

Burgos, Alexander N

From: Ruhlman, Carrie A
Sent: Wednesday, August 19, 2026 3:44 PM
To: rrc.comments
Cc: Everett, Jennifer; Miller, Christopher S; Briggs, M. Kyle; Deaton, Shannon L.
Subject: Comments on 15A NCAC 05B Rules
Attachments: NCMiningActRevisions_RulesReview_NCWRCCommentsAll_August2026.pdf

Attached please find the NC Wildlife Resources Commission's comments on NC Mining Commission Rules for the August RRC meeting. Please let me know if you have any questions.

Carrie



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▣ North Carolina Wildlife Resources Commission ▣

M. Kyle Briggs, Executive Director

August 19, 2026

Rules Review Commission Members,

The NC Wildlife Resources Commission (NCWRC) respectfully submits the following comments on the NC Division of Energy, Mineral, and Land Resources' (NCDEMLR) Rules in 15A NCAC 05B.

After the July Rules Review Commission (RRC) meeting, NCWRC staff met with NCDEMLR staff on August 6, 2026 to discuss the issues presented in our letter submitted to the RRC on July 23, 2026 (attached). While some clarification was provided, NCDEMLR staff did not see a path to take the issues NCWRC identified with the Rules back to the Mining Commission (MC) at this point. The NCWRC still believes that the proposed changes detailed below create an unacceptable level of ambiguity in requirements for mining permits. Thus, the NCWRC provides the following comments for your consideration and requests that the RRC object to Rules 15A NCAC 05B .0104, and 05B .0106 in accordance with N.C. Gen. Stat. § 150B – 21.10(2) for failure to meet N.C. Gen. Stat. § 150B-21.9(2) and (3).

While the Legislature has recognized the importance of mining to the economic well-being of North Carolina it also recognized the importance of minimizing the effects of mining on the environment. See, N.C. Gen. Stat. § 74-47. The Legislature stated that the two purposes of the Mining Act are to provide “(1) [t]hat the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration” and “(2) . . . , no mining shall be carried on in the State unless plans for such mining include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining.” N.C. Gen. Stat. § 74-48 (emphasis added). Both purposes of the Mining Act relate to the protection of North Carolina’s natural resources. To that end, the Mining Act requires DEQ to send a copy of a new mining permit or a modification of a mining permit to federal and state agencies, including the NCWRC, so that those agencies may provide comments on impacts to natural resources, including state and federally listed species. The various agencies’ input is essential in determining whether to grant or deny a permit.

15A NCAC 05B .0104

Requiring the specific location such as longitude and latitude, rather than a general location, is necessary to fulfill the purpose of the Mining Act and the requirements of the Administrative Procedure Act (APA). The information currently required in a mining permit application is listed in 15A NCAC 05B .0104, and NCDEMLR is requesting to add to that list the “name of the mine and location”. See, 15A NCAC 05B .0104(11). While the NCWRC is in support of adding this type of information, the

term “location”, in this circumstance, is not sufficient to comply with the clear and unambiguous requirement of the APA. Applicants could comply with the location requirement by providing a general location, such as the nearest address to the site of the mine or the name of a town. However, general locations do not allow agencies to provide the necessary comments to protect North Carolina’s natural resources. For example, if the applicant provides the nearest address to the site of the mine, that does little to allow the NCWRC to determine if a threatened species with limited range will be affected by the exact location of the mine.

To remedy this problem, the NCWRC previously requested that the 12-digit HUC be added to the rule. NCDEMLR staff disclosed during the August 6 meeting that they are using a new online permit portal for permit applications and require latitude and longitude of the mine in the online application. The NCWRC agrees that latitude and longitude of a mine is an acceptable means of location identification. However, to require an applicant to provide longitude and latitude, it must be required by rule. See, N.C. Gen. Stat. § 150B-18, (“An agency shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement that meets the definition of a rule contained in N.C. Gen. Stat. § 150B-2(8a) if the policy, guideline, or other interpretive statement has not been adopted as a rule in accordance with this Article.”)

Further, in accordance with the RRC Guidance on Form Requirements for Rules dated April 28, 2026, if a rule requires a form, itemizing the required fields in that rule requiring a form or cross-referencing another rule or statute where form contents are itemized are the only two ways to fulfill the clarity requirements of N.C. Gen. Stat. § 150B-21.9

For these reasons, the NCWRC requests that the RRC object to the proposed changes because the term “location” does not satisfy the clear and unambiguous requirement of the APA.

15A NCAC 05B .0106

NCDEMLR proposes to repeal 15A NCAC 05B .0106 because they claim it is duplicative of N.C. Gen. Stat. § 74-51. However, this rule is necessary to interpret N.C. Gen. Stat. § 74-51(d), which states:

The Department may deny the permit upon finding:

- (1) That any requirement of this Article or any rule promulgated hereunder will be violated by the proposed operation;
- (2) **That the operation will have unduly adverse effects on potable groundwater supplies, wildlife, or fresh water, estuarine, or marine fisheries;**
- (3) That the operation will violate standards of air quality, surface water quality, or groundwater quality that have been promulgated by the Department;
- (4) That the operation will constitute a direct and substantial physical hazard to public health and safety or to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property, excluding matters relating to use of a public road;
- (5) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area;
- (6) That previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or

(7) That the applicant or any parent, subsidiary, or other affiliate of the applicant or parent has not been in substantial compliance with this Article, rules adopted under this Article, or other laws or rules of this State for the protection of the environment or has not corrected all violations that the applicant or any parent, subsidiary, or other affiliate of the applicant or parent may have committed under this Article or rules adopted under this Article and that resulted in:

- a. Revocation of a permit,
- b. Forfeiture of part or all of a bond or other security,
- c. Conviction of a misdemeanor under G.S. 74-64,
- d. Any other court order issued under G.S. 74-64, or
- e. Final assessment of a civil penalty under G.S. 74-64, [or]
- f. Failure to pay the application processing fee required under G.S. 74-54.1.

15A NCAC 05B .0106 currently states:

An application for a mining permit including new permits, modified permits and renewal permits, may be denied when the operation will have an unduly adverse effect on wildlife or fisheries by:

- (1) substantial siltation of streams or lake beds, increasing the average water temperature of adjacent waterways to a temperature detrimental to the pre-existing aquatic wildlife; or
- (2) other conditions designated by the North Carolina Wildlife Resources Commission as being unduly detrimental to wildlife.

It is clear that 15A NCAC 05B .0106 does not re-state the requirements of N.C. Gen. Stat. § 74-51(d), it implements and interprets the statute, which is by definition a rule. (See 150B-2(8a), a Rule is “Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency”). While the rule, in its current capacity, may lack a comprehensive list of standards for permit application denial, it is neither redundant with statute nor unnecessary; however, we believe the rule should be revised. The NCDEMLR’s lack of attention to this rule is not indicative of the rule’s necessity, nor does it make the need for interpretation or implementation of the Mining Act requirements obsolete. This rule is necessary to set standards for and identify unduly adverse effects on potable groundwater supplies, wildlife, or fresh water, estuarine, or marine fisheries; substantial physical hazard to public health and safety or to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property, excluding matters relating to use of a public road; significantly adverse effect on the purposes of a publicly owned park, forest or recreation area; and substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution.

This rule interprets vague and broad requirements in N.C. Gen. Stat. § 74-51(d) and removal of these standards creates ambiguity. As such, the NCWRC recommends keeping the rule and clarifying standards for permit denial as they relate to the areas identified in N.C. Gen. Stat. § 74-51(2), (4), (5), and (6). Acceptable rule text for subject matter within the NCWRC’s jurisdiction is attached to this letter. However, because the identified topics span the expertise and jurisdiction of several agencies, the NCWRC recommends a collaborative effort to develop a comprehensive list of standards to be added to this Rule and thus recommends objection by the RRC because repeal of this rule creates ambiguity and does not satisfy the clear and unambiguous requirement of the APA.

The NCWRC believes the proposed changes detailed above to Rules 05B .0104, and 05B .0106 introduce unacceptable ambiguity into application and implementation of the Mining Act. Thus, the NCWRC requests that the RRC object to these rules.

Thank you for your attention to our request. Please contact Ms. Carrie Ruhlman at carrie.ruhlman@ncwildlife.gov, or 919-707-0011, if you have any questions.

Sincerely,

M. Kyle Briggs, Executive Director



North Carolina Wildlife Resources Commission

M. Kyle Briggs, Executive Director
July 23, 2026

Rules Review Commission Members,

The NC Wildlife Resources Commission (NCWRC) respectfully submits the following comments on the NC Division of Energy, Mineral, and Land Resources' (NCDEMLR) Mining Act Rules in 15A NCAC Chapter 05B. The NCWRC believes that the proposed changes detailed below are unnecessary and/or ambiguous.

The NCWRC reviews mine permit applications and provides recommendations to minimize impacts on wildlife and their habitats in accordance with G.S. 74-51(d)(2). The NCWRC uses the standards specified in 15A NCAC 05B .0104, .0105 and .0106 as part of this review. The NCWRC submitted public comments to the NCDEMLR during the open public comment period and requested to meet with NCDEMLR staff to discuss and update current practices for minimizing impacts to wildlife and fisheries of the State. However, to date, the agencies have not met and thus, the NCWRC still has the following concerns:

15A NCAC 05B .0104

Under the G.S. 143-214.23, the state delegates protection riparian buffer protection requirements to local governments. These buffers are mapped and regulated by Hydrologic Unit Codes (HUCs), which are USGS-standardized watershed boundaries. To understand exactly how buffer rules apply to a specific project or property, it is crucial to know the exact 12-digit HUC or project address. It is necessary for permit applicants to know this information as it is already required application information for other state and federal permits. For consistency and site-specific review accuracy, this information needs to be required on the mining permit application.

15A NCAC 05B .0105

The proposed changes to 05B .0105 modify the requirement for a natural buffer along streams to “a vegetated buffer when specified in State or local stream protection requirements.” Changing the buffer description from “natural” to “vegetated” is redundant with statute and adds ambiguity to project expectations. The proposed definition of a “vegetated buffer” in 05A .0202—an unexcavated buffer that may be managed through landscaping or additional plantings—does not differentiate between existing forested buffer and grass and non-native vegetation. The change from “natural” to “vegetative” may mimic G.S. 74-51(f) but does not convey the expectations of having natural, native buffers to minimize unduly adverse effects to wildlife, fisheries and water quality.

15A NCAC 05B .0106

By repealing Rule 05B .0106, the Mining Act Rules no longer contain standards by which permits will be reviewed for impacts to wildlife and fisheries. This rule exists to create expectations for the public and removal of these standards not only creates ambiguity but also removes the ability of the agency with subject matter jurisdiction from specifying specific conditions permit review. This rule is

necessary for implementation, as G.S. 74-51(d)(2) does not provide consideration or standards for review or denial.

The NCWRC believes the proposed changes detailed above to Rules 05B .0104, 05B .0105, and 05B .0106, are either unnecessary, introduce ambiguity, and/or are likely to incite confusion amongst project applicants and the agencies responsible for permit review. The NCWRC requests that the RRC not approve amendments to these rules, as submitted, and instead require the NCDEMLR coordinate with the NCWRC to update and clarify requirements.

Thank you for the opportunity to review and comment on these proposed changes. Please contact me at 919-218-1023 or shannon.deaton@ncwildlife.gov if you have additional questions.

Sincerely,



Shannon L. Deaton, P.E., Chief
Division of Habitat Conservation

1 **15A NCAC 05B .0106 STANDARDS FOR DENYING AN APPLICATION**

2 An application for a new, modified, or renewal mining permit ~~including new permits, modified permits and renewal~~
3 ~~permits~~, may be denied when the operation will ~~have an undue adverse effect on wildlife or fisheries by:~~ harm wildlife
4 or modify wildlife habitat. Impacts may include:

- 5 (1) substantial siltation of streams or lake ~~beds,~~ beds;
6 (2) increasing the average water temperature of ~~adjacent waterways to a temperature detrimental to the~~
7 ~~pre-existing aquatic wildlife; or waterways within or adjacent to project boundaries;~~
8 (3) modifying adjacent wetland or waterbody flow;
9 (4) modifying adjacent waterbody water quality, including:
10 (A) pH
11 (B) dissolved oxygen;
12 (C) total dissolved solids;
13 (D) total suspended solids;
14 (E) turbidity;
15 (F) nutrients;
16 (G) alkalinity; or
17 (H) hardness.
18 (5) significant modification of natural buffers;
19 (6) impacting protected animals and their habitats; or
20 (2)(7) other ~~conditions designated~~ detrimental impacts identified by the North Carolina Wildlife Resources
21 Commission as being ~~unduly detrimental to wildlife.~~ significant to existing species.

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23 *History Note: Authority G.S. 74-51; 74-58; 74-63;*
24 *Eff. February 1, 1976;*
25 *Amended Eff. November 1, 1984.*
26

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