

SUBCHAPTER 01E - INDUSTRIAL AND POLLUTION CONTROL REVENUE BONDS

SECTION .0100 - PURPOSE AND DEFINITIONS

04 NCAC 01E .0101 PURPOSE OF SUBCHAPTER

The purpose of this Subchapter is to set out the procedures and criteria by and under which the Secretary of the Department of Commerce shall make the findings under his project approval responsibility as spelled out in North Carolina General Statutes Section 159C-7.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0102 INDUSTRIAL PROJECT

04 NCAC 01E .0103 POLLUTION CONTROL PROJECT

History Note: Authority G.S. 159C-7; 159C-3;
Eff. August 2, 1976;
Amended Eff. March 1, 1983; February 11, 1980;
Repealed Eff. March 1, 1985.

04 NCAC 01E .0104 OPERATOR

(a) An "operator" shall mean the persons or corporate entity entitled to the use or occupancy of a project. Where all or virtually all of the stock in one corporate entity is owned (either directly or indirectly) by another corporation (i.e., a relationship commonly known as a "parent--wholly-owned subsidiary") and where final management control rests with the parent, "operator" shall be construed so as to include the total corporate responsibility implied by such a relationship. Such presumption may be rebutted where the department finds clear and convincing evidence of the independence of the subsidiary from the parent.

(b) If the initial proposed operator of a project is not expected to be the operator for the term of the bonds proposed to be issued, the Secretary may make the findings required pursuant to Rules .0303 and .0307 of this Subchapter only with respect to the initial operator identified in the application for approval of the project. When the current operator discontinues serving as operator, and arrangements have been made by the obligor for a new operator, the new operator shall be subject to the approval of the Secretary pursuant to Rules .0303 and .0307 of this Subchapter.

(c) If an operator subsequently seeks to sell, to lease, or to sublease the project to a non-affiliated person(s) or entity, the operator must give written notice to the Department of Commerce including information prescribed by the secretary. This information shall include details of the proposed transaction, as well as name, address, NAICS code, and financial status of the non-affiliated person(s) or entity.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. August 1, 2000; March 1, 1983; November 21, 1978; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0105 OBLIGOR

History Note: Authority G.S. 159C-3(7); 159C-7;
Eff. August 2, 1976;
Repealed Eff. March 1, 1985.

04 NCAC 01E .0106 DEPARTMENT

The term "department" shall mean the Department of Commerce.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;

*Amended Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0107 SECRETARY

The term "secretary" shall mean the Secretary of the Department of Commerce, or his appointed designee.

*History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0108 AUTHORITY

The term "authority" shall mean an authority created pursuant to North Carolina General Statutes Section 159C-4.

*History Note: Authority G.S. 159C-4;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

SECTION .0200 - APPLICATION PROCEDURES

04 NCAC 01E .0201 GENERALLY

This Section provides the application procedures which shall be followed, including data and information submissions, before the secretary will make his final decision relative to project approval.

*History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.*

04 NCAC 01E .0202 PRE-APPLICATION CONFERENCE

(a) Authorities may advise the Department when the authority enters serious consideration of financing a project. The department shall assist the authority, as requested, within the limits of available resources. Information, liaison and coordination shall be effected by the Department through the Commerce Finance Center. Available services include:

- (1) provision of forms and documents relating to the application process with informative comments;
- (2) comment on the type of projects consummated by other authorities;
- (3) examination of and comment on assembled facts and data which might be used in the preparation of application;
- (4) analysis of likely or potential procedural or environmental problems.

(b) At least one week prior to submission to the Department of a project application, the authority shall arrange for a pre-application conference with the Department. Parties present at the pre-application conference will include representatives from the authority, the Department, the operator, the obligor, if other than the operator, the Local Government Commission, and the Department of Environment and Natural Resources or its successor agency.

(c) The purpose of the conference is to help ensure that application procedures and requirements are clearly understood.

(d) The operator shall offer verbal, and if available, written project descriptions. The operator will be encouraged to provide data relative to the character and volume of process wastes, water and air discharges of pollutants, as well as any comment already received from the Division of Environmental Management.

(e) Another purpose of this conference will be to reach an understanding among all parties that the project is of the type that may be considered for approval by the secretary.

*History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;*

Amended Eff. April 1, 1999; March 1, 1983; February 11, 1980; November 21, 1978; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0203 APPROVAL IN PRINCIPLE

No application for approval of the project will be officially received until the elected board of commissioners in the county from which the application is to be made, has, by resolution, approved in principle the proposed project and the issuance of bonds to finance or partially finance that project. That resolution will not be considered by the elected board of county commissioners until the public hearing required in Rule .0204 of this Subchapter has been completed. If the elected board of county commissioners delegates to the authority the responsibility for holding the public hearing and if that public hearing is not attended by a quorum of the elected board of county commissioners, the summary of the public hearing required in Rule .0204(d) of this Subchapter will be presented to the elected board of county commissioners prior to their consideration of the resolution. A certified copy of such resolution will be provided to the department as an addendum to the authority application.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Temporary Amendment Eff. January 7, 1983 for a Period of 120 Days to Expire on May 7, 1983;
Amended Eff. March 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0204 PUBLIC HEARING

(a) No application will be officially received until either the elected board of county commissioners or the authority, if so designated by the elected board, has held a public hearing on the advisability of the proposed project and the issuance of the bonds to finance or partially finance the project. The public hearing will take place after the completion of the preapplication conference required in Rule .0202 of this Subchapter. The department will be notified of the public hearing at least three working days in advance of the hearing. That notice will specify the date, place and time of the hearing.

(b) The public notice of the public hearing must be given by the elected board or the authority by publication at least fourteen days prior to the public hearing in one or more newspapers of general circulation in the county. In addition to the place, date and time of the public hearing, the notice of the public hearing will indicate the date on which the authority entered into the inducement agreement with the proposed operator, the type of facility, its location, an estimate of the number of employees' jobs saved or added (except for pollution control projects for public utilities), the approximate cost of the project, the maximum principal amount of the bonds proposed to be issued by the authority, and the intention of the authority to submit to the department an application for approval of the project. The public notice of the public hearing shall also indicate that persons wishing to make written comment about the proposed project and the related bond issue may do so to the authority, to the elected board of county commissioners and to the Secretary of the Department of Commerce, or his designee, within fourteen days of the date of the publication thereof. Certification of the notice of the public hearing will be provided to the department as an addendum to the authority application.

(c) The applicant should be prepared at the public hearing to discuss the details concerning the proposed project and bond issue, including the following:

- (1) the site location;
- (2) the building specifications;
- (3) the type of operations to be conducted at the project;
- (4) pertinent environmental questions;
- (5) employment and wage projections, including whether the operator will meet or seek waiver of the wage test in Rule .0303 of this Chapter;
- (6) the size of the proposed bond issue; and
- (7) a description of plans for sale of the bonds.

(d) A summary of oral comment made at the public hearing, including a list of the names and addresses of those who spoke at the hearing, and a copy of any written comment received, will be prepared and made a part of the authority application.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Temporary Amendment Eff. January 7, 1983 for a Period of 120 Days to Expire on May 7, 1983;
Amended Eff. March 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0205 FORMAL APPLICATION PROCEDURES: REQUIRED DATA: INFORMATION

(a) When making application for an approval of an industrial project for a prospective industry or for an existing industry, a pollution control project for a prospective industry or for an existing industry, or a pollution control project for a utility, the authority shall complete the pertinent application form developed by the secretary and made available by the Commerce Finance Center in the Department of Commerce.

(b) Any application which has factual data which is incomplete shall be returned to the authority with reasons for the return being stated in writing. Missing or deficient information shall be noted. Once the requested information is provided, the application will be accepted as officially received and processing shall begin.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. April 1, 1999; November 21, 1978; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0206 FORMAL APPLICATION PROCEDURES: PUBLIC HEARING

(a) Where the project has caused significant adverse public reaction as determined from the responses to the public notice or the public hearing held by the elected board of county commissioners, or the authority, or where the facts are unclear and do not support clear finding, the secretary may hold a public hearing on the proposed project for the purpose of obtaining the views of the community to be affected. The community is hereby defined as the county in which the project is to be located.

(b) Public notice shall be given - least seven days prior to the hearing. The notice shall specify the date, time, place and subject matter of the hearing.

(c) A complete transcript of the hearing shall be prepared by the secretary. The secretary shall provide to the Secretary of the Department of Environment and Natural Resources a copy of the transcript.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. February 11, 1980; June 7, 1977;
Temporary Amendment Eff. January 7, 1983 for a period of 120 days to expire on May 7, 1983;
Amended Eff. April 1, 1999; March 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0207 PROJECT CERTIFICATION FROM DENR: OR ITS SUCCESSOR AGENCY

(a) Prior to giving final consideration to the authority application, the secretary shall inform the Secretary of the Department of Environment and Natural Resources, or its successor agency, that the particular application is pending, shall furnish him with a copy of the authority application, and shall make a request that the Department of Environment and Natural Resources, or its successor agency, issue a certification, under G.S. 159C-7(3) that in the case of a proposed industrial project, the proposed project shall not have a materially adverse effect on the environment and that, in the case of the proposed pollution control project, the proposed project shall have a materially favorable impact on the environment or shall prevent or diminish materially the impact of pollution which could otherwise occur.

(b) Prior to making any of the findings required in 159C-7(1)(b) and (2), the Secretary of the Department of Commerce shall have received the project certification requested from the Department of Environment and Natural Resources, or its successor agency.

History Note: Authority G.S. 159C-7;

Eff. August 2, 1976;
Amended Eff. April 1, 1999; February 11, 1980; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0208 FORMAL APPLICATION PROCEDURES: APPROVAL

(a) Where the secretary makes all the findings necessary, including discretionary approval where the operator of an industrial project does not pay an above average manufacturing wage or where there is an abandonment of an existing facility, he will do so in writing to the authority at the earliest possible date after following the procedures set forth in (b) of this Rule.

(b) The secretary will prepare a certificate of approval in which all his findings are set forth and cause this certificate to be published in a newspaper of general circulation within the county. If no appeal is taken within a 30-day period from date of notice or after the successful expiration of any appeal process, the secretary will forward the certificate of approval to the authority.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. March 1, 1983; June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0209 FORMAL APPLICATION PROCEDURES: DENIAL

(a) Where there is significant unresolved public controversy or where the secretary is unable to make one or more required findings, the secretary will so indicate in writing and with specificity the reasons for denial.

(b) The secretary in his letter shall indicate that the authority is invited to prepare a presentation, either written or oral which speaks factually to the unresolved issues. The secretary or his designee will be present at the meeting to hear and discuss the issues with the authority. It will be the responsibility of the authority to persuade the secretary that he should make all the necessary findings.

(c) Where the authority does accomplish its responsibility to persuade the secretary, further procedures shall be as in .0208 of this Section.

(d) Where the authority does not accomplish its responsibility to persuade the secretary, the secretary shall notify the authority of his decision in writing specifying the reasons for denial.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0210 REIMBURSEMENT OF EXTRAORDINARY EXPENSE

Where the department finds it necessary to incur "extraordinary" expense pertinent to consideration of/or the approval of an authority application, the department will expect to be reimbursed for those expenses by the authority or its proposed lessee. The expenditure will not be made or committed except as agreed to by the authority. Such expenditures will be confined to those costs to be incurred relative to a particular application, such as the "out-of-pocket" costs relative to "out-of-state" trips made by the secretary, or his designee, or the cost of advertising the certificate of approval.

History Note: Authority G.S. 159C-7;
Eff. June 7, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

SECTION .0300 - REVIEW CRITERIA

04 NCAC 01E .0301 GENERAL

In order for the secretary to approve a project he must make certain findings as specified in G.S. 159C-7(1) or (2) and (3). It is the purpose of this Section to specify the standards and criteria the secretary will use in making his findings.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0302 JURISDICTIONAL FINDINGS

(a) Before the department can begin to make technical findings specified in G.S. 159C-7(1) to (3), a finding must be made that the project is either:

- (1) an industrial project for industry,
- (2) a pollution control project for industry, or
- (3) a pollution control project for public utility, as defined in G.S. 159C-3, and as defined in Article V, Section 9 of the constitution of North Carolina.

(b) The department shall use the definitions of those terms found in Section .0100 of this Subchapter to make those jurisdictional findings.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. March 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0303 MANUFACTURING WAGE TEST

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Temporary Amendment Eff. January 7, 1983 for a period of 120 days to expire May 7, 1983;
Amended Eff. March 1, 1985; November 1, 1984;
Temporary Amendment Eff. September 15, 1988 for a period of 180 days to expire March 14, 1989;
Amended Eff. April 1, 1999; July 1, 1989; March 1, 1989;
Repealed Eff. March 1, 2005.

04 NCAC 01E .0304 NO MATERIALLY ADVERSE EFFECT ON THE ENVIRONMENT TEST

04 NCAC 01E .0305 MATERIALLY FAVORABLE IMPACT TEST

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. March 1, 1983; February 11, 1980; November 21, 1978; June 1, 1977;
Repealed Eff. March 1, 1985.

04 NCAC 01E .0306 JOBS SAVED OR GENERATED TEST

(a) G.S. 159C-7 specifies that in the case of either "... an industrial or a pollution project, except a pollution control project for a public utility, (a), that the jobs to be generated or saved, directly or indirectly by the proposed project will be large enough in number to have a measurable impact on the area immediately surrounding the proposed project and will be commensurate with the size and cost of the proposed project."

(b) The department shall use as a guideline, a standard of requiring one job saved or generated for each two hundred fifty thousand dollars (\$250,000) of bond financing. This ratio may be lower and still acceptable depending upon other critical factors, including but not limited to:

- (1) the wage scale of the facility;
- (2) the present economic situation in the county;
- (3) the effect of the facility on the tax base of the county;

- (4) the expected effect that the industrial facility will have on the development of new industry and services as well as any other factors which the applicant feels pertinent to the issue.
 - (5) the machinery and equipment financed is "state of the art" in technology increasing efficiency with moderate effect on employment.
- (c) The applicant has the burden of demonstrating that the jobs saved or generated will have a measurable impact on the county. The applicant must show by clear and convincing evidence the number and type of such jobs generated or saved.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Amended Eff. April 1, 1999; March 1, 1983; February 11, 1980; November 21, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0307 CAPABILITY TEST

- (a) G.S. 159C-7 specifies that in the case of either "...an industrial or a pollution control project, except for a public utility, that the proposed operator of the proposed project has demonstrated or can demonstrate the capability to operate such a project...."
- (b) The applicant has the burden of showing that capability exists in the operator to operate and maintain the facility efficiently and effectively. Financial strength and prior related experience by the operator will be given great weight. Where little or no prior experience can be demonstrated, the qualifications of management, including production or engineering staff, as applicable, will be of great significance.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Amended Eff. November 21, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0308 ABANDONMENT TEST

- (a) G.S. 159C-7 specifies that in the case of either "an industrial or a pollution project, except a pollution project for a public utility, that the financing of such project by the authority will not cause or result in abandonment of an existing industrial or manufacturing facility of the proposed operator or an affiliate elsewhere within the state unless the facility is to be abandoned because of obsolescence, lack of available labor, or site limitations."
- (b) The department shall consider an abandonment statement as prima facie proof of lack of abandonment.

History Note: Authority G.S. 159C-7;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.

04 NCAC 01E .0309 THE SECRETARY'S FINDINGS

- (a) Unless the applicant has met his various burdens of proof, the secretary shall not make his required findings.
- (b) All findings shall be in writing and where adverse findings are made, they shall specifically indicate in detail which elements of proof were weak, the required conclusions which could not be made, and any suggestions for amending the application.

History Note: Authority G.S. 159C-7; 159C-8;
Eff. August 2, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. September 6, 2016.