

SUBCHAPTER 04E - RULEMAKING PROCEDURES

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 04E .0101 GENERAL PURPOSE

15A NCAC 04E .0102 DEFINITIONS

History Note: Authority G.S. 113A-54; 113A-55; 150B;
Eff. March 14, 1980;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); May 1, 1990; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

15A NCAC 04E .0103 ADDRESS

History Note: Authority G.S. 113A-54;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0104 COPIES OF RULES

(a) Copies of Commission rules may be requested by contacting the Commission's staff at the Archdale building address set forth in 15A NCAC 04A .0101. The request shall specify the rules requested, for example, 15A NCAC 04, Sedimentation Control, or 15A NCAC 04B .0113, Responsibility for Maintenance. A fee may be charged to recover mailing and duplication costs for requests of more than one copy of the same rule(s).

(b) The rules of the Commission (15A NCAC 04) can also be found on the website of the NC Office of Administrative Hearings at: <https://www.oah.nc.gov>.

History Note: Authority G.S. 113A-54; 113A-55;
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04E .0105 DELEGATIONS OF AUTHORITY TO THE DIRECTOR

History Note: Authority G.S. 113A-54; 113A-55; 150B;
Eff. March 14, 1980;
Amended Eff. November 1, 1984; June 5, 1981;
Repealed Eff. August 1, 1988.

SECTION .0200 - PETITIONS FOR RULEMAKING

15A NCAC 04E .0201 FORM AND CONTENT OF PETITION

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Commission shall make the request in a petition to the Commission addressed to the:

Director
Division of Energy, Mineral, and Land Resources
1612 Mail Service Center
Raleigh, North Carolina 27699-1612

(b) The petition shall contain the following information:

- (1) the text of the proposed rule(s) for adoption or amendment;
- (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
- (3) a statement of the effect on existing rules or orders; and

- (4) the name(s) and address(es) of the petitioner(s).
- (c) The petitioner may include the following information within the request:
 - (1) the statutory authority for the agency to promulgate the rules(s);
 - (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
 - (3) a statement explaining the computation of the cost factors;
 - (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
 - (5) documents and data supporting the proposed rule(s).
- (d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director on behalf of the Commission.
- (e) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities.

History Note: Authority G.S. 113A-54; 150B-20;
Eff. March 14, 1980;
Amended Eff. November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04E .0202 CONTENTS OF PETITION

History Note: Authority G.S. 113A-54; 150B-16;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0203 DISPOSITION OF PETITIONS

History Note: Authority G.S. 113A-54; 113A-55; 150B-16;
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.

SECTION .0300 - NOTICE OF RULEMAKING HEARINGS

15A NCAC 04E .0301 TIMING OF NOTICE

History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.

15A NCAC 04E .0302 NOTICE MAILING LIST

History Note: Authority G.S. 113A-54; 150B-12(b);
Eff. March 14, 1980;
Amended Eff. November 1, 1984;
Repealed Eff. August 1, 1988.

15A NCAC 04E .0303 ADDITIONAL INFORMATION

History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;

Repealed Eff. November 1, 1984.

SECTION .0400 - RULEMAKING HEARINGS

15A NCAC 04E .0401 REQUEST TO PARTICIPATE **15A NCAC 04E .0402 CONTENTS OF REQUEST: GENERAL TIME LIMITATIONS**

*History Note: Authority G.S. 113A-54; 150B-12(d),(e);
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.*

15A NCAC 04E .0403 WRITTEN SUBMISSIONS

*History Note: Authority G.S. 113A-54; 150B-12(e);
Eff. March 14, 1980;
Amended Eff. June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.*

15A NCAC 04E .0404 PRESIDING OFFICER: POWERS AND DUTIES

*History Note: Authority G.S. 113A-54; 150B-12;
Eff. March 14, 1980;
Repealed Eff. November 1, 1984.*

15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION **15A NCAC 04E .0406 RECORD OF PROCEEDINGS**

*History Note: Authority G.S. 113A-54; 150B-11(2); 150B-12(e);
Eff. March 14, 1980;
Amended Eff. August 1, 1988; November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.*

SECTION .0500 - DECLARATORY RULINGS

15A NCAC 04E .0501 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Sedimentation Control Commission may issue a declaratory ruling as provided in G.S. 150B-4 and the rules of this Section.

*History Note: Authority G.S. 113A-54; 150B-4;
Eff. March 14, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.*

15A NCAC 04E .0502 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Energy, Mineral, and Land Resources, Department of Environmental Quality, 1612 Mail Service Center, Raleigh, NC 27699-1612.

(b) All requests shall include the following:

- (1) name and address of petitioner(s);
- (2) the rule, statute, or order upon which a ruling is desired;
- (3) a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, statute, or order to a given factual situation;

- (4) arguments or data that demonstrate that the petitioner is aggrieved by the rule, statute, or order, or its potential application to petitioner;
- (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
- (6) a statement of the facts proposed for adoption by the Commission;
- (7) a draft of the proposed ruling; and
- (8) a statement of whether an oral argument is desired, and, if so, the reason(s) for requesting such an oral argument.

(c) A request for a ruling on the applicability of a rule, order or statute shall include a description of the specific factual situation on which the ruling is to be based and documentation supporting those facts. A request for a ruling on the validity of a Commission rule shall state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may ask for both types of declaratory rulings in a single request.

(d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Chairman.

*History Note: Authority G.S. 113A-54; 150B-4;
Eff. March 14, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.*

15A NCAC 04E .0503 DISPOSITION OF REQUEST

(a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0502 of this Section, and the Chairman shall make a recommendation to the Commission on whether to grant or deny a request for a declaratory ruling.

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

- (1) request additional written submissions from the petitioner(s);
- (2) request a written response from the Department, or any other person; and
- (3) hear oral arguments from the petitioner(s) and the Department or their legal counsel.

(c) Whenever the Commission believes for good cause that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reason(s) for the refusal to issue a ruling on the request.

(d) "Good cause" as the term is used in Paragraph (c) of this Rule shall include:

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

(e) The Commission, through the Department, shall keep a record of each declaratory ruling, which shall include at a minimum the following items:

- (1) the request for a ruling;
- (2) any written submission by a party;
- (3) the given state of facts on which the ruling was based;
- (4) any transcripts or recordings of oral proceedings, or, in the absence of a transcript or recording, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling.

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

- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;
- (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule that is the subject of the declaratory ruling in a manner irreconcilable with the declaratory ruling;

- (3) the Commission changes the declaratory ruling prospectively; or
 - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environmental Quality and the party requesting the ruling.
- (g) The party requesting a declaratory ruling may agree to allow the Commission to extend any of the deadlines beyond the timeframes provided in G.S. 150B-4.
- (h) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a decision or a ruling on the merits within the time provided in G.S. 150B-4 shall constitute a denial of the request as well as a denial on the merits of the request and shall be subject to judicial review.

History Note: Authority G.S. 113A-54; 113A-55; 150B-4
Eff. March 14, 1980;
Amended Eff. August 1, 1988; June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.

15A NCAC 04E .0504 RECORD OF DECISION

History Note: Authority G.S. 113A-54; 150B-11;
Eff. March 14, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Repealed Eff. April 1, 2020.