G.S. 150B-21.3A Report for 15A NCAC Chapter 04, SEDIMENTATION CONTROL

Agency - Sedimentation Control Commission

Comment Period -May 15, 2015 - September 8, 2015

Date Submitted to APO - Filled in by RRC staff

Subchapter	Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
SUBCHAPTER 04A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION		15A NCAC 04A .0101	OFFICES OF THE SEDIMENTATION CONTROL COMMISSION	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04A .0105	DEFINITIONS	Amended Eff. August 1, 2012	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL		15A NCAC 04B .0105	PROTECTION OF PROPERTY	Amended Eff. August 1, 1988	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0106	BASIC CONTROL OBJECTIVES	Amended Eff. July 1, 2000	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0107	MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY	Amended Eff. July 1, 2000	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0108	DESIGN AND PERFORMANCE STANDARD	Amended Eff. November 1, 1984	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0109	STORM WATER OUTLET PROTECTION	Amended Eff. February 1, 1992	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0110	BORROW AND WASTE AREAS	Amended Eff. May 1, 1990	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0111	ACCESS AND HAUL ROADS	Eff. February 1, 1976	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0112	OPERATIONS IN LAKES OR NATURAL WATERCOURSES	Amended Eff. November 1, 1984	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0113	RESPONSIBILITY FOR MAINTENANCE	Amended Eff. November 1, 1984	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0115	ADDITIONAL MEASURES	Amended Eff. November 1, 1984	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0116	EXISTING UNCOVERED AREAS	Amended Eff. October 1, 1995	Unnecessary	No		Yes	Unnecessary
		15A NCAC 04B .0118	APPROVAL OF PLANS	Amended Eff. August 1, 2012	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0120	INSPECTIONS AND INVESTIGATIONS	Amended Eff. October 1, 1995	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest

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		15A NCAC 04B .0122	SEVERABILITY CLAUSE	Amended Eff. November 1, 1984	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04B .0124	DESIGN STANDARDS IN SENSITIVE WATERSHEDS	Eff. May 1, 1990	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0125	BUFFER ZONE REQUIREMENTS	Amended Eff. February 1, 1992	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0126	PLAN REVIEW FEE	Amended Eff. August 1, 2002	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0127	PLAN APPROVAL CERTIFICATE	Amended Eff. July 1, 2000	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0128	RAILROAD COMPANIES	Eff. August 1, 1995	Unnecessary	No		Yes	Unnecessary
		15A NCAC 04B .0129	EROSION CONTROL PLAN EXPIRATION DATE	Eff. October 1, 1995	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0130	EMERGENCIES	Eff. October 1, 1995	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0131	SELF-INSPECTIONS	Eff. October 1, 2010	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04B .0132	DESIGN STANDARDS FOR THE UPPER NEUSE RIVER BASIN (FALLS LAKE WATERSHED)	Eff. February 1, 2012	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
SUBCHAPTER 4C - SEDIMENTATION CONTROL CIVIL PENALTIES		15A NCAC 04C .0103	WHO MAY ASSESS	Amended Eff. November 1, 1984	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04C .0106	CRITERIA	Amended Eff. November 1, 1984	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04C .0107	PROCEDURES: NOTICES	Amended Eff. April 1, 2001	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04C .0108	REQUESTS FOR ADMINISTRATIVE HEARING	Amended Eff. October 1, 1995	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
		15A NCAC 04C .0109	TENDER OF PAYMENT	Amended Eff. October 5, 1980	Unnecessary	No		Yes	Unnecessary
		15A NCAC 04C .0110	ADMINISTRATIVE HEARING	Amended Eff. October 1, 1995	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04C .0111	FURTHER REMEDIES	Eff. February 1, 1976	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
SUBCHAPTER 4D - LOCAL ORDINANCES		15A NCAC 04D .0102	MODEL ORDINANCE	Amended Eff. October 1, 1995	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
SUBCHAPTER 4E - RULEMAKING PROCEDURES	**SECTION .0100 - GENERAL PROVISIONS**	15A NCAC 04E .0101	GENERAL PURPOSE	Amended Eff. November 1, 1984	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest

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		15A NCAC 04E .0102	DEFINITIONS	Amended Eff. August 1, 2012	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04E .0104	COPIES OF RULES: INSPECTION	Amended Eff. August 1, 1988	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
	SECTION .0200 - PETITIONS FOR RULEMAKING	15A NCAC 04E .0201	PETITION FOR RULEMAKING HEARINGS	Amended Eff. November 1, 1984	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04E .0203	DISPOSITION OF PETITIONS	Amended Eff. August 1, 1988	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
	SECTION .0400 - RULEMAKING HEARINGS	15A NCAC 04E .0403	WRITTEN SUBMISSIONS	Amended Eff. June 5, 1981	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04E .0405	STATEMENT OF REASONS FOR DECISION	Eff. March 14, 1980	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04E .0406	RECORD OF PROCEEDINGS	Amended Eff. August 1, 1988	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
	SECTION .0500 - DECLARATORY RULINGS	15A NCAC 04E .0501	SUBJECTS OF DECLARATORY RULINGS	Eff. March 14, 1980	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04E .0502	SUBMISSION OF REQUEST FOR RULING	Eff. March 14, 1980	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04E .0503	DISPOSITION OF REQUESTS	Amended Eff. August 1, 1988	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest
		15A NCAC 04E .0504	RECORD OF DECISION	Eff. March 14, 1980	Necessary without substantive public interest	No		Yes	Necessary without substantive public interest

15A NCAC Chapter 04, Sedimentation Control

15A NCAC 04B .0116 Existing Uncovered Areas

Commenter Name: Will Hendrick
Company/Organization: Southern Environmental Law Center

Comment received in letter:
The Southern Environmental Law Center submits these comments on behalf of Sound Rivers in response to the initial determination by the North Carolina Department of Environment and Natural Resources ("DENR") that certain rules implemented by the Sedimentation Control Commission ("SCC") are "unnecessary." We write primarily to emphasize the importance of rules codified at 15A NCAC 04 .0116 and .0126. We disagree with the agency's conclusion that these rules are "obsolete, redundant, or otherwise not needed."

Our comments are generally motivated by recognition of the threat to water quality in North Carolina posed by unchecked erosion and sedimentation. That threat was explicitly recognized by our legislature when it observed in the Sedimentation Pollution Control Act of 1973 ("SPCA") that "[t]he sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem." Notably, however, the General Assembly did not presume to possess the expertise necessary to prevent this "major pollution problem." Instead, it created the SCC and commanded the Commission "in cooperation with the Secretary of Transportation and other appropriate State and federal agencies, [to] develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program." The resulting program is largely implemented through rules in 15A NCAC 04, and we wish to see those rules retained as currently codified.

Because the sedimentation and erosion control program is of vital importance to the health of our State's waters, we are concerned that rules deemed "unnecessary" will expire unless "adopted to conform to or implement federal law." The rules addressed herein were adopted to implement state law, specifically the SPCA. DENR's initial determination that these rules are unnecessary therefore places these important regulations under threat of automatic expiration.

We emphasize that the public has not objected to the rules DENR labeled "unnecessary." Indeed, had DENR received any "public comment" (defined in N.C. Gen. Stat § 150B-21.3A(a)(5) to mean a written objection) regarding these rule within the past two years, the agency *cannot* label them "unnecessary." The absence of objection is unsurprising because elimination of these rules would deprive both the public and DENR of useful regulatory guidance designed to control sedimentation pollution in North Carolina. We therefore encourage DENR to reconsider its decision to label these rules as "unnecessary," and, in recognition of their value as currently codified, classify them as "necessary without substantive public interest."

First, DENR proposes to classify as "unnecessary" the rule designed to prevent sedimentation pollution from "Existing Uncovered Areas." In a 2013 Memorandum, DENR explained its reasoning as follows: "[t]his rule was written to cover areas that predated the

sedimentation pollution control act. Since the act was 1973 this part of the administrative code is unnecessary."

DENR is partly correct; one purpose of the Existing Uncovered Areas Rule is to prevent erosion and sedimentation caused by land-disturbing activity that predated the Sedimentation Pollution Control Act of 1973. Essentially, the rule enhances the effectiveness of DENR's efforts to prevent sedimentation pollution by enabling retroactive application of the Act and associated regulations. However, we disagree with the agency's separate conclusion that the rule is unnecessary and should be allowed to expire. In fact, according to the North Carolina Court of Appeals, "eliminating from regulation all erosion in progress prior to the effective date of the act and continuing thereafter . . . cannot survive the declared policy of the legislation."

The legislature enacted the SPCA to provide for, *inter alia,* a sedimentation control program that included the "adoption of minimal mandatory standards which will permit development of this State to continue with the least detrimental effects from pollution by sedimentation." In *Hensley v. NC DENR Div. of Land Resources* ("*Hensley*"), the Supreme Court of North Carolina stated that "[t]he purpose of the [Act] is to *minimize sedimentation resulting from* land-disturbing activity and not simply to regulate the land-disturbing activity itself." To minimize sedimentation, the Act requires "short-term and long-term measures to control accelerated erosion and prevent off-site sedimentation." The legislature would not require long-term erosion measures to mitigate anticipated harm if such harm was not expected to persist over time. In other words, the Existing Uncovered Areas Rule is not "obsolete."

Yet, inexplicably, DENR contends that the Existing Uncovered Areas Rule is unnecessary solely due to the passage of time. This argument presumes that erosion and sedimentation is unlikely to have gone undetected since the passage of the Act. Notably, however, the SCC has repeatedly lamented its inability to effectively police land-disturbing activity due to inadequate resources to hire a full complement of inspectors. If the agency cannot effectively perform its duties, it should not advance arguments that presume such performance.

Moreover, the rule provides a useful safeguard against undetected harm. By labeling the Existing Uncovered Areas Rule "unnecessary," DENR essentially proposes to eliminate the only regulatory mechanism for preventing impacts of long-term accelerated erosion. In fact, without the Existing Uncovered Areas Rule, neither affected citizens nor DENR would have appropriate recourse against a violating party. As such, the rule is neither "redundant" nor "otherwise not needed."

As noted above, the North Carolina Court of Appeals has previously warned against the consequences of failing to apply the Existing Uncovered Areas rule; notably, elimination of the rule under the auspices of rules review would achieve the same result the Court held to be inconsistent with the SPCA. Indeed, the Court later stated, in *Cox v. State ex rel. Summers* ("*Cox*"), that the rule is not simply an addition to the SPCA, but rather is necessary "[t]o accomplish the purpose of the Act." Because the rule enables "the Act and the regulations enacted pursuant to … appl[y] to land-disturbing activities which occurred before the Act and regulations became effective," it is not "unnecessary." Accordingly, we urge DENR to revise its initial determination to the contrary.

As demonstrated above, 15A NCAC 04B .0116, the Existing Uncovered Areas rule, is necessary because it protects against any undiscovered impact of sedimentation resulting from a land-disturbing activity prior to 1973 and enhances the effectiveness of the Act generally. Similarly, 15A NCAC 04B .0128, the Railroad Rule, is necessary because it seeks to prevent, to the maximum extent allowed under federal law, sedimentation pollution caused by land-disturbing activities conducted by railroad companies. Therefore, we urge the agency to reconsider its initial determination that these rules are "unnecessary," and instead deem them "necessary without substantive public interest." In other words, the agency should retain these rule, as currently codified, to implement important water pollution control requirements, and for DENR to fulfill its mandate to administer the SPCA.

We appreciate the opportunity to comment on this important rule review process. Thank you in advance for your thoughtful consideration of our concerns.

Agency Response:
The comments received focus on the classification rather than an objection to the rules, in whole or in part as defined in G.S. 150B-21.3A(a)(5). This rule will remain classified as unnecessary as the final agency determination.

15A NCAC 04B .0128 Railroad Companies

Commenter Name: Will Hendrick
Company/Organization: Southern Environmental Law Center

Comment received in letter:
The Southern Environmental Law Center submits these comments on behalf of Sound Rivers in response to the initial determination by the North Carolina Department of Environment and Natural Resources ("DENR") that certain rules implemented by the Sedimentation Control Commission ("SCC") are "unnecessary." We write primarily to emphasize the importance of rules codified at 15A NCAC 04 .0116 and .0126. We disagree with the agency's conclusion that these rules are "obsolete, redundant, or otherwise not needed."

Our comments are generally motivated by recognition of the threat to water quality in North Carolina posed by unchecked erosion and sedimentation. That threat was explicitly recognized by our legislature when it observed in the Sedimentation Pollution Control Act of 1973 ("SPCA") that "[t]he sedimentation of streams, lakes and other waters of this State constitutes a major pollution problem." Notably, however, the General Assembly did not presume to possess the expertise necessary to prevent this "major pollution problem." Instead, it created the SCC and commanded the Commission "in cooperation with the Secretary of Transportation and other appropriate State and federal agencies, [to] develop, promulgate, publicize, and administer a comprehensive State erosion and sedimentation control program." The resulting program is largely implemented through rules in 15A NCAC 04, and we wish to see those rules retained as currently codified.

Because the sedimentation and erosion control program is of vital importance to the health of our State's waters, we are concerned that rules deemed "unnecessary" will expire unless "adopted to conform to or implement federal law." The rules addressed herein were adopted to implement state law, specifically the SPCA. DENR's initial determination that these rules are unnecessary therefore places these important regulations under threat of automatic expiration.

We emphasize that the public has not objected to the rules DENR labeled "unnecessary." Indeed, had DENR received any "public comment" (defined in N.C. Gen. Stat § 150B-21.3A(a)(5) to mean a written objection) regarding these rule within the past two years, the agency *cannot* label them "unnecessary." The absence of objection is unsurprising because elimination of these rules would deprive both the public and DENR of useful regulatory guidance designed to control sedimentation pollution in North Carolina. We therefore encourage DENR to reconsider its decision to label these rules as "unnecessary," and, in recognition of their value as currently codified, classify them as "necessary without substantive public interest."

Next, DENR proposes to classify as "unnecessary" the rule designed to prevent sedimentation pollution from railroad construction and operation. In a 2013 Memorandum, DENR stipulates that "[t]his rule has been superseded by federal law and is unnecessary." The agency's reasoning is unclear, possibly incorrect, and understates the value of the rule.

To begin, 15A NCAC 04 .0126 (the "Railroad Rule") was first written in 1995 in explicit recognition of the fact that under federal law, "existing railroad roadbeds comprise a zone of

federal preeminence within which federal law takes precedence over" the SPCA. However, as stated when DENR proposed the Railroad Rule, "[o]utside this zone, the Office of the Attorney General has advised that the Commission does have authority to enforce the Sedimentation Pollution Control Act of 1973." Accordingly, DENR sought to assert control over erosion and sedimentation caused by railroad construction and operation to the maximum extent possible. Indeed, when DENR first adopted the Railroad Rule, the agency observed that the rule was "needed to clarify the authority … to regulate land-disturbing activities undertaken by railroad companies." Accordingly, the Railroad Rule clarifies that although the "[SPCA] and rules do not apply to activities conducted within the zone of federal preeminence" the "[SPCA] and rules apply to all other activities conducted by railroad companies."

DENR does not, in the memorandum claiming that the Railroad Rule is nevertheless "unnecessary," identify the federal law it believes "superseded" the Railroad Rule. Nor are we aware of any federal law addressing the full scope of requirements stated in the Railroad Rule. For instance, unlike the Railroad Rule, federal law does not attempt to control sedimentation outside of the zone of federal preeminence. Also, under the rule, the SCC is directed to "provide advice and technical assistance to railroad companies in the development and implementation of voluntary best management practices to reduce environmental impacts that may otherwise result from activities conducted within the zone of federal preeminence." Stated differently, even where the SCC cannot, due to federal preemption, force railroad companies to protect North Carolina waters from erosion and sedimentation, the SCC is directed in the Railroad Rule to identify and encourage opportunities for such protection. There is neither any federal law, nor any other North Carolina law, commanding this action by the SCC. Indeed, the SPCA makes no reference whatsoever to railroad activity. Instead, it commands the SCC to prevent sedimentation from land-disturbing activity; where that activity is conducted by railroad companies and occurs within the jurisdiction of the SCC the Railroad Rule is a necessary tool to implement the SPCA.

For centuries, railroad companies have engaged in land-disturbing activity; there is no evidence that these companies have ceased such activity. Because that activity continues to pose a threat to water quality in North Carolina if insufficiently regulated, the Railroad Rule is not "obsolete." Moreover, because the substance of the Railroad Rule is not repeated elsewhere in state or federal law, the rule cannot be properly considered "redundant." Finally, because the Railroad Rule commands certain SCC action critical to protection of our waters from the actions of railroad companies, it is not "otherwise not needed." For these reasons, we urge DENR to reconsider its decision to label the Railroad Rule "unnecessary;" we believe it serves important purposes as codified, and therefore encourage the agency to label it "necessary without substantive public interest."

As demonstrated above, 15A NCAC 04B .0116, the Existing Uncovered Areas rule, is necessary because it protects against any undiscovered impact of sedimentation resulting from a land-disturbing activity prior to 1973 and enhances the effectiveness of the Act generally. Similarly, 15A NCAC 04B .0128, the Railroad Rule, is necessary because it seeks to prevent, to the maximum extent allowed under federal law, sedimentation pollution caused by land-disturbing activities conducted by railroad companies. Therefore, we urge the agency to reconsider its initial determination that these rules are "unnecessary," and instead deem them "necessary without substantive public interest." In other words, the agency should retain these rule, as currently codified, to implement important water pollution control requirements, and for DENR to fulfill its mandate to administer the SPCA.

We appreciate the opportunity to comment on this important rule review process. Thank you in advance for your thoughtful consideration of our concerns.

Agency Response:
The comments received focus on the classification rather than an objection to the rules, in whole or in part as defined in G.S. 150B-21.3A(a)(5). This rule will remain classified as unnecessary as the final agency determination.

15A NCAC 04 General Comment

Commenter Name: Will Hendrick
Company/Organization: Southern Environmental Law Center

Comment received in letter:
Notably, DENR determined twenty-five of the forty-five rules administered by the SCC to be "necessary with substantive public interest." Fortunately, that means that a majority of the rules administered by the SCC are currently safe from automatic expiration. However, it also means that many of the SCC rules will not "be allowed to remain in effect without further action." We hope rules labeled "necessary with substantive public interest" will ultimately be retained in some form. After all, rules bearing that label must be "readopted as though the rules were new rules." Yet, we note with concern that DENR has, during the process of rules review, proposed to delete entire rules even after labeling them "necessary with substantive public interest."

To be clear, we do not intend to quibble with the agency's documentation of public objection. As discussed above, a rule must be labeled "necessary with substantive interest" if DENR received "written comments objecting to the rule." However, it is unclear whether the labeling determinations for these SCC rules were dictated by public objection or instead made at DENR's discretion. After all, a rule may also be labeled "necessary with substantive public interest" if "the rule affects the property interest of the regulated public and the agency knows or suspects that any person may object to the rule." However, for rules that do have a regulatory effect on the public's property interest, if DENR has not received, but instead merely anticipates, public objection, we encourage the agency to reconsider its determinations. DENR should not needlessly subject itself to the administratively burdensome rulemaking process. Nor should the agency unreasonably overburden its rulemaking coordinators. DENR may retain an existing rule without undergoing rulemaking by simply labeling the rule "necessary without substantive public interest." So, unless the agency intends to alter its rules, we counsel relabeling them. And because we support the SCC rules in their current form, we urge DENR to label them "necessary without substantive public interest" whenever possible.

Agency Response:
The agency's selected determinations shall remain as indicated in the final agency determinations. This comment does not specifically object to the characterization of any particular rule, but is a generic statement, and again focuses on the classification rather than an objection to the rules, in whole or in part as defined in G.S. 150B-21.3A(a)(5).

15A NCAC 04 General Comment

Commenter Name: Allen Hardison
Company/Organization: NC Chapter of the National Waste and Recycling Association/Joyce Engineering, Inc.

Comment received in letter:
It was nice to meet you a few weeks ago at the Sedimentation Commission meeting. I hope things are going well with you.

As I indicated at the time and in emails, I am working with Joyce Engineering, Inc. on a project for the North Carolina chapter of the National Waste and Recycling Association to monitor and provide assistance in the Periodic Review of Existing Rules. NWRA is an Association of privately-owned solid waste management companies that provide solid waste collection, recycling, disposal, and engineering services throughout the United States. The North Carolina Chapter is comprised of members who own and operate facilities within North Carolina. Our members play a critical role in providing the infrastructure to assure adequate waste and recycling services exist to protect the State's environment.

The legislative committee of the chapter, that also deals with administrative rules and other regulatory issues, has reviewed the categories of the 15 NCAC 04 rules as published on the Office of Administrative Hearings' website. We have also reviewed the supporting reasons for the rules that were categorized as unnecessary. We concur with the categorizations of the rules as presented.

We look forward to a continued engagement with the Division as the rules move forward to the re-adoption stage.

Agency Response:
The agency's selected determinations shall remain as indicated in the final agency determinations. Thank you for the comment.