1. This definition
20 does not apply to a building or other structure that is incidental to agricultural use of the land on
21 which the building or other structure is located unless the building or other structure is used as an
22 occupied private dwelling or for retail trade.

23 ~~(71)~~(72) "Packer" means a piece of downhole equipment that consists of a sealing device, a holding or
24 setting device, and may contain an inner passage for fluids.

25 ~~(72)~~(73) "Perennial stream" means a channel that contains water year round during a year of normal rainfall
26 with the aquatic bed located below the water table for most of the year as indicated on the most
27 recent versions of U.S.G.S 1:24,000 (7.5 minute) scale topographic maps.

28 ~~(73)~~(74) "Permittee" means a person to whom the Department has issued an Oil or Gas Well Permit.

29 ~~(74)~~(75) "Pit" means any natural or man-made depression in the ground used for storage of liquids.

30 ~~(75)~~ "~~Produced water~~" ~~means the water that exists in subsurface formations and is brought to the~~
31 ~~surface during oil or gas production.~~

32 (76) "Plug and abandon" means to place a series of cement plugs into a wellbore and abandon it.
33 wellbore, cut casing strings and remove the wellhead and Christmas tree to permanently
34 decommission the well.

35 (77) "Plug back" means to place cement in or near the bottom of an oil or gas well to sidetrack or to
36 produce from a formation higher in the oil or gas well.

1 (78) "Produced water" means the water that exists in subsurface formations and is brought to the
2 surface during oil or gas production.

3 ~~(78)~~(79) "Production casing" means a casing string that is set ~~across the reservoir interval, within which the~~
4 ~~completion components are installed, to allow completion and installation of down hole~~
5 production equipment for production of an oil or gas well.

6 ~~(79)~~(80) "Production facility" means all storage, separation, treating, dehydration, artificial lift, power
7 supply, compression, pumping, metering, monitoring, flowline, and other equipment directly
8 associated with production at oil or gas wells.

9 ~~(80)~~(81) "Production zone" means the rock stratum that will yield hydrocarbons.

10 ~~(81)~~(82) "Professional engineer" means a person who is presently registered and licensed as a professional
11 engineer by the North Carolina State Board of Registration For Professional Engineers and Land
12 Surveyors pursuant to G.S. 89C.

13 ~~(82)~~(83) "PSI" means pounds per square inch.

14 ~~(83)~~(84) "Rathole" means a hole in the drilling rig floor that is lined with casing into which the kelly is
15 temporarily placed.

16 ~~(84)~~(85) "Reclamation" means the process of returning or restoring disturbed land to its condition prior to
17 the commencement of oil or gas operations.

18 ~~(85)~~(86) "Reenter" means accessing a previously completed or plugged wellbore.

19 ~~(86)~~(87) "Residuals" means any solid, semisolid, or liquid waste, other than effluent or residues from
20 agricultural products and processing, generated from a wastewater treatment facility, water supply
21 treatment facility, or air pollution control facility permitted under the authority of the
22 Environmental Management Commission.

23 ~~(87)~~(88) "Rotating diverter system" means ~~a system~~ equipment normally associated with air drilling
24 operations that provides an annular seal around the drill pipe during drilling operations that routes
25 recovered fluids and solids away from the drilling rig.

26 ~~(88)~~(89) "Safety data sheet" means written or printed materials containing all the information specified in
27 29 CFR 1900.1200(g), which is incorporated by reference including subsequent amendments for
28 regulated hazardous substances.

29 ~~(89)~~(90) "Service company" means a person contracted by the permittee that conducts work onsite related
30 to the drilling, completion, or production of an oil or gas well.

31 ~~(90)~~(91) "Setback" means the horizontal separation distance, in feet, between the surface location of well
32 site structures and adjacent structures and land features.

33 ~~(91)~~(92) "Shut-in" means ~~to close the valves on a wellhead so that production ceases.~~ stop flow from a
34 well.

35 ~~(92)~~(93) "Sidetrack" means to use a downhole motor to drill around the original planned path of the oil or
36 gas well.

37 ~~(93)~~(94) "SPCA" means the Sediment Pollution Control Act of 1973.

1 ~~(94)~~(95) "Spud" means to start the oil or gas well drilling process by removing rock, dirt and other
2 sedimentary material with the drill bit.

3 ~~(95)~~(96) "Sub-base" means the layer of material laid on the subgrade.

4 ~~(96)~~(97) "Subgrade" means the native material at the bottom of a ~~subgrade~~.sub-base.

5 ~~(97)~~(98) "Surface casing" means a large diameter, casing string set in shallow yet competent formations
6 used to protect ~~groundwaters~~.groundwaters, provide sufficient structural integrity to bear the
7 weight of subsequent casing strings and pressure integrity to contain pressures anticipated to the
8 next casing point.

9 (99) "Surface use agreement" means any agreement in the nature of a contract or other form of
10 document binding on the permittee, including any lease, damage agreement, waiver, local
11 government approval or permit, or other form of agreement, which governs the permittee's
12 activities on the surface in relation to locating a well, production facility, pipeline, or any other oil
13 and gas facility that supports oil and gas development located on the surface owner's property.

14 ~~(98)~~(100) "Tank" means a stationary vessel constructed of non-earthen materials used to contain
15 fluids.

16 ~~(99)~~(101) "Tank battery" means a group of tanks that are connected to receive production fluids
17 from an oil or gas well or a producing lease.

18 ~~(100)~~(102) "Tracer technology" means technology used to trace well stimulation fluid back to the oil
19 or gas well where fluid was injected.

20 ~~(101)~~(103) "Trade name" means the common name given by industry or a manufacturer to a
21 chemical or product.

22 ~~(102)~~(104) "Trade secret" as defined in G.S. 66-152(3).

23 (105) "Treating healthcare provider" means a licensed physician, physician's assistant, industrial
24 hygienist, toxicologist, epidemiologist, emergency medical technician, nurse, nurse anesthetist, or
25 nurse practitioner, or local health director.

26 ~~(103)~~(106) "Unconventional reservoir" means a resource whose porosity, permeability, fluid
27 trapping mechanism, or other characteristics differ from conventional reservoirs.

28 ~~(104)~~(107) "Vendor" means a company that sells or provides a substance or product for use in oil or
29 gas exploration or production.

30 ~~(105)~~(108) "Water source" means any of the following:
31 (a) waters of the State;
32 (b) a source of water supply used by a water purveyor;
33 (c) mine pools and discharges; and
34 (d) any other waters that are used for drilling, completing, and stimulating an oil or gas well.

35 ~~(106)~~(109) "Water supply well" as defined in G.S. 87-85(13).

36 ~~(107)~~(110) "Water or waters of the State" as defined in G.S. 143-212.

37 ~~(108)~~(111) "Well" as defined in G.S. 87-85(14).

1 ~~(109)~~(112) "Wellbore" means a borehole drilled by a bit.
2 ~~(110)~~(113) "Wellhead" means the upper terminal of the oil or gas well, including adapters, ports,
3 valves, seals, and other attachments.
4 ~~(111)~~(114) "Well pad" means the area that is cleared or prepared for the drilling of one or more oil or
5 gas wells.
6 ~~(112)~~(115) "Well site" means the areas that are directly disturbed during the drilling and subsequent
7 operation of any oil or gas well and its associated well pad.
8 ~~(113)~~(116) "Well spacing" means the minimum distance from any wellbore in the drilling unit to the
9 boundary of the drilling unit.
10 ~~(114)~~(117) "Well stimulation" means any of several operations or processes to initiate or increase the
11 production of oil or gas from a well, including acidizing, hydraulic fracturing, or other methods.
12 ~~(115)~~(118) "Wetland" as defined in 40 CFR 230.3.
13 ~~(116)~~(119) "Wiper plug" means a rubber plug used to separate the cement slurry from other fluids.
14 ~~(117)~~(120) "Wireline log" means the recording of information about subsurface geologic formations
15 using tools lowered into the wellbore on a wire line.
16 ~~(118)~~(121) "Withdrawal" means the removal of water from a water body, well, or other fluid storage
17 structure.
18 ~~(119)~~(122) "Workover" means the performance of one or more of a variety of operations on a
19 producing oil or gas well to attempt to increase production.
20

21 *History Note: Authority G.S. 113-391;*
22 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0201

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In this Rule, please state how the Department will provide the forms. On a website, by writing to request it? Please give the URL or the contact information for this in the Rule.

Throughout this Technical Change Request, you will note that I ask for contact information for the Department. You could put that in this Rule. "All notice and forms required by Rule to be submitted to the Department shall be made to:" and put in the contact information.

Based on a review of your other Rules, it appears you are stating what is in each form in the other Rules. Is this correct?

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: December 1, 2014

1 15A NCAC 05H .0201 has been adopted with changes as published in 29:02 NCR 114 as follows:

2
3 **SECTION .0200 – ADMINISTRATIVE RULES**
4

5 **15A NCAC 05H .0201 FORMS**

6 (a) An applicant or permittee shall use the following forms, as provided by the Department:

- 7 (1) Form 1 – Financial Responsibility Ownership;
8 (2) Form 2 – Oil or Gas Well Permit Application;
9 (3) Form 3 – Well Construction Design;
10 (4) Form 4 – Water Management Plan;
11 (5) Form 5 – Waste Management Plan;
12 (6) Form 6 – Well Site Reclamation Plan;
13 (7) Form 7 – Irrevocable Letter of Standby Credit;
14 (8) Form 8 – Surety Bond;
15 (9) Form 9 – Assignment of Savings;
16 (10) Form 10 – Cash Deposit;
17 (11) Form 11 – Required Notifications to the Department;
18 (12) Form 12 – Well Drilling Report;
19 (13) Form 14 – Plugging and Abandonment;
20 (14) Form 15 – Oil or Gas Well Status;
21 (15) Form 16 – Mechanical Integrity Test Results;
22 (16) Form 17 – Notification of Return of Oil or Gas Well to Active Status;
23 (17) Form 18 – Well Stimulation Report;
24 (18) Form 19 – Chemical Disclosure Report;
25 (19) Form 20 – ~~Trade Secret~~ Confidential Information Claim;
26 (20) Form 21 – Water Supply Investigation Request;
27 (21) Form 22 – Water Supply Testing Report;
28 (22) Form 23 – Annual Water Use Report;
29 (23) Form 24 – Annual E & P Waste Management Report;
30 (24) Form 25 – Pit Closure Report;
31 (25) Form 26 – Spill and Release Report;
32 (26) Form 27 – Site Investigation and Remediation Work Plan;
33 (27) Form 28 – Monthly Production Report; and
34 (28) Form 29 – Well Site Inspection Report.

35 (b) The use of any forms other than those provided by the Department is prohibited.
36

37 *History Note: Authority G.S. 113-391;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0202

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Paragraph (c), end the sentence after "Subchapter" on line 11. And then begin the new sentence, "At that time..."

Also on line 11, what do you mean by "earlier"? When will this occur? Why will this occur? This sounds as if you are creating a waiver in the rule to reduce the retention period for the permittee, and per G.S. 150B-19(6), a rule cannot allow a waiver or modification of rule without setting specific guidelines to follow in determining whether to allow the modification or waiver.

On line 12, when will copies be accepted and not the records?

On line 12, replace "will" with "shall"

In the History Note, is G.S. 113-391(a)(5)(k) not also applicable?

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: December 1, 2014

1 15A NCAC 05H .0202 has been adopted with changes as published in 29:02 NCR 114 as follows:

2
3 **15A NCAC 05H .0202 RECORD KEEPING & REPORTING**

4 (a) The Department shall collect data, retain records, and produce reports pursuant to G.S. 113-391(b).

5 (b) If information collected during predrilling exploration activities or geophysical surveys related to oil or gas
6 exploration and development is of a confidential nature, then upon request of the permittee, the State Geologist shall
7 hold such information in confidence until the information is no longer confidential in accordance with Rule .0707 of
8 this Subchapter.

9 (c) The permittee shall retain all data, records, reports, logs, and samples associated with oil or gas well drilling,
10 completion, production, and plugging and abandonment for a period of five years following the release of an Oil or
11 Gas Permit in accordance with Rule .1314 of this ~~Subchapter~~. Subchapter, at which time or earlier the records or
12 copies will be transferred to the State Geologist for permanent public record retention.

13
14 *History Note: Authority G.S. 113-391(b); 113-391(b1);*

15 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0203

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I see the change in (a) now means there will be no notice of the inspection. However, I note the original language did not include the amount or method of notice, I am not sure this actually made a change to the Rule. Is this consistent with your interpretation of the change?

In (b), who is an "authorized representative" of the Department? The staff performing the inspection?

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: December 1, 2014

1 15A NCAC 05H .0203 has been adopted with changes as published in 29:02 NCR 114 as follows:

2
3 **15A NCAC 05H .0203 INSPECTIONS**

4 (a) Each permittee ~~shall, upon notice, shall~~ make available to the Department for inspection the well site, any other
5 area encompassed by the permit, and any records maintained pursuant to the provisions of this Subchapter.

6 (b) Authorized representatives of the Department may copy any record required to be kept pursuant to provisions of
7 this Subchapter.

8 (c) Any notice of violation resulting from an inspection shall be issued pursuant to Rule .0901 of this Subchapter.

9
10 *History Note: Authority G.S. 113-391(b);*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0301

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, please replace "may be" with "is"

I'd take the sentence on lines 8-12 and create either a new Paragraph or a listing of Subparagraphs.

"In order for the Commission to grant a variance, or a variance with conditions, the Commission shall find:

- (1) the applicant or permittee...*
- (2) that the variance, if granted...; and*
- (3) the requested variance...*

In (b), how does someone know where to send the written request?

So that I understand (b)(2) – there are statutes that will form a basis for a waiver of Commission rule?

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: December 1, 2014

1 15A NCAC 05H .0301 has been adopted with changes as published in 29:02 NCR 114-115 as follows:

2
3 **SECTION .0300 - VARIANCES**
4

5 **15A NCAC 05H .0301 VARIANCE PROCEDURES**

6 (a) The Commission may grant a variance, grant a variance with conditions, or deny a variance in writing to any
7 Commission rule for which a variance may be requested pursuant to this Subchapter. ~~The applicant or the permittee~~
8 ~~requesting the variance shall make a showing that it~~ To grant a variance or grant a variance with conditions, the
9 Commission shall find that the applicant or permittee has made a good faith effort to comply, or is unable to comply,
10 with the specific requirements contained in the rule or rules from which it seeks a ~~variance~~ variance, that the
11 variance, if granted provides equal or greater protection of public health, safety, and the environment, and that the
12 requested variance does not violate the basic intent of the Oil and Gas Conservation Act in G.S. 113, Article 27.

13 (b) The applicant or permittee shall request the variance by submitting a written request to the Commission. A
14 request for a variance shall include the following information:

- 15 (1) the name and address of the requesting party;
16 (2) the statute or rule authorizing the request for a variance;
17 (3) all information required by the statute or rule authorizing the request for a variance;
18 (4) a statement of whether an oral argument before the Commission is desired, and if so, the reason(s)
19 for requesting such an oral argument;
20 (5) a concise statement of the matter to be presented, including the nature and duration of the variance
21 requested;
22 (6) arguments or data that support the requesting party's position;
23 ~~(7)~~ documents or data that illustrate alternative, mitigating technologies, techniques, or procedures
24 that afford the same or greater protection to public health, safety and the environment;
25 ~~(7)(8)~~ a statement of the consequences of failure to grant relief in favor of the requesting party; and
26 ~~(8)(9)~~ any other information believed by the applicant or permittee to be pertinent to the request.

27 (c) The variance request may be submitted with the Form 2 – Oil or Gas Well Permit Application, which is
28 governed by Rule .1304 of this Subchapter. If the variance request is submitted separate from the application, it
29 shall be submitted no less than 30 days before the next regularly scheduled Commission meeting.

30 (d) Any hearing on the variance request shall be denied or conducted in accordance with Section .0700 of this
31 Subchapter.

32
33 *History Note: Authority G.S. 113-391(a);*

34 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0401

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Given that you defined "Director" in .0102 as the Director of the Division, I think "of the Division" is unnecessary on line 7.

What is your authority to require (b)(5) and (6)? And what do you mean in (b)(6)?

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: December 1, 2014

1 15A NCAC 05H .0401 has been adopted with changes as published in 29:02 NCR 115 as follows:

2
3 **SECTION .0400 – DECLARATORY RULING**
4

5 **15A NCAC 05H .0401 PROCEDURE FOR SUBMISSION OF PETITION**

6 (a) All requests shall be filed in writing and electronically as follows:

- 7 (1) with the Director of the Division by filing one paper copy for each Commissioner plus five
8 additional copies ~~with the Recording Clerk of the Commission~~ to the following address: Oil and
9 Gas Program, Division of Energy, Mineral, and Land Resources, 1612 Mail Service Center,
10 Raleigh, NC 27699-1612; and
11 (2) the electronic submission shall be in .pdf format and sent to the Division at Oil&Gas@ncdenr.gov.

12 (b) All requests shall include the following:

- 13 (1) the name and address of petitioner(s);
14 (2) the statute, rule, or order upon which a ruling is desired;
15 (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the
16 applicability of a statute, rule, or order to a given factual situation;
17 (4) arguments or data demonstrating that the petitioner is aggrieved by the statute, rule, or order or its
18 potential application to the petitioner;
19 (5) a statement of the consequences of failure to issue a declaratory ruling in favor of the petitioner;
20 (6) a draft of the desired outcome; and
21 (7) a statement of whether an oral argument is desired, and if so, the reason(s) for requesting such an
22 oral argument.

23 (c) A petitioner may request a declaratory ruling on the applicability of a statute, rule, or order to the petitioner, or
24 on the validity of a Commission rule. The petitioner may request both types of declaratory ruling in a single request.
25 A request on the applicability of a statute, rule, or order shall include a detailed statement of the facts and
26 documentation supporting such facts, in addition to the requirements of Paragraph (b) of this Rule. A request to
27 determine the validity of a Commission rule shall state the petitioner's reason(s) for the request and a written
28 argument, in addition to the requirements of Paragraph (b) of this Rule.

29 (d) Any other person may petition to become a party by filing a motion to intervene in the manner provided in G.S.
30 1A-1, Rule 24. The Chair of the Commission shall determine whether to grant the motion to intervene in accordance
31 with Rule 24 of the North Carolina Rules of Civil Procedure.

32
33 *History Note: Authority G.S. 113-391(a)(14); 150B-4;*
34 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0402

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Do you feel you need to have (a) and (b) in Rule? This sounds like internal management, and is not required to be in Rule. If you want to give notice to individuals of how this will be handled, that's fine, but I'm not sure you are required to put it in your rules.

In (c), when will the Commission do these things? Are you relying upon later Paragraphs in the Rule to explain this? And how will they give notice they are doing this to all involved?

In (e), line 21, generally "at a minimum" is not preferred in rules, as the Rule itself sets the minimum standards. Do you feel you need to retain it here? Also, why do you need (e)?

On Page 2, (g)(2), line 2, "plainly irreconcilable" to whom?

In (h), when you state "within five days of receipt of notice" do you mean the notice received by the Director in Rule .0401(a)?

In (i), will the intervenor not be allowed to make oral arguments? And since the Commission "may" allow oral arguments (on line 9), when will they not allow it?

On line 10, I believe you mean "shall" rather than "may"

What is the statutory authority for (j)?

In (k), do you want to give notice that denial of a declaratory ruling is also subject to judicial review?

In the History Note, please state, "G.S. 113-391(a)(14); 113-391(a4);

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: December 1, 2014

1 15A NCAC 05H .0402 has been adopted with changes as published in 29:02 NCR 115 as follows:

2
3 **15A NCAC 05H .0402 DISPOSITION OF PETITION**

4 (a) The Chair of the Commission shall make a determination on the completeness of the request for declaratory
5 ruling based on Rule .0401 of this Section.

6 (b) The Chair of the Commission shall make a recommendation to the Commission on whether to issue or decline
7 to issue a declaratory ruling.

8 (c) Before deciding the merits of the request, the Commission may:

- 9 (1) request additional written submissions from the petitioner(s);
10 (2) request a written response from Division staff or any other person; and
11 (3) hear oral arguments from the ~~petitioner(s)~~petitioner(s), intervenors, and Division staff or their
12 legal counsel.

13 (d) The Commission shall decline to issue a declaratory ruling if it finds any of the following:

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

21 (e) The Commission shall keep a record of each request for declaratory ruling, which shall include at a minimum
22 the following items:

- 23 (1) the request for a ruling;
24 (2) any written submission by a party;
25 (3) the facts on which the ruling was based;
26 (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
27 (5) any other information such as documents, photographs, recordings, maps, plats, articles, and
28 studies considered by the Commission in making its decision; and
29 (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the
30 reasons therefore.

31 (f) The Commission shall notify the petitioner in writing of the Commission's decision on the request for
32 declaratory ruling, including the basis for the Commission's decision.

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

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

1 (2) any court of the Appellate Division of the General Court of Justice construes the statute or rule
2 that is the subject of the declaratory ruling to be plainly irreconcilable with the declaratory ruling;
3 or

4 (3) any court sets aside the declaratory ruling in litigation between the Commission or the Department
5 and the party requesting the ruling.

6 (h) Any Division of the Department may be a party to any request for declaratory ruling upon written request. Such
7 request shall be made to the Chair of the Commission within five days of receipt of notice of the request for a
8 declaratory ruling.

9 (i) Upon written request, the requesting party and the Division each may be allowed to present oral arguments to the
10 Commission. No party may offer testimony or conduct cross-examination before the Commission.

11 (j) The petitioner may agree to allow the Commission to issue a written ruling to grant or deny consideration of the
12 request beyond 30 days of receipt of the request and may agree to allow the Commission to issue a written ruling on
13 the merits of the request beyond the 45 days allowed by G.S. 150B-4.

14 (k) A declaratory ruling is subject to judicial review as provided in G.S. 150B-4(a1).

15
16 *History Note: Authority G.S. 113-391(a)(14) and (a4); 150B-4;*
17 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0501

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b)(1), line 16, please add language to make it clear that the proposed text is only required for an adoption or amendment, in order to be consistent with G.S. 150B-21(a).

In Paragraph (d), state "Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned by the Commission to the petitioner."

Do not cite to G.S. 143B-282 in the History Note. Please cite to this Commission's 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: December 1, 2014

1 15A NCAC 05H .0501 has been adopted with changes as published in 29:02 NCR 116 as follows:

2
3 **SECTION .0500 – PETITION FOR RULEMAKING**
4

5 **15A NCAC 05H .0501 FORM AND CONTENTS OF PETITION**

6 (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall petition the
7 Director by submitting the information required in Paragraph (b) of this Rule. The petitioner shall submit one paper
8 copy of the petition for each Commissioner plus five additional copies and a copy in .pdf form ~~to the Recording~~
9 ~~Clerk of the Commission.~~

10 Recording Clerk-Oil and Gas Program

11 Division of Energy, Mineral, and Land Resources

12 1612 Mail Service Center

13 Raleigh, North Carolina 27699-1612

14 Oil&Gas@ncdenr.gov.

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

- 16 (1) the text of the proposed rule(s);
17 (2) a statement of the reasons for adoption or amendment of the proposed ~~rule(s); rules, or the repeal~~
18 of an existing rule(s);
19 (3) a statement of the effect on existing rules or orders;
20 (4) any documents and data supporting the proposed rule(s);
21 (5) the name(s) and address(es) of the petitioner(s); and
22 (6) a request to present the petition to the committee in accordance with Rule .0502 of this Section, if
23 desired.

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

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

31 (d) Petitions failing to contain the required information shall be returned by the Commission.
32

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

34 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0502

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, what do you mean by "complete"? Do you mean petitions accepted pursuant to Rule .0501?

On line 5, who will distribute this? Please rewrite in the active voice, "The Chair/ Division staff shall distribute..."

On line 7, delete "complete."

In (c), line 10, there is no statutory requirement to request just notice of petitions for rulemaking. Instead, G.S. 150B-21.2(d) speaks to a mailing list for all rulemaking actions. Please strike "petitions" and just say "rulemaking."

In (d), the petitioner shall only be allowed to make an oral presentation if he or she asked in advance pursuant to Rule .0501, correct? I recommend you state that here.

In (e)(3), what materials are these? How can you require them?

I think (f) can be simplified. "During the committee review, other Commission members who are not on the committee, may participate ..."

Do not cite to G.S. 143B-282 in the History Note. Please cite to this Commission's 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: December 1, 2014

1 15A NCAC 05H .0502 has been adopted as published in 29:02 NCR 116-117 as follows:

2
3 **15A NCAC 05H .0502 REVIEW BY A COMMITTEE OF THE COMMISSION**

4 (a) The Chair of the Commission shall refer complete petitions to the appropriate subject area committee of the
5 Commission for review and recommended action. Copies of petitions for rulemaking shall be distributed to all
6 members of the committee of the Commission.

7 (b) Within 10 days of the assignment of the complete petition, the Chair of the committee assigned to review the
8 submitted petition 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) The petitioner shall be afforded the opportunity to present the petition to the committee. The Director, through
12 staff, may make a presentation to the committee.

13 (e) The Chair of the committee shall allow one interested person to present the viewpoint of those who oppose
14 initiating rulemaking. The Chair of the committee shall determine whether additional interested persons are
15 permitted to make oral presentations before the committee. Interested persons shall request the opportunity to make
16 a presentation to the committee through the Director. The request shall:

17 (1) state the interest of the person in the petition for rulemaking;

18 (2) state the person's position on the petition; and

19 (3) be accompanied by supporting materials.

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

23
24 *History Note: Authority G.S. 143B-282; 150B-20;*

25 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0503

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, why not state, "Petitions for rulemaking, following committee review pursuant to Rule .0502 of this Section, shall be presented..."

On line 7, replace "through" with "by"

Why do you need lines 8-10?

In (b), G.S. 150B-20 states that the Commission must grant or deny the petition within 120 of the submission of the request to the Commission, not of submission by the Commission to a committee. The language on line 11 contradicts line 6 and, more importantly, the statute. Unless you have authority that I am not aware of, you cannot state this on line 11. If you do have this authority, please include it in the History Note.

Do not cite to G.S. 143B-282 in the History Note. Please cite to this Commission's 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: December 1, 2014

1 15A NCAC 05H .0503 has been adopted as published in 29:02 NCR 117 as follows:

2
3 **15A NCAC 05H .0503 PRESENTATION TO THE COMMISSION**

4 (a) Petitions for rulemaking, after review by the appropriate committee under Rule .0502 of this Section, shall be
5 presented to the Commission for its consideration and determination at a regularly scheduled meeting of the
6 Commission within 120 days following the date of submission. The Petition for Rulemaking and the committee's
7 recommended action shall be presented through the Chair of the committee or other designated member of the
8 committee during the business session of the Commission. Unless the Chair of the Commission rules otherwise,
9 discussion on the petition shall be limited to the members of the Commission, counsel to the Commission, and the
10 Director.

11 (b) Within 120 days following the date of submission of the petition to the appropriate committee, the Commission
12 shall:

- 13 (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who
14 submitted the petition of the decision in writing; or
15 (2) deny the petition in writing, stating the reason(s) for the denial, and send the written denial by
16 certified mail with return receipt to the person(s) who submitted the petition.

17
18 *History Note: Authority G.S. 143B-282; 150B-20;*
19 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0504

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why do you need this Rule? It simply appears to be partially reciting G.S. 150B-20(d). If you wish to retain it, then you need to include the rest of the language that failure to grant the petition in the timeframes in Rule .0503 is a denial and can be appealed.

Do not cite to G.S. 143B-282 in the History Note. Please cite to this Commission's 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: December 1, 2014

1 15A NCAC 05H .0504 has been adopted as published in 29:02 NCR 117 as follows:

2
3 **15A NCAC 05H .0504 RECURSE FOR DENIAL OF PETITION**

4 If the Commission denies the Petition for Rulemaking, the petitioner(s) may seek judicial review of the denial under
5 G.S. 150B, Article 4.

6
7 *History Note: Authority G.S. 143B-282; 150B-20;*

8 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0601

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What are you saying here? That the rules authorize the appointment of hearing officers, state the type of hearings they can conduct and reference rule for rulemaking hearings? What is "delineate" on line 7 referring to?

I think this would read better as a list:

"These Rules:

- 1. authorize...;*
- 2. set out...;*

On line 6, insert "to act" between "Department" and "hearing officers"

On line 7, replace "which" with "that"

I think the better citation for the History Note is G.S. 113-391(a), which authorizes rulemaking for the Commission.

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: December 1, 2014

1 15A NCAC 05H .0601 has been adopted as published in 29:02 NCR 117 as follows:

2
3 **SECTION .0600 – RULEMAKING HEARINGS**
4

5 **15A NCAC 05H .0601 PURPOSE AND SCOPE**

6 These Rules authorize the designation of certain employees of the Department as hearing officers, set out the types
7 of hearings which the designated employees are authorized to conduct, delineate, and reference the rules of
8 procedure for conducting public rulemaking hearings.
9

10 *History Note: Authority G.S. 113-391(b);*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0602

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why do you feel you need this Rule? The procedures for commenting on rulemaking and requests for statements for reasons for adoption are in G.S. 150B. Why does this need to be in the Administrative Code?

In (b), what are you saying? The Commission shall consider all comments and submit recommendations to itself after the comment period closes?

I think the better cite for the History Note is G.S. 113-391(a), which authorizes rulemaking for the Commission.

Also in the History Note, insert a dash so the citation is "150B-21.2(h)"

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: December 1, 2014

1 15A NCAC 05H .0602 has been adopted as published in 29:02 NCR 117 as follows:

2
3 **15A NCAC 05H .0602 PROCEDURES FOR PUBLIC COMMENT FOR RULEMAKING HEARINGS**

4 (a) Any person desiring to comment on the proposed rulemaking action may do so either in writing during the
5 comment period or by oral presentation at the hearing held to take public comments. Any person may file a written
6 statement or argument concerning the proposed rulemaking action prior to the close of the record on the date
7 indicated in the notice published in the North Carolina Register.

8 (b) The Commission shall consider all written and oral submissions and submit recommendations concerning the
9 proposed rulemaking action to the Commission following the close of the record as provided in Paragraph (a) of this
10 Rule.

11 (c) Requests for a statement of the Commission's reasons for adoption of the proposed rule or against adoption of
12 the proposed rule shall be responded to in accordance with G.S. 150B-21.2(h).

13
14 *History Note: Authority G.S. 150B 21.2(h); 113-391(b);*

15 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0603

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please break this into two sentences. I suggest writing it in active voice, such as: "The Chair of the Commission may designate...hearings. The Chair of the Mining Committee shall appoint hearing officers related to receiving comments on... Mining Act of 1971."

If you do not want to write it in active voice, insert a comma after "1971" on line 6.

On line 4, since the Chair "may" appoint a Commission member to serve, when won't the Chair do so? (Please note the waiver provision set forth in G.S. 150B-19(6))

Please insert a citation for the Mining Act of 1971. (For example, you may say "G.S. 74-46, et. seq.")

What is the Mining Committee? Is this a reference to the Committee on Mining that was formerly in 143B-292.2(g)?

I think the better cite for the History Note is G.S. 113-391(a), which authorizes rulemaking for the Commission.

Since it appears you are using this Rule to govern rulemaking under G.S. 74-63, please insert this in your History Note.

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: December 1, 2014

1 15A NCAC 05H .0603 has been adopted as published in 29:02 NCR 117 as follows:

2
3 **15A NCAC 05H .0603 REQUIREMENTS OF RULEMAKING HEARING OFFICER OR PANEL**

4 The Chair of the Commission may designate one or more Commission members to serve as hearing officers for
5 rulemaking hearings, with the exception of hearings related to receiving public comments on regulations necessary
6 to administer the provisions of the Mining Act of 1971 for which the Chair of the Mining Committee shall appoint
7 the hearing officer(s).

8
9 *History Note: Authority G.S. 113-391(b);*

10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0604

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why do you feel you need this Rule? Issuing notices of hearings and rulemaking actions is governed by G.S. 150B-21.

On line 4, since the Commission "may" delegate the authority for administrative actions, when will this not occur? Or do you mean "shall"?

On line 6, please insert a comma after "notices"

I think the better cite for the History Note is G.S. 113-391(a), which authorizes rulemaking for the Commission.

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: December 1, 2014

1 15A NCAC 05H .0604 has been adopted as published in 29:02 NCR 117 as follows:

2
3 **15A NCAC 05H .0604 DELEGATION FOR RULEMAKING HEARINGS**

4 The Commission may delegate to the Director the authority to take administrative actions related to rulemaking
5 hearings, including designating hearing officers in accordance with this Section. If the Director is authorized to
6 designate hearing officers, establish the hearings, issue notices and perform other administrative functions related to
7 rulemaking hearings in accordance with this Section, the Director shall advise the Commission at its regularly
8 scheduled meetings of any rulemaking public hearings held or scheduled since the Commission's last regularly
9 scheduled meeting.

10
11 *History Note: Authority G.S. 113-391(b);*

12 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0605

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule? Is it to give guidance to the Director if he or she appoints the hearing officer?

How will someone know that the employee is a grade of regional engineer or above?

I think the better cite for the History Note is G.S. 113-391(a), which authorizes rulemaking for the Commission.

Also in the History Note, there is no 150B-32(f). And the statute itself does not appear to be relevant to this Rule. Please delete.

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: December 1, 2014

1 15A NCAC 05H .0605 has been adopted as published in 29:02 NCR 117 as follows:

2
3 **15A NCAC 05H .0605 AUTHORIZED HEARING OFFICERS**

4 Any employee of the Department of the grade of regional engineer or above may be designated as a hearing officer
5 for rulemaking hearings held pursuant to this Section.

6
7 *History Note: Authority G.S. 113-391(b); 150B 32(f);*

8 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0701

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, should it read, "when establishing or modifying drilling units"? Based upon Rules .1200, it appears so.

In (b), line 9, do you mean "shall" instead of "may"? If not, then will the Commission not allow the oral arguments when a written request is made?

On line 10, I'd replace "before the Commission" with "at the hearing."

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: December 1, 2014

1 15A NCAC 05H .0701 has been adopted as published in 29:02 NCR 118 as follows:

2
3 **SECTION .0700 – HEARINGS FOR DRILLING UNITS, VARIANCES, AND CONFIDENTIAL**
4 **INFORMATION**

5
6 **15A NCAC 05H .0701 OPPORTUNITY FOR HEARING**

7 (a) The Commission shall conduct hearings when establishing drilling units and considering an application for a
8 variance. Such hearings shall be conducted pursuant to the rules of this Subchapter.

9 (b) Upon written request, the requesting party and the Division may each be allowed to present oral arguments to
10 the Commission. No party shall offer testimony or conduct cross-examination before the Commission.

11
12 *History Note: Authority G.S. 113-391(a); 113-391(b); 113-392; 113-393;*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0702

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), how will the Divisions know that the Commission received this notice?

In the History Note, why are you citing 150B-23?

Also in the History Note, does this Rule only govern hearings for the establishment of drilling units? (That is the only statute cited in the History Note.) If that is the case, I'd recommend renaming the rule to reflect that. However, I don't think that is the only type of hearing governed here. I'd insert more citations in the History Note.

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: December 1, 2014

1 15A NCAC 05H .0702 has been adopted as published in 29:02 NCR 118 as follows:

2
3 **15A NCAC 05H .0702 PARTIES**

4 (a) Any person authorized by statute or rule to request a hearing before the Commission shall be a party to any
5 hearing granted. The Division also shall be a party to any hearing granted. The Chair of the Commission shall rule
6 on motions by any other persons seeking leave to intervene in the pending proceeding or seeking leave to file *amicus*
7 *curiae* briefs. Persons seeking to intervene shall establish through their motion that they qualify for intervention
8 under G.S. 1A-1, Rule 24.

9 (b) Any Division of the Department shall be a party to the hearing upon written request. Such request shall be made
10 to the Chair of the Commission within five days of receipt of notice of the request for hearing.

11
12 *History Note: Authority G.S. 113-393(a); 150B-23(a);*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0703

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (c), I'd end line 8 with "filed." However, I also think that Rule .0707(b) reads better in giving this information and recommend lifting that language for this Rule.

In (d)(8), wouldn't the information in Rule .0301 only be required if someone is seeking a variance?

In the History Note, please state "G.S. 113-391(a)(14); 113-391(a4);"

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: December 1, 2014

1 15A NCAC 05H .0703 has been adopted with changes as published in 29:02 NCR 118 as follows:

2
3 **15A NCAC 05H .0703 PROCEDURE FOR SUBMISSION**

4 (a) An application to establish a drilling unit shall be submitted in accordance with Rule .1202 of this Subchapter.
5 All other requests for a hearing shall be submitted in accordance with this Rule.

6 (b) All requests for a hearing shall be filed no less than 30 calendar days before the next regularly scheduled
7 Commission meeting.

8 (c) All requests shall be filed in writing and electronically as follows:

9 (1) with the Director of the Division by filing one paper copy for each Commissioner plus five
10 additional copies ~~with the Recording Clerk of the Commission at~~ to the following address: Oil &
11 Gas Program, Division of Energy, Mineral, and Land Resources, 1612 Mail Service Center,
12 Raleigh, NC 27699-1612; and

13 (2) the electronic submission shall be in .pdf format sent to the Division at Oil&Gas@ncdenr.gov by
14 5:00 p.m. on the date specified in Paragraph (b) of this Rule.

15 (d) All requests shall include the following:

- 16 (1) the name and address of the requesting party;
17 (2) the rule or statute authorizing the request for a hearing;
18 (3) a statement of whether an oral argument is desired, and, if so the reason(s) for requesting an oral
19 argument;
20 (4) if requesting a variance, the rule or statute under which a variance is desired;
21 (5) a concise statement of the matter to be presented;
22 (6) arguments or data that support the requesting party's position; ~~and~~
23 (7) a statement of the consequences of failure to grant relief in favor of the requesting ~~party-party; and~~
24 (8) all documentation required by Rule .0301 of this Subchapter.

25
26 *History Note: Authority G.S. 113-391(a)(14) and (a4).*

27 *Eff. Pending Legislative Review*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0704

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, please write this in active voice. Who is returning the incomplete request? I suggest using the language in Rule .0708(a).

In (b), line 6, insert a comma after "necessary"

However, who will determine if it's necessary? And what will it be necessary for?

In (b)(3), do you mean legal counsel of both the party and staff?

And in Rule .0702, you may allow intervenors. Are they allowed to make oral argument?

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: December 1, 2014

1 15A NCAC 05H .0704 has been adopted as published in 29:02 NCR 118 as follows:

2
3 **15A NCAC 05H .0704 COMPLETENESS AND REQUEST FOR ADDITIONAL INFORMATION**

4 (a) The Chair of the Commission shall make a determination on the completeness of the request for hearing based
5 on the requirements of this Section. Incomplete requests shall be returned to the requesting party.

6 (b) Before deciding the merits of the request, if necessary the Commission may:

7 (1) request additional written submissions from the requesting party;

8 (2) request a written response from the Division staff or any other person; and

9 (3) hear oral arguments from the requesting party and Division staff or their legal counsel.

10
11 *History Note: Authority G.S. 113-391(b);*

12 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0705

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule?

In Item (5), line 9, please insert a comma after "information"

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: December 1, 2014

1 15A NCAC 05H .0705 has been adopted as published in 29:02 NCR 118 as follows:

2
3 **15A NCAC 05H .0705 ORDER AND RECORD OF PROCEEDING**

4 The Commission shall keep a record of each hearing, which shall include the following items:

5 (1) the request for a hearing;

6 (2) any written submission(s) by a party;

7 (3) the facts on which the Commission's decision was based;

8 (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;

9 (5) any other information such as documents, photographs, recordings, maps, plats, articles, and
10 studies considered by the Commission in making the decision; and

11 (6) the Commission's written decision, which shall include the reasons therefore.

12
13 *History Note: Authority G.S. 113-391(b);*

14 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0706

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In this Rule, you state you will notify only the requesting party of the decision. Not the Division or intervenors?

In the History Note, please cite sufficient authority for this Rule.

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: December 1, 2014

1 15A NCAC 05H .0706 has been adopted as published in 29:02 NCR 118 as follows:

2
3 **15A NCAC 05H .0706 ADMINISTRATIVE AND JUDICIAL REVIEW OF COMMISSION DECISION**

4 The Commission shall notify the requesting party in writing of the Commission's decision, including information
5 about the requesting party's right to a contested case under G.S. 150B.

6
7 *History Note: Authority G.S. 150B;*

8 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0707

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, do you mean "Rule"? Or do you mean "Rules .0707 through .0709 of this Section."?

In (d)(4)(C), please insert "an" at the beginning. "an agreement..."

In (d)(4)(D), please properly incorporate the Act, including a citation to the law, using G.S. 150B-21.6.

Also in (d)(4)(D), insert a comma after "regulated" on line 29.

Aren't (d)(4)(F) and (G) also "if applicable"? And both are specific to the requestor, correct?

On Page 2, (d)(4)(H), would the chemicals be prohibited by law or rule or both?

In (d)(5), when would this not be required under G.S. 113-391.1? Is this to address requests not involving hydraulic fracturing fluid?

In (d)(6), are you saying that the requestor should submit the Form 20, which asks for the information in (d)(6)? If so, why not state it like that? Or is all of (d) meant to be the contents of the Form 20?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0707 has been adopted with changes as published in 29:02 NCR 119 as follows:

2
3 **15A NCAC 05H .0707 FORM AND CONTENTS OF REQUEST TO MAINTAIN CONFIDENTIAL**
4 **INFORMATION**

5 (a) Any person wishing to protect information submitted to the Commission or the Department as confidential
6 information shall make a showing to the Commission in accordance with the requirements of G.S. 113-391.1 and
7 this Section.

8 (b) The requesting party shall submit one paper copy for each Commissioner plus five additional copies ~~with the~~
9 ~~Recording Clerk of the Commission at~~ to the following address: Oil & Gas Program, Division of Energy, Mineral,
10 and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612 and a copy in .pdf form submitted to
11 Oil&Gas@ncdenr.gov.

12 (c) Requests shall be submitted no less than 30 calendar days prior to the next regularly scheduled Commission
13 meeting.

14 (d) The request shall contain the following information:

- 15 (1) the name and address of the requesting party;
- 16 (2) a description of the information to be afforded confidential treatment;
- 17 (3) a statement of whether an oral presentation is desired, and, if so, the reason(s) for requesting such
18 an oral presentation;
- 19 (4) an affidavit with each of the following elements:
- 20 (A) a statement of whether the confidential information is in the public domain and
21 information illustrating the extent to which the confidential information is known outside
22 the business;
- 23 (B) evidence that the information has been treated in the same manner as other confidential
24 information in the company, said manner being detailed in the affidavit;
- 25 (C) agreement to notify the Commission if said information loses confidential status;
- 26 (D) if applicable to the category of information, certification that the chemical for which
27 confidential protection is sought is not regulated under the Federal Safe Drinking Water
28 Act's National Primary Drinking Water Standards or National Secondary Drinking Water
29 Standards, including subsequent amendments, or if regulated is not present in
30 concentrations greater than the EPA-listed maximum contaminant level for that chemical
31 in any fluid inserted into the oil or gas well;
- 32 (E) if applicable to the category of information, certification and evidence that the chemical
33 for which trade secret protection is sought meets the definition of a trade secret under the
34 N.C. Trade Secrets Protection Act in G.S. 66-152(3), including that the chemical is not
35 "generally known or readily ascertainable through independent development or reverse
36 engineering by persons who can obtain economic value from its disclosure or use;"
- 37 (F) which states have issued confidential information status to this specific information;

- 1 (G) which states have refused to issue confidential information status to this specific
2 information and why was confidential information status denied;
3 (H) if applicable to the category of information, a list of all chemicals for which the affiant is
4 seeking confidential protection and whether any such chemicals are prohibited in North
5 Carolina; and
6 (I) if applicable to the category of information, certification that the information is protected
7 by Federal statute, including statutory authority.
8 (5) if required by G.S. 113-391.1, a statement that the State Geologist has reviewed the confidential
9 information and transmitted the certification to the requestor; and
10 (6) the business contact information, including the company name, name of authorized representative,
11 mailing address, and phone number for the business organization claiming entitlement to trade
12 secret protection on Form 20 – ~~Trade Secret~~ Confidential Information Claim.
13

14 *History Note:* Authority G.S. 113-391(a)(5)h; 113-391.1(b); 150B;
15 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0708

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, the Chair is basing the completeness determination on the information required by Rule .0707, correct? (See the language in Rule .0402(a))

In (b), when "may" the Commission determine to do (1) though (3)?

In (d), line 11, strike "may." If you feel you need a word there, state "either."

How will the Commission send notice the request is approved?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0708 has been adopted with changes as published in 29:02 NCR 119-120 as follows:

2
3 **15A NCAC 05H .0708 DISPOSITION OF CONFIDENTIAL INFORMATION REQUEST**

4 (a) The Chair of the Commission shall make a determination on the completeness of the request. If the request is
5 not complete, the Chair shall return the request to the requesting party.

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

7 (1) request additional written submissions from the requesting party;

8 (2) request additional information from the State Geologist or other Department staff; and

9 (3) hear oral presentations from the requesting party or the Department.

10 (c) The Commission shall consider the request in a closed session in accordance with G.S. 143-318.11.

11 (d) The Commission shall consider the merits of the request and may approve or deny the request.

12 (e) If the Commission determines that the information is not entitled to confidential protection, the Commission
13 shall provide notice in accordance with G.S. 113-391.1(e).

14 (f) Confidential information so designated by the Commission shall be held by the State Geologist in accordance
15 with G.S. 113-391.1.

16
17 *History Note: Authority G.S. 113-391(a)(5)h; 113-391.1; 150B;*

18 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0709

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

The name of a Rule is not part of rulemaking, and you may change it without notice. With that said, I do not read the text of this Rule to speak solely to loss of confidential status. Perhaps you should rename the Rule "Notice to the Commission of Changes to Confidential Status."

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0709 has been adopted with changes as published in 29:02 NCR 120 as follows:

2
3 **15A NCAC 05H .0709 NOTICE TO THE COMMISSION OF LOSS OF CONFIDENTIAL STATUS**

4 Any person receiving confidential information status shall provide updated information to the Commission no more
5 than 30 calendar days of the date any of the information described in this Section becomes inaccurate or incomplete.

6
7 *History Note: Authority G.S. 113-391(a)(5)h; 113-391.1; 150B;*

8 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0801

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I suggest rewriting this to state "The rules of this Section establish procedures the Commission shall use in reviewing..."

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0801 has been adopted as published in 29:02 NCR 120 as follows:

2
3 **15A NCAC 05H .0801 PURPOSE AND SCOPE**

4 The rules of this Section establish procedures to be used by the Commission in reviewing petitions for limited
5 preemption of a local ordinance pursuant to the authority set forth in G.S. 113-415.1.

6
7 *History Note: Authority G.S. 113-415.1; 150B;*

8 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0802

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, insert a comma after "Commissioner"

In (b)(3)(E) and (F), I take it this is the actions and compliance by the petitioner? I ask because that is stated in (G)

In (b)(3)(G), I do not read G.S. 113-415.1 to require someone to make attempts to resolve the issue before petitioning the MEC. Therefore, shouldn't the sentence begin, "any attempts..."? Do you have a different interpretation of the statute?

How does the public have the opportunity to participate in the permitting process in (H)? Is this addressed by the new language in Rule .1307?

In (b)(3)(I), what is the MEC's authority remove the word "unreasonable"? 113-415.1(f)(4) states:

(4) That the oil and gas exploration, development, and production activities, and use of horizontal drilling or hydraulic fracturing for that purpose, will not pose an **unreasonable health or environmental risk** to the surrounding locality and that the operator has taken or consented to take reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with applicable local ordinances.

The statute speaks to an unreasonable health or environmental risk, not simply any risk, so what are you relying upon to state that in Rule?

On line 23, please correct the spelling of "jurisdiction"

In (b)(3)(K), please begin with "a" so it reads, "a metes and bounds..."

In (c), why are you here stating you will return the petition and state why the petition is incomplete, whereas you are not doing it for any other request (a variance, rulemaking petition, etc.)?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0802 has been adopted with changes as published in 29:02 NCR 120 as follows:

2
3 **15A NCAC 05H .0802 COMMENCEMENT OF PROCEEDINGS**

4 (a) An operator shall commence a proceeding by filing a petition with the ~~Commission~~Commission by submitting
5 one paper copy for each Commissioner plus five additional copies to the following address: Oil & Gas Program,
6 Division of Energy, Mineral, and Land Resources, 1612 Mail Service Center, Raleigh, NC 27699-1612 and a copy
7 in .pdf form submitted to Oil&Gas@ncdenr.gov.

8 (b) The petition shall contain:

- 9 (1) the name, address, and telephone number of the petitioner;
- 10 (2) the city and county in which the oil or gas operations is or is proposed to be located; and
- 11 (3) a statement of facts and issues, which shall include:
- 12 (A) the action giving rise to the petition;
- 13 (B) a copy of the ordinance;
- 14 (C) the effect of the ordinance on the proposed activities;
- 15 (D) identification of the provisions of the ordinance alleged to prevent the proposed activities;
- 16 (E) any actions taken to comply with the ordinance or any of its provisions;
- 17 (F) status of and compliance with all applicable state and federal permits or approvals;
- 18 (G) attempts made by the petitioner to resolve the issue with each city and county in which
- 19 the activities are proposed;
- 20 (H) opportunities local citizens and elected officials have had to participate in the permitting
- 21 process;
- 22 (I) documentation that the proposed activities will not pose ~~an unreasonable~~ a health or
- 23 environmental risk to the ~~surrounding locality~~applicable jurisdiction. For the purposes
- 24 of filing this petition, this documentation shall be deemed complete if it ~~describes~~includes
- 25 the information submitted for all applicable state and federal permits or approvals;
- 26 (J) measures the applicant or permittee has taken or consented to take to avoid or manage
- 27 foreseeable risks and to comply to the maximum extent feasible with any applicable
- 28 ordinance;
- 29 (K) metes and bounds description, site plan, maps or other information describing the facility
- 30 and its location; and
- 31 (L) all other information the petitioner believes relevant and which constitutes grounds for
- 32 relief under G.S. 113-415.1.

33 (c) Within 10 calendar days of receipt of the petition, the Chair of the Commission shall review the petition and

34 determine whether it is complete in accordance with Paragraph (b) of this Rule. If the petition is determined to be

35 incomplete, the Chair of the Commission shall return it to the petitioner with a statement of the reasons it is

36 deficient. Return of the petition for incompleteness in no way precludes the petitioner from re-filing. If the petition

37 is complete, the Chair of the Commission shall send a notice of proceeding in accordance with Rule .0803 of this

38 Section.

1

2 *History Note:* *Authority G.S. 113-415.1; 150B;*

3 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0803

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, are the petitioner and governing board deemed "the parties" for later rules? If so, then please state so here.

In (b)(8), what is the procedure to be followed at the hearing? If it's what is in Rule .0806, please state that.

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0803 has been adopted as published in 29:02 NCR 120-121 as follows:

2
3 **15A NCAC 05H .0803 NOTICE OF PROCEEDING**

4 (a) Within five days after a petition is found complete by the Chair of the Commission, the Chair of the
5 Commission shall serve a notice of proceeding on the petitioner and the governing board of each city and county in
6 which the activities are proposed.

7 (b) The notice of proceeding shall contain:

8 (1) a statement that a complete petition has been received;

9 (2) a statement that a public hearing on the petition will be held on a specific date and at a specific
10 place in accordance with G.S. 113-415.1;

11 (3) a request that within 30 days of receipt, the city or county that adopted the ordinance respond to
12 the petition. Such response shall include all information within its possession regarding the factors
13 in G.S. 113-415.1 and any other information as to why this ordinance should not be preempted;

14 (4) the name of the proceeding and the date of filing;

15 (5) the address and telephone number of the Clerk of the Commission;

16 (6) a citation to the relevant statutes or rules involved;

17 (7) a statement of the factual allegations or issues to be determined;

18 (8) a brief description of the procedure to be followed at the hearing; and

19 (9) a statement of how interested persons may participate in the hearing and where additional
20 information can be obtained.

21
22 *History Note: Authority G.S. 113-415.1; 150B;*

23 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0804

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why do you feel you need this Rule? It essentially recites 113-415.1(d) and adds nothing to the statutory language.

On line 5, what is a "reasonable time"?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

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: Mining and Energy Commission

RULE CITATION: Rule 15A NCAC 05H .0804

RECOMMENDED ACTION:

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

COMMENT:

This Rule recites merely recites G.S. 113-415.1(d). Staff does not see that this Rule is reasonably necessary to implement or interpret the enactment of the General Assembly.

G.S. 113-415.1(d) states:

(d) When a petition described in subsection (c) of this section has been filed with the Mining and Energy Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within 60 days after receipt of the petition by the Commission.

The Rule states:

When a complete petition is filed with the Commission, the Commission shall hold a public hearing to consider the petition. The public hearing shall be held in the affected locality within a reasonable time but not to exceed 60 days after receipt of the petition by the Commission.

Historically, the RRC has granted agencies significant discretion to recite portions of statutes in their rules if the intent is to ensure that the regulated public is aware of the statutory requirements. However, staff believes that this Rule does not give any additional information than that in statute, which is referenced several times in other rules in this Section. Therefore, staff believes this Rule is unnecessary.

Amanda J. Reeder
Commission Counsel

1 15A NCAC 05H .0804 has been adopted as published in 29:02 NCR 121 as follows:

2
3 **15A NCAC 05H .0804 PUBLIC HEARING TO BE HELD**

4 When a complete petition is filed with the Commission, the Commission shall hold a public hearing to consider the
5 petition. The public hearing shall be held in the affected locality within a reasonable time but not to exceed 60 days
6 after receipt of the petition by the Commission.

7
8 *History Note: Authority G.S. 113-415.1; 150B;*
9 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0805

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please explain the difference between this Rule and Rule .0803. Are you sending two separate notices of this proceeding to the parties? I ask because Paragraph (b) speaks to the notice to only the parties, who received most of this information already in Rule .0803. What is the purpose of this additional Rule and notice? Is it that this sets the date, time and place? Do you really another Rule to establish this?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0805 has been adopted as published in 29:02 NCR 121 as follows:

2
3 **15A NCAC 05H .0805 NOTICE OF PUBLIC HEARING**

4 (a) The Commission shall publish notice of public hearing in accordance with G.S. 113-415.1(d).

5 (b) The Commission shall serve the parties to the proceeding with a notice of public hearing no less than 30
6 calendar days before the hearing. The notice shall contain the following:

7 (1) the name of proceeding and the date of filing;

8 (2) the date, time, and place of the hearing;

9 (3) the name, address, and telephone number of the Clerk of the Commission;

10 (4) a citation to the relevant statutes or rules involved;

11 (5) a statement of the factual allegations or issues to be determined;

12 (6) a brief description of the procedure to be followed at the hearing; and

13 (7) a statement of how persons may participate in the hearing and where the information can be
14 obtained.

15
16 *History Note: Authority G.S. 113-415.1; 150B;*

17 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0806

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Again, rule names are not part of the formal rulemaking process and can be re-named without notice or hearing. I think you may wish to rename this Rule. I suggest, "Conduct of the Hearing"

In (b), delete "reasonable" or give some guidance on what is reasonable. And when will this occur – at the hearing itself?

In (d), since you are reciting statute here, please add language to make it clear that the record will be open for receipt of written comments.

In (f), I'd state, "A party shall have all oral or written evidence to be presented available on the date of the hearing."

Also in (f), lines 12-13, how is the Commission giving this notice of time and date for presentation of evidence? Should that be included in Rule .0805?

In (h), why do you feel you need the second sentence? Do you anticipate many unrepresented parties who would not know to contact the attorney?

In (i), just to ensure I understand, is the Rule saying that you are going to allow the parties to cross-examine the interested persons giving testimony?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0806 has been adopted as published in 29:02 NCR 121 as follows:

2
3 **15A NCAC 05H .0806 CONDUCT THE HEARING**

4 (a) In accordance with information provided in the notice of hearing, any non-party may appear before the
5 Commission at the hearing to offer testimony or submit written evidence for its consideration.

6 (b) The Commission may set the order of presentation and place reasonable limits on the testimony of each person
7 who appears before the Commission at the hearing.

8 (c) Commission members may ask questions of any person who appears before the Commission at the hearing.

9 (d) The Commission shall hold the record open for 20 days after the termination of the hearing.

10 (e) All parties shall have the right to present evidence, rebuttal testimony, and argument relevant to the issues.

11 (f) A party shall have all evidence to be presented, both oral and written, available on the date for the hearing. In
12 cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at
13 the date and time ordered by the Commission.

14 (g) The Commission shall serve copies of all orders or decisions on all parties simultaneously. Any party sending a
15 letter, exhibit, brief, memorandum, or other document to the Commission shall simultaneously serve a copy on all
16 other parties.

17 (h) A party need not be represented by an attorney. If a party has notified other parties of that party's representation
18 by an attorney, all communications shall be directed to that attorney.

19 (i) Any non-party offering testimony or other evidence may be questioned by parties to the case and by the
20 Commission.

21
22 *History Note: Authority G.S. 113-415.1; 150B;*

23 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0807

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, how is this service made? Is it to the Clerk or the full Commission to the address in .0802(a)? Do you need it electronically and in paper as that Rule requires? Do you need multiple copies?

On line 6, please delete or define "reasonable"

Is this amendment going to be entirely permissive? Who will determine what is "reasonable"?

I assume that the recording on line 7 is to create the "complete transcript" required by 113-415.1(h)?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0807 has been adopted as published in 29:02 NCR 121 as follows:

2
3 **15A NCAC 05H .0807 WITNESSES**

4 Any party may be a witness and may present witnesses on the party's behalf at the hearing. Fourteen days in
5 advance of the public hearing, parties shall serve on the Commission a witness list, a synopsis of testimony, and an
6 estimate of the time required to hear each witness. A party may make reasonable amendments to its witness list. All
7 oral testimony by witnesses at the hearing shall be under oath or affirmation and shall be recorded.

8
9 *History Note: Authority G.S. 113-415.1; 150B;*
10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0808

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On lines 7 and 8, what is your authority to preempt only part of the ordinance? Are you relying upon 113-415.1(c), which states the MEC shall determine "to what extent" to preempt the ordinance?

On line 8, please insert a comma after "ordinance"

In (b)(1), line 10, what is "substantial evidence admissible"? And do you mean "admissible evidence"?

In (c), line 15, delete or define "fully"

In (c)(1), line 16, what is the "appropriate" caption?

In (c)(8), under what circumstances will this discretion be exercised?

113-415.1(g) and (h) require the following:

(g) If the Mining and Energy Commission does not make all of the findings under subsection (f) of this section, the Commission shall not preempt the challenged local ordinance. The Commission's decision shall be in writing and shall identify the evidence submitted to the Commission plus any additional evidence used in arriving at the decision.

(h) The decision of the Mining and Energy Commission shall be final unless a party to the action files a written appeal under Article 4 of Chapter 150B of the General Statutes, as modified by this section, within 30 days of the date of the decision. The record on appeal shall consist of all materials and information submitted to or considered by the Commission, the Commission's written decision, a complete transcript of the hearing, all written material presented to the Commission regarding the location of the oil and gas exploration, development, and production activities, the specific findings required by subsection (f) of this section, and any minority positions on the specific findings required by subsection (f) of this section. The scope of judicial review shall be as set forth in [G.S. 150B-51](#), except as this subsection provides regarding the record on appeal.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

Do you feel this Rule captures everything required by the law? Is that why you are stating all of the information in (b) and (c), rather than just relying upon the statute to address what is required?

In addition, is there a reason this Rule not contain any information regarding the “minority positions” in 113-415.1(h)? Do you feel the statute is sufficient to address this?

In the History Note, please either delete 150B or give a specific 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: December 1, 2014

1 15A NCAC 05H .0808 has been adopted with changes as published in 29:02 NCR 121-122 as follows:

2
3 **15A NCAC 05H .0808 COMMISSION'S DECISION**

4 (a) The Commission shall determine whether or to what extent to preempt the ordinance to allow for the
5 construction or operation of oil or gas exploration, development, or production activities in accordance with G.S.
6 113-415.1. In the event the Commission makes all four findings required by G.S. 113-415.1(d) and determines that
7 the provisions of the ordinance are severable, the Commission may determine that a specific provision, rather than
8 the entire ordinance is preempted.

9 (b) A decision shall be based on:

- 10 (1) substantial evidence admissible and arguments presented during the hearing and made part of the
11 official record;
12 (2) stipulations of fact;
13 (3) matters officially noticed; and
14 (4) other items in the official record.

15 (c) A decision shall fully dispose of all issues required to resolve the case and shall contain:

- 16 (1) an appropriate caption;
17 (2) the appearance of the parties;
18 (3) a statement of the issues;
19 (4) references to the specific provisions of the ordinance at issue;
20 (5) findings of fact, with specific reasons given for findings on disputed facts;
21 (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes,
22 rules, or regulations;
23 (7) a final determination that the challenged ordinance, or specific parts thereof, is or is not preempted
24 with respect to the proposed activity;
25 (8) in the discretion of the Commission, a memorandum giving reasons for the conclusions of law;
26 and
27 (9) a statement that each party has the right to appeal the final decision.

28
29 *History Note: Authority G.S. 113-415.1; 150B;*
30 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .0901

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 6, please give the citation for the Act.

Is the purpose of this Rule is to ensure that the regulated public knows that the Department will enforce these Rules and the law? And give notice of how this will occur (venue, type of penalty, etc.)?

If that is the case, where is the MEC's authority to state (b)(1) and (2)?

What is the statutory authority for Paragraph (f)?

In the History Note, isn't 113-391(a4) applicable?

Also in the History Note, please put the statutes in numerical order.

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: December 1, 2014

1 15A NCAC 05H .0901 has been adopted as published in 29:02 NCR 122 as follows:

2
3 **SECTION .0900 - ENFORCEMENT**
4

5 **15A NCAC 05H .0901 ENFORCEMENT**

6 (a) A violation of any provision of the Oil and Gas Conservation Act or any rule in this Subchapter may result in a
7 notice of violation, an assessment of a civil penalty pursuant to G.S. 113-410, suspension or revocation of a permit,
8 injunctive action, or any other remedy afforded by law.

9 (b) The Department shall issue a written notice of violation to the permittee for violations of any provision of the
10 Oil and Gas Conservation Act, any rule of this Subchapter, terms and conditions of the permit, or order of the
11 Commission.

12 (1) The written notice shall specify the facts constituting the violation, corrective actions that are
13 required to address the violation, a timeframe to implement such corrective actions, and a
14 statement that failure to comply with the specified corrective action may result in additional
15 enforcement actions.

16 (2) The Department may extend the timeframe for corrective actions upon written request of the
17 permittee demonstrating that the corrective action cannot be completed in the time specified in the
18 notice of violation.

19 (c) Civil penalties shall be assessed in accordance with G.S. 113-410 and Section .1000 of this Subchapter.

20 (d) Permits shall be suspended or revoked in accordance with G.S. 150B-3 and Rule .1313 of this Subchapter.

21 (e) The Department shall request the Attorney General to institute an action in the North Carolina General Courts of
22 Justice seeking injunctive relief pursuant to G.S. 113-408.

23 (f) The Department shall require the permittee to restore waters and land affected by a violation of any provision of
24 the Oil and Gas Conservation Act, any rule of this Subchapter, terms and conditions of the permit, or order of the
25 Commission so as to protect the quality of the water, air, soil, or any other environmental resource against injury,
26 damage, or impairment.

27
28 *History Note: Authority G.S. 113-408; 113-410; 113-391(a)(4);*

29 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1001

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What are you saying in the first sentence? I know you can write rules on the civil penalty remissions under 143B-293.6 and 113-410(d), but what do you mean by saying the rules govern the Division and delegates of assessment? Do you mean "in assessment"?

In the History Note, please cite to 143B-293.6 and 113-410(d).

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: December 1, 2014

1 15A NCAC 05H .1001 has been adopted as published in 29:02 NCR 122 as follows:

2
3 **SECTION .1000 – CIVIL PENALTIES**
4

5 **15A NCAC 05H .1001 PURPOSE AND SCOPE**

6 The rules of this Section govern the Commission, the Division, and their delegates of assessment of civil penalties.

7 They also govern permittee remission and appeal of those penalties.
8

9 *History Note: Authority G.S. 113-410;*

10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1002

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is your authority to write this Rule as it relates to what will be contained within the notice sent by the Department? G.S. 113-410(a) and (c) speak to actions by the Department in assessing fines.

On line 4, who will send the notice?

In the History Note, please state "113-410(a); 113-410(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: December 1, 2014

1 15A NCAC 05H .1002 has been adopted as published in 29:02 NCR 122 as follows:

2
3 **15A NCAC 05H .1002 NOTICE OF ASSESSMENT**

4 For all violations for which a penalty is assessed, a notice of such action shall be sent to the violator by U.S. mail,
5 certified mail, or other means calculated to provide actual notice. The notice shall describe the violation, advise that
6 the penalty is due, and provide the violator of the right of appeal as specified in G.S. 150B, Article 3 and the right to
7 request remission in G.S. 143B-293.6 and Rule .1004 of this Section.

8
9 *History Note: Authority G.S. 113-410(a) and (c);*

10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1003

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why do you think you need this Rule? It essentially recites 113-410(d). Are you trying to ensure specific guidance is given for the request for remission?

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: December 1, 2014

1 15A NCAC 05H .1003 has been adopted as in 29:02 NCR 122 as follows:

2
3 **15A NCAC 05H .1003 PAYMENT OF ASSESSMENT**

4 An assessed penalty shall be paid within 60 days of service of notice, unless the violator files a contested case
5 pursuant to G.S. 150B, Article 3 or requests remission pursuant to G.S. 113-410(d) and Rule .1004 of this Section.

6
7 *History Note: Authority G.S. 113-410(d);*

8 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1004

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Why are you stating (a)? This has already been said in Rules .1002 and .1003, as well as the statute. At this point, I believe this statement has become unnecessary and needs to be deleted.

In (b), what is the MEC's authority to restrict the request in (b)(2) to only those who stipulate no facts are in dispute? Is it your interpretation of 113-410 that if a party wished to dispute the facts that the court would be a better venue for that, and the role of the Committee on Civil Penalty Remissions is to determine simply if the penalty should be forgiven?

In the History Note, add the citation 143B-293.6

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: December 1, 2014

1 15A NCAC 05H .1004 has been adopted with changes as published in 29:02 NCR 122 as follows:

2
3 **15A NCAC 05H .1004 ADMINISTRATIVE REMEDIES**

4 (a) A person who has received a civil penalty assessment may file a contested case petition at the Office of
5 Administrative Hearings pursuant to G.S. 150B, Article 3.

6 (b) A person who has received a civil penalty assessment may request remission of the civil penalty.

7 (1) A request for a civil penalty remission shall be submitted in writing to the Director at the
8 following address: 1612 Mail Service Center, Raleigh, NC 27699-1612.

9 (2) The request shall be considered only if the person requesting remission of a civil penalty stipulates
10 that no facts are in dispute and waives his or her right to an administrative hearing.

11 (3) In determining whether to approve the remission request, the Commission shall consider the
12 factors in G.S. 143B-293.6.

13
14 *History Note: Authority G.S. 113-410(d);*

15 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1005

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Items (3) and (4), lines 8 and 10, please delete "have"

In the History Note, please list the citations as "113-391(a); 113-391(a4)"

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: December 1, 2014

1 15A NCAC 05H .1005 has been adopted as published in 29:02 NCR 122 as follows:

2
3 **15A NCAC 05H .1005 REPORT TO THE COMMISSION**

4 The Department shall report any action taken under this Section to the Commission at the Commission's next
5 regularly scheduled meeting. Such reports shall include the following information:

6 (1) the person(s) issued letter(s) of proposed assessment;

7 (2) the person(s) assessed a civil penalty;

8 (3) the person(s) who have paid a penalty as assessed, requested remission, or requested an
9 administrative hearing;

10 (4) the person(s) who have failed to pay; and

11 (5) cases referred to the Attorney General for collection.

12
13 *History Note: Authority G.S. 113-391(a) and (a4); 113-410(d);*

14 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1101

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 7, I suggest replacing "be" with "act"

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: December 1, 2014

1 15A NCAC 05H .1101 has been adopted with changes as published in 29:02 NCR 122-123 as follows:

2
3 **SECTION .1100 – EXPLORATION AND GEOPHYSICAL SURVEYS**

4
5 **15A NCAC 05H .1101 EXPLORATION AND GEOPHYSICAL SURVEYS**

6 (a) Any person conducting predrilling exploration activities or geophysical surveys related to oil or gas exploration
7 and development shall be in accordance with 15A NCAC 05C.

8 (b) Notification of exploration activities shall be made in accordance with G.S. 113-420(b2).

9
10 *History Note: Authority G.S. 113-391(a)(1);*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1201

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 7, please make "Rules" capitalized.

In the History Note, please state "113-391(a)(12)"

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: December 1, 2014

1 15A NCAC 05H .1201 has been adopted as published in 29:02 NCR 123 as follows:

2
3 **SECTION .1200 – DRILLING UNITS AND WELL SPACING**
4

5 **15A NCAC 05H .1201 PURPOSE AND SCOPE**

6 The rules of this Section establish the requirements for petitioning the Commission for permission to create or
7 modify a drilling unit. These rules also set forth oil or gas well spacing requirements for conventional and
8 unconventional reservoirs.
9

10 *History Note: Authority G.S. 113-391; 143B-293.1(b);*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1202

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Again, the name of a Rule is not subject to rulemaking under the APA. This Rule covers more than just the requirements for the application, but covers the Commission review and approval as well. I suggest renaming it "Drilling Unit Application and Review" or something to that effect?

On line 4, end the line after "to" and add a colon after "to"

In (b), what happens if the docket is filled? How will the notice be given to the applicant? When will the hearing be scheduled?

In the sentence in (b), lines 8 -10, please write it in active voice. "The Commission shall notify the applicant once the hearing date has been set. The applicant shall then begin the notice process set out in Rule .1203 of this Section."

In (c), line 14, replace "with" with "to"

In (d), I assume you are requiring that only those with an interest in the mineral estate to ensure that your hearings are by interested parties. However, in (e)(10), you are proposing to require a surface right lease, as well. So, it seems in (d) you are only accepting requests from individuals who own or have leased an interest in the mineral estate and have a lease or other freehold rights on the surface. Shouldn't this be in (d)?

In (e), line 18, replace "Any" with "The"

Also in (e), when is this application due? It seems this is the request for the Commission to hold a hearing to establish the drilling unit. However, (e)(9) speaks to things requested by the Commission at the hearing itself. Please clarify.

In (e)(1), isn't the "letter" simply a statement of the intent to create or modify? Do you anticipate more?

In (e)(2), how do individuals know the mailing address for each owner? I know the deed should have information on the owners and physical location of the property, but how will they know the mailing address?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In (e)(6), the term “at least” is generally not preferred in rulemaking, as rules set minimum standards. Do you feel you need the term on lines 32 and 33? If so, you may retain it.

In (e)(6), I take it your regulated public understands this and knows where to get these maps? Are there no specific standards to follow for these maps?

In (e)(7), what is “optimal and efficient” recovery? And I take it this language is included to carry out the requirement of 113-392(b), “For the prevention of waste...”?

In (e)(9) on Page 2, what additional information may be requested? I think this probably does not belong in (e), but in a later Paragraph.

In (g), do you mean “Section .0700” on line 9?

In (h), the second sentence does not seem to belong here. Are you trying to give notice that the drilling unit number is required on the application for a permit? If so, do you really need it here and not in Rule .1304? If you want to have it here, then just say “The drilling unit number shall be used to meet the requirement of Rule .1304(a)(5) of this Subchapter.”

I assume you are relying upon the prohibition against waste in 113-392 for Paragraph (i)?

In the History Note, please add “113-391(a)(12)”

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

1 15A NCAC 05H .1202 has been adopted with changes as published in 29:02 NCR 123 as follows:

2
3 **15A NCAC 05H .1202 APPLICATION FOR DRILLING UNIT REQUIREMENTS**

4 (a) An application shall be submitted to the Commission for permission to do any of the following:

- 5 (1) create a drilling unit; or
6 (2) modify an existing drilling unit.

7 (b) Applications submitted to the Commission no less than 60 calendar days before the next regularly scheduled
8 Commission meeting shall be considered for hearing provided the docket has not been filled. Once the date for
9 hearing has been set by the Commission, the applicant will be notified and instructed to begin the part of the public
10 notification process that requires publishing notice in a newspaper, which is set out in Rule .1203 of this Section.

11 (c) The applicant shall submit the original application and one paper copy for each Commissioner plus five
12 additional copies to ~~the Recording Clerk of the Commission~~ at the following address: Oil & Gas Program, Division
13 of Energy, Mineral, and Land Resources, 1612 Mail Service Center Raleigh, NC 27699-1612. In addition, the
14 applicant shall submit an electronic copy in .pdf format with the Commission at Oil&Gas@ncdenr.gov.

15 (d) Applicants or permittees petitioning the Commission for the creation of drilling units or modifications of
16 existing drilling units shall be persons who own or have leased an interest in the mineral estate underlying the tract
17 or tracts within the drilling unit.

18 (e) Any application for the creation of a drilling unit or modification of an existing drilling unit shall include the
19 following information:

- 20 (1) a letter to the Commission describing the intent of the application;
21 (2) a list of mineral rights owners within the land area of the proposed drilling unit. The list of
22 mineral rights owners shall include the name, physical address, and mailing address for each
23 owner;
24 (3) a map of the proposed or current drilling unit boundary, along with all property boundaries that
25 occur within the land area of the proposed or current drilling unit, as well as locations of existing
26 oil or gas wells within the proposed drilling unit boundary;
27 (4) copies of lease agreements, affidavits, or ~~pooling orders~~ other documents showing that the
28 applicant has obtained legal rights to recover oil or gas resources within the proposed drilling unit;
29 (5) documentation showing that all mineral rights owners were notified by the applicant of the
30 applicant's intent to establish the proposed drilling unit pursuant to Rule .1203(a)(2) of this
31 Section;
32 (6) at least one subsurface geological map showing the structural configuration of the top of the
33 objective formation within the proposed drilling unit and at least one geological cross-section
34 derived from the geological map showing the stratum or strata from which the applicant expects to
35 extract hydrocarbon resources;
36 (7) a written statement signed by the applicant, supported by geological and engineering data, that the
37 proposed drilling unit would result in optimal and efficient recovery of hydrocarbons;

- 1 (8) documentation from the applicant(s) or their representative(s) demonstrating prior work
2 experience in the exploration, drilling, and production of oil or gas relevant to the application; ~~and~~
3 (9) additional information requested by the Commission at the hearing to evaluate
4 the ~~application-application~~; and
5 (10) copies of surface use agreement(s) or equivalent documentation granting the applicant or permittee
6 the right to use the surface.

7 (f) The Commission shall assign a new docket number to each application submitted.

8 (g) The Commission shall approve, deny, or modify drilling units pursuant to G.S. 113-392(b) within 30 calendar
9 days after conducting the hearing pursuant to Rule .0701 of this Subchapter on the application for creating or
10 modifying a drilling unit.

11 (h) If the Commission approves an application, a drilling unit number shall be issued to the applicant. The drilling
12 unit number is required in accordance with Rule .1304(a)(5) of this Subchapter.

13 (i) The Commission approved drilling units shall expire 36 months after the approval date, if the applicant has not
14 spud the first oil or gas well on the well pad.

15
16 *History Note: Authority G.S. 113-392(b);*

17 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1203

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In this Rule, you cite to G.S. 113-393(a) in the History Note. As I read 113-393, the Commission may require the integration of owner interests in an established drilling unit. Therefore, it appears this Rule is not the establishment of a drilling unit, but the integration of interests in an established drilling unit. This goes beyond what is in Rule .1201. As such, if you are truly writing a rule on 113-393, you need to add this to Rule .1201. If this is intended to be a rule for 113-392, please amend the History Note.

In (a), please write this in active voice. "The applicant or permittee shall circulate notice of each drilling unit at least 30 calendar days... docketed. The notice shall be circulated by:"

On line 6 and 24, you speak to proposed dates. On line 20, you state "the date" Again, this may be a separate process from the other Rules in the Section, but Rule .1202 says that the date is not confirmed until the Commission confirms it. So, how can the notice state the date if it's still just a proposal? And how will the applicant receive notice of the hearing date from the Commission?

In (a)(2), (3) and (4), what is "direct" notice?

In (b)(2), what are you asking for? For the individual to say "I want to integrate interests of X, Y and Z?"

In (c), since publication can be in multiple newspapers, shouldn't "the" on line 22 be "each"?

Also, you are not requiring proof of notice to the individuals in (a)(2) through (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: December 1, 2014

1 15A NCAC 05H .1203 has been adopted with changes as published in 29:02 NCR 123-124 as follows:

2
3 **15A NCAC 05H .1203 DRILLING UNIT PUBLIC NOTIFICATION REQUIREMENTS**

4 (a) Public notice of each application shall be circulated ~~in the geographical areas pertaining to the creation of a~~
5 ~~drilling unit, or the modification of an existing drilling unit,~~ as required by this Rule, at least 30 calendar days prior
6 to the next regularly scheduled Commission meeting for which the applicant proposes the application to be
7 docketed. The applicant or permittee shall ~~make~~circulate notice of each drilling unit application by:

- 8 (1) publishing the notice one time in newspaper(s) having general circulation in the county or counties
9 where the drilling unit, either proposed or existing, is located; ~~and~~
10 (2) providing direct notice to all surface owners and mineral rights owners within the land area of the
11 proposed or existing drilling ~~unit, unit;~~
12 ~~(3) providing direct notice to all local governments in the county or counties where the drilling unit,~~
13 ~~either proposed or existing, is located; and~~
14 ~~(4) providing direct notice to any state, federal, or tribal agencies owning land within the area of the~~
15 ~~proposed or existing drilling unit.~~

16 (b) The notice shall include the following:

- 17 (1) the name, address, and telephone number, fax number, and e-mail address of applicant or
18 permittee;
19 (2) a description of the intent of the application;
20 (3) the date the Commission is scheduled to review the application; and
21 (4) the location and time of the Commission meeting.

22 (c) The applicant or permittee shall submit a newspaper certified copy of the public notice published in the
23 newspaper, as certified by the newspaper, to the Department at least 15 calendar days prior to the next regularly
24 scheduled Commission meeting for which the applicant proposes the application to be docketed.

25
26 *History Note: Authority G.S. 113-393(a);*

27 *Eff. Pending Legislative Reivew.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1204

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Paragraph (a) strikes me as repetitive. On line 5, you state that the application will be denied if the proposed drilling unit is in violation of rules. On line 6 you state that the application will be denied if the establishment of the proposed drilling unit will violate the rules or law. Aren't you saying the same thing? Couldn't you state something like "The Commission shall deny a request for the creation or modification of an existing drilling unit upon finding that granting the request would result in a violation of this Subchapter or other applicable rule or law"?

If you do not want to completely rewrite (a), please delete the second "deny" on line 4.

On line 5, please delete "to any person"

In (b), line 8, do you mean "shall" rather than "may"?

In (b)(3), how will the surface user agreement fail to meet the requirements of the Subchapter? What are those? And isn't (b)(3) already included in the language in (a)?

Please add G.S. 113-391(a)(12) to your History Note.

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: December 1, 2014

1 15A NCAC 05H .1204 has been adopted with changes as published in 29:02 NCR 124 as follows:

2
3 **15A NCAC 05H .1204 DENIAL OR MODIFICATION OF DRILLING UNIT APPLICATION**

4 (a) The Commission shall deny a request for the creation of a drilling unit or deny a request to modify an existing
5 drilling unit to any person on finding that the proposed or existing drilling unit is in violation of any of the rules
6 contained in this Subchapter or that establishment or modification would result in a violation of this Subchapter or
7 other applicable law or rule.

8 (b) The Commission may also deny a request according to these criteria:

9 (1) the application is incomplete pursuant to Rule .1202(e) of this Section; ~~or~~

10 (2) the application contains erroneous ~~information~~ information; or

11 (3) the surface use agreement or equivalent documentation fails to meet requirements of the rules of
12 this Subchapter.

13 (c) The Commission may modify a drilling unit application based on geologic, geographic, and environmental
14 factors or to satisfy conflicting interests between adjacent drilling unit applicants or permittees.

15
16 *History Note:* Authority G.S. 113-392(b); 143B-293.1(b);

17 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1205

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, do you mean "of this Section"? Or do you mean "of this Subchapter" or "Rule"?

In (b), please begin "In unconventional reservoirs, no portion..." to be parallel with Rule .1206.

In (c), I take it any request for variance will be granted following a request under Rule .0301?

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: December 1, 2014

1 15A NCAC 05H .1205 has been adopted with changes as published in 29:02 NCR 124 as follows:

2
3 **15A NCAC 05H .1205 WELL SPACING REQUIREMENTS FOR RESOURCES IN**
4 **UNCONVENTIONAL RESERVOIRS**

5 (a) The drilling of a new oil or gas well in an unconventional reservoir, the reopening of an oil or gas well
6 temporarily abandoned pursuant to Rule .1621 of this Subchapter, the deepening, plugging back, or sidetracking of
7 an existing oil or gas well shall conform to the requirements in this Section.

8 (b) No portion of the wellbore recovering hydrocarbons shall be less than 500 horizontal feet from the boundary of
9 the drilling unit.

10 (c) A variance may be granted by the Commission to reduce the distance from the boundary of the drilling unit
11 based on reservoir characteristics including permeability, porosity, and surrounding production history to optimize
12 production and minimize waste. The variance, if granted, shall provide equal or greater protection of public health,
13 safety, and the environment.

14
15 *History Note: Authority G.S. 113-391(a)(12); 143B-293.1(b);*
16 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1206

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (c), I take it any request for variance will be granted following a request under Rule .0301?

Please put the citations in the History Note in correct numerical order.

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: December 1, 2014

1 15A NCAC 05H .1206 has been adopted with changes as published in 29:02 NCR 124 as follows:

2
3 **15A NCAC 05H .1206 WELL SPACING REQUIREMENTS FOR RESOURCES IN CONVENTIONAL**
4 **RESERVOIRS**

5 (a) The drilling of a new oil or gas well in a conventional reservoir, the reopening of an oil or gas well temporarily
6 abandoned pursuant to Rule .1621 of this Subchapter, the deepening, plugging back, or sidetracking of an existing
7 oil or gas well shall conform to the requirements in this Section.

8 (b) In conventional reservoirs, no portion of the wellbore shall be less than 200 horizontal feet from the boundary of
9 the drilling unit.

10 (c) A variance may be granted by the Commission to reduce the distance from the boundary of the drilling unit
11 based on reservoir performance to optimize production and minimize waste of the reservoir. The variance, if
12 granted, shall provide equal or greater protection of public health, safety, and the environment.

13
14 *History Note: Authority G.S. 143B-293.1(b); 113-391(a)(12);*
15 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1301

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In the History Note, please add 113-391(a6).

Why is G.S. 113-410 in the History Note?

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: December 1, 2014

1 15A NCAC 05H .1301 has been adopted as published in 29:02 NCR 124 as follows:

2
3 **SECTION .1300 - PERMITTING**
4

5 **15A NCAC 05H .1301 PURPOSE AND SCOPE**

6 The rules of this Section set forth the registration and permitting requirements for new oil or gas wells. These rules
7 also establish procedures for review, modification, transfer, expiration, suspension or revocation, and release of an
8 Oil or Gas Well Permit.
9

10 *History Note: Authority G.S. 113-391; 113-395; 113-410;*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1302

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In line 6, add a reference to G.S. 55-15-01.

On line 8, replace "which" with "there"

On line 11, end the sentence after include and place a colon there, so it read "shall include:"

In (b)(3), will the points of ingress and egress be different? If so, will you only want to know one but not both? If you want both, please replace "and" with "or"

In (b)(7), line 19, what are "disturbed " or "uncovered" areas? Does your regulated public know?

In (b)(8), do you not also want the contact information for that person as well?

In (b)(10), why is "Certificate of Assumed Name" capitalized? It is not in statute, and I notice you didn't do this for "certificate of authority" on line 6. Also, please include the statutory citation of 66-68 here.

In (c), line 28, please make "employees" lowercase.

On line 30, replace "person's" with "those." If that isn't what you mean, then this sentence is unclear as written.

In (e), line 34, I'd state "Changes of address of the parties..." And I take it you mean only the residence, not email address? If so, then I think you need to spell that out.

On line 35, the individual must send in a new form, fully completed to show the change of address?

On line 35, what do you mean "reported agent"?

In the History Note, please add 113-391(a6).

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: December 1, 2014

1 15A NCAC 05H .1302 has been adopted as published in 29:02 NCR 124-125 as follows:

2
3 **15A NCAC 05H .1302 OIL OR GAS OPERATIONS FINANCIAL RESPONSIBILITY OWNERSHIP**

4 (a) The applicant or permittee, and all service companies who are conducting oil or gas exploration or development
5 activities, shall either be incorporated under the laws of North Carolina or, if a foreign corporation, obtain a
6 certificate of authority from the North Carolina Secretary of State. If the applicant or permittee is a partnership or
7 other person engaging in a business in this State under an assumed name, the applicant or permittee shall have filed
8 a certificate of assumed name in the county in which it is doing business.

9 (b) The applicant or permittee, and any person providing financial assurance for oil or gas operations, shall submit
10 the completed Form 1 – Financial Responsibility Ownership (FRO) with the Department. The Form 1 – FRO shall
11 include the following information:

12 (1) the applicant or permittee's name, address, telephone number, fax number, and email address;

13 (2) the county and nearest city or town where the oil or gas well is located;

14 (3) the property street address or nearest address to the ingress or egress point leading from a public
15 road to the well pad;

16 (4) the lease name and the oil or gas well name and number;

17 (5) the Commission issued drilling unit number;

18 (6) the approximate date that land disturbing activity will commence;

19 (7) the total acreage of disturbed or uncovered areas;

20 (8) the person to contact onsite if any problems occur with erosion control, stormwater, and any well
21 site operations;

22 (9) the name, address, telephone number, fax number, and email address for person(s) who are
23 financially responsible for the oil or gas operations;

24 (10) a copy of the Certificate of Assumed Name if the financial responsible party is a partnership or
25 other person engaging in business under an assumed name;

26 (11) the signature of the financially responsible party; and

27 (12) the seal of a Notary Public of North Carolina.

28 (c) The applicant or permittee shall list all Employees approved to submit documents on behalf of the applicant or
29 permittee on a completed Form 1 – FRO. A person other than the applicant or permittee may be designated as an
30 agent of the financially responsible party, and person's representatives shall be listed on the completed Form 1 –
31 FRO.

32 (d) If the applicant or permittee is not a resident of North Carolina, the applicant or permittee shall designate a
33 North Carolina agent for the purpose of receiving notices from the Commission or the Department.

34 (e) All changes of address for the parties required to submit a Form 1 – FRO shall be reported within 14 calendar
35 days of the change by submitting a new Form 1 – FRO. All changes to reported agent information shall be reported
36 within 14 calendar days of the change by submitting a Form 1 – FRO.

- 1 *History Note:* *Authority G.S. 113-391(a)(5)a;*
- 2 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1303

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), how is this submitted to the Department? What is the address? Is this submitted electronically? (Please note this question applies to rules throughout this Section, as the Section speaks to sending things to the Department.)

In (a), I think that the information lines 5-6 would read better as a list:

"... prior to commencement of the following operations on an oil or gas well:

- (1) drilling;*
- (2) recompleting...*

Also in (a), I note that in Rule .1304(a), line 4, you speak of "plug and abandon" but you do not do so here. Is this by design?

I take it that the requirement in (c) is not only to reflect the statute cited, but is considered information submitted with the application under G.S. 113-391(a)(5)a?

In the History Note, please add 113-391(a6) and 113-395.3.

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: December 1, 2014

1 15A NCAC 05H .1303 has been adopted as published in 29:02 NCR 125 as follows:

2
3 **15A NCAC 05H .1303 OIL OR GAS WELL PERMIT APPLICATION**

4 (a) The applicant or permittee shall submit Form 2 – Oil or Gas Well Permit Application to the Department prior to
5 commencement of the following operations: drilling, recompleting, re-stimulating, deepening, reentering,
6 sidetracking, plugging back, or revising the location of any oil or gas well.

7 (b) The applicant or permittee shall submit the fee for a new Oil or Gas Well Permit as indicated on Form 2 – Oil or
8 Gas Well Permit Application in accordance with Rule .1306 of this Section.

9 (c) The applicant or permittee shall submit an environmental compliance history to the Department in accordance
10 with G.S. 113-395.3.

11
12 *History Note: Authority G. S. 113-391(a)(5)a; 113-395;*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1304

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 6, end the sentence after "include" and place a colon there, so it read, "include:"

In (a)(1), I note that G.S. 114-408 requires the address of the residence of each applicant. Since you do not reference the statute in this Rule, I think you should include that residency address is required in the rule language.

In (a)(3), will the points of ingress and egress be different? If so, will you only want to know one but not both? If you want both, please replace "and" with "or"

In (a)(4), who assigned this name and number?

You may consider changing (a)(5) to "The drilling unit number issued by the Commission pursuant to Rule .1202 of this Subchapter,"

In (a)(7), please properly incorporate the NAD by reference using G.S. 150B-21.6.

In (a)(8), line 20, please insert a comma after "village"

I think in (a)(10) through (15), "statement" is better than "indication." Or is this form a check box where one would simply check the box and hence, give the "indication"?

In (a)(11), please replace "intends to" on line 26 with "shall" or "will"

In (a)(12), line 28, do you really mean "plans" rather than "shall"? Or do you mean have plans to deal with this?

In (a)(13), do you not want the actual estimate, rather than an indication that it is being submitted? If so, state that.

In (a)(14), what is this plan? Where are the details of what is required for this plan set forth?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

In (a)(15), the definition of “pits” in Rule .0102(75) is “any natural or man-made depression in the ground used for the storage of liquids.” Are you seeking to know what kind of liquids?

In (b)(1)(A), Page 2, line 1, replace “which” with “where” and “is to” with “will”

In (b)(1)(C), line 6, do you mean any building at all? I ask because “occupied dwelling” is defined in Rule .0102, but building is not, so I take this to mean any structure. Is this the intent?

On line 9, state “Rules .1205 or .1206 and .1601,” unless you feel that would be confusing to your regulated public.

In (b)(1)(D), what is the “area of influence”? Does your regulated public know?

Technically, (b)(2) is not its own Subparagraph. I suggest removing the (2) and bringing the language to the left margin. I don’t believe this affects any cross-references in other Rules.

In (b)(2)(E), line 21, insert a comma after “contours”

Also on line 21, what is the “disturbed area”? Does your regulated public know?

In (b)(4), line 31, properly incorporate NAVD88 using G.S. 150B-21.6.

In (c)(1)(C), Page 3, line 1, note my earlier question regarding ingress and egress points.

In (c)(1)(D), please note my earlier question regarding the assignment of well name and numbers.

In (c)(1)(F), I see that this is related to 113-391(a)(8). Is this not also related to 113-391(a)(5)c? Should that be in the History Note?

On line 5, please insert a comma after “string”

On line 6, please insert a comma after “loads”

In (c)(1)(J), is this intended to address 113-391(a)(5)i? Should that be in the History Note?

In (c)(2), line 19, please make “a” lowercase

In (c)(3), line 22, the contents of the Form itself are set out in Rule .1901, correct? Also, please state “Form 4 – Water Management Plan, including ...”

So that I understand – a Form 1 is required at the time of completing the application? Is it sent in at this point, or is a copy being sent in with this application?

In (c)(8), line 31, replace “must” with “shall” On that same line, do you feel you need to retain “at a minimum”?

In (c)(8)(C), the traffic cannot be on the road when school buses are on the road? Is that the intent here?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

Is the intent of (c)(8)(C) to address 113-391(a)(5)? Should that citation be in the History Note?

In (c)(10), Page 3, line 3, I suggest replacing “describing” with “of”

In (c)(11), line 5, strike “describes” Insert a comma after “detected” and delete the “and”

In (c)(13), what should be in this plan? Please include more guidance.

In the History Note, please add 113-391(a6) and 114-408.

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: December 1, 2014

1 15A NCAC 05H .1304 has been adopted with changes as published in 29:02 NCR 125-127 as follows:

2
3 **15A NCAC 05H .1304 CONTENTS OF OIL OR GAS WELL PERMIT APPLICATION**

4 (a) All applications to drill, recomple, re-stimulate, deepen, reenter, sidetrack, plug and abandon, plug back, or
5 revise a location shall be submitted using a Form 2 – Oil or Gas Well Permit Application. The Form 2 – Oil or Gas
6 Well Permit Application shall include the following:

- 7 (1) the applicant or permittee's name, address, telephone number, fax number, and email address;
- 8 (2) the county and nearest city or town where the oil or gas well is proposed to be located or is
9 located;
- 10 (3) the property street address or nearest address to the ingress or egress point leading from a public
11 road to the proposed or existing well pad;
- 12 (4) the lease name and the oil or gas well name and number for the proposed or existing oil or gas
13 well;
- 14 (5) the Commission issued drilling unit number;
- 15 (6) any variance request(s) approved by the Commission;
- 16 (7) the latitude and longitude (in decimal degrees) of the proposed or existing oil or gas well
17 location(s) with a minimum of five decimal places of accuracy and precision using the North
18 American Datum (NAD) of 1983. The location coordinates shall be a field measurement and not a
19 calculated or conversion measurement;
- 20 (8) the name of any incorporated city, town, village or respective extra-territorial jurisdiction, if the
21 oil or gas well is proposed to be located or is located within its limits;
- 22 (9) if known, the name(s) of the proposed drilling contractor, cementing service company, and well
23 stimulation company at the time of application submittal;
- 24 (10) an indication that the local emergency management coordinator has received an emergency
25 response plan in accordance with Rule .1305 of this Section;
- 26 (11) an indication that the applicant or permittee intends to scan all equipment at the well site to
27 measure for methane emissions;
- 28 (12) an indication that the applicant or permittee plans to address methane emissions detected; ~~and~~
- 29 (13) an indication that the applicant or permittee is submitting an estimate of the number and type of
30 engine(s) to be used onsite, the size of engine(s), and the fuel source of engine(s) that will be used
31 during drilling or completion ~~activities-activities;~~
- 32 (14) an indication that the applicant or permittee has a proppant related dust management and
33 mitigation plan; and
- 34 (15) an indication of whether pits are to be constructed and, if so, for what purpose.

35 (b) The following plat(s) and maps shall be attached to Form 2 – Oil or Gas Well Permit Application:

- 36 (1) A plat showing:

- (A) the subject drilling unit on which the oil or gas well is to be drilled and the property lines with surface and mineral owner name(s);
 - (B) the location of the proposed oil or gas well in the drilling unit, based on a field survey showing the distances in feet from the proposed well site to the boundary lines of the drilling unit;
 - (C) the location and distances of the nearest buildings, public roads, railroads, private water supply wells, public water supply sources, surface water bodies, utility rights-of-way, and drilling or producing oil or gas wells from the proposed oil or gas well in accordance with Rule .1601 and Rule .1205 or .1206 of this Subchapter; and
 - (D) any areas with known environmental contamination within the area of influence in accordance with Rule .1901 of this Subchapter.
 - (2) All plats submitted as a part of the application for a Form 2 – Oil or Gas Well Permit Application shall contain the following identifying information and be signed and sealed by a Professional Land Surveyor (PLS) or Professional Engineer (PE) licensed by the North Carolina Board of Examiners for Engineers and Surveyors pursuant to G.S. 89C:
 - (A) the name of the applicant or permittee;
 - (B) the oil or gas well name and number;
 - (C) a north arrow;
 - (D) the county;
 - (E) a map scale of 1 inch equals 50 feet to 1 inch equals 500 feet with two foot topographic contours depending on the total disturbed area;
 - (F) a legend with symbols used and corresponding names;
 - (G) the date the plat or map was prepared and revised; and
 - (H) the name and title of person preparing the plat.
 - (3) A topographic and site overlay on a base color aerial map for the well site based on a LiDAR derived map showing the location of the well site, corners of well pad, oil or gas wells, tank battery, pits, access roads, all other proposed production equipment, and any other existing structures and features onsite; and
 - (4) The total estimated true vertical and measured depths of the wellbore and proposed well path report showing inclination and azimuth every 100 feet with the North American Vertical Datum of 1988 (NAVD88) as the vertical control.
- (c) The applicant or permittee shall submit the following attachments with Form 2 – Oil or Gas Well Permit Application:
- (1) Form 3 – Well Construction Design that includes the following:
 - (A) the applicant or permittee's name, address, telephone number, fax number, and email address;
 - (B) the county and nearest city or town where the oil or gas well is located;

- (C) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
 - (D) the lease name and the oil or gas well name and number;
 - (E) the ~~anticipated~~planned diameter of each wellbore segment;
 - (F) the main design parameters for each casing string including the maximum anticipated pressure, compressive and tensile loads and drilling or completion fluid density;
 - ~~(F)~~(G) the casing grade, weight, outside diameter, and setting depth for each proposed casing string;
 - ~~(G)~~(H) the method of drilling, including the fluids that will be used during the drilling for each proposed casing string;
 - ~~(H)~~(I) the cement type, additives, density, yield, and volume for each proposed casing string;
 - ~~(I)~~(J) a list of the blowout prevention equipment and other wellhead equipment; equipment and the pressure rating of each that is to be installed before drilling out of each casing string;
 - ~~(J)~~(K) a wellbore diagram or other documentation detailing the proposed oil or gas well construction design; and
 - ~~(K)~~(L) the method of well stimulation for the oil or gas well, the proposed number of well stimulation stages, the proposed maximum surface treating pressures, and the estimated true vertical depth to the top of fractures.
- (2) A Well Site Development Plan that includes the Sedimentation and Erosion Control and Stormwater Management Plans as a part of the site construction sheets and details for review in accordance with Section .1500 of this Subchapter;
 - (3) Form 4 – Water Management Plan shall include documentations and maps in accordance with Section .1900 of this Subchapter;
 - (4) Form 5 – Waste Management Plan shall include documentations and maps in accordance with Section .2000 of this Subchapter;
 - (5) Form 6 – Well Site Reclamation Plan showing reclamation phases in accordance with Section .2100 of this Subchapter;
 - (6) Form 1 – FRO filled out in its entirety;
 - (7) any variance request(s) approved by the Commission;
 - (8) a road impact plan that mitigates damage to roads by truck traffic and heavy equipment. Plans must include at a minimum:
 - (A) procedures to restore roads to their condition that existed prior to the drilling activity undertaken by the permittee or applicant;
 - (B) identification of trucking routes that minimize road surface travel; and
 - (C) route travel hours that avoid otherwise heavy traffic volume, to include avoidance of hours during which school buses will be traveling on the roads.

- 1 (9) documentation that the local emergency management coordinator has received emergency
2 response plan information in accordance with Rule .1305 of this Section;
- 3 (10) a statement describing how often the permittee intends to scan all equipment at the well site to
4 measure for methane emissions;
- 5 (11) a statement that describes if methane emissions are detected and the time period during which the
6 permittee intends to repair any leaks discovered; ~~and~~
- 7 (12) an estimate of the engine(s) to be used on site during exploration and development including the
8 following information:
- 9 (A) the number and type of engine(s), such as compression ignition, two stroke lean burn
10 ignition, four stroke lean burn ignition, rich burn spark ignition;
- 11 (B) the size of engine(s) (maximum site-rated horsepower); and
- 12 (C) the fuel source of engine(s).
- 13 (13) a plan that manages and mitigates proppant related dust.
- 14

15 *History Note: Authority G.S. 113-391(a)(5)a; 113-391(a)(5)b ;113-391(a)(5)l; 113-391(a)(8); 113-395;*
16 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1305

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), do you need the language "In order for State and local governments to effectively plan for emergency incidents,"?

In (a), line 4, define "effectively."

On line 5, who is the local emergency management coordinator? Does your regulated public know?

So that I understand - a copy of this will not be provided to the Department?

In Item (1), line 9, please remove the extra space between "NAD" and the parenthesis.

In (2), line 11, define "nearby"

In Item (3), line 15, I don't read Rule .0707 to require this. What are you relying upon in that Rule for this statement?

In (4), line 17, replace "which" with "that"

In (6)(D), define "immediate"

You are citing to 113-391(5)l for this Rule, which states that the Commission shall adopt rules for:

- i. Installation of appropriate safety devices and development of protocols for response to well blowouts, chemical spills, and other emergencies, **including requirements for approved emergency response plans** and certified personnel to implement these plans as needed.

Is it your interpretation that this Rule sets out what is required, and that by following the rule, the plan is approved? If not, how is approval occurring?

In the History Note, is (a)(5)j not also applicable?

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: December 1, 2014

1 15A NCAC 05H .1305 has been adopted with changes as published in 29:02 NCR 127 as follows:

2
3 **15A NCAC 05H .1305 EMERGENCY RESPONSE PLANNING**

4 In order for State and local governments to effectively plan for emergency incidents, the applicant or permittee shall
5 provide the following information to the local emergency management coordinator:

- 6 (1) the property street address or nearest address to the ingress or egress point leading from a public
7 road to the well pad. If nearest street address is used, "nearest address" shall be designated and the
8 latitude and longitude (in decimal degrees) with a minimum of five decimal places of accuracy
9 and precision using the North American Datum (NAD) of 1983 of the proposed access road
10 entrance at the ingress or egress point;
- 11 (2) the ~~nearby~~ location of nearby occupied dwellings, high occupancy buildings, streams, rivers,
12 watercourses, ponds, lakes, or other natural and artificial bodies of water, and transportation
13 corridors necessary for the development of the plans required by Item (6) of this Rule;
- 14 (3) the emergency contacts for the well site that include the telephone numbers of the applicant or
15 permittee, which can be accessed 24-hours per day in accordance with the Rule .0707 of this
16 Subchapter;
- 17 (4) identification of the types and quantities of chemicals, fuels, and wastes which will be used at a
18 production facility in accordance with Section .1700 of this Subchapter;
- 19 (5) identification of an emergency well control response contractor, its contact information, and the
20 estimated time of arrival after dispatch;
- 21 (6) plans for the following minor to catastrophic scenarios:
- 22 (A) Level 4: A spill onsite that requires a cleanup company to be contracted;
- 23 (B) Level 3: A spill on other property that requires a cleanup company to be contracted, or
24 an uncontrolled fire adjacent to the site impacting normal operations due to smoke or
25 chemical dispersal;
- 26 (C) Level 2: A spill onsite that requires a full site evacuation or an uncontrolled explosion or
27 fire on site that does not involve any wellhead onsite, or loss of well control not involving
28 an explosion or fire; and
- 29 (D) Level 1: Loss of well control involving an explosion or fire, or incidents requiring the
30 immediate evacuation of the site.

31
32 *History Note:* Authority G.S. 113-391(5)i;
33 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1306

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule? Since the Commission has no authority to set fees, is the idea to simply give notice they are required?

Please change "non-refundable" to "nonrefundable"

In (b), what is the authority to state that that fees in 113-395 and 113A-54.2 are nonrefundable? (I see that G.S. 143-215.3D states the fees are nonrefundable)

In (b), line 7, does the "new permit" go to each well? I ask because of the varying fees in 113-395(a), which speaks to varying fees for the first and subsequent wells.

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: December 1, 2014

1 15A NCAC 05H .1306 has been adopted as published in 29:02 NCR 127 as follows:

2
3 **15A NCAC 05H .1306 FEES**

4 (a) The applicant or permittee shall remit the non-refundable fees in the amounts prescribed under G.S. 113-395,
5 113A-54.2, and 143-215.3D(e).

6 (b) Payment of fees shall be made payable to the "North Carolina Department of Environment and Natural
7 Resources." The payment shall refer to the new permit or the plugging and abandonment of the oil or gas well. The
8 payment shall include a reference to the oil or gas well name listed on the application or the API number.

9
10 *History Note: Authority G.S. 113-395;*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1307

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), please rewrite this in active voice. "The Department shall review applications. The Department shall send written notice to an applicant or permittee if an application is incomplete, stating each deficiency."

On line 5, since the 60 days starts the day the letter was sent, I assume it's being sent via trackable method? Is the letter being mailed or emailed?

In (b), since the Form 2 is required for both new and modification applications, please either delete the form reference or move it earlier in the sentence. "Upon receipt of a complete Form 2- Oil or Gas Well Permit Application for a new permit or modification of an existing permit..."

Also, on lines 7 and 28, where you say "complete" I take it you mean everything required in Rule .1304?

In (c), what is the content of this notice? Is it that a permit or modification has been requested? You need to state what the notice will contain, not just that it includes the permit application.

In (c)(2)(A), what do you mean that the Director will consider them? And do what with them? This is especially important in light of the addition to Paragraph (e) on Page 2. I also note that it is the Department issuing the permit, not the Director. Is the intent that the Director will act on the behalf of the Department?

In (e), please explain the reason for changing the time for Department review from 60 days to 180 days.

On Page 2, lines 3 and 4, the approved variance requests are required by Rule .1304(c)(8). Why do you need it here? And if you do need it, the put a comma after "requests" on line 4.

In (g), line 15, where is the appeal filed?

In (h), line 18, I note that G.S. 113-391(a)(13a) requires that the Commission set criteria for this bond through rulemaking. A better cite here would be the rule number, rather than the statute.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In (i), replace “On” with “Following” on line 22. Also, insert a comma after “well”

Please add G.S. 113-391(a6) to the History Note.

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: December 1, 2014

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: Mining and Energy Commission

RULE CITATION: Rule 15A NCAC 05H .1307

RECOMMENDED ACTION:

Note staff's comment

X Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

X Failure to comply with the APA

Extend the period of review

COMMENT:

In Paragraph (e), the Commission extended the period the Department has to review and act on an application from 60 days to 180 days. Staff believes that to triple the amount of time for the Department to act after publication of this Rule is a substantial change, as it produces an effect that could not have reasonably been expected from the proposed text of the Rule.

Staff notes that after publication, the Commission added Paragraph (c), requiring the Division to take public comments on the application request. Staff does not believe this addition is a substantial change, as it adds a requirement for the Department to consider in reviewing the application.

Staff believes that the Commission has the authority to write this Rule and set the deadline for the Department to review. However, staff believes that changing the deadline for the Department to act after publication of this Rule creates a substantial change by producing an effect that could not reasonably been expected in the proposed text.

Therefore, staff believes this language requires republication in the NC Register before it can be entered into the NC Administrative Code.

*Amanda J. Reeder
Commission Counsel*

1 15A NCAC 05H .1307 has been adopted with changes as published in 29:02 NCR 127-128 as follows:

2
3 **15A NCAC 05H .1307 APPLICATION REVIEW PROCESS**

4 (a) After Department review, if the application is incomplete, the Department shall notify the applicant or permittee
5 in writing, noting each deficiency. The applicant or permittee shall have 60 calendar days from the date the letter
6 was sent to submit the required information to the Department or the application shall be denied.

7 (b) Upon receipt of a complete application for a new Form 2 – Oil or Gas Well Permit Application or for a
8 modification of an Oil or Gas Well Permit, the Department shall send a notice of the application to each of the
9 following agencies with a request that each agency review and provide written comment on
10 the ~~application~~ application, including whether the reviewing agency has concerns regarding the items in Rule
11 .1405(c) of this Subchapter, within 30 calendar days of the date on which the request is made:

- 12 (1) Division of Air Quality, Department of Environment and Natural Resources;
13 (2) Division of Parks and Recreation, Department of Environment and Natural Resources;
14 (3) Division of Water Resources, Department of Environment and Natural Resources;
15 (4) North Carolina Geological Survey, Division of Energy, Mineral, and Land Resources, Department
16 of Environment and Natural Resources;
17 (5) Natural Heritage Program, Department of Environment and Natural Resources;
18 (6) North Carolina Wildlife Resources Commission;
19 (7) Office of Archives and History, Department of Cultural Resources;
20 (8) United States Fish and Wildlife Service, United States Department of the Interior; ~~and~~
21 (9) Any other Federal or State agency that the Department determines to be appropriate based on the
22 location of the proposed well site, including the Division of Coastal Management, Department of
23 Environment and Natural Resources; the Division of Marine Fisheries, Department of
24 Environment and Natural Resources; the Division of Waste Management, Department of
25 Environment and Natural Resources; Division of Public Health; and the Department
26 of ~~Transportation~~ Transportation; and
27 (10) The county and municipality in which the permit application is located.

28 (c) Public notice of the receipt of a complete oil or gas well applications(s) submitted pursuant to the Rule shall be
29 given prior to permit issuance.

30 (1) Such notice shall:

- 31 (A) be posted on the Division's website;
32 (B) provide 30 calendar days for public comments to be submitted to the Director; and
33 (C) include the permit application.

34 (2) After the public comment period has ended the Director shall:

- 35 (A) consider the comments submitted; and
36 (B) post notice on the Division website as of the final permitting action.

1 ~~(e)(d)~~ Pursuant to the SPCA and 15A NCAC 04, the Department shall review the erosion control plan for approval,
2 approval with modifications, or disapproval.

3 ~~(d)(e)~~ The Department shall have ~~60~~180 calendar days from receipt of the complete application, which shall include
4 all approved variance requests to review and approve, approve with conditions, or deny the application. The
5 Department shall consider all input submitted by the reviewing agencies outlined in Paragraph (b) of this Rule and
6 public comment received pursuant to Paragraph (c) of this Rule when approving, approving with conditions, or
7 denying any application.

8 (f) If the Department receives a written comment from an agency in Paragraph (b) of this Rule, indicating that the
9 reviewing agency has concerns regarding an environmentally sensitive area under Rule .1405(c) of this Subchapter,
10 the Department shall notify the Chair of the Commission within 10 days. The Chair shall notify the applicant or
11 permittee and reviewing agencies in Paragraph (b) of this Rule that the Commission will determine the
12 environmental damage bond during a scheduled meeting.

13 ~~(e)(g)~~ If the Department denies an application for a permit pursuant to Rule .1309 of this Section, the Department
14 shall notify the applicant or permittee in writing and stating the reasons for the denial. The applicant or permittee
15 may thereupon modify and resubmit the application or file an appeal; the Department shall have 60 calendar days
16 from receipt of the resubmitted application to complete the review process.

17 ~~(f)(h) On approval of an application, the~~ The Department shall set the amount of the ~~performance~~ bond or other
18 security ~~that is to be~~ required pursuant to G.S. 113-378, 113-391 (a)(13a), and 113-421(a2) and (a3)(2) and mail
19 notice of the required bond to the applicant or permittee. The applicant or permittee shall have 60 calendar days
20 after the Department mails the notice to ~~deposit~~provide the required bond or security instrument ~~with~~ to the
21 Department. The Oil or Gas Well Permit shall not be issued until receipt of this ~~deposit~~instrument.

22 ~~(e)(i)~~ On approval of a Form 2 – Oil or Gas Permit Application for a new oil or gas well the North Carolina
23 Geological Survey shall assign an API number for the oil or gas well.

24 ~~(h)(j)~~ The permittee shall not commence any operation at the well site prior to receiving an ~~approved~~ Oil or Gas
25 Permit and meeting the requirements of this Rule.

26
27 *History Note: Authority G.S. 113-391(a)(5); 113-421(a3)(2);*

28 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1308

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

For clarity, I suggest ending the first sentence after "site" on line 4. Begin the next sentence, "These conditions may include the permittee to create or construct."

In Item (3), line 8, insert a comma after "screening"

In Item (5), please include more specific guidance of when and how the Department will act.

In the History Note, please add G.S. 113-391(a6).

Delete the reference to 113-395(5)c-I, as that citation does not exist. If you meant to cite to 113-391, please only cite to the parts of the statute that apply to this Rule.

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: December 1, 2014

1 15A NCAC 05H .1308 has been adopted as published in 29:02 NCR 128 as follows:

2
3 **15A NCAC 05H .1308 PERMIT CONDITIONS**

4 A Form 2 – Oil or Gas Well Permit Application may be approved with conditions based on the individual well site,
5 such as:

- 6 (1) additional erosion control measures to be installed during oil and gas well operations;
7 (2) a natural buffer to be left between any stream and the disturbed land;
8 (3) visual screening such as existing natural vegetation, vegetated earthen berms, tree plantings at
9 staggered spacing, to be installed and maintained between any disturbed land and any adjoining
10 property containing occupied buildings or public access within view of the disturbed land;
11 (4) erosion control measures to be implemented during the construction and operation of all roads to
12 minimize off-site damage from sediment; or
13 (5) other conditions as determined by the Department to safeguard public health, welfare, and the
14 environment.

15
16 *History Note: Authority G.S. 113-391(a)(5); 113-395(5)c-l;*
17 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1309

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(1), the permit was already denied, correct? So, they are denying it again?

In (a)(4), lines 14 and 15, please define "direct," "public health and safety," and "dwelling house." (do you mean "occupied dwelling," which is defined in Rule .0102?)

In (a)(5), please define "significant adverse effect" in line 17.

In (a)(6), please define "previous experience" and "substantial" on line 20.

On lines 22, please properly incorporate the rules by reference, using G.S. 150B-21.6.

In (a)(7), this is a very long sentence. Can it be broken into two? Further, it seems this Subparagraph addresses 113-395(b) and (c). If that is correct, please insert the citation for 113-395 in the History Note.

On line 27, insert a comma after "Department"

On line 29, do you mean "shall" rather than "may"?

On line 30, replace "said" with "the" and delete the "and"

In the History Note, please add G.S. 113-391(a6).

In the History Note, why are you citing to 113-410(a)?

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: December 1, 2014

1 15A NCAC 05H .1309 has been adopted as published in 29:02 NCR 128-129 as follows:

2
3 **15A NCAC 05H .1309 DENIAL OF APPLICATION**

4 (a) The Department shall have the authority to deny a permit application to any person on finding that the well site for
5 which a permit is requested is in violation of any of the rules contained in this Subchapter, the issuance of the permit
6 would result in a violation of any rule of this Subchapter or other applicable law or rule, or for any of the following
7 factors:

8 (1) the permit application is incomplete and the time has lapsed for resubmission in accordance with
9 Rule .1307 of this Subchapter;

10 (2) the requirements of Section .1400 of this Subchapter have not been met;

11 (3) the operation will have significant adverse effects on surface water, groundwaters, wildlife,
12 habitats of rare and endangered flora and fauna and other critical communities, or freshwater,
13 estuarine, or marine fisheries;

14 (4) the operation will constitute a direct physical hazard to public health and safety or to a neighboring
15 dwelling house, school, church, hospital, commercial or industrial building, public road, or other
16 public property;

17 (5) the operation will have a significant adverse effect on the uses of a publicly-owned park, forest,
18 recreation area, or historical and archeological sites listed on the Federal or State list of historic
19 places;

20 (6) previous experience with similar operations indicates a substantial possibility that the operation
21 will result in deposits of sediment in stream beds or lakes in violation of the Sediment Pollution
22 Control Act of 1973 and 15A NCAC 02L .0202 and 15A NCAC 02B, landslides, or acid water
23 pollution in violation of 15A NCAC 02L .0202 and 15A NCAC 02B; or

24 (7) the Department finds that the applicant or permittee, or any parent, subsidiary, or other affiliate of
25 the applicant or permittee has not been in compliance with the Oil or Gas Conservation Act, rules
26 of this Subchapter, other laws or rules of this State for the protection of the environment
27 administered by the Department, any plan approval, permit, or order issued by of the Department
28 or has not corrected all violations that the applicant or permittee, or any parent, subsidiary, or
29 other affiliate of the applicant, permittee, or parent may have committed under this Act or rules
30 adopted under said Act and that resulted in:

31 (A) the revocation of a permit;

32 (B) the forfeiture of part of all of a bond or other security;

33 (C) a conviction of a misdemeanor or any other court order; or

34 (D) the final assessment of a civil penalty.

35 (b) In the absence of any finding set out above, or if adverse effects are mitigated by the applicant or permittee as
36 approved by the Department, a permit shall be granted.

- 1 *History Note:* *Authority G.S. 113-391(a)(5)a; 113-395; 113-410(a);*
- 2 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1310

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, instead of "rules of this Section," do you mean "Rule .1304 of this Section"?

In (b), what part of Rule .1307 are you referring to?

In (c), why is Reclamation Plan capitalized on lines 12,18, and 20 but not on lines 11 and 16? Isn't it the same thing?

On line 12, insert a comma after "plan"

In (e), are you saying that the Department may modify the permit after issuance because the permit conditions issued by the Department pursuant to Rule .1308 are not meeting the requirements of the statute in the Department's opinion? If so, what is your authority to state this?

On line 20, what do you mean by "in a stated manner"?

In the History Note, please add G.S. 113-391(a6).

Why are you citing to 113-410(a) in the History Note?

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: December 1, 2014

1 15A NCAC 05H .1310 has been adopted with changes as published in 29:02 NCR 129 as follows:

2
3 **15A NCAC 05H .1310 PERMIT MODIFICATIONS**

4 (a) Any permittee may apply at any time for a modification of the permit. The application shall be in writing on
5 Form 2 – Oil or Gas Well Permit Application in accordance with the rules of this Section. The Department may
6 review, approve, approve with conditions, or deny the application for modification in accordance with the rules of
7 this Section.

8 (b) The permittee shall provide any additional information required by the Department to satisfy application
9 requirements in accordance with Rule .1307 of this Section. The permittee shall not be required to resubmit
10 information that remains unchanged since the time of the prior application.

11 (c) If a proposed modification of the permit affects the land area covered by the permit or the approved reclamation
12 plan then the permittee shall propose a modification to the Reclamation Plan that meets the requirements of Rule
13 .2102 of this Subchapter.

14 (d) No modification of a permit shall become effective until any required change has been made in the ~~performance~~
15 bond or other security posted under the provisions of G.S. 113-378, 113-391, and 113-421, so as to assure the
16 performance of obligations assumed by the permittee under the permit and reclamation plan.

17 (e) If at any time it appears to the Department from its inspection of the disturbed land that the activities under the
18 Reclamation Plan and other terms and conditions of the permit are failing to achieve the purposes and requirements
19 of this Subchapter, the Department shall give the permittee written notice of that fact, of its intention to modify the
20 Reclamation Plan, and other terms and conditions of the permit in a stated manner.

21
22 *History Note: Authority G.S. 113-391(a)(5)a; 113-395; 113-410(a);*
23 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1311

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please explain how a permit transfer will actually occur. I understand that from (a) that the transfer can come from a sale, etc. However, (d) says that the permit transfer can be denied. How does that impact a sale or a court assignment?

In (b), line 6, is "sale or other" necessary? Can't you just say "transfer"?

I'd rewrite (b) to be active, "The new owner shall send written notice to the Department of the transfer within 30 calendar days of the transfer."

In (b)(4), when is the new form due? Does it accompany this notice?

In (d), delete the comma after "revocation" on line 17 and replace it with an "or"

On line 18, delete the comma after "transferee"

Why are you citing to 113-410(a) in the History Note?

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: December 1, 2014

1 15A NCAC 05H .1311 has been adopted as published in 29:02 NCR 129 as follows:

2
3 **15A NCAC 05H .1311 PERMIT TRANSFERS**

4 (a) A permit transfer may result from a sale, assignment by a court, a change in operating agreement, or other
5 transaction.

6 (b) Within 30 calendar days of the sale or other transfer, the new owner shall notify the Department, in writing, of
7 the transfer of ownership. The notice shall include:

8 (1) the names, addresses and telephone numbers of the former and new owner, and the agent if
9 applicable. The new permittee information shall be attached to the notice on Form 1 – FRO;

10 (2) the Oil or Gas Well Permit and assigned API number;

11 (3) the effective date of the transfer of ownership; and

12 (4) an affidavit from the new owner verifying that the information on the original application is still
13 accurate and complete. If the information on the original application is no longer accurate or
14 complete, then a new Form 2 – Oil or Gas Well Application shall be submitted to the Department
15 for review and approval.

16 (c) The new owner shall secure the required bond prior to the Department approving the permit transfer.

17 (d) A permit transfer may be denied by the Department based on previous revocation, unaddressed or outstanding
18 violations on a previous permit by the transferee, in accordance with Rule .1309(a) of this Section.

19
20 *History Note: Authority G.S. 113-391(a)(5)a; 113-391(a6); 113-395; 113-410(a);*
21 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1312

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), please include the form name after "application" on line 7.

In the History Note, please add G.S. 113-391(a6), as this is what gives the Commission authority to set permit duration.

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: December 1, 2014

1 15A NCAC 05H .1312 has been adopted as published in 29:02 NCR 129 as follows:

2
3 **15A NCAC 05H .1312 PERMIT EXPIRATION**

4 (a) A permittee shall have 12 months from the date of issuance of the permit to spud an oil or gas well or the permit
5 shall expire.

6 (b) A permittee may request a one time, one-year renewal of the permit. The permittee shall provide an affidavit
7 affirming that the information on the original application is still accurate and complete and that the oil or gas well
8 location restrictions are still in effect. Any change in information from the original application shall be treated as a
9 request for a permit modification pursuant to Rule .1310 of this Section. The permittee shall submit the request so
10 that it is received by the Department at least 30 calendar days prior to the expiration of the original permit.

11
12 *History Note: Authority G.S. 113-391(a)(5)a; 113-395;*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1313

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, do you mean "shall" instead of "may"? If not, then won't the Department do this?

In (a)(2), what do you mean by "necessary"? Isn't all of the information requested on the application necessary?

In (b), please write in the active voice. "The Department shall send written notice of suspension..."

On line 12, insert "any" or "the" before "appeal"

Also on line 12, insert a comma after "upheld"

In the History Note, please add G.S. 113-391(a6).

Why are you citing to 113-410(a) in the History Note?

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: December 1, 2014

1 15A NCAC 05H .1313 has been adopted as published in 29:02 NCR 130 as follows:

2
3 **15A NCAC 05H .1313 PERMIT SUSPENSION OR REVOCATION**

4 (a) The Department may suspend or revoke a permit if:

5 (1) the permittee fails to meet the conditions specified in the permit;

6 (2) the permittee falsified or otherwise withheld necessary information required in the application; or

7 (3) if the Department issued the permit in error because the submitted information was incorrect and
8 the error was not identified during the Department's review but came to light after the permit was
9 issued and the correct information affected the validity of the issued permit.

10 (b) Notification of suspension or revocation of the permit, including specific justification for the revocation, shall be
11 issued in writing. The permittee shall temporarily abandon the oil or gas well pursuant to Rule .1621 of this
12 Subchapter until final disposition of appeal. If the revocation is upheld the permittee shall permanently plug and
13 abandon the oil or gas well pursuant to Rule .1618 of this Subchapter.

14
15 *History Note: Authority G.S. 113-391(a)(5)a; 113-395; 113-410(a);*
16 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1314

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, what do you mean by "release"?

In (c), replace "on" with "after" on line 9.

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: December 1, 2014

1 15A NCAC 05H .1314 has been adopted as published in 29:02 NCR 130 as follows:

2
3 **15A NCAC 05H .1314 PERMIT RELEASE**

4 (a) The permittee may request the Department to release the oil or gas well and all affected areas associated within
5 the well site and return any remaining bond in accordance with Rule .1406 of this Subchapter.

6 (b) The Department shall not approve an oil or gas well permit release unless the requirements for Rule .1406 of
7 this Subchapter have been met and all oil or gas well plugging and abandonment fees and notices have been
8 received.

9 (c) The Department shall release any remaining bond to the permittee on finding that that the well site has been
10 reclaimed as stated in the Reclamation Plan.

11
12 *History Note: Authority G.S. 113-391(a6);*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1401

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 6, do you really need "or permittee"? Isn't this really applying to applicants for permit, transfer or modification?

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: December 1, 2014

1 15A NCAC .1401 has been adopted with changes as published in 29:02 NCR 130 as follows:

2
3 **SECTION .1400 – FINANCIAL ASSURANCE**
4

5 **15A NCAC 05H .1401 PURPOSE AND SCOPE**

6 Each applicant or permittee for a permit, modification, or transfer of an Oil or Gas Well Permit shall file and
7 maintain in force a ~~bond~~bond(s) in favor of the State of North Carolina or surface owner, executed by a surety
8 approved by the Commissioner of Insurance, based on the requirements set forth in the rules of this Section.
9

10 *History Note: Authority G.S. 113-391(a)(5)l; 113-421(a3);*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1402

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, I think the "a" before "modification" and "transfer" are unnecessary.

On lines 5 and 8, what is an "approved financial assurance instrument"? If it's the forms in Paragraph (b), state that.

On line 6, insert a space between "Rules" and ".1403"

In (a), you state that no one can begin operations until the financial document is submitted. Will the individual have a permit without submitting this?

So that I am clear, Paragraph (b) only applies to bonds running to the State, not the landowner? The landowner bonds must be through a surety?

In (b)(1), line 11, state "Form 7 – Irrevocable Letter of Standby Credit, which shall include:"

Please make conforming changes to (b)(2), (3), and (4).

In (b)(1)(A), what do you mean by "as needed"? As determined by whom? Please note that question for (b)(2)(A), (b)(3)(A) and (b)(4)(A).

In (b)(2)(D), why will this form include the amount to NC, as opposed to the other forms? I ask because I believe this Rule encompasses both types of bonds in 113-421, which run to the State and the landowner.

Further, are Forms 9 and 10 applicable to the bond to the landowner in 113-421? Both speak to the bond for the Department only.

In (b)(2)(F), why do you have semicolons following "secretary" and "principal"? Are you requiring the signature from each of the three types of individuals?

In (d), I only see an appeal right for bonds in G.S. 113-421(a3)(1). Therefore, you may wish to give that citation earlier in the Paragraph.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

Paragraph (e) only applies to surety bonds using Form 8. Is that your intent?

In (g), line 31, what is “reasonably acceptable” to the Department? What form is used to submit this?

In (h), what is “good and sufficient” mean on line 3?

On line 4, by “time specified” do you mean the 60 calendar days on line 2? If so, why not state “this time.” or something similar?

Why are you only citing to 113-421(a2) in the History Note, rather than 113-421?

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: December 1, 2014

1 15A NCAC .1402 has been adopted as published in 29:02 NCR 130-131 as follows:

2
3 **15A NCAC 05H .1402 BONDING REQUIREMENTS**

4 (a) After an application for a permit, a modification, or a transfer of an Oil or Gas Well Permit is considered
5 complete by the Department, the applicant or permittee shall provide an approved financial assurance instrument to
6 the Department or each surface owner, as applicable in accordance with Rules.1403, .1404, and .1405 of this
7 Section. The applicant or permittee shall not commence operations to drill, recomplete, restimulate, deepen, reenter,
8 sidetrack, plug and abandon, plug back, or revise the location of any oil or gas well prior to providing an approved
9 financial assurance instrument to the Department or surface owner(s).

10 (b) The permittee shall submit financial assurance to the Department using one of the following forms:

11 (1) Form 7 – Irrevocable Letter of Standby Credit shall include the following information:

12 (A) the applicant or permittee's name, address, telephone number, fax number, and email
13 address as needed;

14 (B) the letter of credit number, effective date, and amount;

15 (C) the name and address for the issuing institution;

16 (D) the date of expiration and date and frequency of renewals; and

17 (E) the issuing institution's representative's dated and notarized signature.

18 (2) Form 8 – Surety Bond shall include the following information:

19 (A) the applicant or permittee's name, address, telephone number, fax number, and email
20 address as needed;

21 (B) the name and the principal and local address of the issuing surety company;

22 (C) the bond number as assigned by the surety company;

23 (D) the amount of bond to be held by the State of North Carolina;

24 (E) the seal of the surety company;

25 (F) the signatures by the secretary or assistant secretary; principal; president, vice president,
26 partner, or owner of the surety company;

27 (G) the signature of the resident agent of North Carolina and the agent or attorney in fact.

28 (3) Form 9 – Assignment of Savings Account shall include the following information:

29 (A) the applicant or permittee's name, address, telephone number, fax number, and email
30 address as needed;

31 (B) the name, address, and county of the bank;

32 (C) the dollar amount to be held to be payable to the Department on demand of the
33 Department;

34 (D) the method and a copy of the instrument of assignment such as a passbook or deposit
35 book;

36 (E) the signature, date, and notary seal for the applicant or permittee; and

(F) an acknowledgement of the bank on the assignment that includes the date of assignment, signature of authorized agent of the bank, date of signature, and notarization.

(4) Form 10 – Cash Deposit shall include the following information:

(A) the applicant or permittee's name, address, telephone number, fax number, and email address as needed;

(B) the county and nearest city or town where oil or gas well is located;

(C) the lease name and the oil or gas well name and number;

(D) the Commission issued drilling unit number; and

(E) a cashiers or certified checks made payable to the North Carolina Department of Environment and Natural Resources.

(c) The amount of the bond shall be determined by the Department or the Commission consistent with Rules .1403, .1404, and .1405 of this Section.

(1) If the Oil or Gas Well Permit is modified to increase the total depth of the oil or gas well or the total disturbed land acreage increases, the bond shall be increased in accordance with Rules .1403 and .1404 of this Section, respectively; and

(2) As areas at a well site are reclaimed in accordance with the Reclamation Plan required by Section .2100 of this Subchapter and approved and released by the Department, the permittee may substitute a new bond for the bond previously filed in an amount covering the remaining oil or gas wells and disturbed land acreage at the site.

(d) If the applicant, permittee, or surface owner disagrees with the bond amount determined by the Commission, the applicant, permittee, or surface owner may appeal the bond amount pursuant to G.S. 113-421(a3)(1).

(e) The bond herein provided shall be continuous in nature and shall remain in force until cancelled by the surety. Cancellation by the surety shall be effectuated only on 60 days written notice thereof to the Department or surface owner and to the permittee.

(f) The bond shall be conditioned on the faithful performance of the requirements set forth in the rules of this Subchapter. On filing the bond with the Department, the permittee shall lose all right, title, and interest in the bond while the bond is held by the Department. Liability under the bond shall be maintained as long as reclamation is not completed in compliance with the approved Reclamation Plan or acceptance by the Department of a substitute bond. In no event shall the liability of the surety exceed the amount of the surety bond required by this Section.

(g) In lieu of the surety bond required by this Section, the permittee may file with the Department a cash deposit, an irrevocable letter of credit, a guaranty of payment in a form that is reasonably acceptable to the Department and held by a financial institution consistent with the Uniform Commercial Code of North Carolina (NC UCC). Alternatively, a permittee may file with the Department an assignment of a savings account in a financial institution consistent with the NC UCC. Cash deposits, irrevocable letters of credit, guaranties of payment, and assignments of savings accounts shall be filed using forms in accordance with Paragraph (b) of this Rule. Security shall be subject to the release provisions of Rule .1406 of this Section.

1 (h) If the Commissioner of Insurance suspends or revokes the license to do business in North Carolina of any surety
2 on a bond filed pursuant to this Subchapter, the permittee shall, within 60 calendar days after receiving notice
3 thereof, substitute for the surety a good and sufficient corporate surety authorized to do business in this State. On
4 failure of the permittee to substitute sufficient surety within the time specified, the permit shall be revoked.

5
6 *History Note: Authority G.S. 113-391(a)(5)l; 113-421(a2);*
7 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1403

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Is it your interpretation that G.S. 113-378 requires a bond for plugging and abandonment? I read the law to require that bond to register, and that seems to be borne out in G.S. 113-421(a3)(1) ("Upon registration with the Department pursuant to G.S. 113-378[.]"). Then the developer asks the Commission to set the bond amounts (per G.S. 113-391(a)(13a) and 421(a3)(1).) If you do read it to state that, is it because of the last sentence in 113-378?

On line 8, delete the comma and "as"

On line 9, delete "to"

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: December 1, 2014

1 15A NCAC .1403 has been adopted as published in 29:02 NCR 131 as follows:

2
3 **15A NCAC 05H .1403 OIL OR GAS WELL PLUGGING AND ABANDONMENT BOND**

4 (a) The applicant or permittee shall submit an oil or gas well plugging and abandonment bond in the amount of five
5 thousand dollars (\$5,000) plus one dollar (\$1.00) per linear foot of the permitted oil or gas well pursuant to G.S.
6 113-378.

7 (b) The oil or gas well plugging and abandonment bond may be submitted as a separate bond or as an aggregate
8 bond amount with the environmental damage bond, as required by Rule .1405 of this Section.

9 (c) The permittee may request this bond to be released by the Department when final site reclamation is completed
10 in accordance with Section .2100 of this Subchapter and for which the oil or gas well is permanently plugged and
11 abandoned in accordance with Rule .1618 of this Subchapter.

12
13 *History Note: Authority G. S. 113-378; 113-391(a)(5)l; 113-421(a2);*

14 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1404

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What bond or bonds are you trying to address in this Rule? Are you trying to establish a bond to the land owner in (a) and a separate bond to the Department in (b)? If so, state specifically in the Paragraph which bond you are referring to by giving the statutory citation.

113-391(a)(5)I requires the Commission to adopt rules to establish financial assurance to ensure that sufficient funds are available for well closure, post-closure maintenance and monitoring, corrective action that the Department may require, satisfy potential liability for accidental occurrences, and costs incurred by the Department in response to an incident at the well site. G.S. 113-421(a3)(1) states that the bond to the landowner will be set using those criteria.

In (a), I think you are addressing the bond under 113-421(a3)(1), which clearly requires the Commission to set the bond amount. How is the Commission setting this bond? I see the reference to Rule .2102, but that rule does not say how the Commission will set the bond. How is the being done? When? At a meeting? Using a formula? Is the material in Rule .2102 intended to address the requirement in 113-421(a3)(1) that the developer provide supporting documentation about the site? It doesn't appear so, since Rule .2102 addresses reclamation activities and the law requires information on the proposed oil and gas activities to be conducted.

Further, given the complexity of the subject matter and that this bond affects the property owner, do you not want to include the notice from statute that the amount may be appealed to the Commission? I know this in Rule .1402(d), but since this is the only Rule that seems to address the bond for that surface owner, I think it bears repeating.

In (b), you are saying that the bond will be based upon corrective action costs for reclamation. This is the entire criteria for setting this bond? When and how is the Commission setting the bond? I note that in Rule .1402(c)(1), you say that if the disturbed area increases, the bond will consistent with this Rule. Does your regulated public know what you are saying here?

On line 7, I assume "may require" is because the bond will be based on site specific issues?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

On line 9, what is a "Reclamation Cost Table"? You say it is going to be approved by the Commission, but how? Where is this "Cost Table" found?

Why are you only citing to 113-421(a2) in the History Note? That does not require a bond, but payment of damages.

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: December 1, 2014

1 15A NCAC .1404 has been adopted as published in 29:02 NCR 130 as follows:

2
3 **15A NCAC 05H .1404 DISTURBED LAND BOND**

4 (a) The permittee shall provide to each surface owner a bond that is sufficient to cover the cost of completing the
5 requirements of the approved Reclamation Plan in accordance with Rule .2102 of this Subchapter and any
6 reclamation conditions of the approved permit.

7 (b) The bond amount for disturbed land shall be based on costs for corrective action(s) that the Department may
8 require to include costs to reclaim well site features, such as the haul road, drainage and roadway ditches and berms,
9 pits, stockpiles, and production facilities at the well pad as set out in the Reclamation Cost Table approved by the
10 Commission.

11
12 *History Note: Authority G. S. 113-391(a)(5)l; 113-391(a)(13a); 113-421(a2);*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1405

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), you state that the bond shall be paid "in the amount pursuant to G.S. 113-421(a3)(2)." That statute states:

(a3) Reclamation of Surface Property Required.--An oil or gas developer or operator shall:

(2) Provide a bond running to the State sufficient to cover any potential environmental damage caused by the drilling process **in an amount no less than one million dollars (\$1,000,000).** The Commission may increase the amount of the bond required by this subdivision if the Commission determines that the drilling operation would be sited in an environmentally sensitive area.

I do not read the statute to set an amount. If you wish to state that the bond will be one million dollars, unless the Commission sets a higher amount pursuant to G.S. 113-421(a3)(2), please state that.

I note that (c) is entirely new language. However, as I read this language, it is intended to define "environmentally sensitive areas" and therefore, clarifies (d) and what the Commission will consider in amending the bond. Therefore, I do not believe this additional language is a substantial change.

In (c), on line 8, please insert a comma after "areas," and replace "such" with "the" and should "area" be "areas"? Do you mean "following areas:"?

Also on line 8, do you mean "shall" instead of "may"? If not, when will the Commission not consider them. (Please see G.S. 150B-19(6))

In (c)(1) through (5), lists generally begin with lowercase letters. If you need to retain the capitalization, please note that (c)(4) and (5) have the entire phrase beginning with capital letters. Why is that?

In (c)(1), do you mean "renewable resources"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

In (c)(1)(A), line 11, where are these designations made? In rule? I note that G.S. 143-214.1 does not speak to a “water-supply use” classification. Is this done in the EMC rules? If so, that’s probably a better cross reference.

In (c)(1)(B), where is this designation found?

In (c)(2), why do you have “of more than local significance”? What do you mean by that? I ask because in (2)(E), you refer to rare species; there are certain plants or animals that only grow in one or two specific areas. Are those of local significance?

In (c)(2)(A), line 20, what do you mean by “formally designated”? (Note the same for line 29)

In (c)(2)(c), on line 25, please state “rulemaking proceeding” (as I read G.S. 143-214.1 to require rulemaking to adopt the classification) and replace “said” with “the.”

In (c)(2)(E), who will make this determination? The Commission?

In (c)(2)(F), I take it the State Geologist makes this determination in his or her professional opinion? And then reports it to the MEC?

In (c)(3)(A), what are “public trust waters”?

In (c)(3)(C), what is a “substantial possibility”? I assume this is determined by the State Geologist as a professional opinion?

In (c)(4) on Page 2, how will the EMC make this designation?

In (c)(5), how will the Marine Fisheries Commission make this designation?

In (d), I just want to be clear – on line 6, the Commission may, not shall, increase the bond?

And for the language on lines 6- 13, are you saying in making the determination of the additional bond amount? Or if the area is in fact “environmentally sensitive”? If it’s the latter, then I think the language in (c) should come after Paragraph (d).

In (d)(5), what other factors? Please provide examples or more guidance here.

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

1 15A NCAC .1405 has been adopted with changes as published in 29:02 NCR 131-132 as follows:

2
3 **15A NCAC 05H .1405 ENVIRONMENTAL DAMAGE BOND**

4 (a) The applicant or permittee shall submit an environmental damage bond in the amount pursuant to G.S. 113-
5 421(a3)(2).

6 (b) The environmental damage bond may be submitted as a separate bond or as an aggregate bond amount with the
7 oil or gas well plugging and abandonment bond, as required by Rule .1403 of this Section.

8 (c) In identifying environmentally sensitive areas the Commission may consider such area as the following:

9 (1) Renewable resource, which may include:

10 (A) watersheds or aquifers that are present sources of public water supply, as identified by the
11 Department or the Environmental Management Commission, or that are classified for
12 water-supply use pursuant to G.S. 143-214.1; and

13 (B) prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of
14 marketable timber), as identified by the Department of Agriculture.

15 (2) Areas containing environmental or natural resources of more than local significance, which may
16 include:

17 (A) existing national or State parks or forests, wilderness areas, the State Nature and Historic
18 Preserve, or public recreation areas; existing sites that have been acquired for any of the
19 same, as identified by the Secretary; and proposed sites for any of the same, as identified
20 by the Secretary, provided that the proposed site has been formally designated for
21 acquisition by the governmental agency having jurisdiction;

22 (B) present sections of the natural and scenic rivers system;

23 (C) stream segments that have been classified for scientific or research uses by the
24 Environmental Management Commission, or that are proposed to be so classified in a
25 proceeding that is pending before said Environmental Management Commission pursuant
26 to G.S.143-214.1 at the time of the designation of the area of environmental concern;

27 (D) existing wildlife refuges, preserves or management areas, and proposed sites for the
28 same, as identified by the Wildlife Resources Commission, provided that the proposed
29 site has been formally designated for acquisition or for inclusion in a cooperative
30 agreement by the governmental agency having jurisdiction;

31 (E) areas that sustain rare and endangered botanical or animal species; and

32 (F) areas containing unique geological formations, as identified by the State Geologist.

33 (3) Natural-hazard areas, which may include:

34 (A) the shoreline of estuarine and public trust waters;

35 (B) floodways and floodplains; and

36 (C) areas where geologic and soil conditions are such that there is a substantial possibility of
37 landslides or seismic activity, as identified by the State Geologist.

1 (4) Outstanding Resource Waters as designated by the Environmental Management Commission and
2 such contiguous land for the purpose of maintaining the exceptional water quality and outstanding
3 resource values identified in the designation; and

4 (5) Primary Nursery Areas as designated by the Marine Fisheries Commission.

5 ~~(c)~~(d) If the Commission determines that an operation would be sited in an environmentally sensitive area, the
6 Commission may increase the bond amount pursuant to G.S. 113-421(a3)(2). In making the determination the
7 Commission shall consider the following factors:

- 8 (1) the proximity of the oil or gas well or well site to the environmentally sensitive area;
9 (2) the character of the environmentally sensitive area;
10 (3) the topography of the environmentally sensitive area;
11 (4) special soil or geologic conditions in the environmentally sensitive area; and
12 (5) any other factors the Commission determines to be relevant in determining an environmentally
13 sensitive area.

14
15 *History Note:* *Authority G. S. 113-391(a)(5); 113-421(a3)(2);*
16 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1406

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (c), line 9, state "Upon receipt of the notice required by Paragraph (b)..."

Why is the language in (c) about the inspections not related to reclamation (especially the language in 11 and 12) not in Rule .0203, where it seems to properly belong?

In order to be consistent with the structure of the Rule, (c)(1) and (2) should begin with lowercase letters.

In (c)(2), how long will the Department have to issue the notice?

On line 17, delete "thereupon"

In (c)(2), will the Department be conducting follow up visits to the site to ensure compliance? If so, I think that should be in the Rule. Also, will the Department not issue a deadline to complete the corrective actions?

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: December 1, 2014

1 15A NCAC .1406 has been adopted as published in 29:02 NCR 132 as follows:

2
3 **15A NCAC 05H .1406 INSPECTION AND APPROVAL OF RECLAMATION FOR BOND RELEASE**
4 **OR FORFEITURE**

5 (a) The permittee shall proceed with reclamation as scheduled in the approved Reclamation Plan pursuant to Rule
6 .2102 of this Subchapter.

7 (b) The permittee shall notify the Department in writing that it has completed reclamation of an area of disturbed
8 land in accordance with Rule .2103 of this Subchapter.

9 (c) On receipt of notice as required by Paragraph (b) of this Rule, and at any other time the Department may elect,
10 the Department shall conduct an inspection in accordance with Rule .0203 of this Subchapter to determine whether
11 the permittee has complied with the Reclamation Plan, the rules of this Subchapter, the statute, and the terms and
12 conditions of the Oil or Gas Well Permit.

13 (1) If the Department determines from its inspection of the area in accordance with this Rule that
14 reclamation has been properly completed, it shall notify the permittee in writing.

15 (2) If the Department determines from its inspection of the area that reclamation is deficient based on
16 Rule .2102 of this Subchapter, then the Department shall notify the permittee in writing of all such
17 deficiencies. The permittee shall thereupon commence action within 30 days to rectify these
18 deficiencies and shall take corrective actions until the deficiencies have been corrected.

19 (d) The Department shall initiate enforcement actions if it finds any of the following conditions in accordance with
20 Rule .0901 of this Subchapter:

21 (1) the reclamation of the disturbed land within the permitted area is not proceeding in accordance
22 with the Rule .2103 of this Subchapter or the Reclamation Plan;

23 (2) the permittee has failed within 30 days after notice to commence corrective action; or

24 (3) the final reclamation has not been properly completed in conformance with the Reclamation Plan
25 and G.S. 113-421(a3).

26
27 *History Note: Authority G. S. 113-391(a)(5); 113-391(b); 113-410; 113-421(a3);*
28 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1407

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

How will this Rule work if there is not a surety, but instead an assignment of account or cash deposit? Will there not be notice for those types of security if forfeiture is sought?

On line 6, you state the permittee must "take corrective action" but on the same line say it must be corrected. Given the language in Rule .1406 that allowed the action to be started, but not completed in a timeframe, I think you need to state "shall have 60 calendars days to complete corrective action."

On line 7, do you mean "shall" rather than "may"? If not, then please state when the Department will not make this request.

In (b), line 10, what "shall be treated as liquidated damages"? And what is the authority of the Commission to establish liquidated damages in the Rule?

What is your authority for Paragraphs (b) and (c), especially as it relates to the collected funds to be placed in a special fund for Department reclamation and additional liability?

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: December 1, 2014

1 15A NCAC .1407 has been adopted as published in 29:02 NCR 132 as follows:

2
3 **15A NCAC 05H .1407 BOND FORFEITURE PROCEEDINGS**

4 (a) If the Department determines there is a violation necessitating bond forfeiture or the revocation of a permit, it
5 shall send the permittee and surety a written notice. Upon receipt of the written notice of violation, the permittee
6 shall have 60 calendar days to take corrective action. If the permittee does not correct the violation within the 60
7 day period, the Department may request the Attorney General to initiate forfeiture proceedings against the bond or
8 other security filed by the permittee in accordance with Rule .0901 of this Subchapter.

9 (b) Such proceedings shall be brought in the name of the State of North Carolina for the face amount of the bond or
10 other security, less any amount already released by the Department, shall be treated as liquidated damages and
11 subject to forfeiture.

12 (c) All funds collected as a result of such proceedings shall be placed in a special fund and used by the Department
13 to carry out, to the extent possible, the required final reclamation which the permittee has failed to complete. If the
14 amount of the bond or other security filed pursuant to this Section proves to be insufficient to complete the required
15 final reclamation pursuant to the approved Reclamation Plan, the permittee shall be liable to the Department for any
16 excess above the amount of the bond or other security which is required to defray the cost of completing the
17 required final reclamation.

18 (d) If a permit is revoked by the Department, the Department shall proceed with efforts to collect the bond(s) or
19 other financial assurance that was submitted to the Department at the time of permitting for oil or gas well plugging
20 and abandonment and environmental damage in accordance with the rules of this Section.

21
22 *History Note: Authority G.S. 113-391(a)(5)l; 113-421(a2);*

23 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1500

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

This Section in particular has several documents that are incorporated by reference. You may want to consider creating a new Rule, .1505, for Incorporation by Reference. In that Rule, you could list all of the documents you wish to incorporate by reference and where they can be found. It would make reading the substantive rules easier, while maintaining conformity with the APA.

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: December 1, 2014

1 15A NCAC 05H .1501 has been approved as published in 29:02 NCR 132 as follows:

2
3 **SECTION .1500 – SITE INFRASTRUCTURE AND CONSTRUCTION STANDARDS**

4
5 **15A NCAC 05H .1501 PURPOSE AND SCOPE**

6 The rules in this Section establish requirements for well site construction standards.

7
8 *History Note: Authority G.S. 113-391(a)(4); 113-391(a)(5)c;*

9 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1502

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(4), I take it your regulated public knows what is meant by "all other production equipment"?

In (a)(6), what is a "topsoil stockpile"? I take it your regulated public knows?

In (a)(7), insert a comma after "pit" on line 21.

In (a)(11) and (12), where are these documents in Rule or law?

On Page 2, Paragraph (b), what is the contact information for the Department? You require a telephone call or email, but don't have that information in the Rule.

Also, I assume you wish to retain the "at least" on line 6, to ensure permittees know they can give notice earlier than that?

On line 8, within five calendar days of what? The call or email to the Department?

In (b)(3), the ingress and egress points will not be the same?

In (b)(5), is this advance notice, or can this be sent after the construction began? If so, then someone is not sending the scheduled date, but instead the date the activities commenced.

In (c), how does one access the BLM standard?

In (d), rather than citing to the statute, why not just state SPCA? Also, what are you referring to within that statute? I did not see the standards in that statute, but perhaps your regulated public understands what you are referring to?

In (f), how will the regulated public determine this? Is a professional designing this? Is this determined by the Professional Engineer?

Please begin (g)(1) through (7) with lowercase letters.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In (g)(1), line 36, please insert a comma after “additives”

In (g)(4), Page 3, line 12, the ASTM D5747 / D5747M - 08(2013)e1 is now \$43.00. Please update the cost in the Rule.

In (g)(5), please define or give guidance for “sufficient regularity.” I presume the regulated public knows how to maintain these systems?

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: December 1, 2014

1 15A NCAC 05H .1502 has been approved with changes as published in 29:02 NCR 132-134 as follows:

2
3 **15A NCAC 05H .1502 WELL SITE CONSTRUCTION STANDARDS**

4 (a) The applicant or permittee shall submit a Well Site Development Plan to the Department pursuant to Rule
5 .1304(c)(2) of this Subchapter. The Well Site Development Plan shall be signed and sealed by a North Carolina
6 Professional Engineer and shall include the following information:

- 7 (1) the name, address, telephone number, fax number, and email address of applicant or permittee;
- 8 (2) the lease name and the oil or gas well name and number;
- 9 (3) the name and address of surface and mineral owners;
- 10 (4) the latitude and longitude (in decimal degrees) of the proposed access road entrance, corners of the
11 well pad, wellhead(s), tank battery, pits, and all other production equipment reported to five
12 decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);
- 13 (5) a well site location map depicting the well pad and access road using a scale of one inch equals
14 2,000 feet;
- 15 (6) ~~maps~~ maps, plan sheets, and details depicting the proposed well site, well pad, tank battery, pits,
16 access road, and topsoil stockpiles along with existing roads, surface water bodies, wetlands, and
17 other surface features affected by the construction using a scale ranging between one inch equals
18 50 feet to one inch equals 500 feet with two foot topographic contours, depending on the total
19 disturbed area;
- 20 (7) the details of the leak detection system, either electrical or piped, that will be installed on any
21 proposed pit including a plan of action to mitigate leakage;
- 22 (8) the proposed cut and fill areas with two foot grading contours depicting slope ratios and
23 identifying elevation at the top and bottom of slopes using the North American Vertical Datum of
24 1988 (NAVD88);
- 25 (9) the cross-sections of the length and width of the well site, well pad, and access road that include
26 cut and fill volumes posted in cubic yards;
- 27 (10) a description of ~~the proposed~~ well site construction sequence and stabilization techniques;
- 28 (11) the erosion and sedimentation control measures that are designed and constructed to prevent
29 sedimentation to water bodies and adjacent properties from any land disturbing activities related to
30 the construction of the well site in accordance with the SPCA and 15A NCAC 04, and the "North
31 Carolina Erosion and Sediment Control Planning and Design Manual," which is incorporated by
32 reference, including subsequent amendments and editions. The North Carolina Erosion and
33 Sediment Control Planning and Design Manual may be viewed online at
34 <http://portal.ncdenr.org/web/lr/publications>;
- 35 (12) the stormwater management control measures shall be designed and constructed in accordance
36 with 15A NCAC 02H and the "North Carolina Division of Water Quality Stormwater Best
37 Management Practices Manual," which is incorporated by reference, including subsequent

1 amendments and editions. The Stormwater Best Management Practices Manual may be viewed
2 online at <http://portal.ncdenr.org/web/lr/bmp-manual>;

3 (13) the maintenance procedures for the access road and well pad; and
4 (14) the pre-construction conditions at the proposed well site, including aerial photographs,
5 topographic maps, and pre-construction site inspection data.

6 (b) The permittee shall notify the Department at least 48 hours via telephone or email prior to the commencement of
7 construction of a new well site or prior to the implementation of an approved permit modification. The permittee
8 shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days
9 and shall include the following information:

10 (1) the permittee's name, address, telephone number, fax number, and e-mail address;
11 (2) the county and nearest city or town where the oil or gas well is located;
12 (3) the property street address or nearest address to the ingress or egress point leading from a public
13 road to the well pad;
14 (4) the API number, the lease name and the oil or gas well name and number; and
15 (5) the scheduled date and approximate time of day for commencement of construction activities.

16 (c) Well site disturbed areas shall be minimized. Taking into consideration the geologic target, setbacks, and safety,
17 the well site shall be located in accordance with API Recommended Practice 51R "Environmental Protection for
18 Onshore Oil and Gas Production Operations and Leases," and the United States Department of the Interior, Bureau
19 of Land Management (BLM) "Surface Operating Standards and Guidelines for Oil and Gas Exploration and
20 Development, the Gold Book," which are incorporated by reference, including subsequent amendments and editions.
21 Recommended Practice 51R, published by API, may be viewed online ~~at~~for no charge at
22 ~~<http://publications.api.org/default.aspx>~~[http://www.api.org/publications-standards-and-](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents)
23 [statistics/publications/government-cited-safety-documents](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents).

24 (d) Well sites shall be designed and located pursuant to G.S. 113A, Article 4 and in accordance with the North
25 Carolina Erosion and Sediment Control Planning and Design Manual.

26 (e) All topsoil shall be stockpiled for reuse during reclamation. Topsoil shall be segregated and stored separately
27 from subsurface materials. Stockpiles shall be located and protected to minimize wind and water erosion in
28 accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual.

29 (f) Well pads shall be designed and constructed to support the maximum weight of all vehicles, equipment, and
30 material on the site.

31 (g) Well pads shall be designed and constructed using surface or subsurface containment systems that prevent spills
32 or releases of any substances from escaping the well pad.

33 (1) Containment systems shall be required on the well pad for all equipment used for any phase of
34 drilling, casing, cementing, hydraulic fracturing or flowback operations and for all substances
35 including drilling mud, drilling mud additives, hydraulic oil, diesel fuel, hydraulic fracturing
36 additives or flowback fluid.

- 1 (2) Containment systems shall have a coefficient of permeability no greater than 1×10^{-10} centimeters
2 per second (cm/sec) and shall be at least 30 millimeters (mils) in thickness.
- 3 (3) Adjoining sections of containment systems shall be sealed together in accordance with the
4 manufacturer's directions to prevent leakage.
- 5 (4) All components of the containment system that could potentially come into direct contact with any
6 substances shall be compatible with those substances and be resistant to physical, chemical and
7 other failure during handling, installation and use pursuant to American Society for Testing and
8 Materials (ASTM) D5747/D5747M-08 (2013) e1 "Standard Practice for Tests to Evaluate the
9 Chemical Resistance of Geomembranes to Liquids," which is incorporated by reference, including
10 subsequent amendments and editions. This document, published by ASTM International, 100
11 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428, may be purchased at a cost of
12 forty-two dollars (\$42.00) at <http://www.astm.org/Standards/D5747.htm>.
- 13 (5) The permittee shall inspect all containment systems with sufficient regularity to ensure integrity is
14 maintained. Containment systems shall be maintained in such manner to prevent an impact to
15 public health, welfare, and the environment. Containment system inspection and maintenance
16 records shall be available at the well site for review by the Department.
- 17 (6) The permittee shall notify the Department if a spill or release occurs at the well site and take
18 necessary remedial actions in accordance with Rule .2005 of this Subchapter.
- 19 (7) The permittee shall provide primary and secondary containment when storing additives,
20 chemicals, oils, or fuels. The secondary containment shall have the capacity to contain 110 percent
21 of the volume being stored.
- 22 (h) Well sites shall be constructed to prevent stormwater runoff from entering the well pad. All stormwater control
23 measures shall be designed and managed in accordance with 15A NCAC 02H and the "North Carolina Division of
24 Water Quality Stormwater Best Management Practices Manual."
- 25 (i) All erosion control or stormwater measures shall be maintained according to the approved Well Site
26 Development Plan.
- 27
- 28 *History Note: Authority G.S. 113-391(a)(4); 113-391(a)(5)l; 150B-2(8a)h;*
29 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1503

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), you do not need to reincorporate documents that were incorporated by reference in Rule .1502. However, please note my question about where these are found in law or Rule.

In (b), by deleting (1), you are now requiring the permittee to construct a road for each access route. What gave rise to this change?

In current (b)(1), is the 20 feet minimum width (and I assume you need to keep "minimum" here) to ensure that emergency response vehicles can use the road?

Please have (b)(1) through (3) begin with lowercase letters.

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: December 1, 2014

1 15A NCAC 05H .1503 has been approved with changes as published in 29:02 NCR 134 as follows:

2
3 **15A NCAC 05H .1503 ACCESS ROAD CONSTRUCTION STANDARDS**

4 (a) Prior to construction of the access road, the permittee shall post an identification sign pursuant to Rule .1615 of
5 this Subchapter.

6 (b) Access roads shall be located, designed, and constructed to minimize environmental impact and meet the
7 requirements of the SPCA, 15A NCAC 04, "North Carolina Erosion and Sediment Control Planning and Design
8 Manual," 15A NCAC 02H, "North Carolina Division of Water Quality Stormwater Best Management Practices
9 Manual," and the North Carolina Department of Transportation "Standard Specifications for Roads and Structures,"
10 which are incorporated by reference, including subsequent amendments and editions. The "North Carolina Erosion
11 and Sediment Control Planning and Design Manual," may be viewed online ~~at~~for no charge at
12 <http://portal.ncdenr.org/web/lr/publications>. The Stormwater Best Management Practices Manual may be viewed
13 online ~~at~~for no charge at ~~<http://portal.ncdenr.org/web/lr/publications>~~. <http://portal.ncdenr.org/web/lr/bmp-manual>.
14 The Standard Specifications for Roads and Structures, published by the Department of Transportation, may be
15 viewed online ~~at~~for no charge at
16 http://www.ncdot.org/doh/preconstruct/ps/specifications/specifications_provisions.html.

17 ~~(1) Existing roads shall be used as access routes when feasible.~~

18 ~~(2)(1)~~ Access roads shall be constructed and maintained ~~so emergency response vehicles may to a~~
19 minimum width of 20 feet and to allow emergency response vehicles to enter the well site at
20 all times.

21 ~~(3)(2)~~ Public roads shall be kept clear of mud and debris from the well ~~site~~site; and

22 ~~(4)(3)~~ Turnarounds or pull-off areas shall be installed for single-lane access roads exceeding 150 feet in
23 length.

24
25 *History Note: Authority G.S. 113-391(a)(4); 391(a)(5);*
26 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1504

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, why is "Exploration" capitalized? In Rule .0102(40), it is not.

In this Rule, I assume your regulated public knows the following terms?

- "cut material," "pit dike," and "fill material" in (b)(2)
- "trenched" and "berm" in (c)(6)
- "predicted head" in (c)(7)(A)

In (b)(2), what is "the fullest extent possible"

In (b)(5), you can just state "These documents may be viewed..." on line 30, rather than stating each document name.

In (c)(1), line 35, replace "an" with "a"

On Page 2, in (c)(2), please spell out "cm/sec" and "mils" as you did in Rule .1502.

In (c)(3), there is no need to incorporate this ATSM standard by reference again.

In (c)(5), how long will the test results need to be maintained?

In (c)(7)(C), delete the "and" before "~~remove~~" and the comma after "repair"

In (c)(12), Rule .2006 requires netting or screening.

In (d), define "continuously" on line 34.

Also in (d), what will the contents of the pit be emptied into? I note you are amending (h) to remove the requirement for secondary containment for pits. Or is the intent for the individual waste management plant to control as set forth in Paragraph (f)?

On Page 3, in (e), line 2, I believe you mean "failed"

On line 3, what are "accepted procedures"?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

On line 5, please insert a comma after “removed”

On line 6, please reference Rule .2002.

*In (h), punctuation is treated as part of a word. To remove the comma after “tanks,” write:
“~~pits,tanks,~~ tanks and”*

In (i)(4), delete “Recommended Practice 2003, published by API” on lines 23 and 24 and simply state “This document may be viewed...”

In (i)(6), define “reasonably”

In (j), if the Commission is going to find more than (1) and (2) to grant the waiver, then you must state what else you are expecting from the permittee in this Rule.

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: December 1, 2014

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: Mining and Energy Commission

RULE CITATION: Rule 15A NCAC 05H .1504

RECOMMENDED ACTION:

Note staff's comment

X Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

X Failure to comply with the APA

Extend the period of review

COMMENT:

Staff believes that several changes made to this Rule following publication create a substantial change pursuant to G.S. 150B-21.2(g).

In (b)(3) and (4), pits are now required to have three feet of freeboard at all times, rather than two. Further, the pits and open tanks have an additional requirement for size to take into account the volume of precipitation from a 25-year 24-hour storm event.

Several changes were made to the requirements for pits, including a requirement for monitoring and alarm technology to continuously verify the integrity of the pit liner [Paragraph (d)], and monthly monitoring of leak detection systems [Paragraph (e)].

Staff does not dispute that the Commission has authority to write these requirements in the Rule. However, staff believes that adding these requirements after publication of this Rule creates a substantial change by addressing subject matters not addressed in the proposed text.

Therefore, staff believes this language requires republication in the NC Register before it can be entered into the NC Administrative Code.

*Amanda J. Reeder
Commission Counsel*

1 15A NCAC 05H .1504 has been approved with changes as published in 29:02 NCR 134-136 as follows:

2
3 **15A NCAC 05H .1504 PIT AND TANK CONSTRUCTION STANDARDS**

4 (a) All pits, series of pits, tanks, and tank batteries shall be constructed and maintained to contain all Exploration
5 and Production (E & P) wastes from the drilling, completing, recompleting, producing, servicing, and plugging of an
6 oil or gas ~~well~~-well and shall be constructed, operated and maintained to protect public health, safety, and the
7 environment.

8 (b) The pit, series of pits, tanks, and tank batteries shall be installed and maintained in accordance with the
9 following requirements:

10 (1) the location of pit(s) and tanks(s) shall be in accordance with the minimum setbacks as required in
11 Rules .1601 and .1602 of this Subchapter, or in an approved variance pursuant to Rule .1603 of
12 this Subchapter;

13 (2) pits shall be located in cut material to the fullest extent possible. Pits shall be constructed adjacent
14 to the high wall for sloping well sites. If the pit cannot be constructed in cut material, at least 50
15 percent of the pit shall be constructed below original ground level to prevent failure of the pit dike.
16 Pit dikes constructed of fill material shall be compacted according to soil texture and moisture
17 content pursuant to 15A NCAC 02K .0208, which is incorporated by reference, including
18 subsequent amendments and editions;

19 (3) all pits and open tanks shall maintain a minimum of ~~two~~three feet of freeboard at all ~~times~~;times
20 and be sized so as to contain the projected volume of E&P waste along with the volume of
21 precipitation that would fall within a 25-year 24-hour storm event;

22 (4) if Paragraph (3) of this Rule is violated, the permittee shall notify the Department within two
23 hours of discovery and take the necessary actions to ensure the structural stability of the pit or
24 open tank, prevent spills, and restore the ~~two~~three feet of freeboard; and

25 (5) tank design, installation, and use shall comply with API Specifications 12B "Specification for
26 Bolted Tanks for Storage of Production Liquids," Specification 12D "Specification for Field
27 Welded Tanks for Storage of Production Liquids," ~~and~~ Specification 12F "Specification for Shop
28 Welded Tanks for Storage of Production Liquids," or Specification 12P "Specification for
29 Fiberglass Reinforced Plastic Tanks," which are incorporated by reference, including subsequent
30 amendments and editions. Specifications 12B, 12D, ~~and 12F~~12F, and 12P, published by API, may
31 be viewed online ~~at~~for no charge
32 at <http://publications.api.org/default.aspx> ~~http://www.api.org/publications-standards-and-~~
33 statistics/publications/government-cited-safety-documents.

34 (c) Any pit that contains E & P waste shall comply with the following standards:

35 (1) pits shall have an ~~upper~~primary and ~~lower~~secondary synthetic liner;

- (2) each synthetic liner shall have a coefficient of permeability no greater than 1×10^{-10} cm/sec and shall be at least 30 mils in thickness for polyvinyl chloride or at least 40 mils in thickness for high-density polyethylene;
- (3) each synthetic liner shall be designed, constructed and maintained so that the physical and chemical characteristics of the liner are not adversely affected by the E & P waste or by ultraviolet light pursuant to ASTM D5747/D5747M-08 (2013) e1 "Standard Practice for Tests to Evaluate the Chemical Resistance of Geomembranes to Liquids," which is incorporated by reference, including subsequent amendments and editions. This document, published by ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428, may be purchased at a cost of forty-two dollars (\$42.00) at <http://www.astm.org/Standards/D5747.htm>;
- (4) the synthetic liner shall be resistant to failures or damage during transportation, handling, installation, and use;
- (5) adjoining sections of synthetic liners shall be sealed together to prevent leakage and tested in accordance with the manufacturer's ~~directions~~ directions. Testing results shall be maintained by the permittee and provided to the Department upon request;
- (6) the synthetic liner shall be trenched and anchored into the top of the berm;
- (7) the pit shall be constructed with a leak-detection zone between the upper and lower synthetic liners designed to:
- (A) reduce the maximum predicted head acting on the lower membrane liner to less than one inch and to detect a leak within 24 hours;
 - (B) function without damaging the liners; and
 - (C) ~~designed to~~ allow permittee to monitor, record, and ~~remove~~ remove, or repair, any leakage within the zone.
- (8) the liner sub-base shall be smooth, uniform, and free from debris, rock, and other materials that may puncture, tear, cut, or otherwise cause the liner to fail. The liner sub-base and subgrade shall be capable of bearing the weight of the material above the liner without causing settling that may affect the integrity of the liner;
- (9) the pit shall have a perimeter berm that is a minimum of two feet in width along the crest of the berm, to prevent stormwater runoff from entering the pit; ~~and~~
- (10) the bottom of the pit shall be at least four feet above the seasonal high groundwater table and ~~bedrock~~ bedrock;
- (11) fencing in accordance with Rule .2006 of this Subchapter; and
- (12) netting in accordance with Rule .2006 of this Subchapter.
- (d) Monitoring and alarm technology shall be used to continuously verify the integrity of the primary pit liner. If the primary liner failure is discovered at any time, the pit shall be emptied and liner repaired prior to placing the pit back in service.

(e) The leak detection systems shall be monitored on a monthly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.

~~(d)(f)~~ If a liner becomes torn or otherwise loses integrity, the pit shall be managed to prevent the pit contents from leaking out of the pit, ~~or~~ the pit contents shall be removed and liner repaired prior to placing the pit back in service. Pit contents shall be disposed of in accordance with the Waste Management Plan.

~~(e)(g)~~ If the liner drops below the ~~two~~three feet of freeboard, the pit shall be managed to prevent the pit contents from leaking from the pit and the ~~two~~three feet of lined freeboard shall be restored.

~~(f)(h)~~ The permittee shall provide and maintain secondary containment for all ~~pits~~, tanks, and production equipment of sufficient capacity to contain 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater. Secondary containment structures shall be constructed of a material compatible with the fluids being stored and maintained to prevent loss of fluids.

~~(g)(i)~~ Tanks for the storage of produced hydrocarbons shall not be buried and shall contain the following components:

- (1) activated charcoal filters installed on vent stacks. Activated charcoal filters shall be maintained and replaced according to manufacturer's specifications;
- (2) low-pressure relief valves installed on vent stacks. Relief valves shall remain functioning at all times;
- (3) hatch lids shall have a functioning seal and shall be secured at all times unless the permittee is on-site; ~~and~~
- (4) lightning arrestors installed on each tank to comply with API Recommended Practice 2003, "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents," which is incorporated by reference, including subsequent amendments and editions. Recommended Practice 2003, published by API, may be viewed online ~~at~~for no charge at <http://publications-api.org/default.aspx-http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents;>
- (5) tanks shall be elevated such that leaks on their sides or bottoms are readily discernible; and
- (6) tanks shall be installed above a surface reasonably impermeable to materials that the tank will contain.

~~(h)(j)~~ The Commission may grant or deny a variance from any construction standard of this Rule. The applicant or permittee shall submit a request for a variance in accordance with Rule .0301 of this Subchapter. In granting or denying the request the Commission shall ~~consider factors such as~~ determine, at a minimum, that the applicant or permittee has met the following two factors:

- (1) the requested variance to deviate from the standards and rule will provide equal or greater protection of public health, welfare, and the environment; and
- (2) construction in accordance with the standards of this Rule is not technically or economically feasible.

1

2 *History Note:* *Authority 113-391(a)(5)c; 113-391(a)(5)d;*

3 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1601

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout the .1600 Rules, you use "at a minimum" or "minimum" often. As expressed earlier, generally "at least" or "at a minimum" is not used in Rule language, as rules set the minimum standards. However, I assume that you believe you need to retain this language in these Rules, correct?

In (a), what is "production facility equipment"? I note that Rule .0102(80) defines "production facility" to include "other equipment directly associated with production at oil or gas wells." Is production facility equipment something else?

Also in (a), so that I understand: when measuring setback distances, the measurement begins from the center of the wellhead, and from the edge of a pit, equipment, tank or tank battery? Does that apply for all measurements for setbacks or for just (a)? I am reading to apply to just (a), so I am curious how the setbacks in Rule .1602 are measured. This sentence may need to be its own Paragraph if it applies to all measuring.

I know that many of the terms used in (a) are defined in Rule .0102. However, what is a "watercourse" and "trout stream"? Does your regulated public know?

In (a)(3), line 13, insert a comma after "water." Also, is "wetlands" always plural? In Rule .0102, it is not.

In (a)(5), what if the well is intended for livestock consumption? Is that not included?

In (b), how does one find the map? Does your regulated public know?

In (c), I take it your regulated public knows what "downgrade," "surface water impoundment," "herbaceous vegetation," and "drainage area" means? And how will they know if the water serves as a municipal water supply? Is that the intent of sending the Department sending application notice to municipalities in .1307?

In (d), line 27, "Rule" should be capitalized. What purpose does this Paragraph serve?

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: December 1, 2014

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: Mining and Energy Commission

RULE CITATION: Rule 15A NCAC 05H .1601

RECOMMENDED ACTION:

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

COMMENT:

Staff notes that the Commission added Paragraph (c) to this Rule after publication, adding a requirement for setback from municipal drinking water supply. Staff does not believe this change is substantial when read with the rest of the Rule language, particularly (a)(5). Staff believes the Commission wrote the Rule in order to protect public drinking supplies and this clarifies the Rule.

Therefore, staff believes that this addition does not create an effect that could not be reasonably expected based on the proposed text of the Rule, and recommends approval of the Rule as submitted.

Amanda J. Reeder
Commission Counsel

1 15A NCAC 05H .1601 has been adopted with changes as published in 29:02 NCR 136 as follows:

2
3 **SECTION .1600 – WELL CONSTRUCTION AND COMPLETION**
4

5 **15A NCAC 05H .1601 SETBACK DISTANCES**

6 (a) Each oil or gas well, production facility, tank, tank battery, or pit shall comply with the following setback
7 distances as measured from the center of a wellhead and the edge of the pit, production facility equipment, tank, or
8 tank battery closest to the features below:

- 9 (1) occupied dwellings and high occupancy buildings: 650 feet;
10 (2) edge of a public road, highway, utility or railroad track right-of-way, or other right-of-way:
11 100 feet;
12 (3) a perennial stream, river, watercourse, pond, lake, or other natural and artificial bodies of
13 water including wetlands and trout stream: 200 feet;
14 (4) intermittent stream: 100 feet;
15 and
16 (5) a public or private water well intended for human consumption or household purpose:
17 650 feet.

18 (b) The permittee shall ensure a minimum setback of 100 feet from each oil or gas wellhead, tank, tank battery, or
19 pit to the edge of the mapped 100-year floodplain and floodway.

20 (c) The permittee shall ensure a minimum setback of 1,500 feet downgrade from each oil or gas wellhead, tank,
21 tank battery, pit, or production facility to the edge of any surface water impoundment that serves as a municipal
22 drinking water supply or to the edge of any river having a drainage area greater than 140 square miles and upstream
23 of a municipal drinking water supply point. For surface water impoundments, the edge shall be measured from the
24 nearest point of the most landward limit of the normal water level or the rooted herbaceous vegetation. For any river
25 upstream of a municipal drinking water supply point, the edge shall be measured from the nearest, most landward
26 limit of the bank or the rooted herbaceous vegetation.

27 (d) Nothing in this rule prohibits a local government exercising its existing authority consistent with G.S. 113-
28 415.1.

29
30 *History Note: Authority G.S. 113-391(a)(5)d;*
31 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1602

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), from what point are these distances measured? The edge of the tank or pit?

In (b), as I understand the definition of "tank battery", it is a series of connected tanks. Are you saying here that all tanks in the battery must be five feet from each other?

In (d), what are "gathering lines"?

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: December 1, 2014

1 15A NCAC 05H .1602 has been adopted as published in 29:02 NCR 136 as follows:

2
3 **15A NCAC 05H .1602 PRODUCTION FACILITY SAFETY SETBACK DISTANCES**

4 (a) A pit, tank, or tank battery shall be a minimum of 75 feet from any wellhead.

5 (b) A tank shall be a minimum of five feet from another tank.

6 (c) A mechanical separator or compressor shall be located the minimum distance from any of the following:

7 (1) a wellhead: 50 feet; and

8 (2) a tank: 75 feet.

9 (d) All production facility equipment, excluding gathering lines, whose contents may be heated shall be located a
10 minimum distance of 75 feet from a tank or a wellhead.

11
12 *History Note: Authority G.S. 113-391(a)(5)d;*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1603

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(1), what are "potential adverse impacts" and who determines this? The applicant or the Commission?

How can the applicant or permittee have met (a)(2)? You are requiring that the permittee meet the factor before you will grant the waiver. I am reading this Subparagraph to say that the Commission will set site-specific measures for the applicant or permittee to follow. Do you mean in (a)(2) "the variance includes site-specific mitigation measures?"

In (b), (b)(2) should not be in the list, as it is not something the Commission is going to require in issuing a waiver, as the Commission will not waive this. Thus, I suggest bringing the language in (b)(2) to the left margin.

"The Commission shall require... dwelling:

(1) the wellhead, ... occupied dwelling; and

(2) freshwater...dwelling.

The Commission shall not grant a variance for any E&P waste pit setback from an occupied dwelling."

Also, where is this setback found? Is it the pit setback in Rule .1601(a)(1)?

In (c), line 21, insert a comma after "tank"

In (c), line 22, I do not read Rule .1601 to require the waters to be wholly contained with the drilling unit. Where do you see that requirement in the Rule?

On line 25, replace "provides" with "shall provide"

For (c)(3), please note my thoughts on (b)(2) above. I suggest making conforming changes here.

In (c)(4), Page 2, line 1, delete "or" and state "tank, tank battery, or pit..."

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In (d)(1), what are “flow lines,” “separators,” and “sand traps”? I take it your regulated public understands this?

In (d)(2), is this part of the green completion? Or is this additional? I ask because you state in (d) that green completions are required, so it reads as if this list is part of the green completion. If the list contains additional requirements, please state that in (d). “The Commission shall require green completions and the following in any approved variance:”

In (d)(3), what is “flowback flaring”?

In (d)(3)(A), line 7, what is “adequately sized”? As determined by whom?

In (d)(2)(C), who determines the sufficiency of the supply?

In (e), as I understand it, this is something the Commission will consider in the request, but the Commission will not automatically grant a variance because the surface owner consented?

Further, will the Commission require any additional site-specific measures in its variance, or will those be treated as a contract between parties?

I note that you refer to (e)(2) and (3) being filed with the Register of Deeds. However, G.S. 113-423 requires all leases to be recorded, so why isn’t that included in (e)(1), as well?

(g) Recordation of Leases.--Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property, including assignments of such leases, shall be recorded within 30 days of execution in the register of deeds office in the county that the land that is subject to the lease is located.

Why are you anticipating that (e)(3) will be filed the Register of Deeds? Because it is a use agreement separating the oil or gas from property?

In (f), line 32, do you mean to reference Paragraph (e) instead of (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: December 1, 2014

1 15A NCAC 05H .1603 has been adopted with changes as published in 29:02 NCR 136-137 as follows:

2
3 **15A NCAC 05H .1603 VARIANCE FOR SETBACKS**

4 (a) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a
5 tank or tank battery, and a pit from an occupied dwelling required by Rule .1601 of this Section. The variance, if
6 granted, shall provide equal or greater protection of public health, safety, and the environment. Variances from
7 setbacks established for high occupancy buildings are prohibited. The Commission shall ~~consider the following~~
8 ~~factors~~ determine that the applicant or permittee has met the following two factors in granting or denying variances:

- 9 (1) the variances shall include additional measures that eliminate, minimize, or mitigate potential
10 adverse impacts to public health, welfare, and the environment, such as the use of non-diesel fuels
11 with lower emissions; and
12 (2) the Commission shall require site-specific mitigation measures to address location specific
13 considerations.

14 (b) The Commission shall require the following conditions in any approved variance from an occupied dwelling:

- 15 (1) the wellhead, tank or tank battery, or production facility shall be a minimum of 400 feet from an
16 occupied dwelling;
17 (2) no variance is allowed for any E & P waste pit setback from an occupied dwelling; and
18 (3) freshwater storage pits, reserve pits to drill surface casing, and emergency pits, shall be a
19 minimum of 400 feet from an occupied dwelling.

20 (c) An applicant or permittee may request a variance to reduce the setback distances for an oil or gas wellhead, a
21 tank or tank battery from an intermittent stream, or a pond, or other natural or artificial water body, that is not a
22 water of the State, wholly contained within the drilling unit required by Rule .1601 of this Section. The
23 Commission shall determine that the measures proposed to eliminate, minimize or mitigate potential adverse
24 impacts to public health, welfare and the environment are adequate to address all the risks at the well site and justify
25 the reduction of setback distances as requested in the variance and that the variance, if granted, provides equal or
26 greater protection of public health, safety, and the environment. ~~The Commission shall consider the following~~
27 ~~factors in granting or denying variances:~~ variance shall include the following conditions:

- 28 (1) ~~the variances shall include~~ additional measures that eliminate, minimize, or mitigate potential
29 adverse impacts to public health, welfare, and the environment, such as the use of secondary or
30 backup containment measures;
31 (2) ~~the measures proposed to eliminate, minimize or mitigate potential adverse impacts to public~~
32 ~~health, welfare and the environment are adequate to address all the risks at the well site and justify~~
33 ~~the reduction of setback distances as requested in the variance;~~
34 (3) the oil or gas wellhead, freshwater storage pit, tank, tank battery, or production facility shall be a
35 minimum of 50 feet from any intermittent stream, pond, or other natural or artificial water body,
36 that is not a water of the State, wholly contained within the drilling unit;
37 (4) no variance is allowed for any E & P waste pit setback from an intermittent stream; and

- 1 ~~(5)~~(4) oil or gas wellheads, tanks or a tank battery, or pits less than 650 feet from, and up-gradient of, a
2 surface water body shall use tertiary containment, such as an earthen berm.
- 3 (d) The Commission shall require green completions in any approved variance:
- 4 (1) flow lines, separators, and sand traps capable of supporting green completions shall be installed;
- 5 (2) uncontrolled venting shall be prohibited; and
- 6 (3) temporary flowback flaring and oxidizing equipment shall include the following:
- 7 (A) adequately sized equipment to handle one and one half times the largest flowback volume
8 of gas experienced within a 10-mile radius;
- 9 (B) valves and porting available to divert gas to temporary equipment or to permanent flaring
10 and oxidizing equipment; and
- 11 (C) auxiliary fuel with sufficient supply and heat to sustain combustion or oxidation of the
12 gas mixture when the mixture includes noncombustible gases.
- 13 (e) An applicant or permittee may submit a surface use agreement from a surface landowner as justification to
14 request a variance to setback distances for the wellheads, tank or tank battery, and pits from occupied dwellings.
15 The surface use agreement may include additional site-specific mitigation measures. The surface use agreement
16 shall include written consent of the landowner, which may be provided by any of the following:
- 17 (1) a copy of an original lease agreement text that provides for the reduction of the distance of the
18 location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from an occupied
19 dwelling;
- 20 (2) a copy of a deed severing the oil and gas mineral rights, as applicable, from the owner's parcel of
21 land as filed with the county Registrar of Deeds that expressly provides for the reduction of the
22 distance of the location of an oil or gas wellhead, well pad, tank battery, or pit, as applicable, from
23 an occupied dwelling; or
- 24 (3) a copy of a written surface use agreement signed by the property owner that consents to the
25 proposed location of an oil or gas wellhead, well pad, tank, tank battery, or pit(s), as applicable.
26 An applicant or permittee may submit a copy of a written statement filed with the county Register
27 of Deeds that expressly provides for the reduction of the distance of the location of an oil or gas
28 wellhead, well pad, tank battery, or pit, as applicable, from an occupied dwelling in lieu of a copy
29 of a written surface use agreement.
- 30 (f) Variance requests shall be submitted in accordance with Rule .0301 of this Subchapter. In addition to the
31 information required by Rule .0301 of this Subchapter, any permittee seeking to use surface use agreement as a basis
32 for a variance shall submit a copy of the surface use agreement containing the information in Paragraph (c) of this
33 Rule.

34
35 *History Note: Authority G.S. 113-391(a)(5)d;*
36 *Eff. Pending Legislative Review.*
37

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1604

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), state "The Commission incorporates by reference, ..."

*I checked the URL and it appears to no longer exist. Is this the document you are referring to:
<http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/epa816r14001.pdf>*

If so, please update the URL.

In (b), I take it your regulated public knows what "subsurface" means?

In (c), what are these additional chemicals? I see that benzene and xylene are in gasoline, and toluene is a benzene derivative. Is this part of diesel fuel?

On line 18, do you mean "shall" instead of "may"?

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: December 1, 2014

1 15A NCAC 05H .1604 has been adopted with changes as published in 29:02 NCR 137 as follows:

2
3 **15A NCAC 05H .1604 PROHIBITED SUBSTANCES**

4 (a) The Commission shall incorporate by reference, including subsequent amendments and editions, the "Permitting
5 Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels – Draft: Underground Injection
6 Control Program Guidance #84," published by the United States Environmental Protection Agency. Copies of this
7 document may be obtained online ~~at~~for no charge at:
8 <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/upload/hfdieselfuelsguidance.pdf>.

9 (b) Any substance identified by one or more of the following Chemical Abstract Service Registry Numbers listed in
10 the United States Environmental Protection Agency's "Permitting Guidance for Oil and Gas Hydraulic Fracturing
11 Activities Using Diesel Fuels" shall not be used in the subsurface:

- 12 (1) 68334-30-5, Primary Name: Fuels, diesel;
13 (2) 68476-34-6, Primary Name: Fuels, diesel, Number 2;
14 (3) 68476-30-2, Primary Name: Fuel oil Number 2;
15 (4) 68476-31-3, Primary Name: Fuel oil, Number 4; and
16 (5) 8008-20-6, Primary Name: ~~Kerosene~~; and Kerosene.
17 ~~(6) 68410-00-4, Primary Name: Distillates (petroleum), crude oil.~~

18 (c) Drilling fluids and hydraulic fracturing fluids may not be formulated to include benzene, toluene, ethylbenzene,
19 or xylene.

20
21 *History Note: Authority G.S. 113-391(a)(5)g;*
22 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1605

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 6, what do you mean by "previously used casing"? Are people buying used equipment?

On Page 1, lines 10 and 27 and Page 2, lines 18, 25 and 31, delete "published by API" so that it reads, "This document may be viewed..."

In all incorporations by reference, when I tried the URL, it did not work because of a page reorganization. Please include a correct URL.

In (a)(2), reasonably anticipated by whom?

In (b)(1), as I read this, I think it would read better to end the sentence on line 36 after "psi." Then state "The pressure shall be calculated..." End that sentence after "0.2" Then state, "The pressure test shall not exceed 1,500 psi;:"

On Page 2, in (b)(2), I believe you should separate these thoughts. I suggest you make (b)(2) the duration of the test.

Then make (b)(3) a combination of (b)(2) and (3):

"(3) If the pressure drops by more than 10 percent, the casing string failed to meet integrity requirements. The permittee shall not drill the cement plug or stimulate oil or gas wells until the condition is corrected; or"

Then change (4) to be parallel with (3), " If the pressure drops by no more than 10 percent, the casing string met the integrity requirements."

If you do this, then I believe you will end (b)(2) with an "and" and (b)(3) with an "or," as (b)(1) and (2) are always required and the result will be either (3) or (4)

In (d), does your regulated public know what "critical zones" and "lost circulation zones" are?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

In (d)(1) and (2), I see “centralizer” is defined in Rule .0102. But what are “bow-spring” and “rigid” centralizers? I take it your regulated public understands these terms?

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: December 1, 2014

1 15A NCAC 05H .1605 has been adopted with changes as published in 29:02 NCR 137-138 as follows:

2
3 **15A NCAC 05H .1605 CASING AND EQUIPMENT REQUIREMENTS**

4 (a) All casing and tubing installed in oil or gas wells shall be steel, steel alloy, or other material that has been
5 manufactured to meet or exceed the American Petroleum Institute (API) standards. All casing and tubing material
6 shall be manufactured according to API standards; all previously used casing shall comply with design parameters
7 for the oil or gas well, pass a hydrostatic test, a drift test, and a wall thickness test pursuant to API Specification 5CT
8 "Specification for Casing and Tubing," and API Specification 5B "Specification for Threading, Gauging, and Thread
9 Inspection of Casing, Tubing, and Line Pipe Threads," which are incorporated by reference, including subsequent
10 amendments and editions. These documents, published by API, may be ~~purchased at a cost of two hundred thirty-~~
11 ~~seven dollars (\$237.00) at <http://www.techstreet.com/api/products/1802047> and one hundred eighteen dollars~~
12 ~~(\$118.00) at <http://www.techstreet.com/api/products/1555125> respectively, or by mail at Techstreet, 3916 Ranchero~~
13 ~~Drive, Ann Arbor, MI 48108.~~ viewed online for no charge at [http://www.api.org/publications-standards-and-](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents)
14 statistics/publications/government-cited-safety-documents. The casing shall be marked to verify the test results and
15 the permittee shall provide a copy of the test results to the Department before the casing is installed in the wellbore.

- 16 (1) Casing shall be designed to have a minimum internal yield pressure rating that is 20 percent
17 greater than the maximum anticipated pressure to which the casing may be subjected to during
18 drilling, completion, or production operations.
- 19 (2) Where subsurface reservoir pressure is unknown and cannot be reasonably anticipated, the
20 permittee shall assume a pressure gradient of 0.433 pounds per square inch (psi) per foot in a fully
21 evacuated hole, under shut-in conditions.
- 22 (3) All casing and tubing connections shall be torqued to the manufacturer's specifications and shall
23 comply with API Recommended Practice 5A3 "Recommended Practice on Thread Compounds for
24 Casing, Tubing, Line Pipe, and Drill Stem Elements," and API Recommended Practice 5C5
25 "Recommended Practice on Procedures for Testing Casing and Tubing Connections," which are
26 incorporated by reference, including subsequent amendments and editions. These documents,
27 published by API, may be ~~purchased at a cost of one hundred forty five dollars (\$145.00) at~~
28 ~~<http://www.techstreet.com/api/products/1657246> and one hundred sixty three dollars (\$163.00) at~~
29 ~~<http://www.techstreet.com/api/products/1087582> respectively, or by mail at Techstreet, 3916~~
30 ~~Ranchero Drive, Ann Arbor, MI 48108.~~ viewed online for no charge at
31 [33 \(b\) The permittee shall verify casing integrity by pressure testing each cemented casing string greater than 200 feet
34 in length in accordance with the following test method:](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-</u>
32 <u>documents.</u></p></div><div data-bbox=)

- 35 (1) test the casing string, prior to drilling the cement plug or stimulating the oil or gas well, at a
36 minimum pump pressure in psi, that is calculated by multiplying the length of the casing string, in
37 feet, by 0.2; but in no event shall the pressure test exceed 1,500 psi;

- (2) this pressure test shall be conducted for 30 minutes; if the pressure has dropped by more than 10 percent, then the casing string has failed to meet the integrity requirements;
- (3) the permittee shall not drill the cement plug or stimulate the oil or gas well until the condition has been corrected; and
- (4) the casing string has met the integrity requirements if the pressure has dropped by no more than 10 percent of testing pressure.
- (c) The wiper plug and float collar assembly shall be set with a minimum cement displacement pressure of 500 psi.
- (d) All casing shall be centralized to allow the cement to fill the annular space to the surface in order to isolate critical zones including: aquifers, flow zones, voids, lost circulation zones, coal layers, and hydrocarbon production zones. Casing strings shall comply with API Recommended Practice 10D-2 "Recommended Practice for Centralizer Placement and Stop Collar Testing," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be ~~purchased at a cost of seventy seven dollars (\$77.00) at <http://www.techstreet.com/api/products/1173247> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.~~ viewed online for no charge at <http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents>.
- (1) All bow-spring centralizers shall comply with API Specification 10D "Specification for Bow-Spring Casing Centralizers," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be ~~purchased at a cost of eighty nine dollars (\$89.00) at <http://www.techstreet.com/api/products/957236> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.~~ viewed online for no charge at <http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents>.
- (2) All rigid centralizers shall comply with API Technical Report 10TR4 "Considerations Regarding Selection of Centralizers for Primary Cementing Operations," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be ~~purchased at a cost of sixty one dollars (\$61.00) at <http://www.techstreet.com/api/products/1568067> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.~~ viewed online for no charge at [Http://api.org/publications-standards-and-statistics/publications/government-cited-safety-documents](http://api.org/publications-standards-and-statistics/publications/government-cited-safety-documents).
- (e) All packers and bridge plugs shall comply with API Specification 11D1 "Packers and Bridge Plugs," which is incorporated by reference, including subsequent amendments and editions. This document, published by API, may be ~~purchased at a cost of ninety eight dollars (\$98.00) at <http://www.techstreet.com/api/products/1634486> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108.~~ viewed online for no charge at <http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents>.

*History Note: Authority G.S. 113-391(a)(5)c;
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1606

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), please check and update the URL for the API document.

In (b), what are the cement slurry design parameters? Are they contained in the standards in (a)?

In (c), what is "channeling"? I take it your regulated public knows this term?

In (d), line 18, delete the comma after "permittee"

Also in (d), so I understand, the cement here must meet the API standard? It cannot meet the ATSM standard?

In (e), delete the commas after "require" and "condition" on line 22. But please more guidance on when this will occur.

In (f), I understand these Rules will be read together in constructing the cement, but I think that including at least a reference to (f) in Rule .1605(b) would be helpful.

In the History Note, as I read this Rule, you are addressing G.S. 113-391(a)(5)c, which states the Commission shall adopt rules:

c. Appropriate construction standards for oil and gas wells, which shall address the additional pressures of horizontal drilling and hydraulic fracturing treatments. These rules, at a minimum, shall include standards for casing and cementing sufficient to handle highly pressurized injection of hydraulic fracturing fluids into a well for purposes of fracturing bedrock and extraction of gas, and construction standards for other gas production infrastructure, such as storage pits and tanks.

If that my thought is correct, please make the citation 113-391(a)(5)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: December 1, 2014

1 15A NCAC 05H .1606 has been adopted with changes as published in 29:02 NCR 138-139 as follows:

2
3 **15A NCAC 05H .1606 CEMENTING STANDARDS**

4 (a) All cement pumped into the wellbore shall consist of cement that is manufactured and tested pursuant to API
5 Specification 10A "Specification for Cements and Materials for Well Cementing" or the American Society for
6 Testing and Materials (ASTM) Standard Specification "C150/C150M Standard Specification for Portland Cement,"
7 which are incorporated by reference, including subsequent amendments and editions. Specification 10A, published
8 by API, may be ~~purchased at a cost of one hundred forty-five dollars (\$145.00) at~~
9 ~~<http://www.techstreet.com/api/products/1757666> or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI~~
10 ~~48108.~~ viewed online for no charge at [http://www.api.org/publications-standards-and-](http://www.api.org/publications-standards-and-statistics/publications/government-cited-saftey-documents)
11 [statistics/publications/government-cited-saftey-documents](http://www.api.org/publications-standards-and-statistics/publications/government-cited-saftey-documents). Specification C150/C150M, published by ASTM, may
12 be purchased at a cost of forty-one dollars (\$41.00) at <http://www.astm.org/Standards/C150.htm> or by mail at 100
13 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

14 (b) The permittee, or an authorized representative of the permittee, shall be on site for all cement mixing and
15 placement operations to monitor the cement mixing equipment and to ensure that cement slurry design parameters
16 are followed.

17 (c) Cement shall be pumped at a rate and in a flow regime that minimizes channeling of the cement in the annulus.

18 (d) Cement mixtures for which published performance data are not available shall be tested by the permittee, or the
19 service company. The cement test results shall be included with the Form 2 – Oil or Gas Well Permit Application
20 confirming that the cement mixture meets API Specification 10A "Specification for Cements and Materials for Well
21 Cementing."

22 (e) The Department may require, by permit condition, a specific cement mixture to be used in any oil or gas well.

23 (f) All cement shall reach a compressive strength of at least 500 pounds per square inch (psi) prior to conducting the
24 casing integrity test required by Rule .1605 of this Section.

25
26 *History Note: Authority G.S. 113-391(a)(5).*

27 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1607

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), when will the Department establish this conditions and what might they be?

In (b), what is the contact information for the Department?

In (b) and (c), what is the anticipated timing for these notifications? I ask because you require a call or email 48 hours before beginning, but sending the form within five days. Five days from what? The call/email or beginning the process? I ask especially in light of (c), which states the Department wants to be present. Is the email or call supposed to include everything in the Form? If so, you need to state that.

In (b)(3) and (c)(3), will the ingress and egress point not be the same?

In (d), I see you are requiring steel pipes for mousehole or ratholes. Since you amended the definition of "casing" in Rule .0102 to remove a requirement for steel pipes, do you want to amend the definitions of those terms in Rule .0102 to require steel pipes? Or is this only applicable for this Rule?

In (e)(1), line 29, please change "is" to "which" since the noun is "standards."

In (f), where does the measuring begin? At the edge or center? Does your regulated public know?

In (g), I read the term "conditioned" on line 34 to be defined on line 35 as "circulating the total volume of drilling fluid two times"?

On line 34, what do you mean by "adequate"? Does your regulated public know?

In (h), Page 2, line 1, what is "reciprocated"? In (i), line 3, what is "crowning"?

Please insert a cross reference to the Well Site Development Plan on line 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: December 1, 2014

1 15A NCAC 05H .1607 has been adopted as published in 29:02 NCR 139 as follows:
2

3 **15A NCAC 05H .1607 WELL INSTALLATION**

4 (a) The Department may establish, by permit conditions, additional oil or gas well construction standards that
5 provide greater protection of human health, safety, and the environment.

6 (b) The permittee shall notify the Department at least 48 hours via telephone or email prior to spudding the oil or
7 gas well. The permittee shall submit Form 11 – Required Notifications to the Department, by mail, email, or fax
8 within five calendar days and shall include the following information:

9 (1) the permittee's name, address, telephone number, fax number, and email address;

10 (2) the county and nearest city or town where the oil or gas well is located;

11 (3) the property street address or nearest address to the ingress or egress point leading from a public
12 road to the well pad;

13 (4) the API number, the lease name, and the oil or gas well name and number; and

14 (5) the scheduled date and approximate time for spudding the oil or gas well.

15 (c) The permittee shall notify the Department at least 48 hours prior to setting and cementing any casing string via
16 telephone or email, in order to allow the Department to participate in pre-job safety and procedural meetings,
17 independently test cement mix water, evaluate casing condition, and observe and document the execution of the
18 cementing operation. The permittee shall submit Form 11 – Required Notifications to the Department, by mail,
19 email, or fax within five calendar days and shall include the following information:

20 (1) the permittee's name, address, telephone number, fax number, and email address;

21 (2) the county and nearest city or town where the oil or gas well is located;

22 (3) the property street address or nearest address to the ingress or egress point leading from a public
23 road to the well pad;

24 (4) the API number, the lease name, and the oil or gas well name and number; and

25 (5) the scheduled date and approximate time for setting and cementing any casing string.

26 (d) If a mousehole or rathole is used, it shall be constructed of liquid-tight steel pipe with a welded-basal plate.

27 (e) A wellbore shall be drilled using air, water, water-based drilling fluid, or a combination thereof until all fresh
28 groundwaters have been isolated.

29 (1) Drilling fluids that cause a violation of standards established in 15A NCAC 02L, which is
30 incorporated by reference including subsequent amendments, shall not be used until all
31 groundwaters have been isolated.

32 (2) Only freshwaters shall be used for mixing all drilling fluids.

33 (f) A wellbore shall be drilled to provide a minimum of a one-inch annulus, as measured from the casing.

34 (g) The wellbore shall be conditioned prior to cementing to ensure an adequate cement bond between the casing and
35 the formation by circulating the total volume of drilling fluid in the wellbore a minimum of two times. The drilling
36 fluid rheology shall be adjusted to optimize conditions for displacement of the drilling fluid and to ensure that the
37 wellbore is stable.

1 (h) All casing strings shall be rotated and reciprocated during the emplacement of cement to circulate the cement
2 surrounding the casing string to fill the annulus.

3 (i) Stormwater shall be prevented from infiltrating the wellbore by crowning the location around the wellbore to
4 divert fluids as approved in the Well Site Development Plan.

5
6 *History Note: Authority G.S. 113-391(a)(5)c;*
7 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1608

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, I take it your regulated public knows what "potential drilling hazards" are?

In (b), line 6, should the language read, "bottom to top, with return to surface."? (I note it states that in Rule .1609)

In (b), if the cement does not return to the surface, do you have a deadline for the permittee to notify the Department?

I take it in the consultation here will require a case-by-case determination of the best method for emplacement?

In (c)(2), should it read "groundwater," rather than "groundwaters"? And what are "groundwater zones"?

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: December 1, 2014

1 15A NCAC 05H .1608 has been adopted as published in 29:02 NCR 139 as follows:
2

3 **15A NCAC 05H .1608 WELL INSTALLATION FOR CONDUCTOR CASING**

4 (a) Conductor casing design and setting depth shall be based on the geological conditions at the wellbore location,
5 including the presence or absence of hydrocarbons and potential drilling hazards.

6 (b) Conductor casing shall be cemented from bottom to top. If cement does not return to the surface, the permittee
7 shall consult with and obtain approval from the Department to determine the appropriate method to emplace cement.

8 (c) Conductor casing shall:

9 (1) stabilize unconsolidated sediments;

10 (2) isolate and seal off shallow groundwaters zones;

11 (3) isolate any shallow drilling hazards, hydrocarbon bearing zones, or coal formations;

12 (4) provide a stable platform for oil or gas well construction; and

13 (5) provide solid structural anchorage for a diverter system in air drilling operations.

14 (d) A mechanical or cement seal shall be installed at the surface to block downward migration of surface pollutants.
15

16 *History Note: Authority G.S. 113-391(a)(5)c;*
17 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1609

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), what is "competent"?

Also, I note that "surface casing" is defined in Rule .0102 states to placement in "formations." Is "bedrock" the same as "formations"?

On line 6, who determines if the fluids or gases could negatively impact the quality?

In (b), line 7, please insert a comma after "top" And is the term "return to surface" or "return to the surface"? (I ask because of the language in the next sentence.)

In (d), who determines if the depth is "sufficient to ensure"?

In (e), what are correlation logs?

On line 19, state "to submit to the Department with the Form..."

In (g), what is "heaving shale"? I take it your regulated public knows this?

In (h), "formation integrity test" is in lowercase letters; however, in Rule .0102(47), the term is in capital letters. Which is correct? Please be consistent.

On line 24, delete the comma after "casing."

On line 25, insert a comma after "50 feet."

On line 27, delete "published by API," The sentence will

Please check and update the URL on lines 28 and 29.

I am not familiar with the FIT; however, on line 29, will the FIT fail, or will the pressure fail the FIT?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

On lines 30 and 31, there is no deadline for the permittee to consult? They just can't continue operations until it is done?

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: December 1, 2014

1 15A NCAC 05H .1609 has been adopted with changes as published in 29:02 NCR 139-140 as follows:

2
3 **15A NCAC 05H .1609 WELL INSTALLATION FOR SURFACE CASING**

4 (a) Surface casing shall be set into competent bedrock to a depth of at least 100 feet below the base of the deepest
5 groundwaters but above any hydrocarbon strata containing fluids or gases that could negatively impact the quality of
6 the cement or proper functioning of the oil or gas well.

7 (b) Surface casing shall be cemented from bottom to ~~top~~ top with return to surface. If cement does not return to the
8 surface, the permittee shall consult with and obtain approval from the Department to determine the appropriate
9 method to emplace cement.

10 (c) Surface casing shall:

11 (1) isolate and seal off shallow groundwaters;

12 (2) provide a stable platform for oil or gas well construction; and

13 (3) contain pressures and fluids from subsequent ~~drilling, completion, and production~~
14 ~~operations~~ drilling operations to the next planned casing setting point.

15 (d) The surface casing shall be set into competent bedrock at a depth sufficient to ensure the blowout preventer
16 (BOP) can contain any formation pressure that may be encountered when drilling the next section of the wellbore
17 below the base of the surface casing string.

18 (e) The permittee shall collect correlation logs, core samples, and drill cutting samples to identify groundwaters,
19 zones of formational instability, and competent bedrock to be submitted to the Department with Form 12 – Well
20 Drilling Report required in Rule .1623 of this Section.

21 (f) Surface casing shall be cemented before drilling through any hydrocarbon-bearing stratum.

22 (g) If geologic hazards such as heaving shale, abnormal pressure, annular flow or other potential flow zones are
23 encountered, drilling shall stop, and casing shall be set and cemented before drilling continues.

24 (h) A formation integrity test (FIT) shall be completed after drilling out below the base of the surface casing, into at
25 least 20 feet, but not more than 50 feet of new formation. The FIT shall be completed in accordance with API
26 Standard 65-Part 2 "Isolating Potential Flow Zones During Well Construction," which is incorporated by reference,
27 including subsequent amendments and editions. This document, published by API, may be viewed online ~~at~~ for no
28 charge at ~~http://publications.api.org/default.aspx~~ [http://www.api.org/publications-standards-and-](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents)
29 statistics/publications/government-cited-safety-documents. If the FIT fails, the permittee shall consult with the
30 Department to determine remedial or corrective actions necessary before operations continue.

31
32 *History Note: Authority G.S. 113-391(a)(5)c;*
33 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1610

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Will Item (2) be used to address issues in Rule .1609(g)?

In Item (3), I take it your regulated public knows what is meant by "zones of formational instability"? And please note my earlier question about "competent bedrock."

On line 14, please state "bedrock to submit to the Department with the submission of the Form 12..."

In Item (4), line 17, how does one know "potential" flow zones?

On line 20, state "This document may be viewed..." And please check the URL.

In Item (5), is the CBL a test?

In Item (6), is there a deadline to submit the plan of remediation, or is it just that the permittee cannot continue operations until it is done? Also, I note this appears to be the first Rule to require a plan, rather than a consultation to determine the appropriate action. Is it different?

In Item (7), since you already incorporated this standard by reference in Item (4), you do not need to do so again.

Also in Item (7), does the FIT fail, or does the pressure fail the FIT?

On Page 2, is there no set deadline for the consultation in Item (7)?

In Item (8), line 3, should it read, "the permittee shall identify the top of the cement..."

In Item (8), line 4, what are "fluid returns"?

On line 5, who determines whether the coverage is "inadequate"?

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: December 1, 2014

1 15A NCAC 05H .1610 has been adopted with changes as published in 29:02 NCR 140 as follows:

3 **15A NCAC 05H .1610 WELL INSTALLATION FOR INTERMEDIATE CASING**

4 Intermediate casing shall isolate groundwaters that have not been isolated by the surface casing and isolate flow
5 zones, lost circulation zones, or other geologic hazards in accordance with the following:

- 6 (1) if used to isolate groundwaters, the casing shall be set into competent bedrock to a depth of at least
7 200 feet below the deepest groundwaters. The casing string shall be cemented from the bottom to
8 a minimum of 100 feet above the top of the shallowest groundwaters;
- 9 (2) if used to mitigate ~~unanticipated~~ geologic hazards, such as heaving shale, abnormal pressure,
10 annular flow or other potential flow zones, the casing shall be set to a depth appropriate to mitigate
11 the hazard. The casing string shall be cemented from across such hazards and from the bottom to
12 200 feet above the base of the previous casing string;
- 13 (3) the permittee shall collect correlation logs, core samples, and drill cutting samples to identify
14 groundwaters, zones of formational instability, and competent bedrock to be submitted to the
15 Department with the submission of Form 12 – Well Drilling Report as required in Rule .1623 of
16 this Section;
- 17 (4) if the intermediate wellbore penetrates one or more potential flow zones, the cement used to
18 control annular gas migration from the potential flow zones shall be designed to comply with API
19 Standard 65-Part 2 "Isolating Potential Flow Zones During Well Construction," which is
20 incorporated by reference, including subsequent amendments and editions. This document,
21 published by API, may be viewed online ~~at~~for no charge
22 at ~~http://publications.api.org/default.aspx~~http://api.org/publications-standards-and-
23 statistics/publications/government-cited-safety-documents;
- 24 (5) a cement bond log (CBL) for the intermediate casing string shall be completed after cement has
25 reached a compressive strength of 500 psi to demonstrate the cementing operation was completed
26 in accordance with this Rule and to locate casing collars and centralizers. Drilling shall not
27 commence until the CBL is complete;
- 28 (6) if there is a failure to isolate groundwater zones, the permittee shall submit a plan of remediation
29 to the Department for approval and implement such plan by performing remedial operations prior
30 to continuing drilling operations. If the deficiencies cannot be remedied, the oil or gas well shall
31 be plugged and abandoned in accordance with Rule .1618 of this Section;
- 32 (7) a formation integrity test (FIT) shall be completed after drilling out below the base of the
33 intermediate casing, into at least 20 feet, but not more than 50 feet of new formation. The FIT
34 shall be completed in accordance with API Standard 65-Part 2 "Isolating Potential Flow Zones
35 During Well Construction," which is incorporated by reference, including subsequent amendments
36 and edition. This document, published by API, may be viewed online ~~at~~for no charge
37 at ~~http://publications.api.org/default.aspx~~http://api.org/publications-standards-and-
38 statistics/publications/government-cited-safety-documents. If the FIT fails, the permittee shall

consult with the Department to determine remedial or corrective actions necessary before operations continue; and

- (8) the permittee shall identify the top of cement and submit a plan of remediation to the Department for approval and implementation if ~~operations~~operational parameters, such as fluid returns, lift pressure, and displacement indicate inadequate coverage of any flow zones, lost circulation zones, or any strata containing groundwater.

*History Note: Authority G.S. 113-391(a)(5)c;
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1611

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), is the installation of production casing the final requirement to establish the production zone? If not, then how does the first sentence relate to the second?

On line 6, what is a "production liner"?

I think that the language beginning on line 6, "Installation of production casing..." should be its own Paragraph (b). If you do that, please be sure to change the cross reference on line 6.

In (a)(1), what is "logging"? Creating a log?

In (a)(2), line 11, "centralizer" is defined in Rule .0102, but "collars" is not. What is that?

In (a)(3), is there a deadline to submit the plan of remediation?

Also in (a)(3), who will determine the deficiencies cannot be remedied? The permittee, Department or both?

In (c), who will determine the "maximum anticipated pressure"?

On line 29, I'd state "verified by passing a subsequent..."

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: December 1, 2014

1 15A NCAC 05H .1611 has been adopted as published in 29:02 NCR 141 as follows:
2

3 **15A NCAC 05H .1611 WELL INSTALLATION FOR PRODUCTION CASING**

4 (a) Production casing shall be installed and cemented from the bottom to 200 feet above the base of the previous
5 casing string. Notwithstanding the foregoing, a production zone may be completed using a non-cemented production
6 liner in accordance with Paragraph (b) of this Rule. Installation of production casing or installation of production
7 liners shall comply with the following:

8 (1) logging of the wellbore shall be performed prior to installation of the production casing to measure
9 and evaluate the rock sections;

10 (2) a CBL shall be completed after the cement has reached a compressive strength of 500 psi to verify
11 the cementing operation was completed and to locate the casing collars and centralizers. Well
12 completion shall not commence until the CBL has been completed;

13 (3) the permittee shall submit a plan of remediation to the Department for approval if the cement
14 evaluation indicates a failure to isolate groundwater zones, and if the plan is approved, implement
15 such plan by performing remedial operations prior to continuing drilling operations. If the
16 deficiencies cannot be remedied, the oil or gas well shall be plugged and abandoned in accordance
17 with Rule .1618 of this Section; and

18 (4) for cemented well completions, the base of the production casing shall be cemented into or below
19 the production zone. For open-hole well completions, the base of the production casing shall be
20 cemented into or above the production zone.

21 (b) A production liner may be used as production casing if the following criteria are met:

22 (1) the surface casing is used as the groundwater isolation casing;

23 (2) the intermediate casing is set for a reason other than isolation of groundwater; and

24 (3) the production liner shall be cemented with a minimum of 200 feet of cement above the base of
25 the previous casing string.

26 (c) The production liner top shall be pressure tested to at least 500 psi, for a period of 30 minutes, above the
27 maximum anticipated pressure in the wellbore during well completion and production operations. If after 30
28 minutes the pressure has dropped by more than 10 percent, the permittee shall not resume operations until the
29 condition has been corrected and verified by a subsequent passing pressure test.

30
31 *History Note: Authority G.S. 113-391(a)(5)c;*
32 *Eff. Pending Legislative Review.*

1 15A NCAC 05H .1612 has been adopted with changes as published in 29:02 NCR 141 as follows:

2
3 **15A NCAC 05H .1612 WELL INSTALLATION VARIANCE**

4 The applicant or permittee may request a variance from Rules .1608, .1609, .1610, or .1611 of this Section by
5 submitting a request pursuant to Rule .0301 of this Subchapter. In granting or denying a variance, the Commission
6 shall ensure the variance provides equal or greater protection for public health, safety, and the environment
7 and consider factors such as:

8 (1) increasing the oil or gas well efficiency; and

9 (2) minimizing ~~waste~~; and waste.

10 (3) ~~providing equal or greater protection for public health, welfare, and the environment.~~

11
12 *History Note:* Authority G.S. 113-391(a)(5)c.

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1613

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), insert a "the" before "Form" on line 4.

In (a), if the request for well stimulation is intended to be on the permit application, and the Commission has authority over those, what is the authority in this Rule to say the Department will make the decision to allow this?

And further on line 7, the document must be submitted by the permittee to the Department 30 days before beginning? So, the answer must be issued by the Department within that 30 days?

In (d), please note my earlier questions about contacting the Department, the timing of the form as it relates to the email or call and points of ingress and egress being different.

In (e), by "visual discharge," do you mean discharge the permittee can see?

On line 29, any remedial action the permittee deems necessary?

In (f)(1), what is a "casing shoe"?

On Page 2, line 1, define "immediately"

On line 2, I believe you mean "Department" but if you do mean "Departments," please state what other Department(s) you are referring to.

In (g), when you say "at all times" you mean 60 seconds per minute, 60 minutes per hour, 24 hours a day, 365 days a year"? Is this done electronically?

In (h), line 17, do you mean "shall" rather than "may"? If not, then will the Department not require the additional documentation?

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: December 1, 2014

1 15A NCAC 05H .1613 has been adopted with changes as published in 29:02 NCR 141-142 as follows:

2
3 **15A NCAC 05H .1613 WELL STIMULATION REQUIREMENTS**

4 (a) The applicant or permittee shall indicate on Form 2 – Oil or Gas Well Permit Application the intent to perform
5 well stimulation operations. If well stimulation was not approved as part of the initial application, the permittee
6 desiring to perform such operations shall submit the information required by this Rule via email, fax or mail to the
7 Department for review and approval at least 30 calendar days prior to commencement of well stimulation
8 operations.

9 (b) The production casing shall withstand the maximum anticipated treating pressure of the proposed well
10 stimulation operations. The maximum anticipated treating pressure shall not exceed 80 percent of the minimum
11 internal yield pressure for such production casing.

12 (c) Non-cemented portions of the oil or gas well shall be tested prior to well stimulation operations to ensure that
13 the wellbore can meet one of the following conditions:

- 14 (1) 70 percent of the lowest activating pressure for pressure actuated sleeve completions; or
15 (2) 70 percent of formation integrity for open-hole completions, as determined by a formation
16 integrity test (FIT).

17 (d) The permittee shall notify the Department via telephone or email a minimum of 48 hours prior to the
18 commencement of all well stimulation operations at the oil or gas well. The permittee shall submit Form 11 –
19 Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the
20 following information:

- 21 (1) the permittee's name, address, telephone number, fax number, and email address;
22 (2) the county and nearest city or town where the oil or gas well is located;
23 (3) the property street address or nearest address to the ingress or egress point leading from a public
24 road to the well pad;
25 (4) the API number, the lease name, and the oil or gas well name and number; and
26 (5) the scheduled date and approximate time for the well stimulation operations.

27 (e) The permittee shall monitor and record all casing annuli via pressure gauges and by visual discharge for any
28 pressure or flow increases or discharges that would be indicative of a potential loss of wellbore integrity during the
29 well stimulation operations. The permittee shall take remedial action to avoid the loss of wellbore integrity and shall
30 notify the Department within 24 hours of discovery via telephone or email.

31 (f) If well stimulation treatment design does not allow the surface casing annulus to be open to atmospheric
32 pressure, then the surface casing pressures shall be monitored with a gauge and pressure relief device. The
33 maximum set pressure on the pressure relief device shall be the lower of:

- 34 (1) a pressure equal to: 0.70 times 0.433 times the true vertical depth of the surface casing shoe
35 (expressed in feet);
36 (2) 80 percent of the API rated minimum internal yield for the surface casing; or
37 (3) 80 percent of the surface casing shoe test pressure, adjusted for fluid density.

1 The well stimulation treatment shall be terminated immediately if the pressures exceed the limits set in
2 Subparagraphs (f)(1) through (f)(3) of this ~~Rule~~-Rule and the Departments shall be notified within 24 hours of the
3 occurrence of an exceeded pressure. Pressures on any casing string other than the surface casing shall not be
4 allowed to exceed 80 percent of the API rated minimum internal yield pressure for such casing string throughout the
5 stimulation treatment. The permittee shall notify the Department within 24 hours via telephone or email if treatment
6 pressure exceeds 80 percent of the API rated minimum internal yield pressure on any casing string other than
7 surface casing.

8 (g) The permittee shall monitor and record, at all times, the following parameters during well stimulation
9 operations:

- 10 (1) surface injection pressure, in pounds per square inch (psi);
- 11 (2) ~~slurry pumping~~fluid injection rate in barrels per minute (BPM);
- 12 (3) proppant concentration in pounds per thousand gallons;
- 13 (4) fluid pumping rate in BPM;
- 14 (5) identities, rates, and concentrations of additives used in accordance with Rule .1702 of this
15 Subchapter; and
- 16 (6) all annuli pressures.

17 (h) Following the notification in Paragraph (f) of this Rule, the Department may require additional documentation
18 or oil or gas well tests to determine if the well stimulation operations potentially endanger any fresh groundwater
19 zones. If either the permittee or the Department determines fresh groundwater zones are endangered, the
20 Department shall require the permittee to perform remedial operations to correct any oil or gas well failure.

21 (i) The Department shall notify the Commission at its next regularly scheduled meeting of any remedial operations
22 conducted pursuant to Paragraph (h) of this Rule.

23
24 *History Note: Authority G.S. 113-391(a)(5)k; 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1);*
25 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1614

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), what is a wellhead "assembly"?

What assemblies aren't used for production?

On line 6, please just state, "This document may be viewed..." and please check the URL.

I think (f) would make more sense written in active voice and in two sentences. "The permittee shall notify the Department within 24 hours... if the annular pressure..." "The Department shall determine the appropriate action to remedy annular over-pressurization."

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: December 1, 2014

1 15A NCAC 05H .1614 has been adopted with changes as published in 29:02 NCR 142 as follows:

2
3 **15A NCAC 05H .1614 WELLHEAD REQUIREMENTS**

4 (a) All wellhead assemblies intended for production shall be installed and maintained in accordance with API
5 Specification 6A "Specification for Wellhead and Christmas Tree Equipment," which is incorporated by reference,
6 including subsequent amendments and editions. This document, published by API, may be viewed online ~~at~~for no
7 charge at ~~http://publications.api.org/default.aspx~~http://www.api.org/publications-standards-and-
8 statistics/publications/government-cited-safety-documents.

9 (b) All other wellhead assemblies shall be pressure rated to withstand operating pressures 100 percent above the
10 maximum anticipated operating pressure during drilling, maintenance, remediation, stimulation, and production.

11 (c) All oil or gas wells shall be equipped so that ~~no~~ oil, gas, or condensate ~~is able to leak~~does not leak from the
12 wellhead.

13 (d) All valves shall be installed and be accessible so that pressure readings can be observed on the casing and tubing
14 at any time by the Department. Valves shall be designed to accommodate a one-half (0.5) inch National Pipe
15 Thread pressure connection. The Christmas tree shall also be similarly equipped to allow pressure monitoring of the
16 production tubing.

17 (e) All intermediate and production casing annuli shall be equipped with a functioning pressure relief valve that is
18 set at 50 percent of the maximum surface pressure recorded during the formation integrity test (FIT) at the base of
19 the previous casing string.

20 (f) If the annular pressure measured at the surface exceeds 0.303 multiplied by the length of the casing string, or
21 upon discovering the activation of the pressure relief valve, the permittee shall notify the Department within 24
22 hours via telephone or email to determine appropriate action to remedy annular over-pressurization.

23 (g) A check valve shall be installed in the flowline downstream of the Christmas tree to prevent the return of fluids
24 into the oil or gas well.

25
26 *History Note: Authority G.S. 113-391(a)(5)c; 113-391(a)(5)i;*

27 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1615

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), line 6, delete the comma after "operations"

In (c), I take it "emergency repairs" is a known term to your regulated public?

In (d), the sign is not required during completion operations?

In (e), line 13, what is "unauthorized" access?

In (f), does this include the wellhead assemblies in Rule .1614(b)?

In (g), line 18, delete "published by API," and please check the URL.

In (h)(2), I take it your regulated public knows what "restrictive wire" is?

In (h)(4), the gates are no less than four feet wide?

Also in (h)(4), doesn't a tank battery always contain two or more tank? Why do you need to state this here?

In (i), why do you need to state "upon written request with justification by the permittee"? Isn't this all captured by Rule .0301?

In (l), Page 2, line 2, "easily seen or noticed" by whom? Anyone?

In (m)(2), is the county only required if there is no city or town? Or did you mean "county and city or town" as you put in other Rules?

In (m)(3), the ingress/egress will not be the same point? And in (n)(1), if the ingress or egress points are not the same, the sign only has to be posted at one?

In (o), I take it the fencing would not be installed because of a variance, correct?

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: December 1, 2014

1 15A NCAC 05H .1615 has been adopted with changes as published in 29:02 NCR 142-143 as follows:

2
3 **15A NCAC 05H .1615 WELL SITE MAINTENANCE AND SECURITY**

4 (a) A functioning blowout preventer (BOP) shall be installed and used during maintenance, remediation, and
5 stimulation operations in accordance with Rule .1616 of this Section.

6 (b) The permittee shall perform well servicing, excluding workovers, and equipment maintenance operations,
7 between the hours of 6:00 a.m. and 9:00 p.m.

8 (c) The permittee may perform emergency repairs at any time.

9 (d) A temporary work zone sign, "Authorized Personnel Only Beyond This Point" shall be posted at all ingress or
10 egress points leading from a public road to the well pad at least 200 feet from the activity area during drilling,
11 maintenance, remediation, and stimulation operations.

12 (e) Fencing no less than three feet in height shall be installed around the outer boundary of the well pad to restrict
13 unauthorized access to the well pad during drilling and completion operations.

14 (f) Equipment that is not used in the production of the oil or gas well shall not be stored within the well site.

15 (g) Equipment, vegetation, and refuse shall be maintained in order to ensure protection of the environment, public
16 health, and safety in accordance with API Recommended Practice 51R "Environmental Protection for Onshore Oil
17 and Gas Production Operations and Leases," which is incorporated by reference, including subsequent amendments
18 and editions. This document, published by API, may be viewed online ~~at~~for no charge
19 at <http://publications.api.org/default.aspx> ~~http://www.api.org/publications-standards-and-~~
20 ~~statistics/publications/government-cited-safety-documents.~~

21 (h) A permanent fence shall be installed around the wellhead, tank battery, separator, and all associated production
22 equipment prior to placing any oil or gas well into production. Fencing shall be:

- 23 (1) placed no closer than 50 feet to the wellhead or any portion of the tank battery;
24 (2) composed of chain link that is no less than six feet in height and shall be topped with restrictive
25 wire to prevent unauthorized access;
26 (3) securely anchored in the ground; and
27 (4) gated with locks and no less than four feet in width. If there are two or more tanks in a tank
28 battery, the permittee shall provide two gates on opposite sides of the production facility.

29 (i) The Commission, upon written request with justification by the permittee, may grant a variance to the permanent
30 fencing requirements in accordance with Rule .0301 of this Subchapter. In granting or denying the variance request,
31 the Commission shall consider factors such as:

- 32 (1) zoning of the area;
33 (2) land use; and
34 (3) configuration and size of the well pad.

35 (j) All gates, electrical boxes, and valves controlling the flow of production fluid for a site under production shall be
36 locked unless in use, under repair, or if the permittee or an authorized representative of the permittee is on-site. The
37 permittee shall provide keys or combinations to the Department and local emergency responders upon request.

38 (k) All brine and oil pick-up lines shall be secured by bull plugs.

(l) All oil or gas wells shall have an identification sign, in accordance with Paragraph (m) of this Rule, posted in a place easily seen or noticed on or near the oil or gas wellhead or the tank battery until final abandonment, in accordance with the following:

- (1) the identification sign shall be posted within 72 hours after drilling activities cease;
- (2) if multiple oil or gas wells are produced into a tank battery, each wellhead shall be identified; and
- (3) any change of ownership shall be shown on the signs at the wellhead or tank battery no later than 60 calendar days after the date of the assignment or approval of the transfer.

(m) Identification signs shall be constructed of weatherproof and rustproof material and maintained to remain legible at all times. Each sign shall include, at a minimum, the following information in two-inch or larger letters:

- (1) the permittee's name, address, business telephone number, and emergency telephone number;
- (2) the county, city, or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad, if nearest street address is used, "nearest address" shall be designated on the sign;
- (4) the API number, the lease name, and the oil or gas well name and number; and
- (5) the local emergency response telephone number.

(n) The identification sign shall be posted at the following locations:

- (1) the ingress or egress points leading from a public road to the well pad; and
- (2) the outside of the fence that surrounds the well pad.

(o) "Danger, Keep Out" and "No Smoking or Open Flame" signs shall be attached to each side of the fencing surrounding the wellhead and tank battery. If fencing has not been installed, the signs shall be attached to the wellhead and tank battery. A "No Smoking Beyond This Point" sign shall be posted at ingress or egress points leading from a public road to the well pad.

*History Note: Authority G.S. 113-391(a)(5)i;
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1616

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(1), line 6, delete "has been"

In (a)(2), line 10, delete "published by API," and check the URL.

In (a)(3), line 13, delete "above"

In (a)(4), what is "shear ram" on line 16.

On line 17, I recommend ending the sentence after "conditions."

On line 17, what does "closing on the drill pipe" mean? I take it your regulated public knows?

In (b), please explain the timing of the notification through from after email or call, and egress/ingress points being different.

In (d), what is a "mud system"?

In (e), what is a "diverter system"? I see in Paragraph (f) that you had required a "rotating diverter system" in certain instances. Is this similar?

In (e), if the Commission is requiring this, what is the authority to allow the Department to waive it? Is this part of the permit?

In (f), Page 2, line 1, do you mean "drilling into formations..."

Also, who will determine the expected reservoir pressure?

In (f), what is a "rotating diverter system"?

In (g), delete or define "effective" on line 4.

On line 6, what is "safe distance" and who determines it? What is "readily accessible"?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

In (h), line 10, please add a "the" before "International"

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: December 1, 2014

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: Mining and Energy Commission

RULE CITATION: Rule 15A NCAC 05H .1616

RECOMMENDED ACTION:

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

COMMENT:

The Commission added a requirement for a diverter system to be installed and for that system to be maintained throughout drilling operations in Paragraphs (e) and (g). Staff does not know what a diverter system is, as the Rules do not define the term. Staff inquired in the Technical Change Request if the system is similar to published language in Paragraph (f), which referred to a "rotating diverter system." However, it appears that requiring the installation of this system after publication is a substantial change, especially in light of the fact that if the diverter system is not functioning, the Rule states that the well cannot operate.

Staff does not dispute that the Commission has authority to write these requirements in the Rule. However, staff believes that adding these requirements after publication of this Rule creates a substantial change by addressing subject matters not addressed in the proposed text.

Therefore, staff believes this language requires republication in the NC Register before it can be entered into the NC Administrative Code.

*Amanda J. Reeder
Commission Counsel*

1 15A NCAC 05H .1616 has been adopted with changes as published in 29:02 NCR 143-144 as follows:

2
3 **15A NCAC 05H .1616 WELL-CONTROL AND BLOWOUT PREVENTION**

4 (a) During drilling, all oil or gas wells shall be equipped with a well-control system that includes a blowout
5 preventer (BOP). The well-control system shall meet the following requirements:

- 6 (1) be functional at all times and has been tested to working pressures at least 50 percent above the
7 hydrostatic pressures anticipated in the oil or gas well;
- 8 (2) BOP equipment shall be in compliance with API Standard 53 "Blowout Prevention Equipment
9 Systems for Drilling Wells," which is incorporated by reference, including subsequent
10 amendments and editions. This document, published by API, may be viewed online ~~at~~for no
11 charge at ~~http://publications.api.org/default.aspx;~~http://www.api.org/publications-standards-and-
12 statistics/publications/government-cited-safety-documents;
- 13 (3) the BOP shall be installed and tested as required in Subparagraph (a)(1) above prior to drilling the
14 surface-casing cement ~~plug; plug~~. The BOP shall be retested as required in Subparagraph (a)(1) of
15 this Rule prior to drilling the cement plug in each subsequent casing string; and
- 16 (4) during drilling operations, the shear-ram BOP shall be tested by closing the BOP at least
17 once ~~daily~~ weekly in open hole conditions; the annular BOP shall be tested by closing on the drill
18 pipe at least once each ~~week;~~week.

19 (b) The permittee shall notify the Department via telephone or email at least 48 hours prior to testing the BOP. Test
20 results shall be posted at the well site for review and available to the Department on request. The permittee shall
21 submit Form 11 – Required Notifications to the Department, by mail, email, or fax within five calendar days and
22 shall include the following information:

- 23 (1) the permittee's name, address, telephone number, fax number, and email address;
- 24 (2) the county and nearest city or town where the oil or gas well is located;
- 25 (3) the property street address or nearest address to the ingress or egress point leading from a public
26 road to the well pad;
- 27 (4) the API number, the lease name, and the oil or gas well name and number; and
- 28 (5) the scheduled date and approximate time for the BOP test.

29 (c) The quantity of drilling fluid of sufficient weight to maintain well control shall be located on the well site during
30 drilling operations.

31 (d) If drilling with a mud system, the drilling-fluid system shall be designed to maintain control of the oil or gas
32 well to minimize the potential of a hydrostatic pressure surge when the drilling assembly is inserted into or removed
33 from the wellbore.

34 (e) A diverter system shall be installed while drilling the surface casing wellbore in geographic areas that have not
35 yet been drilled unless waived by the Department based on prior drilling data that confirms shallow gas and other
36 drilling hazards are not present.

1 ~~(e)~~(f) If drilling with ~~air~~ air or drilling to formations where the expected reservoir pressure exceeds the weight of the
2 drilling fluid column, a rotating diverter system shall be installed to divert any wellbore fluids away from the rig
3 floor to a circulation pit or tank at least 80 feet from the wellbore.

4 (g) All diverter systems shall be maintained in effective working condition and shall be function tested when
5 installed and at regular intervals during drilling operations. There must be two diverter control stations, one on the
6 drilling floor and one located at a safe distance and readily accessible from the drilling floor. No well shall continue
7 drilling operations if a test or other information indicates the diverter system is unable to function or operate as
8 designed.

9 ~~(f)~~(h) The permittee shall have an individual certified from an accredited well control training program, such as
10 International Association of Drilling Contractors (IADC) WellCAP, on site during the drilling and completion of an
11 oil or gas well.

12 ~~(g)~~(i) A wellhead shall be installed after drilling operations are complete and the BOP has been removed.
13

14 *History Note: Authority G.S. 113-391(a)(5)i;*
15 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1617

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, please put "Visual screening" in quotation marks, as it appears that the term is being defined here through examples.

On line 5, I take it your regulated public knows what is meant by "vegetated earthen berms" and "tree plantings at staggered spacing"?

In (a), are you saying that visual screening is only required for occupied buildings? And by occupied buildings, do you mean "occupied dwellings" and "high occupancy buildings" as defined in Rule .0102?

In (b), line 9, I don't think you need to state "or deny." I think it's clear the Commission can refuse to grant a variance.

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: December 1, 2014

1 15A NCAC 05H .1617 has been adopted with changes as published in 29:02 NCR 144 as follows:
2

3 **15A NCAC 05H .1617 VISUAL IMPACT MITIGATION**

4 (a) The permittee shall mitigate visual impacts using visual screening. Visual screening shall include existing
5 natural vegetation, vegetated earthen berms, or tree plantings at staggered spacing to be installed and maintained
6 between any disturbed land and any adjoining property containing occupied buildings within view of the disturbed
7 land.

8 (b) The Commission, upon written request by the applicant or permittee submitted pursuant to Rule .0301 of this
9 Subchapter, may grant or deny a variance to the visual impact mitigation requirements. The Commission shall
10 consider factors such as:

- 11 (1) zoning of the area;
- 12 (2) surface use agreements;
- 13 (3) land use;
- 14 (4) topography; and
- 15 (5) configuration of the well pad.

16
17 *History Note: Authority G.S. 113-391(a)(4);*
18 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1618

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 9, please delete "published by API," and check the URL.

In (b), what do you mean by "releasing the drilling rig" on line 12?

In (g), what is a "cement" plug? (I see that "mechanical bridge plug" is defined in Rule .0102)

In (g)(2), what is "circulation"? Does your regulated public know?

I take it in (g)(4)(A), the choice of which placement to use is entirely up to the permittee?

In (g)(4)(5), Page 2, line 3, what is the "well curve kick-off point"?

In (k), what are flowlines on line 12?

Please add a cross reference to the waste management plan at the end of line 14.

Please add G.S. 113-395(c) to the History Note.

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: December 1, 2014

1 15A NCAC 05H .1618 has been adopted with changes as published in 29:02 NCR 144-145 as follows:

2
3 **15A NCAC 05H .1618 REQUIREMENTS FOR PERMANENT CLOSURE OF OIL OR GAS WELLS**

4 (a) All lost holes, dry holes, and oil or gas wells incapable of production shall be plugged and abandoned. In
5 addition to the requirements detailed within this Rule, all plugging and abandonment activities shall meet the
6 standards in API Recommended Practice 51-R "Environmental Protection for Onshore Oil and Gas Production
7 Operations and Leases," and API Bulletin E3 "Environmental Guidance Document: Well Abandonment and Inactive
8 Well Practices for U.S. Exploration and Production Operations," which are incorporated by reference, including
9 subsequent amendments and editions. These documents, published by API, may be viewed online ~~at~~for no charge

10 at ~~http://publications.api.org/default.aspx~~[http://www.api.org/publications-standards-and-](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents)
11 [statistics/publications/government-cited-safety-documents.](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents)

12 (b) The permittee shall plug and abandon lost holes and dry holes prior to releasing the drilling rig from the well
13 pad.

14 (c) Non-drillable material that would prevent re-entry of an oil or gas well shall not be placed in any wellbore.

15 (d) Trash or refuse shall not be used as plugging and abandonment material.

16 (e) Conductor casing or surface casing shall not be removed from any wellbore during plugging and abandonment
17 operations.

18 (f) All pits or tanks utilized during oil or gas well plugging and abandonment operations to contain waste shall
19 conform to Rule .1504 of this Subchapter.

20 (g) Cement or mechanical bridge plugs shall be placed within the wellbore to isolate hydrocarbon bearing zones,
21 prevent migration of fluids in the wellbore, protect fresh groundwater aquifers, and prevent surface water from
22 entering the wellbore. All plugs used for plugging and abandonment shall meet the following requirements:

- 23 (1) all cement used to plug an oil or gas well shall conform to Rule .1606 of this Section;
- 24 (2) cement plugs shall be placed by circulation using tubing, casing, or drill pipe;
- 25 (3) all intervals between the cement and mechanical bridge plugs shall be filled with a bentonite-
26 based mud that has a minimum weight of nine and one half pounds per gallon;
- 27 (4) vertical wellbores shall have cement plugs placed in the following intervals:
- 28 (A) from the total depth to a minimum of 100 feet above the top of the ~~lowest~~deepest
29 hydrocarbon bearing zone or alternatively, from a minimum of 50 feet below the base of
30 the ~~lowest~~deepest hydrocarbon bearing zone penetrated to a minimum of 100 feet above
31 the top of the ~~lowest~~deepest hydrocarbon bearing zone;
- 32 (B) from a minimum of 50 feet below to a minimum of 100 feet above each succeeding
33 hydrocarbon bearing or fresh groundwater zone, not isolated by intermediate or surface
34 casing;
- 35 (C) from a minimum of 100 feet below to a minimum of 100 feet above the base of
36 intermediate and surface casing strings; and
- 37 (D) from a minimum of 200 feet below ground ~~elevation~~surface to three feet below
38 ground ~~elevation~~ surface.

- 1 (5) horizontal wellbores shall have cement plugs placed in accordance with Parts (g)(4)(A) through
2 (g)(4)(D) of this Rule with the exception that the bottom plug, as outlined in Part (g)(4)(A) of this
3 Rule, shall be placed at the depth of the well curve kick-off point and extend above that point a
4 minimum of 200 feet; and
- 5 (6) if mechanical bridge plugs are used, the plug shall be set directly above each zone identified in
6 Parts (g)(4)(A) through (g)(4)(D) of this Rule and covered with a minimum of 50 feet of cement.
- 7 (h) All casing remaining in the wellbore shall be cut off a minimum of three feet below ground elevation surface.
- 8 (i) The top of the wellbore shall be sealed with a steel plate that is welded in place and the API number for the oil or
9 gas well shall be identifiable on the steel plate.
- 10 (j) All ratholes and mouseholes shall be filled with bentonite or cement to a depth of three feet below ground
11 surface, and then filled to the surface with soil.
- 12 (k) ~~All wellheads shall be disconnected from gathering lines.~~ flowlines shall be flushed with freshwater and the ends
13 of the lines shall be capped and buried at least three feet below the ground surface. All freshwater used to flush lines
14 shall be disposed of in accordance with the approved waste management plan.

15

16 *History Note: Authority G.S. 113-391(a)(2);*
17 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1619

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

From reading this Rule, my understanding of this process is as follows:

- 1. The permittee submits part of the Form 14 and the fee to the Department.*
- 2. The Department approves or denies based upon Paragraph (d) guidelines.*
- 3. If approved, the permittee sends notice that they are commencing the closing.*
- 4. Following completion of plugging and abandoning, the permittee sends the Department notice on another part of the Form 14? The notice sent in here is substantially similar to the notice in 1.*

In (a), how does the permittee know which part of the Form 14 is the "intent" portion? Is it what is in (a)(1) through (16)? If so, why not just state that?

On line 7, delete the comma after "Abandonment"

In (a), are you saying if the Department approves the application, this is a now a plan? (See line 9)? What is in the plan? The information submitted in (a)(1) through (16)? Or is it something the Department issues?

In (a), I think it would make more sense to put the third sentence in front of the second sentence. Thus, the first two sentences would say what the permittee must submit and then the next sentence would address Department action.

On line 10, is the information included "with" or "in" the form?

In (a)(6), so that I understand - the casing is cut?

In (a)(10), if this is prospective, then isn't it "estimated volume to be used"?

In (a)(13) and (14), these diagrams can be done by anyone? There is no requirement for personnel to do this?

In (a)(16), what is a "wireline contractor"?

In (b), what is the timing of this notification through a call/email and then mailing the form?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

On Page 2, I think Paragraph (c) should become Paragraph (b), and current Paragraph (b) should become (c). I believe the Rule would read easier if stated the permittee application in (a), Department action in (b) and then permittee actions in (c) and (d).

In (c), line 3, do you mean "shall" rather than "may"? I suspect you do, but if not, then I don't see you have the authority for this Paragraph.

In (c)(1), I'd begin with "the"

In (d), this is substantially similar to what is required in (a). Do you not want to just refer to "the information required in (a)(1), (2),(3),(4),(5), (7), (8), (9) and (11)"? and add the rest?

In (d), line 9, isn't the information contained "in" rather than "with"?

In (d)(11), I note that (a)(11) states "identification of the type of plug" Is there a reason it is different here?

In (a)(17), what are "cementing tickets" and "job summary report"? Also, should "reports" be plural? If not, then insert an "a" before "job" on line 30.

Add G.S. 113-395 to the History Note.

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: December 1, 2014

1 15A NCAC 05H .1619 has been adopted with changes as published in 29:02 NCR 145-146 as follows:

2
3 **15A NCAC 05H .1619 NOTIFICATION AND REPORTING REQUIREMENTS FOR PERMANENT**
4 **CLOSURE OF OIL OR GAS WELLS**

5 (a) The permittee shall complete and submit the intent to plug and abandon portion of Form 14 – Plugging and
6 Abandonment, at least 30 calendar days prior to the commencement of plugging and abandonment operations. The
7 Department shall approve or deny Form 14 – Plugging and Abandonment, in accordance with this Rule. The
8 permittee shall submit a fee in accordance with G.S. 113-395(c) for plugging and abandonment of any oil or gas
9 well. Approved plugging and abandonment plans shall remain valid for a period of 12 months. The permittee shall
10 include the following with the completed Form 14 – Plugging and Abandonment:

- 11 (1) the permittee's name, address, telephone number, fax number, and email address;
- 12 (2) the county and nearest city or town where the oil or gas well is located;
- 13 (3) the property street address or nearest address to the ingress or egress point leading from a public
14 road to the well pad;
- 15 (4) the API number, the lease name, and the oil or gas well name and number;
- 16 (5) the reason for abandonment;
- 17 (6) identification of casing that will be removed from ~~wellbore~~wellbore and depth below ground
18 surface at which it will be cut;
- 19 (7) the diameter of each wellbore segment;
- 20 (8) the casing grade, weight, outside diameter, and setting depth for each casing string;
- 21 (9) elevation of cement top and cement bottom for each casing string;
- 22 (10) identification of the cement type, additives, density, yield, and estimated volume used for each
23 plug;
- 24 (11) identification of the type of plug if other than cement;
- 25 (12) identification of non-cemented sections of casing that may be perforated;
- 26 (13) the wellbore diagrams depicting the current oil or gas well configuration;
- 27 (14) the wellbore diagrams depicting the proposed oil or gas well configuration with cement plugs;
- 28 (15) the anticipated beginning and ending date for plugging and abandonment activities; and
- 29 (16) identification of wireline and cementing contractors.

30 (b) The permittee shall notify the Department 72 hours via telephone or email prior to commencement of plugging
31 and abandonment operations for all existing wells and eight hours for lost and dry holes by submitting Form 11 –
32 Required Notifications to the Department. This notification shall be submitted to the Department by mail, email, or
33 fax within five days and shall include the following information:

- 34 (1) the permittee's name, address, telephone number, fax number, and email address;
- 35 (2) the county and nearest city or town where the oil or gas well is located;
- 36 (3) the property street address or nearest address to the ingress or egress point leading from a public
37 road to the well pad;
- 38 (4) the API number, the lease name, and the oil or gas well name and number; and

(5) the scheduled date and approximate time of day for which the plugging and abandonment will be performed.

(c) The Department may deny a request to plug and abandon an oil or gas well if the request is in violation of any rule of this Subchapter or any of the following requirements have not been met:

(1) Form 14 – Plugging and Abandonment was not complete in accordance with Paragraph (a) of this Rule; or

(2) the well abandonment fee has not been paid.

(d) No later than 90 days after plugging and abandoning an oil or gas well, the permittee shall complete and submit Form 14 – Plugging and Abandonment, to the Department. The permittee shall include the following with the completed Form 14 – Plugging and Abandonment, confirming that the plugging and abandonment operations were conducted in accordance with the approved plan:

(1) the permittee's name, address, telephone number, fax number, and email address;

(2) the county and nearest city or town where the oil or gas well is located;

(3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;

(4) the API number, the lease name, and the oil or gas well name and number;

(5) the reason for abandonment;

(6) the length and type of casing that was removed from ~~wellbore;~~the wellbore and the top of each casing string remaining in the wellbore;

(7) the diameter of each wellbore segment;

(8) the casing grade, weight, outside diameter, and setting depth for each casing string;

(9) the elevation of cement top and cement bottom for each casing string;

(10) the cement type, additives, density, yield, and volume used for each plug;

(11) the type of plug if other than cement;

(12) identification of the non-cemented sections of casing that were perforated;

(13) the wellbore diagrams depicting the pre-plugging oil or gas well configuration;

(14) the wellbore diagrams depicting the final plugged oil or gas well configuration with cement plugs;

(15) the date plugging and abandonment activities commenced and were completed;

(16) identification of wireline and cementing contractors that were used; and

(17) a copy of wireline logs, cementing tickets, and job summary report as supplied by the wireline and cementing contractors.

*History Note: Authority G.S. 113-391(a)(2);
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1620

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), lines 4 and 5, delete "are" in all three places.

On line 5, why don't you say "shut-in" instead of "temporarily closed"?

As I understand this process, the permittee decides to shut-in the well and notifies the Department after the fact, correct?

In (b), line 7, how does one contact the Department?

In (b)(5), delete "indicate"

In (b)(8), there is only one tubing string?

In (b)(13), strike "indicate"

In (b)(14)(D), insert a comma after "property" on line 28.

In (c), line 32, please insert "either" before "permanent"

In (g), Page 2, line 4, replace "is" with "shall be"

Is there a limit on the amount of renewals that individuals can seek here? I note that Rule .1312 states that failure to spud a well in 12 months will cause the permit to lapse, and I assumed it was to prevent waste. Please note, I am not questioning your authority to do so, but just seeking clarity on this, since here a working well may be closed for up to ten years.

In (g), either strike or explain "to the Department's satisfaction" on lines 5 and 6.

In (i), line 14, I believe you should replace "with" with "in" as this information is what is required in the form, correct?

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: December 1, 2014

1 15A NCAC 05H .1620 has been adopted as published in 29:02 NCR 146 as follows:
2

3 **15A NCAC 05H .1620 REQUIREMENTS FOR SHUTTING-IN OIL OR GAS WELLS**

4 (a) Oil or gas wells that are completed according to Rule .1607 of this Section, are equipped with a wellhead
5 according to Rule .1614 of this Section, and are capable of production may be temporarily closed in accordance with
6 this Rule.

7 (b) The permittee shall complete and submit Form 15 – Oil or Gas Well Status to the Department via mail, email or
8 fax within 14 calendar days of closing the master valve on the wellhead. The Form 15 – Oil or Gas Well Status
9 shall include the following information:

10 (1) the permittee's name, address, telephone number, fax number, and email address;

11 (2) the county and nearest city or town where the oil or gas well is located;

12 (3) the property street address or nearest address to the ingress or egress point leading from a public
13 road to the well pad;

14 (4) the API number, the lease name, and the oil or gas well name and number;

15 (5) indicate if the request is for initial shut-in status or an annual extension of shut-in status;

16 (6) the type of oil or gas well;

17 (7) the diameter and length for each casing string;

18 (8) the diameter and length of tubing string;

19 (9) the type and amount of cement used for each casing string;

20 (10) the current pressure for tubing and casing strings;

21 (11) the current annulus pressure between tubing and production casing;

22 (12) the current annulus pressure between production casing and surface casing;

23 (13) indicate if any annuli are open to atmosphere;

24 (14) a description of how the current condition of the oil or gas well is capable of the following:

25 (A) preventing damage to the production zone;

26 (B) preventing surface leakage of fluids;

27 (C) protecting groundwaters; and

28 (D) protecting health and safety of persons, property or the environment.

29 (15) a description of the future utilization of the oil or gas well; and

30 (16) a description of how the oil or gas well is in compliance with the requirements of Rules .1614 and
31 .1615 of this Section.

32 (c) The master valve shall remain closed and locked until the oil or gas well is permanently plugged and abandoned
33 or placed into production.

34 (d) The permittee shall maintain bonding required by Section .1400 of this Subchapter until the oil or gas well is
35 permanently plugged and abandoned.

36 (e) The permittee shall conduct monthly site inspections of the well site in accordance with Rule .2201 of this
37 Subchapter.

1 (f) The permittee shall conduct an annual mechanical integrity test of each shut-in oil or gas well in accordance with
2 Rule .2201(j), (k) and (l) of this Subchapter and submit the test results to the Department using Form 16 –
3 Mechanical Integrity Test Results.

4 (g) Shut-in status is valid for a period of one year with an annual renewal required if the permittee desires to
5 maintain shut-in status beyond one year. The annual renewal application shall demonstrate to the Department's
6 satisfaction one of the following:

7 (1) inadequate infrastructure development; or

8 (2) sub-economic producing conditions.

9 (h) The Department shall revoke shut-in status of an oil or gas well if the permittee fails to maintain all of the
10 requirements of this Rule. The Department shall require the permittee to either place the oil or gas well into
11 production or plug and abandon the oil or gas well at the permittee's discretion.

12 (i) The permittee shall complete and submit Form 17 – Notification of Return of Oil or Gas Well to Active Status,
13 to the Department by mail, email, fax within 14 calendar days of producing from an oil or gas well that has been
14 shut-in. The permittee shall include the following with the completed Form 17 – Notification of Return of Oil or
15 Gas Well to Active Status:

16 (1) the permittee's name, address, telephone number, fax number, and email address;

17 (2) the county and nearest city or town where the oil or gas well is located;

18 (3) the property street address or nearest address to the ingress or egress point leading from a public
19 road to the well pad;

20 (4) the API number, the lease name, and the oil or gas well name and number; and

21 (5) the date of return to active status.

22
23 *History Note: Authority 113-391(a)(2);*
24 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1621

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), line 9, replace "with" with "in," since I assume the information required in (b)(1) through (11) is the content of the form.

Please note earlier questions regarding how to contact the Department and ingress/egress points.

In (b)(5), delete "indicate"

In (b)(7), replace "for" with "of"

In deleting (c), you are no longer including in this Rule notice of how to close down the well. Are there no guidelines to follow?

In (d), should it read, "Temporary abandonment shall be valid for a period not to exceed five years,..."? Or is temporary abandonment for a period of five years?

As I read the Rule, in (b), the permittee decides to temporarily abandon the well and sends notice to the Department. In (e), it appears that the permittee will then decide when to reactivate the well and send notice. If the well is not reactivated within five years, the individual must seek approval of the Commission for another five-year hiatus?

In (d), line 33, please state "five-year"

In (d), line 34, what standards will the Commission use in authorizing the renewal period? That information needs to be in Rule.

On line 34, I suggest writing this in active voice, "before the permittee shall either place the oil or gas well into production or permanently plug and abandon it..."

In (e), line 37, delete the comma after "status"

In (e), Page 2, line 1, please replace "with" with "in"

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: December 1, 2014

1 15A NCAC 05H .1621 has been adopted with changes as published in 29:02 NCR 146-147 as follows:

2
3 **15A NCAC 05H .1621 REQUIREMENTS FOR TEMPORARY ABANDONMENT OF OIL OR GAS**
4 **WELLS**

5 (a) Oil or gas wells that are ~~completed~~ constructed according to Rule .1607 of this Section, but are not
6 ~~equipped with a wellhead according Rule .1614 of this Section and are capable of production completed after being~~
7 drilled may be temporarily abandoned in accordance with this Rule.

8 (b) The permittee shall complete and submit Form 15 – Oil or Gas Well Status to the Department 30 calendar days
9 prior to the temporary abandonment operations. The permittee shall include the following with the completed Form
10 15 – Oil or Gas Well Status:

- 11 (1) the permittee's name, address, telephone number, fax number, and email address;
- 12 (2) the county and nearest city or town where the oil or gas well is located;
- 13 (3) the property street address or nearest address to the ingress or egress point leading from a public
14 road to the well pad;
- 15 (4) the API number, the lease name, and the oil or gas well name and number;
- 16 (5) indicate if the request is for initial temporary abandonment or a renewal of temporary
17 abandonment;
- 18 (6) the type of oil and gas well;
- 19 (7) the diameter and length for each casing string;
- 20 (8) the type and amount of cement that will be used for each casing string;
- 21 (9) a description of how the current condition of the oil or gas well is capable of the following:
 - 22 (A) preventing damage to the production zone;
 - 23 (B) preventing surface leakage of fluids;
 - 24 (C) protecting groundwaters; and
 - 25 (D) protecting health and safety of persons, property or the environment.
- 26 (10) a description of the future utilization of the oil or gas well; and
- 27 (11) a description of how the oil or gas well is in compliance with the requirements of Rule .1614 of
28 this Section.

29 ~~(e) Oil or gas wells shall be temporarily abandoned according to Rule .1618(g)(4)(A) – (D) of this Section for~~
30 ~~vertical wellbores and Rule .1618(g)(5) of this Section for horizontal wellbores.~~

31 ~~(d)(c)~~ The permittee shall maintain bonding requirements in Section .1400 until the oil or gas well is permanently
32 plugged and abandoned.

33 ~~(e)(d)~~ Temporary abandonment is valid for a period of five years, with a maximum of one 5-year renewal period
34 authorized by the Commission before the oil or gas well shall be placed into production or permanently plugged and
35 abandoned in accordance with Rule .1618 of this Section.

36 ~~(f)(e)~~ The permittee shall complete and submit Form 17 – Notification of Return of Oil or Gas Well to Active
37 Status, to the Department within 14 calendar days of producing from an oil or gas well that was temporarily

1 abandoned. The permittee shall include the following with the completed Form 17 – Notification of Return of Oil or
2 Gas Well to Active Status:

- 3 (1) the permittee name, address, telephone number, fax number, and email address;
- 4 (2) the county and nearest city or town where the oil or gas well is located;
- 5 (3) the property street address or nearest address to the ingress or egress point leading from a public
6 road to the well pad;
- 7 (4) the API number, the lease name, and the oil or gas well name and number; and
- 8 (5) the date of return to active status.

9
10 *History Note:* *Authority G.S. 113-391(a)(5)l;*
11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1622

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), please note my earlier questions about contacting the Department.

In (b), line 9, replace "has" with "have"

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: December 1, 2014

1 15A NCAC 05H .1622 has been adopted as published in 29:02 NCR 147 as follows:
2

3 **15A NCAC 05H .1622 DEFECTIVE CASING, DEFECTIVE CEMENTING, AND WELL BLOWOUT**
4 **NOTIFICATIONS**

5 (a) The permittee shall commence corrective actions upon discovery of defective casing or cementing and report the
6 defect to the Department within 24 hours of discovery via telephone or email.

7 (b) The permittee shall take actions in the event of an oil or gas well blowout to comply with the emergency
8 scenarios in Rule .1305 of this Subchapter. Any oil or gas well blowout shall be reported to the Department after the
9 emergency officials and the emergency well control response contractor has been contacted.

10
11 *History Note: Authority G.S. 113-391(a)(5)i.*

12 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1623

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In Item (8), I take it your regulated public knows what "true vertical and measured" means and how to take this measurement?

In Item (10), what are cement tickets?

In Item (11), what are "casing collars"?

Also in Item (11), I recommend deleting the second and third "the location of" and inserting an "and," so the sentence reads, "the location of casing collars, the top of the cement for each casing string, and centralizers, and the method used to make such determinations."

In (13), what are "other industry standard logs" and "specialty logs"? Can you give examples? Or is the CBL intended to be an example?

In (13)(A), (B) and (C), in other rules, you state ".pdf" Further, does your regulated public know what "pds" stands for? I do not, and when I searched for it online, there were multiple results that could have been this.

In (14), the sentence beginning on line 33 is not a complete sentence. Should it begin "The report shall also contain" or end with "shall be included in the report."?

In Item (18) on Page 2, I take it your regulated public knows how to get this?

In Item (19), lines 12 and 15, insert a comma after "type"

In the History Note, to what part of 113-391(a)(5) are you referring? Is it c, e and k?

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: December 1, 2014

1 15A NCAC 05H .1623 has been adopted as published in 29:02 NCR 147-148 as follows:
2

3 **15A NCAC 05H .1623 WELL DRILLING REPORT**

4 Within 30 calendar days after drilling an oil or gas well, the permittee shall submit Form 12 – Well Drilling Report
5 to the Department that includes the following information:

- 6 (1) the permittee's name, address, telephone number, fax number, and email address;
- 7 (2) the county and nearest city or town where the oil or gas well is located;
- 8 (3) the property street address or nearest address to the ingress or egress point leading from a public
9 road to the well pad;
- 10 (4) the API number, the lease name, and the oil or gas well name and number;
- 11 (5) the type of oil or gas well;
- 12 (6) the date the drilling started and was completed;
- 13 (7) the method of drilling;
- 14 (8) the hole diameter and depth wellbore at each casing setting depth and the total depth, both true
15 vertical and measured of the oil or gas well;
- 16 (9) the size and depth of conductor casing, surface casing, intermediate casing, and production casing,
17 if applicable;
- 18 (10) the type and amount of cement and results of cementing procedures, including copies of all cement
19 tickets and the results of cement evaluations completed pursuant to Rule .1606 and Rule .1607 of
20 this Section;
- 21 (11) the location of casing collars, the location of the top of cement for each casing string, location of
22 centralizers, and the method used to make such determinations;
- 23 (12) the elevation relative to the kelly bushing and total vertical and measured depth of the wellbore;
- 24 (13) a paper and digital copy of all electrical, radioactive, or other standard industry logs:
 - 25 (A) standard electric log with curve data shall be submitted in LAS digital data format and as
26 a pdf, tiff, or pds;
 - 27 (B) specialty logs with array data shall be submitted in LIS or DLIS digital data format and as
28 a pdf, tiff, or pds; and
 - 29 (C) cement bond logs shall be submitted as a pdf, tiff, or pds with the casing collars,
30 centralizers, and top of cement located.
- 31 (14) a drilling log that includes the name, depth, and thickness of formations penetrated from the
32 surface to total depth. The drilling log shall also include the depth of oil or gas producing zone(s),
33 depth of groundwater and brines, and the source of the information. Other data recorded about
34 groundwater zones, anomalous pressure zones, zones with corrosive fluids, lost circulation zones,
35 and other zones with fluids capable of annular flow and how the casing and cementing program
36 was modified in response to the information;

- 1 (15) copies of pressure tests and formation integrity tests that were conducted during installation of the
2 surface, intermediate, and production casing strings pursuant to Rule .1605 and .1607 of this
3 Section;
- 4 (16) a statement of whether methane or other hydrocarbons were encountered in other than a target
5 formation and the depths of the intervals, and how the casing and cementing program was
6 modified in response to the information;
- 7 (17) a summary of events reported to the Department in accordance with Rule .1607 and .1616 of this
8 Section;
- 9 (18) a wellbore inclination and directional survey;
- 10 (19) the engines used on-site during exploration and development, including:
- 11 (A) the number of engines with capacities (maximum site-rated horsepower) less than 750
12 horsepower by engine type such as compression ignition, two stroke lean burn ignition,
13 four stroke lean burn ignition, rich burn spark ignition;
- 14 (B) the number of engines with capacities (maximum site-rated horsepower) greater than or
15 equal to 750 horsepower by engine type such as compression ignition, two stroke lean
16 burn ignition, four stroke lean burn ignition, rich burn spark ignition; and
- 17 (C) the average number of hours of operation for engines in each of the categories above.
- 18 (20) any other information as specified as part of the conditions of the permit, such as drill stem test
19 charts, formation water analysis, porosity, permeability or fluid saturation measurements, core
20 analysis, and lithologic log or sample description, or other similar data as compiled. No
21 interpretation of the data is required to be filed unless specifically required elsewhere in this
22 Subchapter; and
- 23 (21) the signature of the permittee verifying that the oil or gas well has been constructed in accordance
24 with this Subchapter and any permit conditions imposed by the Department.

25

26 *History Note:* Authority G.S. 113-379; 113-391(a)(5); 113-391(a)(7); 113-391(a)(10); 113-391(a)(11); 113-
27 391(b); 113-391(b1);
28 Eff. Pending Legislative Review.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1624

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(6), what is "base fluid"?

In (a)(11), what are "true treating pressures"? And I take it your regulated public knows how to create this model pursuant to industry standards already referenced in these Rules?

In (a)(12), is this the measured depth of the well?

In (a)(13), please insert a comma after "perforations" on line 27.

In (a)(14), please insert a comma after "oil" on line 29.

In (a)(15), please incorporate these Rules by reference. You do not need to say where they can be accessed, as it is clear they will be in the Code.

I note that 15A NCAC 02H includes laboratory certification for different types of labs (.0800, .1100) Will certification under either type be sufficient for this Rule?

In (a)(16), Page 1, line 35 and Page 2, line 2, please insert a comma after "type"

On Page 2, line 6, insert a comma after "business"

On Page 2, line 7, I believe you mean "Rule" rather than "Paragraph."

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: December 1, 2014

1 15A NCAC 05H .1624 has been adopted with changes as published in 29:02 NCR 148-149 as follows:

2
3 **15A NCAC 05H .1624 WELL STIMULATION REPORT**

4 (a) Within 30 calendar days after ~~stimulating the conclusion of stimulation operations on~~ an oil or gas well, the
5 permittee shall submit Form 18 – Well Stimulation Report to the Department that includes the following
6 information:

- 7 (1) the permittee's name, address, telephone number, fax number, and email address;
- 8 (2) the county and nearest city or town where the oil or gas well is located;
- 9 (3) the property street address or nearest address to the ingress or egress point leading from a public
10 road to the well pad;
- 11 (4) the API number, the lease name, and the oil or gas well name and number;
- 12 (5) the type of oil or gas well;
- 13 (6) the total volume of the base fluid;
- 14 (7) the total volume of reused water, alternative water, freshwater, or other base fluid that was used in
15 each hydraulic fracturing stage;
- 16 (8) the maximum pump pressure measured at the surface during each stage of the hydraulic fracturing
17 operations;
- 18 (9) the types and volumes of the well stimulation fluid and proppant used for each stage of the well
19 stimulation operations;
- 20 (10) the well stimulation treatment data collected in accordance Rule .1613 of this Section;
- 21 (11) for hydraulic fracture stimulations, the estimated maximum fracture height and length and
22 estimated true vertical depth to the top of the fracture achieved during well stimulation treatments
23 as determined by a three dimensional model using true treating pressures and other data collected
24 during the hydraulic fracturing treatments;
- 25 (12) the well shooting or perforation record detailing the true vertical and measured depths, and total
26 number of shots in the wellbore;
- 27 (13) the wellbore diagram that includes casing and cement data, perforations and a stimulation
28 summary;
- 29 (14) the initial oil or gas well test information recording daily gas, oil and water rate, and tubing and
30 casing pressure in accordance with Rule .2201 of this Subchapter;
- 31 (15) the initial gas analysis, performed by a laboratory certified by the State in accordance with 15A
32 NCAC 02H .0800; and
- 33 (16) the engines used on-site during exploration and development, including:
 - 34 (A) the number of engines with capacities (maximum site-rated horsepower) less than 750
35 horsepower by engine type such as compression ignition, two stroke lean burn ignition,
36 four stroke lean burn ignition, rich burn spark ignition;

1 (B) the number of engines with capacities (maximum site-rated horsepower) greater than or
2 equal to 750 horsepower by engine type such as compression ignition, two stroke lean
3 burn ignition, four stroke lean burn ignition, rich burn spark ignition; and

4 (C) the average number of hours of operation for engines in each of the categories above.

5 (b) The permittee may attach to the completed Form 18 – Well Stimulation Report any information received from a
6 service company regarding the well stimulation operations, as used in the normal course of business to satisfy some
7 or all of the requirements in this Paragraph.

8
9 *History Note: Authority G.S. 113-391(a)(5); 113-391(a)(10); 113-391(a)(11); 113-391(b); 113-391(b1);*

10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1701

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 8, please replace the dash with "at"

On line 9, should "trade secret" be replaced with "confidential information"? (I note that you are referring to "trade secret" as "confidential information" in Rule .1702 on Page 1, line 26.)

Also on line 9, please replace "can" with "may"

In the History Note, please add the citation to G.S. 113-391.1

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: December 1, 2014

1 15A NCAC 05H .1701 has been adopted with changes as published in 2902 NCR 149 as follows:

2
3 **SECTION .1700 – CHEMICAL DISCLOSURE**
4

5 **15A NCAC 05H .1701 CHEMICAL DISCLOSURE REQUIREMENTS**

6 The rules of this Section set forth the requirements of chemical disclosures for permittees, service companies, and
7 vendors involved in oil or gas exploration and production. This Section delineates information to be posted to the
8 Chemical Disclosure Registry – <http://fracfocus.org/>. These Rules also specify the conditions under which ~~trade~~
9 ~~secret~~confidential information protections apply and the conditions under which trade secret information can be
10 disclosed to health professionals or emergency responders.

11
12 *History Note: Authority G.S. 113-391(a)(5)h;*
13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1702

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, I take it that the regulated public knows who the "local emergency management office" is? And that this corresponds to the "local government emergency response officials" in G.S. 113-391(a)(5)h?

In (a), is the information in the Safety Data Sheet confidential?

Please begin (a)(2) and (3) with "the"

In (b), please correct the spelling of "vendor" on line 10.

On line 11, I believe you mean "a complete list of all planned base fluids..." And what do you mean by "complete"?

On lines 14 and 27, I know you are reciting statute, but I don't think "securely" is needed.

Also in (b), do you mean that this claimed confidential information will be held until the Commission makes the determination? I am reading (b) as if the granting of the claim is a foregone conclusion and I don't think that is the intent, based upon other Rules.

In (c), line 20, please insert "pursuant to Rule .0708 of this Subchapter" after "Commission"

In (c), who is maintains the Chemical Disclosure Registry? I ask because the permittee is uploading confidential information and the statute speaks to only the State and local government having access to this information. Is this a governmental agency?

On line 23, is "FracFocus" the correct name when it's not in a URL?

On line 24, please delete the comma after "amendments"

On line 26, don't you mean anything claimed as confidential information and granted that status by the Commission? Again, the Rule reads as if the claim is sufficient for protection and that does not correlate with Rules .0707 and .0708.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

Also in (c), please note my earlier questions regarding contacting the Department and whether ingress and egress points are the same.

In (c)(9), Page 2, I take it the “certified” survey is from a licensed surveyor?

In (c)(11), line 7, delete the comma after “operation”

On line 8, since the report is submitted afterwards, shouldn’t “is” be “was”?

In (16), you do not need to reincorporate this by reference, as you already did so in Rule .0102.

Also, please delete the parenthesis. I suggest you state “identification and chemical classification of each chemical and additive...”, but if that would change the meaning, please do not do so.

In the History Note, please add the citation to G.S. 113-391.1

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: December 1, 2014

1 15A NCAC 05H .1702 has been adopted with changes as published in 29:02 NCR 149-150 as follows:

2
3 **15A NCAC 05H .1702 REQUIRED DISCLOSURES**

4 (a) The permittee shall notify the local emergency management office of all hazardous chemicals that may be used
5 for any purpose at the well site no later than 30 calendar days prior to the chemicals entering the well site. This
6 notification shall include a Safety Data Sheet for each chemical and the following information:

- 7 (1) the anticipated quantity (mass or volume);
8 (2) method of containment; and
9 (3) chemical classification.

10 (b) The permittee, service company, or vender shall submit to the Department, no less than 30 calendar days prior to
11 the commencement of well stimulation activities, a complete list planned of all base fluids and additives to be used
12 in well stimulation ~~activities, unless activities.~~ Any information claimed as a trade secret confidential information
13 under G.S. 66-152(3), 113-391.1, and Rule .0707 of this Subchapter shall be protected as confidential
14 information and shall be maintained securely in accordance with G.S. 132-7. This notification shall include:

- 15 (1) the trade or common name of each chemical subject to the Safety Data Sheet;
16 (2) the CAS registry number;
17 (3) the range of anticipated concentrations (by mass or volume) in the mixture for each chemical; and
18 (4) the purpose each chemical or mixture will serve in the well stimulation process.

19 (c) The permittee shall upload all well stimulation data, unless claimed as a trade secret under G.S. 66-152(3), 113-
20 391.1, and Rule .0707 of this Subchapter and said claim determined as satisfactory by the Commission, to
21 ~~http://fracfocus.org/ and submit a Form 19 – Chemical Disclosure Report to the Department~~ within 15 calendar days
22 following the conclusion of well stimulation. The permittee shall submit a Form 19 – Chemical Disclosure Report
23 and a copy of the FracFocus submission to the Department within 15 calendar days following the conclusion of
24 stimulation. If the permittee amends its FracFocus submission, any subsequent amendments, shall be submitted to
25 the Department within 15 calendar days of the amendment. Any information submitted to the Department that is
26 claimed as confidential information under G.S. 66-152(3), 113-391.1, and Rule .0707 of this Subchapter shall be
27 protected as confidential information and shall be maintained securely as provided in G.S. 132-7. The Form 19 –
28 Chemical Disclosure Report shall include:

- 29 (1) the permittee's name, address, telephone number, fax number, and email address;
30 (2) the county and nearest city or town where the oil or gas well is located;
31 (3) the property street address or nearest address to the ingress or egress point leading from a public
32 road to the well pad;
33 (4) the API number, the lease name, and the oil or gas well name and number;
34 (5) the type of oil or gas well;
35 (6) the date well stimulation operations began;
36 (7) the date well stimulation operations ceased;

- (8) the latitude and longitude of each wellhead reported to five decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);
 - (9) a certified directional survey of the horizontal oil or gas well;
 - (10) the measured depth of the oil or gas well and the true vertical depth of the oil or gas well;
 - (11) the total volume of water used in the well stimulation operations, including surface water, groundwater, produced water, reused water, reclaimed or recycled water, or the type and total volume of the base fluid used in the well stimulation operation, if a base substance other than water is used;
 - (12) the amount(s) and percent by volume of surface water or groundwater used in the well stimulation operations and the point(s) of withdrawal of that surface water or groundwater;
 - (13) the source amount(s) and location(s) of recycled water, along with percent by volume of recycled water that is used in well stimulation operations;
 - (14) the trade or common name and CAS registry number of each chemical used in the well stimulation operation;
 - (15) the trade or common name, supplier, and a brief description of the intended use or function of each additive in the well stimulation operation;
 - (16) identification of each chemical and additive (and its chemical classification) that is subject to the Safety Data Sheet requirements of 29 CFR 1910.1200, which is incorporated by reference including subsequent amendments and additions;
 - (17) the actual or maximum concentration of each chemical and additive listed pursuant to Subparagraphs ~~(13)~~(14) and ~~(14)~~(15) of this Paragraph expressed in percent by mass;
 - (18) the overall well stimulation mixture; and
 - (19) the chemical classification for each chemical and additive.
- (d) For disclosures required pursuant to Paragraphs (b) and (c) of this Rule, the permittee is not required to disclose:
- (1) chemical mixtures or compounds that occur as a consequence of drilling or well stimulation operations or that may be the incidental result of a chemical reaction or process; or
 - (2) naturally occurring materials that become unintentionally combined with well stimulation substances.

*History Note: Authority G.S. 113-391(a)(5)h;
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1703

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule? I ask because I think the content of this Rule is already addressed by Rules .0707, .1702 and G.S. 113-391.1.

If you feel you need to retain the Rule, please insert a comma after "designee" on line 7.

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: December 1, 2014

1 15A NCAC 05H .1703 has been adopted as published in 29:02 NCR 150 as follows:

2
3 **15A NCAC 05H .1703 CONFIDENTIAL INFORMATION PROTECTION**

4 (a) If any person asserts any information is entitled to be protected as confidential pursuant to G.S. 113-391.1, the
5 requesting party shall make a showing to the Commission in accordance with Rule .0707 of this Subchapter.

6 (b) In addition, any person requesting protection for confidential information that concerns hydraulic fracturing
7 fluid shall request certification by the State Geologist, or the Geologist's designee in accordance with G.S. 113-
8 391.1.

9
10 *History Note: Authority G.S. 113-391(a)(5)h; 113-391.1;*

11 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1704

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule? This appears to be simply a recitation of parts of G.S. 113-391.1.

In (a), you state that the information may be disclosed when relevant to any proceeding under G.S. 113-391.1. However, G.S. 113-391.1 states that the information can be released when relevant to any proceeding under Article 27. What is your authority to limit this disclosure? Or is this just intended to give notice of disclosure under this Section?

Further, if you reciting G.S. 113-391.1(c), why aren't you including notice that (c)(1) will require disclosure to the Division of Emergency Management? Or that federal agencies may be given the information?

In (a), line 4, who are "authorized representatives"?

Please define "immediately" on lines 7 and 9.

In the History Note, please add the citation to G.S. 113-391.1

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: December 1, 2014

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: Mining and Energy Commission

RULE CITATION: Rule 15A NCAC 05H .1704

RECOMMENDED ACTION:

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

COMMENT:

This Rule recites merely recites portions of G.S. 113-391.1. Staff does not see that this Rule is reasonably necessary to implement or interpret the enactment of the General Assembly.

G.S. 113-391.1(c) states:

(c) Exceptions to Disclosure Prohibitions.--Confidential information obtained by the Commission and the Department pursuant to this Article, and rules adopted thereunder, may be disclosed to any officer, employee, or authorized representative of any federal or State agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under this Article. Confidential information shall be disclosed to the following:

Paragraph (a) of the Rule states:

"Confidential information may be disclosed to any officer, employee, or authorized representative of a State agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant in any proceeding under G.S. 113-391.1."

Staff notes that the only difference between the language within the Rule and the law is that the Rule language removed notice to the regulated public that the information may be shared with federal agencies. Further, the Rule omits notice that the confidential information may be shared for a proceeding for any Rule under the Article.

*Amanda J. Reeder
Commission Counsel*

G.S. 113-391.1(c)(2) states:

(2) A treating health care provider who determines that a medical emergency exists and that the information is necessary for emergency or first aid treatment. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the treating health care provider upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the treating health care provider as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the health purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

Paragraph (b) of the Rule states:

The Department shall immediately disclose confidential information to a treating healthcare provider upon request in accordance with G.S. 113-391.1.

G.S. 113-391.1(c)(3) states:

(3) A Fire Chief, as that term is defined in [G.S. 95-174](#), who determines that an emergency exists and that the information is necessary to address the emergency. Regardless of the existence of a written statement of need or a confidentiality agreement, the Department shall immediately disclose the confidential information to the Fire Chief upon request. If confidential information is disclosed pursuant to this subdivision, the Department shall notify the owner of the confidential information as soon as practicable, but no later than 24 hours after disclosure. The owner of the confidential information may require execution of a written statement of need and a confidentiality agreement from the Fire Chief as soon as circumstances permit. The confidentiality agreement (i) may restrict the use of the information to the emergency purposes indicated in a written statement of need; (ii) may provide for appropriate legal remedies in the event of a breach of the agreement, including stipulation of a reasonable pre-estimate of likely damages; and (iii) may not include requirements for the posting of a penalty bond. The parties are not precluded from pursuing noncontractual remedies to the extent permitted by law.

Paragraph (c) of the Rule states:

The Department shall immediately disclose confidential information to a Fire Chief, as defined in G.S. 95-174, upon request in accordance with G.S. 113-391.1.

Historically, the RRC has granted agencies significant discretion to recite portions of statutes in their rules if the intent is to ensure that the regulated public is aware of the statutory requirements. However staff believes that this Rule does not give any additional information than that in statute, which is referenced several times in other rules in this Section. Therefore, staff believes this Rule is unnecessary.

1 15A NCAC 05H .1704 has been adopted with changes as published in 2902 NCR 150 as follows:

2
3 **15A NCAC 05H .1704 DISCLOSURE OF CONFIDENTIAL INFORMATION**

4 (a) Confidential information may be disclosed to any officer, employee, or authorized representative of a State
5 agency if disclosure is necessary to carry out a proper function of the Department or other agency or when relevant
6 in any proceeding under G.S. 113-391.1.

7 (b) The Department shall immediately disclose confidential information to a treating healthcare provider upon
8 request in accordance with ~~G.S. 133-391.1~~ G.S. 113-391.1.

9 (c) The Department shall immediately disclose confidential information to a Fire Chief, as defined in G.S. 95-174,
10 upon request in accordance with G.S. 113-391.1.

11
12 *History Note: Authority G.S. 113-391(a)(5)h;*
13 *Eff. Pending Legislative Review.*

1 15A NCAC 05H .1801 has been adopted as published in 29:02 NCR 150 as follows:

2
3 **SECTION .1800 – ENVIRONMENTAL TESTING**
4

5 **15A NCAC 05H .1801 PURPOSE AND SCOPE**

6 The rules in this Section establish requirements for the pre-drilling testing of water supplies, the testing of water
7 supplies after production has commenced, and the reporting of data collected.
8

9 *History Note: Authority G.S. 113-391(a)(5)b;*
10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1802

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), you are only requiring notice before the first drilling. Aren't the notices required for all of the tests?

On line 7, what are you referring to in G.S. 113-421(a)? That portion of the statute does not require notice.

(a) Presumptive Liability for Water Contamination.--It shall be presumed that an oil or gas developer or operator is responsible for contamination of all water supplies that are within a one-half mile radius of a wellhead that is part of the oil or gas developer's or operator's activities unless the presumption is rebutted by a defense established as set forth in subsection (a1) of this subsection. If a contaminated water supply is located within a one-half mile radius of a wellhead, in addition to any other remedy available at law or in equity, including payment of compensation for damage to a water supply, the developer or operator shall provide a replacement water supply to the surface owner and other persons using the water supply at the time the oil or gas developer's activities were commenced on the property, which water supply shall be adequate in quality and quantity for those persons' use.

In (a)(2), line 10, replace "and" with "an" after "drill"

In (a)(5), why is the owner responding to the Department?

You are deleting (a)(6), which provided for the surface owner to be given a list of Department approved labs. Who will choose the lab now? I read G.S. 113-423(f) to allow the surface owner to choose the tester. Do you have a different interpretation?

(f) Pre-Drilling Testing of Water Supplies.--Any lease of oil or gas rights or any other conveyance of any kind separating rights to oil or gas from the freehold estate of surface property shall include a clause that requires the oil or gas developer or operator to pay for the reasonable costs involved in testing all water supplies within a one-half mile radius from a proposed wellhead that is part of the oil or gas developer's or operator's activities at least 30 days prior to initial drilling activities and at least five follow-up tests at six months, 12 months, 18 months, and 24 months after production has commenced and a test within 30 days after completion of production activities at the site. The Department shall identify the location of all water supplies, including wells, on a

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

property on which drilling operations are proposed to occur. A surface owner shall use an independent third party selected from a laboratory certified by the Department's Wastewater/Groundwater Laboratory Certification program to sample wells located on their property, and the developer or operator shall pay for the reasonable costs involved in testing of the wells in question. Developers and operators may share analytical results obtained with other developers and operators as necessary or advisable. All analytical results from testing conducted pursuant to this section (i) shall be provided to the Department within 30 days of testing and (ii) shall constitute a public record under Chapter 132 of the General Statutes, and the Department shall post any results to the Department's Web site within 30 days of receipt of the results. Nothing in this subsection shall be construed to preclude or impair the right of any surface owner to refuse pre-drilling testing of wells located on their property.

If your interpretation is that the surface owner will choose, how will they know who has been certified? Is this information maintained somewhere for the individual to see?

In (b), line 21, delete the commas after "Department" and "Section"

Also on line 21, what part of Rule .1805 are you referring to if the individual refused the testing? The 30 day deadline to report? Are you saying that the Form 22 doesn't have to be filled out as required by Rule .1805, but only include the information in (b)(1) through (4)?

In (b)(3), line 28, insert a comma after "documentation" and replace "that" with "the documentation"

Please add G.S. 113-391(a)(5)b to the History Note.

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

1 15A NCAC 05H .1802 has been adopted with changes as published in 29:02 NCR 150 as follows:

2
3 **15A NCAC 05H .1802 WATER SUPPLY TESTING NOTIFICATIONS**

4 (a) The permittee shall provide written notice to all surface owners or owners of a water supply, as defined in
5 G.S.113-389, prior to water supply testing within one-half mile of the proposed wellhead. The permittee shall pay
6 the costs involved in testing all water supplies as required by G.S. 113-423(f). In addition to the requirements of
7 G.S.113-420(a) and G.S. 113-421(a) the written notice shall include the following:

- 8 (1) the applicant or permittee's name, address, telephone number, and email address;
- 9 (2) a statement of the permittee's intent to ~~perform testing of water supplies prior to drilling an oil or~~
10 ~~gas well;~~ drill and oil or gas well and as a result water supplies within one-half mile of the
11 proposed oil or gas well shall be tested;
- 12 (3) the date, time, and location of when the water supply testing is expected to occur and the estimated
13 number of entries to the property;
- 14 (4) a statement explaining that if the surface owner or owner of the water supply refuses ~~to contact a~~
15 ~~certified laboratory from the Wastewater/Groundwater Laboratory Certification program,~~ access to
16 conduct testing of the water supply, then such refusal may be used as evidence to rebut the
17 presumption of liability established by G.S. 113-421(a); and
- 18 (5) the name, address, and telephone number of the Department, to which the surface owner or owner
19 of the water supply may respond, ~~respond;~~ and
- 20 ~~(6) a list of the Department's Wastewater/Groundwater Laboratory Certification program laboratories.~~

21 (b) The permittee shall provide written notice to the Department, in accordance with Rule .1805 of this Section, if a
22 surface owner or water supply owner refuses ~~to contact a certified laboratory from the Wastewater/Groundwater~~
23 ~~Laboratory Certification program, to conduct testing of the water supply.~~ The written notice shall be submitted to
24 the Department as an attachment to Form 22 – Water Supply Testing Report and include the following:

- 25 (1) the permittee's name, address, telephone number, fax number, and email address;
- 26 (2) a copy of the written notice required in Paragraph (a) of this Rule;
- 27 (3) the name of the person or firm who requested and was refused access to conduct the testing, the
28 date of the request, and a copy of all documentation including that showing the request for access
29 was denied; and
- 30 (4) the name, address, and telephone number of the surface owner or owner of the water supply.

31
32 *History Note: Authority G.S. 113-391(a)(3); 113-423(f);*
33 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1803

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(3)(E), G.S. 113-423(f) requires the testing within 30 calendar days. I think you should state that here.

In (b), line 23, please delete "published by the U.S. EPA and USGS,"

In (c), line 26, replace "has abandoned" with "abandons"

In (d), do you mean "shall" rather than "may" on line 29? If not, then when won't the Department require additional testing after the data shows the increase?

In (e), please incorporate these standards by reference. Also, why is Subchapter L before B in the sentence?

In (f), line 34, I think you should delete the commas after "samples" and "Rule" and the language "collected in accordance with this Rule" (as I read Paragraph (b) to govern the collection of all samples.)

In (f) on Page 2, why are some elements capitalized (i.e., "Calcium" and "Sodium") but not others (i.e., "magnesium")? I note that "Chloride" and "Sodium" are capitalized in (f) but not in (h) on line 5.

In (g), what the "test one series"? Is it the test in (a)(1)? (a)(2)(A)?

In (h), please incorporate the Rules cited. Again, you do not need to say where they can be found; simply incorporate and designate if the subsequent amendments will be incorporated.

On line 4, do you need "at a minimum"? If so, you may retain it, but I wanted to inquire.

In (i), line 7, should it read "or the initial occurrence..."

On line 8, please insert a comma after "Rule"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

Also in (i), once the heightened testing is required, will it required in all subsequent tests?

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: December 1, 2014

1 15A NCAC 05H .1803 has been adopted with changes as published in 29:02 NCR 150-151 as follows:

2
3 **15A NCAC 05H .1803 WATER SUPPLY TESTING PROCEDURES**

4 (a) All water supplies located within one-half mile of the proposed wellhead shall be tested prior to initial drilling
5 activities and after production has commenced. All water supplies shall be tested according to the following:

- 6 (1) the initial water supply testing shall be conducted no earlier than 12 months but no later than 30
7 calendar days prior to the commencement of drilling-operations to establish a baseline;
- 8 (2) when multiple oil or gas wells are permitted and constructed at a well pad, the analytical results
9 for the initial sampling shall serve as the baseline for all future wells drilled on the same well pad;
10 and
- 11 (3) subsequent water supply testing shall be conducted at all initial sample locations:
- 12 (A) test one: six months after production has commenced;
- 13 (B) test two: 12 months after production has commenced;
- 14 (C) test three: 18 months after production has commenced;
- 15 (D) test four: 24 months after production has commenced; and
- 16 (E) test five: 30 calendar days after completion of production activities at the well site.

17 (b) Water supply testing required by G.S. 113-423(f), and in accordance with this Rule, shall be conducted pursuant
18 to the U.S. Environmental Protection Agency (EPA) Region IV Science and Ecosystem Support Division (SESD)
19 "Operating Procedure for Groundwater Sampling," document number SESDPROC-301-R3, "Operating Procedure
20 for Surface Water Sampling," document number SESDPROC-201-R3, and the U.S. Geological Survey (USGS)
21 "National Field Manual for the Collection of Water-Quality Data," Book 9, Handbooks for Water-Resources
22 Investigations, which are incorporated by reference, including subsequent amendments and editions. These
23 documents, published by the U.S. EPA and USGS, may be obtained online at no charge at
24 <http://www.epa.gov/region4/sesd/fbqstp/Groundwater-Sampling.pdf>,
25 <http://www.epa.gov/region4/sesd/fbqstp/Surfacewater-Sampling.pdf>, and <http://water.usgs.gov/owq/FieldManual/>.

26 (c) If a permittee drills an oil or gas well but does not install production casing and has abandoned the oil or gas
27 well in accordance with the plugging and abandonment requirements outlined in Rule .1618 of this Subchapter,
28 subsequent testing pursuant to Subparagraph (a)(3) of this Rule is not required.

29 (d) The Department may require additional testing if the current data collected show an increase in concentration
30 from the previous data for any water supply within one-half mile.

31 (e) All sample analyses required by this Rule shall be made by a laboratory certified in accordance with 15A NCAC
32 02H .0800 and pursuant to laboratory analytical procedures that comply with 15A NCAC 02L .0112 and 15A
33 NCAC 02B .0103.

34 (f) The initial samples, required by Subparagraph (a)(1) of this Rule, collected in accordance with this Rule shall be
35 analyzed for:

36 pH

manganese

specific conductance	selenium
total dissolved solids (TDS)	strontium
turbidity	lithium
alkalinity	lead
Calcium	zinc
Chloride	uranium
magnesium	isotopic radium (²²⁶ Ra and ²²⁸ Ra)
potassium	isotopic strontium (⁸⁷ Sr and ⁸⁶ Sr)
Fluoride	trihalomethanes
Sodium	benzene
Sulfate	toluene
Arsenic	ethyl benzene
Barium	xylene
Boron	diesel range organics (DRO)
Bromide	gasoline range organics (GRO)
chromium	total petroleum hydrocarbons (TPH)
Iron	Polycyclic <u>or</u> polynuclear aromatic hydrocarbons (PAH) (including benzo(a)pyrene)
dissolved methane, propane, and ethane	

- (g) The test one series of samples collected shall include all parameters listed in Paragraph (f) of this Rule.
- (h) If the results from the test one series did not exceed the permissible concentrations outlined in 15A NCAC 02L .0202 and 15A NCAC 02B .0200 for the required analytes, then the permittee, at a minimum, shall sample and analyze for pH, specific conductance, TDS, chloride, sodium, divalent cations, and dissolved methane, propane, and ethane to complete the remaining series of sampling and testing in accordance with this Rule.
- (i) If there is an increase in the concentration, or the occurrence of any analytes set forth in Paragraph (h) of this Rule the permittee shall test for all analytes set forth in Paragraph (f) of this Rule.
- (j) If any analysis conducted pursuant to this Rule reveals a concentration of dissolved methane greater than 1.0 milligram per liter (mg/l), then a gas compositional analysis and stable isotope analysis of the methane (carbon and hydrogen – ¹²C, ¹³C, ¹H and ²H) shall be conducted to determine the gas type. The permittee shall report the results in accordance with Rule .1805 of this Section.

*History Note: Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f);
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1804

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the authority for this Rule? Are you relying upon 113-391(a)(3), (4), (14)? All three?

In (a), how will a surface owner know where to get the form? And how will they know how to contact the Department?

In (a)(3), will the surface owner know this information? I know the sign onsite will have it per Rule .1615, so is that how the owner will know?

In (a)(4), I'd state, "An indication if the individual contacted the permittee, and if so, the name of the contact." Would there be a problem if the individual didn't remember the name of the person contacted?

In (a)(5), should it read "the date and description of the incident, if known" (since the individual may not know the incident at all, just the problem that resulted). If so, then please amend (a)(6) to state "a description of the problem."

In (b), provide more guidance on this in the Rule. Will the Department always make this request to the permittee in response to a complaint?

Also in (b), do you mean within 30 calendar days of receipt of the Department request or the test results?

In (c), how can the Department require this? I think you mean to cite to G.S. 113-421(a5), and I don't see how the Department can do this.

In the History Note, why are you referring to G.S. 113-423(f)?

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: December 1, 2014

1 15A NCAC 05H .1804 has been adopted as published in 29:02 NCR 152 as follows:

2
3 **15A NCAC 05H .1804 REQUEST FOR INVESTIGATION OF WATER SUPPLY**

4 (a) Any surface owner or owner of a water supply who suspects contamination as a result of the drilling, alteration,
5 or operation of an oil or gas well may submit Form 21 – Water Supply Investigation Request to the Department,
6 requesting that an investigation be conducted. The completed form shall include the following information:

7 (1) the name of surface owner or owner of the water supply, address, telephone number, and email
8 address;

9 (2) the name of the oil or gas well permittee;

10 (3) the API number, the lease name, and the oil or gas well name and number;

11 (4) an indication if the permittee was contacted and if so provide contact name;

12 (5) the date of incident if known; and

13 (6) a description of the incident or problem.

14 (b) At the request of the Department, the permittee shall conduct a test of the water supply and submit the analytical
15 results to the Department within 30 calendar days of receipt.

16 (c) The Department shall require the permittee to replace a water supply pursuant to G.S. 113-421(a4) if the
17 investigation and analytical results indicate that the water supply is contaminated due to the activities of the
18 permittee.

19
20 *History Note: Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f);*

21 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1805

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, will the regulated public know who this individual is?

And will this information be sent after all testing? Do you want to include language to state that here?

On line 7, why are these individuals signing and sealing the form? Are they ones conducting the testing?

Please note my earlier questions regarding contact information for the Department and points of ingress and egress.

In (a)(5), should it read "the date the water supply"?

In (a)(6), what is the "testing series"? And please delete "on" at the end of the line.

In (a)(11), who conducts the field observations? The geologist or engineer signing the form?

Also, I suggest stating, "field observations, including odor, water color..."

In (a)(13), what is "complete"? what are the required analyses? Is it what is in (a)(9)?

In (a)(14), please incorporate these Rules by reference.

On line 29, please end the sentence after "indicated."

In (b), I believe you mean to reference "113-~~423~~(f)."

Please explain the rationale for including Paragraph (c) after the public comment period.

In (c), line 32, why is "local health director" not capitalized, but it is on line 5?

In (c)(2), line 34, change "increases" to "increased"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

In (c)(3), line 35, please change “is” to “was”

In (c)(4), line 36, what is “BTEX” and “TPH”? Please change “exceeds” to “exceeded”

On line 37, please delete the quotation mark after “18C.”

In the History Note, aren’t G.S. 113-391(a)(3), (a)(4), and (a)(5)b, as well as 113-423(f) applicable to this Rule?

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: December 1, 2014

1 15A NCAC 05H .1805 has been adopted with changes as published in 29:02 NCR 152 as follows:

2
3 **15A NCAC 05H .1805 REPORTING OF TEST RESULTS**

4 (a) The permittee shall submit Form 22 – Water Supply Testing Report to the Department, in accordance with G.S.
5 113-423(f). The permittee shall also send the Form 22 – Water Supply Testing Report to the Local Health Director,
6 surface owner(s), and owner(s) of the water supply within 30 calendar days of testing. The form shall be signed and
7 sealed by either a Licensed Geologist or Professional Engineer and shall include the following information:

- 8 (1) the permittee's name, address, telephone number, fax number, and email address;
- 9 (2) the county and nearest city or town where the oil or gas well is located;
- 10 (3) the property street address or nearest address to the ingress or egress point leading from a public
11 road to the well pad;
- 12 (4) the API number, the lease name, and the oil or gas well name and number;
- 13 (5) the date water supply was sampled;
- 14 (6) an indication of which water supply testing series is being reported on;
- 15 (7) the latitude and longitude of each water supply within one-half mile of the wellhead reported to
16 five decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);
- 17 (8) the name, address, and telephone number of the surface owner or owner of the water supply;
- 18 (9) identification of the certified laboratory at which analyses required by this Section were
19 conducted, the date(s) on which the analyses were conducted, and identification of the technical
20 personnel who conducted such analyses;
- 21 (10) a description of where and how the sample was collected and the name of the person who
22 collected the sample;
- 23 (11) field observations to include odor, water color, sediment, bubbles, and effervescence;
- 24 (12) a description of the type and age, if known, of the water supply, and water supply treatment, if
25 any;
- 26 (13) the complete results of the required analyses attached to the report in hard copy, as a .pdf, and as
27 an electronic spreadsheet; and
- 28 (14) any exceedance of applicable Maximum Contaminant Levels for public drinking water, as set
29 forth in 15A NCAC 18C shall be indicated in the report.

30 (b) Applicants or permittees may share analytical results in accordance with G.S. 113-421(f).

31 (c) The permittee shall provide verbal notice within 24 hours and written notice within 30 days to the Department,
32 local health director, surface owner(s), and owner of the water supply if test results indicate:

- 33 (1) the presence of natural gas constituents;
- 34 (2) the dissolved methane concentration increases by more than 5.0 mg/L between sampling periods;
- 35 (3) the dissolved methane concentration is detected at or above 10.0 mg/L; or
- 36 (4) BTEX compounds or TPH exceeds applicable Maximum Containment Levels for public drinking
37 water, as set forth in 15A NCAC 18C.”

1

2 *History Note:* *Authority G.S. 113-391(a)(1); 113-391(a)(5)k;*

3 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1806

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I'd end the sentence on line 4 after "Section." Then begin "This shall be available..."

Please note in the Rule that the information shall be available on the Department's website and provide the URL.

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: December 1, 2014

1 15A NCAC 05H .1806 has been adopted as published in 29:02 NCR 152 as follows:

2
3 **15A NCAC 05H .1806 RECORD KEEPING AND REPORTING**

4 (a) The Department shall maintain baseline and subsequent analytical data results required pursuant to this Section,
5 which shall be available to the public through the Department within 30 calendar days of receipt of results.

6 (b) The permittee shall maintain all records in accordance with Rule .0202 of this Subchapter.

7
8 *History Note: Authority G.S. 113-391(a)(5)b; 113-391(a)(5)k;*

9 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1807

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), how will the Department make this determination? On a case-by-case basis based upon outside guidance?

On line 5, define "effective."

In (b)(1), line 10, delete "that is"

On line 11, I believe you mean to end this with an "or" since it will be used for (1) or (2) – not only (1) and (2) together.

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: December 1, 2014

1 15A NCAC 05H .1807 has been adopted as published in 29:02 NCR 152 as follows:

2
3 **15A NCAC 05H .1807 TRACER TECHNOLOGY**

4 (a) The Department shall only approve the use of tracer technology for the purposes described in this Rule if the
5 Department determines that the tracer technology is effective in tracing well stimulation fluids back to the oil or gas
6 well where the fluid was injected and can be used without chemical or radiological impacts to groundwaters or other
7 adverse impacts to public health, welfare, and the environment.

8 (b) A permittee shall only use approved tracer technology for the following purposes:

9 (1) as evidence that well stimulation fluid from a particular oil or gas well caused or contributed to an
10 exceedance of the standards set out in 15A NCAC 02L .0202 or 15A NCAC 02B .0200 that is
11 detected as a result of water supply testing required under Rule .1803 of this Section; and

12 (2) to identify well stimulation fluid from a particular oil or gas well as the source of contamination
13 detected as a result of an investigation of water supply conducted under Rule .1804 of this Section.

14
15 *History Note: Authority G.S. 113-391(a)(3); 113-391(a)(5)b; 113-423(f);*

16 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1901

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), please end the sentence after "include:" on line 10.

Please note my earlier questions regarding the method of contacting the Department and ingress and egress points.

In (b)(5), should it read, "with the additional information required by Rules..."

In (b)(9), I believe that "flowback water" can be understood from the definition of "flowback fluid" as defined in Rule .0102. However, I note that you are deleting "produced water" in Rule .0102. Does your regulated public know what these terms mean?

In (a)(9), the applicant is required to state the sources rejected. I must be missing it, but where is the requirement for listing the sources of water that shall be used?

In (b)(10)(B), you may want to just cite "113-389" in case the specific citation is changed later.

In (b)(12), Page 2, line 1, please define "sufficient" and "accurately". And define "accurately" on line 2.

In (c), when will this occur? Provide guidance on this in the Rule.

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: December 1, 2014

1 15A NCAC 05H .1901 has been adopted as published in 29:02 NCR 153 as follows:

2
3 **SECTION .1900 – WATER ACQUISITION AND MANAGEMENT**
4

5 **15A NCAC 05H .1901 WATER MANAGEMENT PLAN REQUIREMENTS**

6 (a) An applicant or permittee shall submit a Water Management Plan for proposed oil or gas well(s) to be located at
7 the well pad. This plan shall be submitted to the Department for review and approval in accordance with Rule .1304
8 of this Subchapter and with the rules of this Section prior to the commencement of activities covered under the Form
9 2 – Oil or Gas Well Permit Application.

10 (b) A Form 4 – Water Management Plan shall include the following:

11 (1) the applicant or permittee's name, address, telephone number, fax number, and email address;

12 (2) the county and nearest city or town where the oil or gas well is located;

13 (3) the property street address or nearest address to the ingress or egress point leading from a public
14 road to the well pad;

15 (4) the lease name and the oil or gas well name and number;

16 (5) identification of the source(s) of water to be used with additional information provided in
17 accordance with Rules .1902 through .1905 of this Section;

18 (6) the name, address, phone number, parcel identification, and written consent from the owner of the
19 real property where any surface water intake, groundwater well, or water transport system
20 components or structures have been, or will be, located, installed, or constructed;

21 (7) the proposed start date and expected ending date of water withdrawals;

22 (8) the proposed average and maximum daily withdrawal in millions of gallons per day and the
23 expected total withdrawal in millions of gallons;

24 (9) a description of all potential sources of water, including flowback and produced water, that were
25 evaluated for this application and the reasons for rejecting those sources as required by Rule .1905
26 of this Section;

27 (10) topographic maps and aerial maps showing the latitude and longitude, in decimal degrees, of the
28 following features and locations:

29 (A) the proposed water source(s) and any existing hydrologic features within the area of
30 influence of the proposed water source, including other streams, springs, and wetlands;

31 (B) any existing water supply, as defined in G.S. 113-389(15), within the area of influence;

32 (C) any areas with known environmental contamination within the area of influence;

33 (D) any current or proposed utility rights-of-way associated with the project area; and

34 (E) any current or proposed structure(s) or appurtenance(s) for the transport or storage of
35 water.

36 (11) a list of alternative water source(s) or practices to be used during times of drought or low flow
37 conditions;

1 (12) a monitoring plan sufficient to accurately record the amount of water used from each source
2 included in this application on a daily basis, including schedules of maintenance to ensure accurate
3 measuring and recording of the water usage; and

4 (13) all other information required by Rule .1906 of this Section.

5 (c) The Department may request additional information necessary to protect public health, welfare, and the
6 environment when reviewing the Form 4 – Water Management Plan.

7
8 *History Note: Authority G.S. 113-391(a)(5)e;*
9 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1902

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(4), what is "instream flow"?

In (b), please clearly state in the Rule who will provide this information and to whom. I suspect the permittee must provide it to the Department, but I'm not sure.

On line 12, please insert a comma after "reach"

In (b)(1), I see that river basin is defined in G.S. 143-215.22G. Is that you mean? If so, move that closer to the term defined. Further, you do not need to incorporate a statute by reference.

In (b)(3), what are "free-flowing water sources"?

In (b)(3)(A), line 19, please state "a list of other..." and insert a comma after "reach"

In (b)(3)(B), line 21, please delete "provide"

In (b)(4), this information is required to be given to someone? Isn't this instead a requirement the Commission is putting into Rule that applies to everyone?

On line 24, replace "this" with "the"

In (b)(5), how does one obtain the NPDES permit?

On line 27, what is a "point source discharge"? Does your regulated public know?

Also on line 27, please delete "that." Should the sentence read, "... any point source discharges within the affected reach or discharges to a groundwater impoundment..."?

Please explain what the requirements in (c) have to do with water. Is this if the permittee is withdrawing from a water source, the information must address that source?

In (d), Page 2, line 2, how will the permittee know if the species are exotic or invasive?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In (e), lines 4 and 5, you already incorporated every Rule in 02B .0200 and do not need to do so here again.

On line 5, please insert "the permittee" after "amendments" (assuming that is who you mean).

Is the permittee documenting or stating that the resource will not be adversely affected? If they are documenting it, how are they doing that?

In the History Note, is 113-391(a)(4) not also applicable?

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: December 1, 2014

1 15A NCAC 05H .1902 has been adopted as published in 29:02 NCR 153-154 as follows:

2
3 **15A NCAC 05H .1902 SURFACE WATER SOURCE DOCUMENTATION**

4 (a) For surface water sources, the applicant or permittee shall consult with the Department to determine and
5 evaluate the limits of the affected reach. The exact delineation of the affected reach shall be determined in
6 consultation with and with the approval of the Department and shall depend on factors including:

- 7 (1) the cumulative amount of water to be withdrawn when the proposed withdrawal is combined with
8 existing withdrawals;
9 (2) the hydrologic characteristics of the stream;
10 (3) the presence or absence of downstream point source discharges; and
11 (4) the potential effects on other users and instream flow.

12 (b) Following a determination of the limits of the affected reach the following information shall be provided:

- 13 (1) the river basin designation at the point of withdrawal and the river basin designation where the
14 water will be used as defined by G.S. 143-215.22G, which is incorporated by reference including
15 subsequent amendments;
16 (2) the classification of the water source at the withdrawal point in accordance with 15A NCAC 02B
17 .0301, which is incorporated by reference including subsequent amendments;
18 (3) for free-flowing water sources:
19 (A) list other existing and proposed withdrawals within the affected reach including the
20 maximum withdrawal capacity of each; and
21 (B) provide an estimate of the 7Q10 flow at the proposed intake location and explain the
22 methodology used to derive the estimate. The cumulative maximum instantaneous
23 withdrawal from the affected reach shall be limited to 20 percent of the 7Q10 flow.
24 (4) when flows in the affected reach are at 7Q10 levels, withdrawals conducted under this permit shall
25 cease until flows reach 120 percent of the 7Q10 flow level; and
26 (5) the owner, facility name, National Pollution Discharge Elimination System (NPDES) permit
27 number, and permitted volume of any point source discharges within the affected reach or that
28 discharge to a water impoundment that is listed as a water source.

29 (c) The results of a survey to determine the presence of any state or federally threatened or endangered species or
30 any invasive species that may be affected by the proposed withdrawal shall include:

- 31 (1) the identification of any state or federally threatened or endangered species present;
32 (2) a description of how any detrimental impacts to those species and their critical habitats will be
33 avoided;
34 (3) a description of how the spread of any identified invasive species will be prevented; and
35 (4) the identification of the sources of information used for the determination and contact information
36 for the federal and state agencies consulted.

1 (d) The permittee shall indicate the presence of any known noxious aquatic weeds listed in 15A NCAC 02G .0602,
2 which is incorporated by reference including any subsequent amendments, or other exotic or invasive species in the
3 source water(s).

4 (e) If the surface water source is classified as an Outstanding Resource Water under 15A NCAC 02B .0225, which
5 is incorporated by reference including subsequent amendments, shall document that the outstanding resource value
6 will not be adversely affected.

7
8 *History Note: Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k;*
9 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1903

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a)(1), these are filed with the local health department?

In (a)(2), please incorporate Rule 02C .0105 by reference.

In (a)(4), line 16, should "from" be "through" or "by"?

In (a)(5), what is a "cone of depression"?

In (b), shouldn't the language on lines 25-28 come first? That way, individuals know what a "drought indicator well" is.

On line 23, where are these designations by the Division of Water Resources listed in law or Rule? (I am asking because it seems you are reciting Rule language.)

On line 26, do you mean "shall" rather than "may"? If not, then this does not seem clear, as the requirement in the Paragraph won't apply because the permittee will not have a drought indicator well.

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: December 1, 2014

1 15A NCAC 05H .1903 has been adopted as published in 29:02 NCR 154 as follows:

2
3 **15A NCAC 05H .1903 GROUNDWATER SOURCE DOCUMENTATION**

4 (a) For groundwater sources from which water is proposed to be obtained as part of the Water Management Plan,
5 the applicant or permittee shall provide the following information:

6 (1) for pre-existing groundwater wells, a copy of the well construction record filed with the
7 Department in accordance with 15A NCAC 02C .0114(b), which is incorporated by reference
8 including subsequent amendments, or from the local health department;

9 (2) for groundwater wells constructed specifically for the purposes covered by this application, a copy
10 of the Well Construction Permit issued by the Department pursuant to 15A NCAC 02C .0105 and
11 the associated groundwater well construction record form submitted to the Department pursuant to
12 15A NCAC 02C .0114(b);

13 (3) the results of an aquifer pump test for each well included in this application. The aquifer pump
14 test shall be conducted in accordance with 15A NCAC 02C .0110(b), which is incorporated by
15 reference including subsequent amendments;

16 (4) a map showing the extent of the measureable area of influence determined from the aquifer pump
17 test at the proposed rate of withdrawal indicating the locations of all surface waters and water
18 supply wells within the area of influence;

19 (5) a map showing the extrapolated cone of depression based on six months usage; and

20 (6) information required by 15A NCAC 02C .0107(j)(2)(E) and (j)(3)(D), which is incorporated by
21 reference including subsequent amendments, for the construction of water supply and other wells.

22 (b) When the drought indicator well closest to the groundwater source(s) included in this application is designated
23 as D3, indicating that water levels are at or below the 5th percentile of historic water level measurements as reported
24 by the Division of Water Resources, withdrawals from these sources shall cease until the designation is upgraded to
25 D1 or above, indicating water levels above the 10th percentile of historic water level measurements. In consultation
26 with and with the approval of the Department, an applicant or permittee may identify a drought indicator well within
27 the measureable area of influence to be used to monitor the impacts to groundwater and to determine appropriate
28 thresholds on which to base the cessation of groundwater pumping.

29
30 *History Note: Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k; 113-391(b);*
31 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1904

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Should the first sentence read, "For purchased water sources from which water is proposed to be obtained as part of the Water Management Plan, the applicant or permittee shall provide the following documentation:"? That would be consistent with Rule .1903.

In Item 1, please switch the order of the statues so they are in numerical order.

Further, I don't read G.S. 143-355(l) to require registration.

(l) Local Water Supply Plans. - Each unit of local government that provides public water service or that plans to provide public water service and each large community water system shall, either individually or together with other units of local government and large community water systems, prepare a local water supply plan and submit it to the Department for approval. The Department shall provide technical assistance with the preparation of plans to units of local government and large community water systems upon request and to the extent that the Department has resources available to provide assistance. At a minimum, each unit of local government and large community water system shall include in local water supply plans all information that is readily available to it. Plans shall include present and projected population, industrial development, and water use within the service area; present and future water supplies; an estimate of the technical assistance that may be needed at the local level to address projected water needs; current and future water conservation and water reuse programs, including a plan for the reduction of long-term per capita demand for potable water; a description of how the local government or large community water system will respond to drought and other water shortage emergencies and continue to meet essential public water supply needs during the emergency; and any other related information as the Department may require in the preparation of a State water supply plan. A unit of local government or large community water system shall submit a revised plan that specifies how the water system intends to address foreseeable future water needs when eighty percent (80%) of the water system's available water supply based on calendar year average daily demand has been allocated to current or prospective water users or the seasonal demand exceeds ninety percent (90%). Local plans shall be revised to reflect changes in relevant data and projections at least once each five years unless the Department requests more frequent revisions. The revised plan shall include the current and anticipated reliance by the local government unit or large community water system on surface water transfers as defined by G.S. 143-215.22G. Local plans and revised plans shall be submitted to the Department once they have been approved by each unit of local government and large community water system that participated in the preparation of the plan.

Is this in Department rules or just done through practice?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In Item (3), what is “raw water”?

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: December 1, 2014

1 15A NCAC 05H .1904 has been adopted as published in 29:02 NCR 154-155 as follows:

2
3 **15A NCAC 05H .1904 PURCHASED WATER SOURCE DOCUMENTATION**

4 For purchased water sources, the applicant or permittee shall provide the following information:

- 5 (1) identification of the water supplier, including name, contact information, and water supply facility
6 identification, if such identification is required by G.S. 143-355(l) or G.S. 143-215.22H;
7 (2) a copy of a letter of commitment or contract authorizing the acquisition of water by the applicant
8 or permittee;
9 (3) the type of water to be provided, such as water treated to drinking water standards, treated
10 wastewater, reclaimed water, or raw water;
11 (4) the proposed average and maximum amount of water to be provided daily in millions of gallons
12 per day and the expected total maximum amount to be provided; and
13 (5) the proposed method of transport of the water from the supplier to the point of use.

14
15 *History Note: Authority G.S. 113-391(a)(5)e; 113-391(a)(5)k;*
16 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1905

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

So that I understand – the applicant is required to review potential alternative sources of water and either accept or reject them. If rejected, Paragraph (a) applies, and if accepted, Paragraph (b) applies?

In (a), line 5, please delete the comma after “Plan”

In (b)(3), what do you mean by “this application”? The application for the permit or the application of the water?

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: December 1, 2014

1 15A NCAC 05H .1905 has been adopted as published in 29:02 NCR 155 as follows:

2
3 **15A NCAC 05H .1905 ALTERNATIVE WATER SOURCES**

4 (a) The applicant or permittee shall provide a review of the potential alternative sources of water, including the
5 option of using flowback or produced water, evaluated for the Water Management Plan, and indicate the reasons for
6 rejecting those water sources. The applicant or permittee shall include the following in the review:

7 (1) current uses of each alternative water source evaluated, including a list of current withdrawers
8 other than the applicant or permittee;

9 (2) the name and classification of each alternative water source evaluated; and

10 (3) a description of the current or proposed structure or appurtenances for the transport or storage of
11 water from the alternative water source.

12 (b) For reuse of flowback or produced water, the applicant or permittee shall provide the following information:

13 (1) the source of the flowback or produced water;

14 (2) the proposed maximum daily use in millions of gallons per day and the amount expected to be
15 used; and

16 (3) the estimated amount of additional water needed to provide sufficient quantity for activities
17 covered in this application.

18
19 *History Note: Authority G.S. 113-391(a)(5)e;*
20 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .1906

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, does your regulated public know what is meant by "daily monitoring records"? Is the permittee expected to monitor water usage daily? Where is that stated? Also, retain for five years from the date of recording?

In (b), please insert "The" before "Form 23" on line 10.

Please note my earlier questions regarding contact information for the Department (especially as it relates to Paragraph (c)), ingress and egress points, and for Paragraph (f), the timing of that notice.

In (b)(5), (6) and (7), what do you mean by "this application"?

In (d), you say that for land disturbing activity, there must be notice. But it appears that you are reciting the notice requirements for 113-420(a), which governs activities that do not disturb the surface of the property. Was this intentional? I think you should include at least a reference to G.S. 113-420(b) here.

On line 25, please insert an "as" before "required by ..."

Why is the water in .1905 not included? Is it because that type of water is produced in the process?

In (e), what is required in this notice? When is it required to be sent?

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: December 1, 2014

1 15A NCAC 05H .1906 has been adopted with changes as published in 29:02 NCR 155 as follows:

2
3 **15A NCAC 05H .1906 REPORTING**

4 (a) For each Water Management Plan, the permittee shall monitor, record and retain, for a period of five years after
5 reclamation of the last oil or gas well for which the plan was submitted as part of the application, all records related
6 to the daily water pumping schedules, received and purchased water, amounts of stored water, and quantities of
7 flowback and produced water for recycling or reuse. The daily monitoring records shall be retained by the permittee
8 for five years. These records shall be made available to representatives of the Department upon request.

9 (b) The permittee shall submit Form 23 – Annual Water Use Report to the Department by April 1st of each year for
10 the period of January 1st to December 31st of the prior year. Form 23 – Annual Water Use Report shall include the
11 following information:

- 12 (1) the permittee's name, address, telephone number, fax number, and email address;
- 13 (2) the county and nearest city or town where the oil or gas well is located;
- 14 (3) the property street address or nearest address to the ingress or egress point leading from a public
15 road to the well pad;
- 16 (4) the API number, the lease name, and the oil or gas well name and number;
- 17 (5) the daily average water withdrawals from each of the surface water and groundwater source(s)
18 included in this application for each month;
- 19 (6) the maximum daily water withdrawals from each of the surface and groundwater source(s)
20 included in this application for each month; and
- 21 (7) the number of days that water was withdrawn in each month from the surface and groundwater
22 source(s) included in this application.

23 (c) The permittee shall submit Form 23 – Annual Water Use Report electronically to the Department.

24 (d) The applicant or permittee shall provide notice of any land-disturbing activity associated with the Water
25 Management Plan to any owner of real property identified in the plan required by Rule .1901(b)(6) of this Section.
26 The notice shall be sent at least 30 calendar days before the desired date of entry to the property for activities
27 described in Rules .1902 through ~~.1905~~.1904 of this Section. Notice shall be given by certified mail with return
28 receipt requested and shall include:

- 29 (1) the dates and duration of activities;
- 30 (2) the location where entry will take place; and
- 31 (3) the identity of person(s) entering the property.

32 (e) The applicant or permittee shall provide notice identifying the water source to the local municipality and county
33 where the source is located.

34 (f) The permittee shall notify the Department at least 48 hours via telephone or email prior to first withdrawal from
35 the approved water source(s) identified in the Water Management Plan. The permittee shall submit Form 11 –
36 Required Notifications to the Department, by mail, email or fax within five calendar days and shall include the
37 following information:

- 1 (1) the permittee's name, address, telephone number, fax number, and email address;
- 2 (2) the county and nearest city or town where the oil or gas well is located;
- 3 (3) the property street address or nearest address to the ingress or egress point leading from a public
- 4 road to the well pad;
- 5 (4) the API number, the lease name, and the oil or gas well name and number; and
- 6 (5) the scheduled date and approximate time of day for the first withdrawal from the water source.

7

8 *History Note:* *Authority G.S. 113-391(a)(5)e;*
9 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2001

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 6, please insert a comma after "control"

On line 7, I assume your regulated public knows what "all applicable laws and regulations" means?

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: December 1, 2014

1 15A NCAC 05H .2001 has been adopted as published in 29:02 NCR 155-156 as follows:

2
3 **SECTION .2000 – OIL OR GAS SITE EXPLORATION AND PRODUCTION WASTE MANAGEMENT**

4
5 **15A NCAC 05H .2001 PURPOSE AND SCOPE**

6 The permittee shall manage, control and dispose of all waste associated with exploration and production (E & P) of
7 oil or gas in accordance with the standards set forth in this Section and all applicable laws and regulations.

8
9 *History Note: Authority 113-391(a)(5)f;*

10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2002

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), line 10, you state that the E&P plan will include storage and handling of residuals and solid wastes. However, Rule .0102(87) defines "residuals" as "any solid, semisolid or liquid waste," so isn't the reference to "solid wastes" here redundant?

If it is not, please insert a comma after "wastes" on line 10.

In (d), line 13, does your regulated public know what "plan design sheets" are?

In (d)(1), line 14, please delete "as provided by the Department" Rule .0201 states that all forms are provided by the Department, and it is not needed here.

In (d)(1)(A), will there always be both pits and tanks? If not, then here and in (d)(1)(B), shouldn't it be "pits or tanks"? (And if so, that would affect language elsewhere in the Rule.)

In (d)(3), please incorporate the CFR by reference.

In (d)(6), what if the wastes are being disposed on onsite?

In (d)(8), the permittee has to provide this information to the Department, but you give it to them here. Is this intended to assist the individuals in complying with the Rule?

In (e), is "upon request" necessary? It says it is "available," so I don't read it to require that it be presented. However, if you believe it's necessary, that's fine.

In (f), why are you referring to Rule .1305 here? I don't read that Rule to require this. Are you saying that it has to be on the sign required in Rule .1305?

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: December 1, 2014

1 15A NCAC 05H .2002 has been adopted with changes as published in 29:02 NCR 156 as follows:

2
3 **15A NCAC 05H .2002 EXPLORATION AND PRODUCTION WASTE MANAGEMENT PLAN**
4 **REQUIREMENTS**

5 (a) An E & P Waste Management Plan, approved by the Department in accordance with this Rule, is required prior
6 to the generation of E & P wastes from the drilling, producing, plugging, or any other activity associated with an oil
7 or gas well.

8 (b) The E & P Waste Management Plan shall identify the management, control, reuse, and disposal methods for E
9 & P wastes.

10 (c) The E & P Waste Management Plan shall address the storage and handling of wastewater, residuals, solid wastes
11 and any other non-hazardous and hazardous wastes related to exploration and production activities from the point of
12 initial generation of E & P wastes onsite to final disposal of the E & P waste.

13 (d) The E & P Waste Management Plan shall include the following form, documentation, and plan design sheets:

14 (1) a completed Form 5 – Waste Management Plan, as provided by the Department that includes the
15 following information:

16 (A) a description of the pit and tank use and locations onsite;

17 (B) the capacity of pits and tanks onsite;

18 (C) the pit liner material type, thickness, and manufacturer;

19 (D) the disposal methods for liquid and solid wastes;

20 (E) an operation and maintenance plan for all waste management infrastructure;

21 (F) a description of pit closure and site reclamation methods; and

22 (G) the anticipated date of construction or installation of all waste management infrastructure.

23 (2) construction, installation, operation, and maintenance specifications and details for all pits, tanks,
24 secondary containment, and other ancillary equipment, such as piping, pumps, and valve systems.
25 This shall include site design and capacity of all pits and tanks installed or constructed onsite;

26 (3) an emergency response plan that complies with 40 CFR 112 and Rule .1305 of this Subchapter;

27 (4) a statement of whether and how E & P wastes produced onsite will be reused at the permitted oil
28 or gas well or reused at other permitted oil or gas wells;

29 (5) a statement of whether and how the E & P wastes will be pretreated onsite for reuse or disposal;

30 (6) a statement of whether the E & P wastes will be disposed of off-site and the identification of the
31 disposal facility;

32 (7) a pit and tank closure plan that includes final disposal methods for all pit and tank contents within
33 the Reclamation Plan in accordance with the Rule .2004 of this Section and Rule .2102 of this
34 Subchapter; and

35 (8) the contact information for the local county emergency management officials and the State
36 Emergency Operations Center (1-800-858-0368) for where the well site is located shall be
37 included in the plan.

1 (e) A copy of the approved E & P Waste Management Plan shall be available to the Department at the well site
2 during drilling and completion activities upon request.

3 (f) The contact information for the local county emergency management officials and the State Emergency
4 Operations Center (1-800-858-0368) shall be prominently displayed at the well site during exploration, drilling, and
5 completion activities in accordance with Rule .1305 of this Subchapter.

6 (g) The permittee shall submit Form 24 – Annual E & P Waste Management Report to the Department in
7 accordance with Rule .2007(d) of this Section.

8
9 *History Note: Authority 113-391(a)(5)e; 113-391(a)(5)f; 113-391(a)(5)k; 113-391(b);*

10 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2003

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), this sentence is very long. Why not delete "for the following parameters" on line 4, and then start a new sentence on line 7, "The permittee shall test for the following parameters:"?

In (a), how will the Department determine the schedule? I think the new language clarifies the published language, but there should be more guidance in this Rule.

On line 6, you seem to be missing language "and shall on all fluids..." What did you mean to say there?

In the list, why are some items capitalized and others not?

In (a)(2), is this timeframe affected by the new language in (a)? Is this the same schedule as referenced in (a)?

In (b), line 14, please delete the comma after "Resources" and insert "and the" before "Director"

In (b), what would trigger the additional testing?

In this Rule, you state "on-site" in (c)(2) and (e), but "onsite" in (f) and (k)(7). Please be consistent in using the term.

In (b)(3), Page 2, line 3, please capitalize "State" and insert a comma after it.

In (d)(1), what is "POTW"? Please properly incorporate the citation by reference. As I understand Rule 15A NCAC 02H .0916, the facility is already required to have this permit, correct? As such, the extra action here is for the permittee to get a copy of the facility's permit and submit it to the Division?

In (e), what is "sludge"?

On lines 16 and 17, please make "Subparagraph" plural.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

On line 18, please incorporate the CFRs by reference under G.S. 150B-21.6.

In (g), I take it your regulated public knows what “drill cuttings” and “solidified muds” are on line 25?

On line 26, what is this procedure? Where is it found?

In (g), how will the Department set this schedule? This needs to be included in the Rule.

In (h), what is meant by “appropriate”? One permitted to accept that type of waste?

On line 30, please replace “is” with “are”

In (i), line 33, please insert a comma after “safety”

In (j), what facilities are “authorized,” rather than “permitted,” by the Department? How are they authorized?

In (k), Page 3, line 4, who determines what is “necessary”?

In (k)(10), who are the “appropriate parties”? Also, is the “generator” the permittee/operator who generated the waste?

In the History Note, please state, “113-391(a)(3); 113-391(a)(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: December 1, 2014

1 15A NCAC 05H .2003 has been adopted with changes as published in 29:02 NCR 156-157 as follows:

2
3 **15A NCAC 05H .2003 EXPLORATION AND PRODUCTION WASTE DISPOSAL**

4 (a) The permittee shall test produced water and flowback fluids for the following parameters on a frequency and
5 schedule determined by the ~~Department~~ Department, but at a minimum testing shall be conducted on the produced
6 water and flowback fluids from the first completed well on each well pad and shall on all fluids prior to management
7 in accordance with Subparagraphs (c)(2), (c)(3), and (c)(4) of this Rule:

carbonaceous biochemical oxygen demand (CBOD)	ammonia-nitrogen (NH ₃ -N)
dissolved oxygen (DO)	specific conductance
pH	total suspended solids (TSS)
Barium	bromide
Chlorides	sulfates
Sodium	divalent cations
total dissolved solids (TDS)	oil and grease
arsenic, total recoverable	cadmium, total recoverable
cobalt, total recoverable	copper, total recoverable
cyanide, total recoverable	lead, total recoverable
mercury, total recoverable	nickel, total recoverable
tin, total recoverable	zinc, total recoverable
Benzene	bis(2-ethylhexyl)phthalate
butylbenzyl phthalate	carbazole
n-Decane	fluoranthene
n-Octadecane	radium-226 (Dissolved)
strontium-90 (Dissolved)	beta radiation (gross)
chronic wet testing <u>whole effluent toxicity</u>	<u>Total organic carbon</u>
	<u>Volatile organic compounds</u>
	<u>Semi-volatile organic compounds</u>

9
10 (1) the water samples shall be collected and analyzed in accordance with Rule .1803 of this
11 Subchapter; and

12 (2) the analytical results shall be submitted to Division within 30 calendar days of receiving the
13 analytical results, unless a different schedule is prescribed by the Department.

14 (b) The Director, in consultation with the Director of the Division of Water Resources, Director of the Division of
15 Public Health within the Department of Health and Human Services, may require additional analysis and scheduling
16 as necessary for the protection of public health, welfare, and the environment.

17 (c) E & P waste shall be managed as:

- (1) reuse in well stimulation operations;
- (2) on-site pretreatment for reuse or disposal;
- (3) disposal at a plant installed for the purpose of disposing of waste within the state permitted in accordance with G.S. 143-215.1; or
- (4) disposal facility located within another state that is duly permitted to accept flowback fluid and produced water from oil or gas operations.

(d) If E & P waste is to be disposed of in accordance with Subparagraph (c)(2), (c)(3), or (c)(4) of this Rule, the permittee shall also comply with the following requirements:

- (1) prior to transporting the waste to a POTW pursuant to Subparagraph (c)(3) of this Rule, the permittee shall submit a copy of the approved Industrial User Permit required by 15A NCAC 02H .0916 to the Division.
- (2) the permittee shall notify the Division if any facility identified in the plan refuses to accept E & P waste. Upon such refusal, the permittee shall submit a revised E & P Waste Management Plan in accordance with Rule .2002 of this Section that identifies a new disposal facility to the Division.

~~(d)(e)~~ Any sludge or residual resulting from the reuse process authorized pursuant to Subparagraph (c)(1) of this Rule or from any on-site pretreatment that may be used in conjunction with Subparagraph (c)(2) and (3) of this Rule shall be managed and disposed of pursuant to Subparagraph (c)(3) and (4) of this Rule or with the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto, 42 USC 6901 *et seq.* and 40 CFR Parts 239-282. In addition, prior to disposal of any sludge or residual resulting from the reuse process authorized pursuant to Subparagraph (c)(1) of this Rule, or from any on-site pretreatment that may be used in conjunction with Subparagraph (c)(2) and (3) of this Rule, the permittee shall demonstrate that the sludge or residual meets all applicable radioactivity standards for the disposal facility.

~~(e)(f)~~ Residuals from onsite pretreatment shall be disposed of in accordance with G.S. 143-215.1, G.S. 130A-294, or transported to another state and disposed of in accordance with the receiving state's rules.

~~(f)(g)~~ Solid E & P waste, including drill cuttings and solidified muds, shall be characterized in accordance with Toxicity Characteristic Leaching Procedure, on a frequency and schedule determined by the Department. In addition, the Director, in consultation with the Director of the Division of Waste Management, may require additional analysis as necessary for the protection of public health, welfare, and the environment.

~~(g)(h)~~ Solid E & P waste shall be disposed of by transfer to an appropriate permitted solid waste management facility in accordance with 15A NCAC 13A or 15A NCAC 13B, which is incorporated by reference including subsequent amendments.

~~(h)(i)~~ E & P waste fluids may be transported to other drilling sites for reuse provided that such fluids are transported and stored in a manner that does not constitute a hazard to water resources, public health, safety or the environment in accordance with 15A NCAC 13B .0105.

~~(i)(j)~~ E & P waste, when transported off-site for treatment or disposal, shall be transported to treatment facilities authorized by the Department, or to waste disposal facilities permitted to receive E & P waste by the Department in accordance with 15A NCAC 13B. When transported to facilities outside of North Carolina for treatment or disposal,

1 E & P waste shall be transported to facilities authorized and permitted by the appropriate regulatory agency in the
2 receiving state.

3 ~~(j)(k)~~ When E & P waste is transported off-site, the permittee shall maintain for five years copies of each invoice,
4 bill, or ticket and such other records necessary to document the following requirements:

- 5 (1) the permittee's name, address, and business telephone number;
- 6 (2) the county, city, or town where the oil or gas well is located;
- 7 (3) the property street address or nearest address to the ingress or egress point leading from a public
8 road to the well pad;
- 9 (4) the API number, the lease name, and the oil or gas well name and number;
- 10 (5) the date and time of the transport;
- 11 (6) the company name and contact information of the E & P waste transporter;
- 12 (7) the location of the E & P waste pickup site if different than a pit or tank located onsite;
- 13 (8) the type and volume of E & P waste;
- 14 (9) the name and location of the treatment or disposal site; and
- 15 (10) a chronological record showing the date and time of waste collection and the transfer of waste
16 from one person to another during the course of final delivery to a disposal facility. These
17 documents shall be signed and dated by all appropriate parties, and shall include the generator,
18 transporter, and receiving facility representative.

19 ~~(k)(l)~~ All records shall be maintained in accordance with the Rule .0202 of this Subchapter.

20
21 *History Note: Authority G.S. 113-391(a)(3) and (4); 113-391(a)(5)f;*
22 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2004

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), how is the notice made and what is the timing for sending the form as it relates to the phone call?

In (c), I'd make this two sentences. End the first sentence on line 18 after "pit." Begin the next sentence "The permittee shall collect individual..."

Also in (c), I take it your regulated public knows what "five-point composite" and "grab samples" are?

In (d), why would the Department request the additional samples? Please tell why and when in the Rule. (I think that the language on lines 28-30 does an excellent job of explaining when the Department might ask for additional information.)

On line 23, I read Rule 15A NCAC 02L .0412 to only speak to EPA and Department approved methods. Where are the USGS standards found, and what is the USGS? Are you referring to the standard in Rule .1803? If so, please include that cross-reference.

In (e), line 25, remove the comma after "concentrations" and replace "under" with "in"

In (e), I tested the URL and it did not work. But if the website merely restates what is in Rule (as it should), then there is no need to include it here. Just state "concentrations established by Environmental Management Commission in 15 NCAC 02L .0202, or the background concentration..."

On line 28, when would the background concentration not have been established?

In (g), line 33, insert a comma after "reclaimed"

On line 37, insert a comma after "completed" and replace "with" with "containing"

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: December 1, 2014

1 15A NCAC 05H .2004 has been adopted with changes as published in 29:02 NCR 157-158 as follows:

2
3 **15A NCAC 05H .2004 PIT CLOSURE REQUIREMENTS**

4 (a) The permittee shall notify the Department via telephone or email 48 hours prior to commencing pit closure
5 activities so the Department staff may be onsite to inspect pit closure. The permittee shall submit Form 11 –
6 Required Notifications to the Department, by mail, email, or fax within five calendar days and shall include the
7 following information:

- 8 (1) the permittee's name, address, telephone number, fax number, and email address;
9 (2) the county and nearest city or town where the oil or gas well is located;
10 (3) the property street address or nearest address to the ingress or egress point leading from a public
11 road to the well pad;
12 (4) the API number, the lease name, and the oil or gas well name and number; and
13 (5) the scheduled date and approximate time for the pit(s) closure.

14 (b) Prior to removing the liner, all freestanding liquids and solid waste remaining in the pit shall be disposed of in
15 accordance with applicable laws and regulations. Synthetic liners shall be removed and disposed of in accordance
16 with applicable laws and regulations.

17 (c) The permittee shall collect a five-point composite sample from the pit sub-base if there are no wet or discolored
18 areas or any other indications of a release of fluids from the pit; or collect individual grab samples from any pit base
19 or sidewall slope areas that are wet, discolored or show other evidence of a release along the pit sidewall slopes or
20 base.

21 (d) The samples collected from the pit sub-base shall be analyzed for benzene, toluene, ethylbenzene, xylene
22 (BTEX), total petroleum hydrocarbons (TPH) and metals, and if requested by the Department, chlorides, bromides
23 and sulfates, according to approved EPA, USGS, or Department methods in accordance with 15 NCAC 02L .0412.

24 (e) If concentrations of BTEX, TPH, or metals exceed the soil to groundwater maximum contaminant
25 concentrations, established by the Environmental Management Commission under 15A NCAC 02L .0202 and
26 published by the Division of Waste Management at
27 [http://portal.ncdenr.org/c/document_library/get_file?uuid=ad84a424-64a3-423c-a34c-](http://portal.ncdenr.org/c/document_library/get_file?uuid=ad84a424-64a3-423c-a34c-8faeb9ffc27b&groupId=38361)
28 [8faeb9ffc27b&groupId=38361](http://portal.ncdenr.org/c/document_library/get_file?uuid=ad84a424-64a3-423c-a34c-8faeb9ffc27b&groupId=38361), or the background concentration, if established, then the Department may require
29 additional delineation upon review of the results to ensure compliance with other applicable environmental
30 regulations for soil and water contamination.

31 (f) All soil that exceeds limits established in Paragraph (e) of this Rule shall be removed from the pit and disposed
32 of at a permitted municipal solid waste landfill, hazardous waste facility, or soil reclamation facility.

33 (g) The location where the pit(s) were constructed shall be returned to grade, reclaimed and seeded in accordance
34 with the approved Reclamation Plan. Pit(s) shall be reclaimed no later than 180 calendar days after the drilling rig is
35 removed from the well site, workover operations are complete, or plugging is complete.

36 (h) The permittee shall submit a signed copy of Form 25 – Pit Closure Report to the Department within 30 calendar
37 days after the pit closure has been completed with the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) the latitude and longitude of the pit reported to five decimal places of accuracy and precision using the North American Datum of 1983 (NAD83);
- (6) the pit type and use;
- (7) the date of pit closure;
- (8) the volume of fluid and solid E & P wastes removed from the pit(s);
- (9) a confirmation that the liner was removed in accordance with Paragraph (b) of this Rule;
- (10) copies of analytical results from the required sampling in Paragraph (c) of this Rule; and
- (11) the name, permit number, and contact information for the receiving facilities.

*History Note: Authority 113-391(a)(5)c; 113-391(a)(5)d; 113-391(a)(5)f; 113-391(b);
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2005

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), please give the citations to these laws. You do not need to incorporate them by reference, as they are laws, but please do give the citation for them.

In (b), I take it your regulated public knows what "controlled and contained" means?

In (b), is the language "to protect the public health, welfare, and the environment" a policy statement or directions on how to take the action? If it's just a policy statement, do you feel you need this language?

In (d), how will the Department determine this? By looking at the reported information or based on a site visit? And what may be required?

In (e), these are reported by the permittee, correct? You may want to put that on line 13.

In (e)(1), line 14, does your regulated public knows what is meant by "incident"?

Also, so that I understand – if the spill is less than one barrel per incident, it is not reported at all?

In (e)(2), is this five barrels per incident?

In (e)(2) through (4), how does one contact the Director?

In (e)(4), please insert a comma after "impact" both places on line 24 (and this is consistent with line 20)

In (e)(4), on line 25, you require notice to the Director; however, on lines 27 and 29, you state the notice must go to the Department. Is this a different notice, or should the references be to the same noun?

On line 28, is the "water supply facility" the facility that manages the water supply? If not, what is it?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

In (f)(7), on Page 2, what is required in the site investigation?

In (f)(8), is this the remediation that may be required by (d)? If so, I'd use similar language in (d). If it is not, then how will the permittee know what this is?

In (h), I do not understand why you have this cross-reference. Are you referring to Item (6) of the Rule?

On line 10, please delete the comma after "releases"

On line 11, please delete the comma after "hours"

In (i), line 12, "When there is a threat of..."

Further on line 12, I take it "significant" is understood by the Department and regulated public?

On lines 13 -14, I think you can delete "under the Environmental Management Commission"

On line 14, do you mean "shall" instead of "may"? If not, then will the Department not want this information when there is are significant impacts or a threats of significant impacts on public health, welfare, or the environment?

In (i)(10), line 26, please insert a "the" before "extent"

In (i)(13), I suggest inserting "the" before "beginning" on line 29, "date" and "remediation" ("the date the remediation plan...") on line 30 both places, and "anticipated" on line 31.

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: December 1, 2014

1 15A NCAC 05H .2005 has been adopted as published in 29:02 NCR 158-159 as follows:

2
3 **15A NCAC 05H .2005 SPILLS AND RELEASES**

4 (a) Chemical spills and releases shall be reported in accordance with applicable state and federal requirements,
5 including the Emergency Planning and Community Right-to-Know Act, the Comprehensive Environmental
6 Response, Compensation, and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act,
7 G.S. 143-215.75 through 215.104U, 15A NCAC 02B, and 02L, as applicable.

8 (b) Spills and releases of E & P waste shall be controlled and contained upon discovery to protect public health,
9 welfare, and the environment.

10 (c) The permittee shall be responsible for controlling, containing, and remediating any spill or release.

11 (d) The Department may require any cleanup activities it determines to be necessary to protect public health,
12 welfare, and the environment.

13 (e) Spills and releases shall be reported as follows:

14 (1) spills and releases of any E & P waste that exceed a volume of one barrel per incident, including
15 those contained within lined or unlined berms, including containment systems, shall be reported
16 on Form 26 – Spill and Release Report in accordance with Paragraph (f) of this Rule;

17 (2) spills and releases that exceed a volume of five barrels of any E & P waste shall be reported by
18 telephone or email to the Director as soon as practicable, but no more than 24 hours after
19 discovery;

20 (3) spills and releases of any size that impact, or threaten to impact, any waters of the State, high
21 occupancy buildings or occupied dwellings, livestock or public roads shall be reported by
22 telephone or email to the Director as soon as practicable, but no more than 24 hours after
23 discovery; and

24 (4) spills and releases of any size that impact or threaten to impact any surface water, water supply
25 area, or water supply intake shall be reported to the Director and the appropriate local emergency
26 management coordinator in accordance with Rule .1305 of this Subchapter. These spills and
27 releases shall be reported by phone to the local emergency management coordinator, Department,
28 and water supply facility within two hours of the discovery. This initial notification to the local
29 emergency management coordinator, Department, and water supply facility shall include a
30 description of actions to be taken to mitigate the spill and release.

31 (f) For all reportable spills, the permittee shall submit Form 26 – Spill and Release Report, to the Department no
32 more than five days after discovery. The form shall include the following:

33 (1) the permittee's name, address, telephone number, fax number, and email address;

34 (2) the county and nearest city or town where the oil or gas well is located;

35 (3) the property street address or nearest address to the ingress or egress point leading from a public
36 road to the well pad;

37 (4) the API number, the lease name, and the oil or gas well name and number;

- (5) an 8 1/2 by 11 inch topographic map showing the location of the spill;
- (6) color photographs of the affected area;
- (7) a description of the initial mitigation, site investigation, and any additional remediation proposed by the permittee; and
- (8) additional information or remediation based on the type, size, and extent of the spill or release as required by the Department.

(g) The permittee shall determine the cause of all spills and releases, and shall implement measures to prevent spills and releases due to similar causes in the future.

(h) The permittee shall notify the local emergency management coordinator and State Emergency Operations Center in accordance with Rule .1305 of this Subchapter of reportable spills and releases, pursuant to the requirements in this Rule, as soon as practicable, but not more than 24 hours, after discovery.

(i) When a threat of or actual significant impacts on public health, welfare, and the environment from a spill or release exist, or when necessary to ensure compliance with 15A NCAC 02B and 02L under the Environmental Management Commission, the Department may require the permittee to submit a Form 27 – Site Investigation and Remediation Work Plan with the following information:

- (1) the permittee's name, address, telephone number, fax number, and email address;
- (2) the county and nearest city or town where the oil or gas well is located;
- (3) the property street address or nearest address to the ingress or egress point leading from a public road to the well pad;
- (4) the API number, the lease name, and the oil or gas well name and number;
- (5) a description of the impact to soils, vegetation, groundwater, or surface water;
- (6) a description of initial actions taken to remediate the spill or release;
- (7) a description of how the spill or release and impacts will be removed or remedied;
- (8) a description of proposed groundwater monitoring plan if groundwater was impacted;
- (9) a description of changes to the well site development plan or reclamation plan if needed;
- (10) a map of the area showing sample locations and extent of spill or release;
- (11) a copy of analytical reports for any samples that have been collected and analyzed;
- (12) the final disposal site of the E & P wastes recovered from the spill or release;
- (13) an implementation schedule detailing the date(s) of the initial spill or release, beginning and end of site investigation, date remediation plan was submitted, date remediation plan will be implemented, anticipated completion date of remediation, the actual completion date; and
- (14) the signature of the permittee and date signed.

*History Note: Authority 113-391(a)(5)i; 113-391(a)(5)k;
Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2006

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 5, what are you saying? "render the area non-hazardous"?

In this context, does your regulated public know what is intended by "non-hazardous" to wildlife?

On line 5, delete or define "adequate"

In (b), how often will the inspection occur? Is this just within the discretion of the permittee?

Also in (b), I take it your regulated public knows what "screening" and "netting" are?

On line 11, how is this notice given? Email, telephone call, Form 11?

On line 12, please give the citation for this Act.

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: December 1, 2014

1 15A NCAC 05H .2006 has been adopted with changes as published in 29:02 NCR 159 as follows:

2
3 **15A NCAC 05H .2006 SAFETY AND SECURITY AT PITS AND TANKS**

4 (a) Fencing around any pit or tank shall be constructed and maintained to prevent unauthorized ~~access~~access and
5 render non-hazardous to wildlife. Fences are not required if there is an adequate surrounding perimeter fence that
6 prevents unauthorized access to the well site or production facility, including the pit(s) or tank(s). Fencing shall
7 comply with Rule .1615 of this Subchapter.

8 (b) All E & P waste pits or open tanks shall be screened, netted or otherwise rendered non-hazardous to wildlife,
9 including migratory birds. ~~Where netting or screening is not used, the~~The permittee shall ~~on a monthly basis~~ inspect
10 for and, within 48 hours of discovery, report any discovery of dead migratory birds or other wildlife to the
11 Department in order to facilitate assessment and implementation of measures to prevent incidents from reoccurring.
12 All netting, screening, or other measures installed shall comply with the Migratory Bird Treaty Act.

13
14 *History Note: Authority 113-391(a)(4);*
15 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2007

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), what is the interval for this monitoring? Is it in the discretion of the permittee?

In (b), line 8, what is "monitoring and maintenance log"? Is it what is described in (b)(1) through (9)?

In (b)(3), the points of ingress and egress won't be the same?

In (b)(8), who determines "necessary" repair work? The permittee?

On line 18, state "any necessary repair work and the date(s)..."

In (d), if there are no oil or gas wells installed, then there shouldn't be any E&P waste, correct? So, someone submitting the form can only supply the first four requirements in (d)(1) – (4)?

On line 24, please begin the sentence "The Form..."

In (d)(6), line 32, insert a comma after "name"

In (d)(8), I note the requirement for two feet of freeboard conflicts with the proposed change to Rule .1504.

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: December 1, 2014

1 15A NCAC 05H .2007 has been adopted as published in 29:02 NCR 159-160 as follows:

2
3 **15A NCAC 05H .2007 MONITORING AND REPORTING**

4 (a) The permittee shall monitor all onsite E & P waste storage and disposal structures and facilities for compliance
5 with the approved E & P Waste Management Plan.

6 (b) The permittee shall inspect all pits or open tanks after a rain event of one half inch or more in a 24-hour period
7 to ensure structures have not been impaired and have the required freeboard. If impairment of a pit or open tank is
8 noted during the course of inspection, the impairment shall be recorded on a monitoring and maintenance log. The
9 log shall include:

10 (1) the permittee's name, address, telephone number, fax number, and email address;

11 (2) the county and nearest city or town where the oil or gas well is located;

12 (3) the property street address or nearest address to the ingress or egress point leading from a public
13 road to the well pad;

14 (4) the API number, the lease name, and the oil or gas well name and number;

15 (5) the date of inspection, name of the inspector;

16 (6) the location of impairment of the pit or tank;

17 (7) if a spill or release was observed;

18 (8) any necessary repair work along with the date(s) all repairs were completed; and

19 (9) the signature of person conducting the inspection.

20 (c) If the impairment of the structure of the pit or open tank results in a spill or release, the permittee shall comply
21 with the requirements for reporting, repair, and remediation in accordance with Rule .2005 of this Section.

22 (d) The permittee shall submit Form 24 – Annual E & P Waste Management Report to the Department no later than
23 April 1st of each year for the previous calendar year, regardless of whether any oil or gas wells are installed at a well
24 pad during the calendar year covered by the report. Form 24 – Annual E & P Waste Management Report shall
25 include:

26 (1) the permittee's name, address, telephone number, fax number, and email address;

27 (2) the county and nearest city or town where the oil or gas well is located;

28 (3) the property street address or nearest address to the ingress or egress point leading from a public
29 road to the well pad;

30 (4) the API number, the lease name, and the oil or gas well name and number;

31 (5) the quantity of drill cuttings that have been disposed of at off-site solid waste landfills;

32 (6) the permit number, name and location of the solid waste facility;

33 (7) the monthly quantity, in barrels, of liquid E & P waste produced in the drilling, stimulation,
34 alteration, and production of an oil or gas well; and

35 (8) the records of when pits were serviced due to inadequate freeboard, and the actions that were
36 taken to restore the two feet of required freeboard.

- 1 *History Note:* *Authority 113-391(a)(5)i; 113-391(a)(5)k;*
- 2 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2101

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 8, what is "permanent vegetative cover"? Who determines what is "appropriate" to the area? The permittee? Or is this part of the approved Reclamation Plan, specifically in Rule .2102(7)?

In (b), you state that the reclamation shall occur unless the surface owner said it was not required. However, G.S. 113-423(a3)(1) states, in relevant part:

(a3) Reclamation of Surface Property Required.--An oil or gas developer or operator shall:

(1) **Reclaim all surface areas affected by its operations** no later than two years following completion of the operations.

Are you relying upon G.S. 112-423.1, which allows agreements between the surface owner and operator, for Paragraph (b)? If so, please put this citation in the History Note?

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: December 1, 2014

1 15A NCAC 05H .2101 has been adopted as published in 29:02 NCR 160 as follows:

2
3 **SECTION .2100 – WELL SITE RECLAMATION**
4

5 **15A NCAC 05H .2101 PURPOSE AND SCOPE**

6 (a) The permittee shall reclaim all disturbed land associated with the drilling, completion, and production of an oil
7 or gas well by removing any well site structures or equipment from the well site or well pad and establishing
8 permanent vegetative cover, soil stability, water conditions, and safety conditions appropriate to the area.

9 (b) The disturbed land shall be reclaimed unless otherwise designated by the surface owner in a surface use
10 agreement submitted with a Form 2 – Oil or Gas Well Permit Application.

11
12 *History Note: Authority G.S. 113-391(a)(5); 113-421(a3);*

13 *Eff. Pending Legislative Review.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2102

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), as I read this, you are saying that anyone seeking a new permit or a permit modification must submit the Reclamation Plan to the Department with the Form 2. Is that correct? If so, I think this Paragraph can be simplified to state that.

Further, the plan is submitted for approval. If the Department finds that all the requirements in (b) are met, then the plan is approved? How will the Department make the determination? Can the Department request additional information or changes? If so, that needs to be in Rule.

In (b), is this submitted on a Form 6 – Well Site Reclamation Plan? If so, please state that. Is what is in (b)(1) through (7) what is in the form?

On line 8, I'd end the sentence, "well site, including:"

In (b)(5) and (6), if this is prospective, shouldn't it read, "the methods/ measures to be taken to"?

In (b)(7), on lines 18 and 19, I'd delete "which shall be"

In (b)(7), what is the rationale for using these individuals? Do you read your statute to give the Commission authority to designate only these professionals?

In (b)(7)(C), who are you referring to? Research and extension personnel at NC State Department of Agriculture and Extension Education? Are you referring to this: <http://harvest.cals.ncsu.edu/agscience/index.cfm?pageID=1281>

In (b)(7)(E), "forester" should be singular.

In (d), line 32, should it read "all disturbed lands"?

On line 33, is this the cross-reference you intended? Do you mean .1304(c)(5)?

In (e), I assume the permittee must make the request to modify the plan? If so, how do they do that?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: December 1, 2014

On line 34, I suggest, "An approved reclamation plan may be modified if the Department determines..."

On line 35, define "fully." I note that G.S. 113-391 is very broad and mostly addresses Commission authority. Will the Department use the rules as the lodestar? Will they be required to tell the Commission about those modifications?

On line 35, do you mean "proposed modifications are consistent..."?

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

1 15A NCAC 05H .2102 has been adopted as published in 29:02 NCR 160-161 as follows:

2
3 **15A NCAC 05H .2102 RECLAMATION PLAN REQUIREMENTS**

4 (a) The applicant or permittee for a Form 2 – Oil or Gas Well Permit Application or modification shall submit a
5 Reclamation Plan to the Department for approval. The Reclamation Plan shall be submitted in accordance with
6 Section .1300 of this Subchapter.

7 (b) The Reclamation Plan shall conform to the SPCA, 15A NCAC 04, and 15A NCAC 02H and include
8 information and details on the reclamation of all disturbed land at the well site including the following information:

9 (1) the reclamation activities to be conducted onsite;

10 (2) a plan for subsequent land use and the general methods to be used in reclaiming the disturbed
11 land;

12 (3) the practices to be taken to protect adjacent surface resources;

13 (4) the methods to prevent or eliminate adverse impacts to flora and fauna in, or adjacent to, the
14 disturbed land;

15 (5) the methods of reclaiming the disturbed land associated with pits in accordance with Rule .2004 of
16 this Subchapter;

17 (6) the measures to stabilize slopes; and

18 (7) the plan for re-vegetation and reforestation, or other surface treatment of the disturbed land, which
19 shall be approved in writing by one of the following prior to submission of the application:

20 (A) an authorized representative of the local soil and water conservation district having
21 jurisdiction over lands in question;

22 (B) an authorized representative of the North Carolina Forest Service within the Department
23 of Agriculture and Consumer Services;

24 (C) a county agricultural extension Chair or research and extension personnel headquartered
25 at North Carolina State University in the School of Agricultural and Life Sciences;

26 (D) a North Carolina licensed Landscape Architect pursuant to G.S. 89A; or

27 (E) a private consulting foresters referred by the North Carolina Forest Service within the
28 Department of Agriculture and Consumer Services.

29 (c) The applicant shall submit financial assurance in accordance with the Section .1400 of this Subchapter prior to
30 commencing activity onsite.

31 (d) In addition to performing all activities required by the reclamation plan, the permittee shall stabilize and reclaim
32 all lands disturbed associated with drilling, completion, and production in accordance with the Well Site
33 Development Plan required by Rule .1304(c)(2) of this Subchapter.

34 (e) An approved reclamation plan may be modified, so long as the Department determines that the modified plan
35 fully meets the standards set forth in G.S. 113-391 and that the modifications would be consistent with the basis for
36 issuance of the original permit.

37
38 *History Note: Authority G.S. 113-391(a)(5)l;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2103

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (b), reclamation can be done in stages, correct? (That is how I read Rule .1406(b)) But the intent of this Rule is that you are only requiring notice at the very end, rather than each stage/area?

In (c)(2), is it the permittee who must maintain this? For how long?

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: December 1, 2014

1 15A NCAC 05H .2103 has been adopted as published in 29:03 NCR 252 as follows:

2
3 **15A NCAC 05H .2103 TIMING AND NOTICE OF RECLAMATION**

4 (a) The permittee shall complete reclamation of all disturbed land within two years pursuant to G.S. 113-421(a3).

5 (b) The permittee shall notify the Department in writing within 30 calendar days following completing reclamation.

6 (c) The Department shall monitor the well site for compliance with the following standards:

7 (1) the vegetative cover shall be maintained for a period of one year after the notice has been given
8 before the disturbed land bond under Rule .1404 shall be released by the surface owner; and

9 (2) the filled or graded areas shall be maintained so as to avoid the formation of depressions or
10 standing pools of water.

11
12 *History Note: Authority G.S. 113-391(a)(5)l;*

13 *Eff. Pending Legislative Review.*
14

REQUEST FOR TECHNICAL CHANGE

AGENCY: Mining and Energy Commission

RULE CITATION: 15A NCAC 05H .2201

DEADLINE FOR RECEIPT: Friday, December 12, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), you are referring to an occupational standard. However, G.S. 113-391(d) gave the Department of Labor the rulemaking authority for health and safety standards for workers. What is contained in the Standard that is within your authority for this Rule?

If this standard is within your authority, please delete "published by API" on line 9. Also, please check the URL and replace as necessary.

In (b), you incorporated this standard in Rule .1502 and do not need to do so again. If you wish to do so, please delete "published by API" on line 16 and replace the URL.

In (d), I take it your regulated public knows what is included in the "production data" on line 22?

On line 24, delete the comma after "Report" and end the sentence after "month." Then begin a new sentence, "The form shall include..."

Throughout this Rule, please note my earlier questions about contact information for the Department, the timing of sending the form as it relates to the email or telephone call, and points of ingress and egress.

In (d)(7), is well status whether it is producing or not?

In (d)(8) and (9), what is "posting"?

In (e), line 36, do you need to retain "at least"?

In (e), Page 2, please check the URL.

In (f), are these maintained pursuant to manufacturer specification?

In (i), is the testing method in the API standard in (e), or is that something your regulated public knows?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: December 1, 2014

In (m), Page 3, so that I understand – the Department may require additional testing if it appears from the Form 29 that there may be a deficiency? It's not that if there are deficiencies, the Department "may" rather than "shall" require additional testing? If the first sentence is correct, I suggest inserting "in order" before "to determine" on line 3.

In (n), is the API minimum contained within the standards in (e)?

In (o), it is in the discretion of the permittee to either repair or plug and abandon, correct?

On line 10, I suggest inserting "conducted" before "in accordance..."

In (o)(1), is the "bridge plug" the same as the "mechanical bridge plug" defined in Rule .0102? If so, please use the same term here. Or is this intended to capture both cement and mechanical bridge plugs? If so, then you don't need to make the change.

In (p)(5), line 27, delete "for which"

In (q)(6), line 36, state the depth" to be consistent with the rest of this list.

In (q)(7), I take it your regulated public knows where to begin measurement for this (center v. edge)?

In (q)(8) on Page 4, line 1, state a description"

Also in (q)(8), the pressure must be given for the following times:

- 1) Before beginning the test;*
- 2) At the beginning of the test; and*
- 3) During testing.*

If that is correct, why aren't they listed in that order in the Rule?

In (r), line 5, delete the comma after "Application"

On lines 5 and 6, what is "recompletion work"? Is this repairs?

In the History Note, state: "G.S. 113-391(a)(5)c; 113-391(a)(5)i; 113-391(a)(5)k;

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

1 15A NCAC 05H .2201 has been adopted with changes as published in 29:02 NCR 161-162 as follows:

2
3 **SECTION .2200 – OPERATION AND PRODUCTION**

4
5 **15A NCAC 05H .2201 OPERATION AND PRODUCTION REQUIREMENTS FOR OIL OR GAS**
6 **WELLS**

7 (a) All oil or gas wells shall comply with API Recommended Practice 74, "Recommended Practice for
8 Occupational Safety for Onshore Oil and Gas Production Operation," which is incorporated by reference, including
9 subsequent amendments and editions. This document, published by API, may be viewed online ~~at~~for no charge
10 at ~~<http://publications.api.org/default.aspx>~~[http://www.api.org/publications-standards-and-](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents)
11 [statistics/publications/government-cited-safety-documents](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents).

12 (b) All production equipment shall be maintained to comply with API Recommended Practice 51R "Environmental
13 Protection for Onshore Oil and Gas Production Operations and Leases," ~~and North Carolina Petroleum and~~
14 ~~Convenience Marketers (NCPCM) "Above Ground Petroleum Storage Tank Manual and Fire Codes with data on~~
15 ~~North Carolina Gasoline Vapor Recovery and EPA Spill Plan Information,"~~ which ~~are~~is incorporated by reference,
16 including subsequent amendments and editions. Recommended Practice 51R, published by API, may be viewed
17 online ~~at~~for no charge at ~~<http://publications.api.org/default.aspx>~~[http://www.api.org/publications-standards-and-](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents)
18 [statistics/publications/government-cited-safety-documents](http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents). ~~The Above Ground Petroleum Storage Tank Manual,~~
19 ~~published by NCPCM, may be viewed online at no charge at http://www.ncpcm.org/pdf/AST_Manual2014.pdf.~~

20 (c) All natural gas compressor stations shall be contained within a baffled building in accordance with G.S. 113-
21 395.1.

22 (d) The permittee shall report monthly production data from all producing oil or gas wells, wells capable of
23 producing oil or gas, and all fluids produced during any phase of operation of the oil or gas well to the Department,
24 on Form 28 – Monthly Production Report, within 60 calendar days from the end of each month and shall include the
25 following information:

- 26 (1) the permittee's name, address, telephone number, fax number, and email address;
27 (2) the county and nearest city or town where the oil or gas well is located;
28 (3) the property street address or nearest address to the ingress or egress point leading from a public
29 road to the well pad;
30 (4) the API number, the lease name, and the oil or gas well name and number;
31 (5) the month and year of production;
32 (6) the number of days the oil or gas well was producing for the reporting period;
33 (7) the oil or gas well status;
34 (8) the quantities of oil and production fluids posted in barrels; and
35 (9) the quantities of gas posted in units of thousand cubic feet.

36 (e) All meters shall be calibrated at least annually and shall comply with Chapters 14, 21, and 22 of the API
37 "Manual of Petroleum Measurement Standards," which is incorporated by reference, including subsequent

1 amendments and editions. These documents, published by API, may be ~~purchased at a cost of one thousand four~~
2 ~~hundred and sixty eight dollars (\$1,468) for Chapter 14, four hundred and sixteen dollars (\$416.00) for Chapter 21,~~
3 ~~and one hundred and sixty three dollars (\$163.00) for Chapter 22 at <http://www.techstreet.com/api/products/21408>~~
4 ~~or by mail at Techstreet, 3916 Ranchero Drive, Ann Arbor, MI 48108. viewed online for no charge at~~
5 ~~<http://www.api.org/publications-standards-and-statistics/publications/government-cited-safety-documents>.~~

6 (f) All meters, valves, and gauges shall be maintained and remain accessible to the Department.

7 (g) The permittee shall notify the Department at least 72 hours via telephone or email prior to meter calibration. The
8 permittee shall submit Form 11 – Required Notifications to the Department, by mail, email or fax within five
9 calendar days and shall include the following information:

- 10 (1) the permittee's name, address, telephone number, fax number, and email address;
- 11 (2) the county and nearest city or town where the oil or gas well is located;
- 12 (3) the property street address or nearest address to the ingress or egress point leading from a public
13 road to the well pad;
- 14 (4) the API number, the lease name, and the oil or gas well name and number; and
- 15 (5) the scheduled date and approximate time for the meter testing.

16 (h) The permittee shall retain calibration records for five years in accordance with Rule .0202 of this Subchapter.

17 (i) The permittee shall adjust, repair, or replace any meter that fails an annual meter calibration ~~test-test with a~~
18 calibrated meter. Test results that exceed two percent of the manufacturer's specifications shall constitute a failure
19 of the meter calibration test. The permittee shall notify the Department within 24 hours of replacing a meter via
20 mail or email and shall retain records related to replacement for a period of five years.

21 (j) The permittee shall inspect daily each producing oil or gas well for the first 30 calendar days following
22 commencement of production and monthly thereafter. The permittee shall report on the daily inspections results
23 within 30 calendar days of the final daily inspection on Form 29 – Well Site Inspection Report.

24 (k) The permittee shall submit a monthly inspection report to the Department using Form 29 – Well Site Inspection
25 Report within 30 calendar days of the inspection.

26 (l) The Form 29 – Well Site Inspection Report shall include the following information:

- 27 (1) the permittee's name, address, telephone number, fax number, and email address;
- 28 (2) the county and nearest city or town where the oil or gas well is located;
- 29 (3) the property street address or nearest address to the ingress or egress point leading from a public
30 road to the well pad;
- 31 (4) the API number, the lease name, and the oil or gas well name and number;
- 32 (5) the presence of corrosion or equipment deterioration on any production equipment;
- 33 (6) any indication or observation of a hydrocarbon release;
- 34 (7) the condition of the wellhead, tanks, separators, and all other production equipment;
- 35 (8) the condition of the secondary containment system for all tanks and separators;
- 36 (9) certification that activated charcoal filters, low pressure relief valves, hatch lids, and lightning
37 arrestors are present and functional for all tanks; and

- 1 (10) any pressure measurements taken at the wellhead.
- 2 (m) The Department may require the permittee to perform diagnostic testing on the oil or gas well or production
3 equipment to determine whether a potential mechanical deficiency exists and the best method of repair if
4 deficiencies or violations are noted by the permittee on the Form 29 – Well Site Inspection Report.
- 5 (n) The permittee shall notify the Department via telephone or email of any annular pressures in excess of 80
6 percent of the API rated minimum internal yield pressure rating within 24 hours after discovery.
- 7 (o) All shut-in oil or gas wells shall pass an annual mechanical integrity test. Oil or gas wells that had surface
8 equipment removed or have become incapable of production shall pass a mechanical integrity test within 30
9 calendar ~~days~~ days of the cessation of production. Oil or gas wells that fail a mechanical integrity test shall be
10 repaired or plugged and abandoned within six months of failing the test. Mechanical integrity testing shall be in
11 accordance with the following procedure:
- 12 (1) isolate the wellbore with a bridge plug, set at 100 feet or less above the production packer or the
13 highest perforations; perforations, if the production tubing has been removed;
- 14 (2) pressure test the production tubing, or casing if the tubing has been removed, casing with inert or
15 nonreactive liquid or gas at a minimum of 300 pounds per square inch (psi)
16 surface pressure; pressure or 110 percent of the shut in tubing pressure, whichever is greater; and
- 17 (3) maintain a minimum of 300 psi surface pressure for at least 15 minutes without a pressure
18 differential of more than 10 percent.
- 19 (p) The permittee shall notify the Department using Form 11 – Required Notifications to the Department, not less
20 than 10 calendar days prior to initiating a mechanical integrity test by mail, email, or fax. The notification shall
21 include the following information:
- 22 (1) the permittee's name, address, telephone number, fax number, and email address;
23 (2) the county and nearest city or town where the oil or gas well is located;
24 (3) the property street address or nearest address to the ingress or egress point leading from a public
25 road to the well pad;
26 (4) the API number, the lease name, and the oil or gas well name and number; and
27 (5) the scheduled date and approximate time for which the test will be performed.
- 28 (q) Mechanical integrity test results shall be submitted to the Department using Form 16 – Mechanical Integrity
29 Test Results, within 30 calendar days after completing the test and shall include the following information:
- 30 (1) the permittee's name, address, telephone number, fax number, and email address;
31 (2) the county and nearest city or town where the oil or gas well is located;
32 (3) the property street address or nearest address to the ingress or egress point leading from a public
33 road to the well pad;
34 (4) the API number, the lease name, and the oil or gas well name and number;
35 (5) the purpose or reason for testing and identify if tubing or casing is being tested;
36 (6) identify depth of producing zone and perforated intervals;
37 (7) the tubing and casing diameter and depth;

- 1 (8) description of the pressure test data including pressure charts showing pressure prior to, during,
2 and at the commencement of testing; and
3 (9) be signed by the service company or contractor conducting the pressure test to attest that all tests
4 and results comply with the standards set in this Rule.
5 (r) The permittee shall submit Form 2 – Oil or Gas Well Permit Application, to the Department for the recompletion
6 work required for the oil or gas well to be placed back into production.
7
8 *History Note: Authority G.S. 113-391(a)(5)c, i, and k;*
9 *Eff. Pending Legislative Review.*