

Burgos, Alexander N

From: Jean Spooner <umsteadcoalition@gmail.com>
Sent: Thursday, August 20, 2026 5:17 PM
To: rrc.comments; Miller, Christopher S
Cc: Everett, Jennifer; Burgos, Alexander N
Subject: [External] Comments - Proposed Mining Rules 15A NCAC 05
Attachments: 2026, July 23 Wildlife Resources Commission, comments to RRC.pdf

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As referenced in the Umstead Coalition's August 20, 2026 letter submitted earlier, the North Carolina Wildlife Resources Commission letter the RRC dated July 23, 2026 is attached. Their letter is also in your file records; I attached because we reference in our letter to the RRC.

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Thanks for Supporting William B. Umstead State Park!

Dr. Jean Spooner, Chair
The Umstead Coalition
919-602-0049

Burgos, Alexander N

From: Jean Spooner <umsteadcoalition@gmail.com>
Sent: Thursday, August 20, 2026 4:58 PM
To: rrc.comments; Miller, Christopher S
Cc: Everett, Jennifer; Burgos, Alexander N
Subject: [External] Comments - Proposed Mining Rules 15A NCAC 05
Attachments: UC Public Comments Proposed Mining Rules-August 20, 2026.pdf

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Please accept these additional comments on behalf of the Umstead Coalition, the Friends Group supporting William B. Umstead State Park and its surrounding open space.

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Thanks for Supporting William B. Umstead State Park!

Dr. Jean Spooner, Chair
The Umstead Coalition
919-602-0049



The Umstead Coalition

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August 30, 2026

To: North Carolina Rules Review Commission

c/o Christopher Mill, OAH Staff attorney and DEQ Rules Coordinator
rrc.comments@oah.nc.gov
christopher.miller@oah.nc.gov
alexander.burgos@oah.nc.gov

Subject: **Public Comment on Proposed Mining Rules**

Dear Rules Review Commission Members and Counsel:

Please accept these additional comments on behalf of the Umstead Coalition, the Friends Group supporting William B. Umstead State Park and its surrounding open space. The Coalition is a membership-based nonprofit that exists to support the Park through conservation and enhancement initiatives. The Coalition has a particular interest in these rules as it is neighbor to an existing aggregate quarry subject to these rules.

The following comments identify areas where the Mining Commission's proposed rules should be returned to the agency for further amendment because they 1) are not within the delegated authority delegated to the agency by the General Assembly, 2) are not clear and unambiguous, and/or 3) are not reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. N.C. Gen. Stat. § 150B-21.9(a). Accordingly, the following rules should be returned to the agency for further revisions:

15A NCAC 05A .0202 AUTHORITIES AND DEFINITIONS

1) **15A NCAC 05A .0202(c)(2)**, as proposed, reads:

(2) "Affected land", as defined in G.S. ~~[74-49(1)]~~ 74-49(1), shall not include an unrelated use that (i) does not meet the definition of mining set forth in G.S. 74-49(7) and (ii) ~~[that]~~ occurs within the permit boundaries, including activities pertaining to agriculture and silviculture including timber harvesting, (iii) where an erosion and sedimentation plan is approved pursuant to G.S. 113A, Article 4, when required, and (iv) the unrelated use area is shown on the mine map.

Issues: The proposed rule is not within the agency's delegated authority and is not reasonably necessary to implement or interpret an enactment of the General Assembly.

Explanation: The proposed rule conflicts with the Mining Act, N.C. Gen. Stat. § 74-49(1), the statutory definition of "Affected land," and with N.C. Gen. Stat. § 74-49(7), which provides an exclusive list of exclusions from the definition of "Mining." This rule attempts to create a carve out for silviculture, including

timber harvesting, that does not exist and is not allowed by statute. Additionally, the cited statutory sections are clear and unambiguous, making this proposed rule unnecessary.

2) **15A NCAC 05A .0202(c)(4)**, as proposed, reads:

(4) "Director" means the Director of the Division of Energy, ~~[Mineral]~~ Mineral, and Land Resources of the Department of Environmental Quality, or any Department position to which the Director has delegated ~~[their]~~ his or her authority.

Issues: The proposed rule is not within the agency's delegated authority and is not reasonably necessary to implement or interpret an enactment of the General Assembly.

Explanation: The Mining Act establishes the bounds of the Department's authority, and the bounds of the Division's Director and staff. Section 74-49(4) specifies the limits of who may delegate their authority: "Whenever in this Article the Department is assigned duties, they may be performed by the Secretary or an employee of the Department designated by the Secretary." The only person within the Department who may determine who within the Division may exercise the duties established by the Mining Act is DEQ's Secretary. The proposed rule defining "Director" undermines the statutory limitation on delegation, and does not find support in the Mining Act.

3) 15A NCAC 05A .0202(c)(7), as proposed, reads:

- (7) "Mining [Buffer"] buffer" means an unexcavated, undisturbed, or vegetative area managed to protect adjacent land owners or areas needing spatial protections.[area of special concern.]
- (A) "Unexcavated" means no mine excavation shall occur. Unexcavated buffers may be used for roadways, [berms] berms, and erosion and sedimentation control or stabilization. Excavation may be allowed for sediment basins or erosion and sedimentation control when shown on the mine map.
- (B) "Undisturbed" means no disturbance shall occur.
- (C) "Vegetative [Buffer"] buffer" means an unexcavated buffer that may be managed through landscaping or additional plantings.

Issue: The proposed rule is not clear and unambiguous.

Explanation: Proposed subsection (7)(C) essentially clarifies that some unexcavated buffers, as defined in subsection (7)(A), may be managed via landscaping or additional plantings. While this clarification would be appropriate for subsection (7)(A), it does not successfully establish a definition for "vegetative buffer" that reflects common understanding or real-world conditions. Vegetative buffers may include both naturally-occurring vegetative areas or those areas that have been supplemented by additional plantings. In contrast, "unexcavated" refers to areas that may be devoid of all vegetation, for example, mining haul roads.

Further, the definition of "vegetative buffer" conflicts with the term "vegetated buffer" used in proposed rule 15A NCAC 05B .0105(2), discussed in the following section, not just in form, but in substance. Proposed rule section .0101(5) uses the term "vegetated buffer" to refer to areas protected under state or local riparian buffer rules, areas that are not allowed to be disturbed without separate authorization and mitigation. However, the term defined in subsection (7)(C) explicitly anticipates disturbance in "vegetative buffers" as they are a type of "unexcavated" buffer. It is unclear whether the Mining Commission actually intends to create two separate, albeit readily-mistakable, definitions for "vegetative buffer" versus "vegetated buffer," or if it is intending to allow the mining rules to allow for buffers with fewer requirements to exist in areas separately protected from disturbance.

Regardless of intent, the lack of clarity in the proposed rule set requires that the rules be returned to the agency for further review and amendment.

15A NCAC 05B .0104 INFORMATION REQUIRED IN PERMIT APPLICATION

- 4) (d) (1) and (d)(3) delete the proposed addition of “approved in advance by the Department” and “proof satisfactory to the Department” and replace “Register of Deeds” for “tax records.” The Department is not the authority on land ownership. The Rule violates § 74-50. (b1).

The proposed Rules:

15A NCAC 05B .0104

(d)(1) The names and addresses of all known owners, both private and public of all land adjoining the proposed mining site as is specified in G.S. 74-50 and as determined by a diligent search of the tax records or other sources of information approved in advance by the Department ~~about property ownership in a manner reasonable calculated to identify~~ that identifies the owners of all adjoining land, ~~and approved by the department [Department.]~~ The proposed mining site means all land to be included within the proposed permitted area;

(d)(3) Pursuant to G.S. 74-50, proof satisfactory to the Department that the applicant has made a ~~reasonable~~ the required effort to notify all owners of record of all adjoining land and the county, city and town managers, who serve as the chief administrative officers, of the county or [and] municipality of the local governments in which any part of the proposed mining site is located of the pending application. Proof satisfactory to the Department shall include an affidavit by the applicant ~~that he has caused~~ stating that a notice of the pending application ~~to be~~ has been sent by certified or registered mail to all known adjoining owners and to the chief administrative officers of the county or municipality. Other means of notice shall be satisfactory if approved in advance by the. Department.

Issue: This proposed Rule addition violates with the Mining Act of 1971 and attempts to delegate authority not allowed by the Mining Act and not within the agency’s delegated authority. The Mining Act clearly states **“Owners of record of land”**:

§ 74-50 (b1) At the time of an application for a new mining permit or for a modification of a mining permit to add land to the permitted area, the applicant or operator shall make a reasonable effort, satisfactory to the Department, to notify:

- (1) The chief administrative officer of each county and municipality in which any part of the permitted area is located.*
- (2) The **owners of record of land** adjoining that lies within 1,000 feet of the permit boundaries.*

Explanation: The while tax records sometimes are an indication, the recorded DEED at the county Register of Deeds or County’s Clerks office is the official legal document that proves the owner of record. Legal ownership should NOT be determined by an agency staff by being “approved by Department employees.” Additional land ownership records could include court records. DEQ must follow the law, not what some employee of DEQ or a mining company approves or desires.

15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT

5) 15A NCAC 05B .0105(2) and (3), as proposed, read:

15A NCAC 05B .0105 CONDITIONS WHICH MAY BE INCLUDED IN PERMIT

To ~~assure~~ ensure that the mining operation will comply fully ~~fully complies~~ with the requirements and objectives of the Mining Act of 1971, G.S. 74-46 through 74-68, the ~~director~~ Director may approve an application or reclamation plan ~~subject to certain conditions. Such conditions of application approval may include:~~ require that a permit or reclamation plan contain conditions including:

- (2) a ~~natural~~ vegetated buffer ~~to be left between any stream and the affected land;~~ land when specified in State or local stream protection ~~[requirements.] requirements;~~
- (3) visual screening such as existing ~~natural~~ vegetation, vegetated earthen berms, and tree plantings at staggered spacing ~~spacing, etc.~~ to be installed and maintained ~~as feasible~~ between any affected land and any adjoining property containing occupied buildings or public access within view of the affected land; any screening conditions shall take into consideration the mining operation activities that are being screened and the current usage of the neighboring ~~[property.] property;~~

Issue: The proposed rule is not clear and unambiguous.

Explanation: The term “buffer” is used across regulatory programs, but carries a different meaning in each. For example, the Division of Water Resources implements the rules designed to protect riparian buffers, those areas on either side of a regulatory stream that serve important ecological functions. However, the Division of Energy, Mineral, and Land resources also include “buffers” akin to setbacks in permitting conditions. The purpose of these buffers is to maintain a physical distance between a mining operation and neighboring property and/or provide visual screening. The rule conflates the terms, and attempts to limit the application only to those situations where an impacted basin or watershed carries a separate riparian buffer requirement. Many of North Carolina’s streams are not protected by a riparian buffer rule.

However, it is the Division’s duty to implement the purpose of the Mining Act, which is to protect the environment to the fullest extent practicable. This rule, as written, would hinder DEMLR’s ability to include situation-specific permitting conditions that would mitigate environmental impacts without denying a permit application for running afoul of N.C. Gen. Stat. 74-51(d)(2), the denial criteria addressing unduly adverse impacts to fresh water.

Likewise, the term “vegetation” fundamentally changes the meaning of the rule in that it does not necessarily mean naturally-occurring vegetation. The rule does not account for situations when leaving naturally-occurring vegetation in place is the appropriate condition for a permit. The words “natural” and “vegetation” are not synonymous, and the rule should be returned to the agency for further revisions.

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

6) **15A NCAC 05B .0106** proposes to repeal the currently-codified language that reads:

The RRC should object to the proposed Rule Repeal.

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.

Issue: The proposed rule repeal results in ambiguity as to the standards the Department would apply to determining whether a permit should issue in light of the denial criteria codified in N.C. Gen. Stat. § 74-51(d)(2).

Explanation: Mining Act Section 74-51(d)(2) authorizes the Department to deny a mining permit when “the operation will have unduly adverse effects on potable groundwater supplies, wildlife, or fresh water, estuarine, or marine fisheries.” The Department, meaning the Division of Energy, Mineral, and Land Resources, is not the agency tasked with establishing the environmental standards appropriate to protect the State’s wildlife. The rule as currently written provides necessary clarity regarding the standards that would be applied to mining permit applications, and properly incorporates those standards designated by the appropriate wildlife agency, the North Carolina Wildlife Resources Commission, as being applicable. Without this language, the standard that the Department may apply to future mining permit applications is unclear.

7) **15A NCAC 05B .0111(c) and (e)**, as proposed, read:

(c) Any person may appear at the public hearing and give oral or written comments on the proposed application. The hearing officer may impose reasonable limitations on the length of time that any person may speak and may summarize comments rather than recording them in full. The hearing officer may allow additional written comments to be submitted for up to ten days after the hearing hearing after which the public comment period will be considered closed and no other public comments [can] shall be considered in the final determination of the application. ~~within a period of time he deems appropriate which shall not exceed ten days.~~

(e) In the event there is not a public hearing, public comments will be accepted for 60 days following the receipt of the application after which the public comment period will be considered closed and no other public comments [will] shall be considered in the final determination of the application.

Issues: The proposed rule revisions are not reasonably necessary to implement or interpret an enactment of the General Assembly, and are not clear and unambiguous.

Explanation: The Mining Act enables the Department to seek as much information as a particular application requires in order to able it to make a well-founded permitting decision, and part of the investigative process anticipated by the Mining Act is the submission of public comments. This is a particularly relevant feature as mining permit applications may remain under review for a matter of months to years, and often involve material changes to the project not initially anticipated by the original application. The proposed subsections (c) and (e) seeks to limit public comments and hinder the Department's ability to accept new, relevant information on a pending permit application. They also seek to hinder public participating in the permitting process despite the direct impacts mining projects have on the environment and their neighbors. The practical result of cutting the administrative process prematurely is to force persons affected by a final permitting decision to challenge the permit via a contested case proceeding rather than address resolvable issues pre-permit issuance.

The proposed rule also does not reflect what the Mining Act anticipates—an iterative process of review and information gathering sufficient to satisfy the Act's purpose of ensuring "[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." N.C. Gen. Stat. § 74-48(a). The Act gives the Department discretion to request information and in reviewing that information. While it does not require the Department to consider post-hearing public comments, the Mining Commission's rule attempts to improperly limit the Department's discretion to accept new information during the application review process.

Equally important, the proposed rule does not differentiate between other government agencies and the general public. Since mining operations create environmental impacts regulated by other agencies or that fall within the professional expertise of other agencies, a rule that attempts to limit those agencies' ability to offer comments for the duration of an application's review creates a conflict between the Division's and its fellow agencies' authorities.

15A NCAC 05F .0112 FURTHER REMEDIES

Object to the proposed Rule Repeal. The director SHOULD be able to pursue remedies to ensure a mining operation complies with the law.

8) **15A NCAC 05F .0112** proposes the repeal of the currently-codified language that reads:

No provision of this Subchapter shall be construed to restrict or impair the right of the director or the Mining and Energy Commission to pursue any other remedy provided by law for violations of the Mining Act of 1971 or the rules of this Chapter.

Issues: The proposed rule repeal is not within the delegated authority delegated to the agency by the General Assembly and is not clear and unambiguous.

Explanation: While the currently-codified rule should stand for an obvious proposition—that the rules adopted by the Mining Commission cannot conflict with statute—the proposed repeal of this rule and corresponding proposed rules that loosen statutory requirements in favor of the regulated industry create an ambiguity between authorities. As identified above, some of the proposed rule provisions directly conflict with the Mining Act and the legal standard that the Director is obligated to enforce. This proposed rule should be returned to the agency for revisions to update the name of the referenced Commission, and restored should any of the other amended provisions be approved as currently written.

The Coalition further agrees with and incorporates by reference the comments submitted by the North Carolina Wildlife Resources Commission on July 23, 2026, and attached to this comment letter.

Thank you for your careful consideration of the proposed rules and comments.

Respectfully submitted,
Dr. Jean Spooner, Chair
The Umstead Coalition
919-602-0049

cc: Jennifer Everett, Jennifer.everett@deq.nc.gov

Burgos, Alexander N

From: Natalie <nlew@mindspring.com>
Sent: Thursday, August 20, 2026 4:57 PM
To: Burgos, Alexander N; Miller, Christopher S
Cc: Ascher, Seth M
Subject: [External] Written Public Comment for proposed Mining Rule changes
Attachments: RRC_verbal public comments_2026 07 30_resubmitted for Aug26 hearing.pdf

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Good afternoon,

Please confirm that this email and the attachment are given to the Rules Committee.

While the first page may look similar to an earlier submission, the attachment actually contains two comments.

Unfortunately, due to work, I have not been able to write any additional comments.

But I will take the last few minutes of the day to say a few thoughts...

NC has one of the weakest Mining Laws in the country. As such, we need be sure that the Rules do not make the Law even weaker.

Personally, I am all for property rights. But I also feel strongly about being respectful to one's neighbor. The Mining Law and Rules have captured the attention of many people from both sides of the isle. This is an issue which actually brings people together – Republican and Democrat. Of the many people I know, I can say that people are not against mines in general. But there are some places where mines are not appropriate – like directly adjacent to two NC State Park entities on land deeded to the public and deemed critical for the State Park – next to where children play. Nobody is looking to stop mining, but as the Good Lord is my witness, I have seen and heard a certain mining company using the weakness in the Law and current Rules, along with the ancient and outdated, 30 year old Surface Mining Manual, to get their way at the expense of the public and public resources. It is not an environmental thing – it is a company taking advantage of weak policy.

I urge you to reject the rules as documented in the many public comments.

I do plan to give a verbal public comment.

Thank you,

-Natalie

Submitted at 4:55pm EST
Proverbs 12:22

There is not one central document that includes all text changes over time for either the Mining Law or Rules. So, I pulled each iteration, created such documents, and assessed the changes over time. To my knowledge, neither current DEQ nor Mining Commission staff have done this.

I see the butterfly effect in action – small changes are adding up to create effects vastly different from the intent of the original Law.

Here are some examples:

Regarding Rule 15A 05B .0106 (Standards for Denying an Application)

Section 74-51(d) of the Mining Law lists seven criteria for denying a new or modified permit. Currently Rule 05B .0106 provides some clarifying text. The proposed Rule removes this text without adding additional text.

A Rule is needed but should be rewritten to include, **at least**, the concept that noise can be considered when evaluating denial criteria 74-51 (d)(5): “That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest, or recreation area.”

This need arises from the fact that the Department and mining companies are using confusing wording in two sections of the **30-year-old** Surface Mining Manual (~~dated Feb/1996~~) to skirt and minimize permit denial criteria outlined in the Law. Based on the outdated Manual, they claim that noise cannot be considered **at all** when evaluating denial criteria 74-51 (d)(5).

To say that the Mining Act does not address noise just because the exact word “noise” is not used is absurd. Using an outdated Guide book makes this worse.

To evaluate denial criteria 74-51 (d)(5), the first question is “What causes harm to the purposes of the *affected* publicly owned park, forest, or recreation area?” Clearly, noise causes harm when the purpose of such an entity is to escape from the sounds of modern life and to be in a place of peace and tranquility.

The next question is “Who should define what constitutes “significant” adverse effects on parks, water, or wildlife? Neither the Department nor mining companies have appropriate experience to make this definition. But G.S. 74-50 (b3) tells us who does.

This Section lists several relevant State agencies that must be notified of both new and modified permit applications. These agencies include the true Subject Matter Experts (SME) on parks, water, and wildlife and it is these agencies that have the knowledge to accurately define “unduly” or “significant” adverse effects.

Yet, in practice, the Department and mining companies have been making biased decisions about parks, water, and wildlife by relying on the **30-year-old** Surface Mining Manual without obtaining guidance from the true Subject Matter Experts (SMEs).

*The rewritten Rule should simply state “**The agencies noted in 74-50 (b3) retain primary authority for determining what constitutes unduly or significant adverse effects on parks, water, or wildlife.**”*

Regarding Rule 15A 05B .0111, Public Hearings, item (a)

For 55 years, G.S. 74-52 (“Permit Modifications”) has stated that “... *terms and conditions [of the mining permit] may be modified **only** where the Department determines that the permit as modified would meet **all** requirements of **G.S. 74-50 and 74-51**,*” the two sections in the Law that focus on new permits—the “Permit, General” section and the “Permits; Application, Granting, Conditions” section.

In 1981, public hearings were added to G.S. 74-51 and to this day states that “*Upon its determination that **significant public interest exists**, the Department shall conduct a public hearing on any application for a new mining permit.*”

Since permit modifications must meet **all** criteria of new permit applications, when “**significant public interest**” exists, a public hearing SHALL be conducted. The trigger for the public hearing is “significant public interest” whether such interest is on a new or **modified** permit and no matter what is modified.

The proposed Rule attempts to limit public hearings by including the phrase “modification that adds land to the existing permit.” This phrase is just a special case of a permit modification. While it is appropriately used in the Law Section regarding *notifying adjacent land owners*, its use in the Rule about public hearings results in a confusing Rule with the effect of changing the Law by ignoring the **full** concepts in G.S. 74-52.

The proposed Rule must account for all provisions in G.S. 74-50, 74-51, AND 74-52 and should simply state “If the Department determines that there exists a significant public interest in an application for a new or modified permit, the Director shall appoint a hearing officer to conduct a public hearing on the application ...”

Continuing with the concept that permit modifications must meet all criteria associated with new permits, per G.S. 74-50 (b3), the Department must notify the agencies listed in this Section of not just new permits, but any permit modifications or Additional Information request responses. In practice and contrary to the Law, the Department seems to be liming agency notification and comments to new permits. The Department should either create a clarifying Rule or simply follow the Law.

>>>>>>>>>>>>>

As you will hear and read, there are other issues with the proposed changes to the Mining Rules and many need to be rejected.

We are not against mining, we just want to ensure the public and our surface resources are seen as important, too.

Please let me know if you have any questions regarding the text changes in the Law or Rules over time.

Thank you for allowing me to make a remote comment. I was not able to attend in person as I have long planned to attend an adult Bible study course at the Franciscan University.

Regarding Rule 15A 05B .0111, Public Hearings, items (c) – public comments

It is important to understand the mining permit approval process. There is not simply one permit application and then it's done.

Whether or not there is a public hearing, there is a critical sequence that follows the initial application. Subsequent to the initial application, the Department can ask the mining operator for Additional Information, called an ADI. The mining operator must respond. Subsequent to these inquiries and responses, changes to the mining application can occur, some of which can be extremely significant and different from what was presented on the initial application.

Each ADI response is like a pre-approval permit modification and must receive the same scrutiny under GS 74-50, GS 74-51, and GS 74-52 and nothing in the Law prohibits such.

The current Mining Law accomplishes this in part by NOT restricting public comments to a public hearing. In other words, the current Law does not prohibit the submission or consideration of **general** public comments, those comments submitted outside of a public hearing.

Since 1981, 45 years ago, GS 74-51 (c) has simply stated that a “[public] hearing shall be held before the Department reaches a final decision on the application, and in making its determination, the Department shall give full consideration to all comments submitted at the public hearing.” Simply stated, the Department cannot ignore comments given at the public hearing.

While it is understandable to close public comments associated with the public hearing so that the hearing report can be completed, it is contrary to the Law to totally eliminate **general** public comments after a public hearing. The proposed Rule attempts to eliminate **general** public comments by adding the phrase “ ... and no other public comments can be considered in the final determination of the application.” Thus, this Rule change should be rejected.

The Public Hearing Rule should simply state “**The hearing officer may allow additional written comments to be submitted for up to x days after the hearing after which the public comment period associated with the public hearing will be considered closed.**”

Public comments are needed outside of the public hearing in order to ensure critical information that could affect the safety of the public and neighboring land is made available to the Department in order for them to make a proper decision regarding issuance or denial of the permit.

Reminder, it is the number of public comments received that determines if a public hearing is to occur. Where is the Rule to ensure that comments received **prior** to a public hearing get the consideration they deserve?

Regarding Rule 15A 05B .0111, Public Hearings, item (e) – public comments

Following similar thought processes, the proposed new rule (e) goes above and beyond the Law and essentially changes the Law. Given the Law does not prohibit the submission or consideration of **general** public

comments, the Rule is not needed. If the Rule is to be kept, the Rule should simply state ***“In the event there is not a public hearing, public comments will be accepted and considered.”***

Regarding agency comments

While agency comments are addressed in 74-50 (b3) of the Law, when it comes to public hearings, agency comments should be included as one type of public comment.

As noted earlier, permit modifications have to meet all criteria for new permit applications. As such, the Department must notify all agencies in 74-50 (b3) regarding any permit modification applications, including ADI response during the permitting process. In addition, the Department must allow comments from each agency listed in 74-50 (b3) regarding these permit modification applications and ADI responses.

To limit agencies to only commenting on a new permit or to only commenting on the initial application for a permit modification is contrary to the intent of the Law. The Department should create a rule clarifying that State agencies must be notified of new applications, modified permit applications, and ADI responses and that agency comments will be accepted on any of these. Otherwise, the Department would not be following the Law.

Thank you for your consideration.