

## SUBCHAPTER 5B - PERMITTING AND REPORTING

### **15A NCAC 05B .0101 PURPOSE** **15A NCAC 05B .0102 ACTIVITIES REQUIRING PERMITS**

*History Note:* Authority G.S. 74-50; 74-63; 74-67; 143B-290(1)(d);  
Eff. February 1, 1976;  
Amended Eff. January 31, 1979;  
Repealed Eff. November 1, 1984.

### **15A NCAC 05B .0103 BONDING REQUIREMENTS**

(a) After an application for a new mining permit or permit renewal, modification, or transfer is considered approvable by the Department, an applicant or permittee must file a bond with the Department in an amount to be determined by the Director.

(b) If the applicant or permittee disagrees with the bond amount determined by the Director, the applicant or permittee may submit to the Director for his consideration, an estimate of reclamation costs from a third party contractor to be used as the bond amount. The estimate shall be provided to the Director within 30 days following the receipt of the Director's initial bond determination. After considering the estimate and recommendations provided by his staff, the Director shall notify the applicant or permittee of his bond determination and the process and conditions used to set the bond amount.

(c) The Director may invite the applicant or permittee to submit to the Department an estimate of reclamation costs from a third party contractor for the Director's use in determining the required bond amount. After considering the estimate and the recommendations provided by his staff, the Director shall notify the applicant or permittee of his bond determination and the process and conditions used to set the bond amount.

(d) The amount of the bond shall be based on the costs to reclaim the affected land as determined by the reclamation plan approved pursuant to G.S. 74-53 and 15A NCAC 5B .0004(b). The bond amount shall be based on a range of five hundred dollars (\$500.00) to five thousand dollars (\$5,000) per acre of land approved by the Department to be affected. If the mining permit is modified to increase the total affected land, the bond shall be increased accordingly. The Director shall consider the method and extent of the required reclamation for a particular site in determining the bond amount. As areas at a site are reclaimed and formally released by the Department, the permittee may substitute a bond in an amount covering the remaining affected land at the site for the bond previously filed with the Department; otherwise, without such bond substitution, the Department shall retain the previously filed bond until all reclamation has been completed and approved by the Department.

(e) If an applicant or permittee has multiple sites, the applicant or permittee may file a separate bond with the Department for each site or the applicant or permittee may submit one blanket bond covering all sites in the aggregate amount of all bond totals. Once the total amount of all bonds for separate sites or the total of blanket bond(s) for all sites reaches five hundred thousand dollars (\$500,000):

- (1) the applicant or permittee with separate bonds may substitute a five hundred thousand dollar (\$500,000) blanket bond to be used for all future sites, or
- (2) the applicant or permittee with the five hundred thousand dollar (\$500,000) blanket bond covering all sites may use that blanket bond for all future sites,

if the Director finds that the applicant or permittee, in either case, has a good operating record, that the five hundred thousand dollars (\$500,000) is sufficient to reclaim all sites and that no additional reclamation bond money is needed. If the Director finds that the applicant or permittee does not have a good operating record, that the five hundred thousand dollars (\$500,000) is not sufficient to reclaim all sites, or that additional reclamation money is needed, the Director shall require per acreage bonding for future sites as provided in Paragraph (d) of this Rule.

(f) For the purposes of this Rule, a good operating record is defined as two consecutive years of operation within the State of North Carolina without final assessment of a civil penalty or other enforcement action pursuant to G.S. 74-64, or having a permit suspended or revoked under G.S. 74-58, or having a bond or other surety forfeited under G.S. 74-59. For the purposes of this Rule, a bond shall include any and all types of security allowed under G.S. 74-54.

*History Note:* Authority G.S. 74-51; 74-54; 143B-290;  
Eff. February 1, 1976;  
Amended Eff. January 1, 1994; April 1, 1990; November 1, 1985; November 1, 1984.

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

(a) The completed application for the mining permit shall include information concerning the mining operation and a reclamation plan for the restoration of all affected land. Information required concerning the mining operation shall include:

- (1) materials to be mined;
  - (2) method of mining;
  - (3) expected depth of mine;
  - (4) size of the mine, including:
    - (A) acreage for tailings ponds,
    - (B) acreage for stockpiles,
    - (C) acreage for waste piles,
    - (D) acreage for processing plants,
    - (E) acreage for mine excavation,
    - (F) acreage for annual disturbance;
  - (5) anticipated effect on wildlife, freshwater, estuarine or marine fisheries;
  - (6) whether or not the operation will have a waste water discharge or air contaminant emission which will require a permit from the division of environmental management;
  - (7) method to prevent physical hazard to any neighboring dwelling house, school, church, hospital, commercial or industrial building, or public road if the mining excavation will come within 300 feet thereof;
  - (8) measures to be taken to insure against landslides and acid water pollution;
  - (9) measures to be taken to minimize siltation of streams, lakes, or adjacent properties during the mining operation;
  - (10) measures to be taken to screen the operation from public view.
- (b) Information required in the reclamation plan shall include:
- (1) intended plan for overall mine reclamation, subsequent land use and the general methods to be used in reclaiming;
  - (2) intended practices to be taken to protect adjacent surface resources;
  - (3) intended methods to prevent or eliminate conditions hazardous to animal or fish life in or adjacent to the affected areas;
  - (4) intended methods of rehabilitation of settling ponds;
  - (5) intended methods of restoration or establishment of stream channels and stream beds to a condition minimizing erosion, siltation and other pollution;
  - (6) intended measures to stabilize slopes;
  - (7) intended measures to provide for safety to persons and adjoining property in excavation in rock;
  - (8) intended measures of disposal of mining refuse and control of contaminants;
  - (9) provisions to prevent collection of noxious, odious or foul water in mined areas;
  - (10) plan for revegetation and reforestation or other surface treatment of the affected areas which plan must be approved in writing by one of the following prior to submission of the application:
    - (A) Authorized representatives of the local soil and water conservation district having jurisdiction over lands in question;
    - (B) Authorized representatives of the division of forest resources, Department of Environment, Health, and Natural Resources;
    - (C) County agricultural extension chairmen or research and extension personnel headquartered at North Carolina State University in the school of agriculture and life sciences;
    - (D) North Carolina licensed landscape architects;
    - (E) Private consulting foresters referred by the division of forest resources, Department of Environment, Health, and Natural Resources;
    - (F) Others as may be approved by the department; Provided that areas expected to be in use beyond the maximum permissible permit period, such as processing plants or stockpiles, do not require a specific revegetation plan;
  - (11) time schedule of reclamation that provides that reclamation activities be conducted simultaneously with mining operations whenever feasible and in any event be initiated at the earliest practicable time after completion or termination of mining on any segment and completed within two years.
- (c) In addition to the application form, the operator shall also submit two copies of a county map showing the mine location and two copies of a mine map. Mine maps should be accurate drawings, aerial photographs or enlarged topographic maps of the mine area and must clearly show the following:
- (1) property lines or affected area of mining operation;
  - (2) outline of pits;
  - (3) outline of stockpile areas;

- (4) outline of overburden disposal areas;
- (5) location of processing plants (Processing plants may be described as to location and distance from mine if sufficiently far removed.);
- (6) location and name of streams and lakes;
- (7) outline of settling ponds;
- (8) location of access roads;
- (9) map legend:
  - (A) name of company,
  - (B) name of mine,
  - (C) north arrow,
  - (D) county,
  - (E) scale,
  - (F) date prepared,
  - (G) name and title of person preparing map; and
- (10) names of owners of record, both public and private, of all adjoining land.

The mine maps should be correlated with the reclamation plan. The approximate areas to be mined during the life of the permit should be clearly marked.

If reclamation is to be accomplished concurrently with mining, then show segments that are to be mined and reclaimed during each year of the permit.

Add drawings showing typical sections or cross sections and layout of proposed reclamation where such drawings will assist in describing reclamation.

(d) An application for a mining permit shall include:

- (1) The name and address of all known owners, both private and public of all land adjoining the proposed mining site as determined by a diligent search of the tax records or other sources of information about property ownership in a manner reasonable calculated to identify the owners of all adjoining land and approved by the department. The proposed mining site means all land to be included within the proposed permitted area;
- (2) The name of the chief administrative officer of the county or municipality in which the proposed mining site is located together with the officer's mailing address; and
- (3) Proof satisfactory to the department that the applicant has made a reasonable effort to notify all owners of record of all adjoining land and the chief administrative officer of the county or municipality of the pending application. Proof satisfactory to the department shall include an affidavit by the applicant that he has caused a notice of the pending application to be sent by certified or registered mail to all known adjoining owners and to the chief administrative officer of the county or municipality. Other means of notice shall be satisfactory if approved in advance by the department.

*History Note: Authority G.S. 74-63; 74-51; 74-53;  
Eff. February 1, 1976;  
Amended Eff. April 1, 1990; May 1, 1982; September 1, 1979; January 31, 1979.*

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

To assure that the operation will comply fully with the requirements and objectives of the Mining Act of 1971, the director may approve an application or reclamation plan subject to certain conditions. Such conditions of application approval may include:

- (1) additional erosion control measures to be installed during the mining operation;
- (2) a natural buffer to be left between any stream and the affected land;
- (3) visual screening such as existing natural vegetation, vegetated earthen berms, tree plantings at staggered 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;
- (4) erosion control measures to be taken during the construction and operation of all haul roads or access roads to minimize off-site damage from sediment;
- (5) other conditions necessary to safeguard the adjacent surface resources or wildlife.

*History Note: Authority G.S. 74-63; 74-51;  
Eff. February 1, 1976;*

*Amended Eff. May 1, 1992; November 1, 1984.*

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

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.

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

**15A NCAC 05B .0107 MODIFICATION OF MINING PERMIT**

**15A NCAC 05B .0108 RENEWAL OF MINING PERMIT**

**15A NCAC 05B .0109 STANDARDS FOR SUSPENDING OR REVOKING A MINING PERMIT**

*History Note: Authority G.S. 74-52; 74-57; 74-58;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.*

**15A NCAC 05B .0110 MINING RECLAMATION REPORTS**

The mine operator shall, by February 1 of each year during the life of the permitted operation, and within 30 days of completion or termination of mining on an area under permit, file with the department a mining reclamation report on a form prescribed by the department.

*History Note: Authority G.S. 74-55; 143B-290;  
Eff. March 30, 1978;  
Amended Eff. November 1, 1984.*

**15A NCAC 05B .0111 PUBLIC HEARINGS**

(a) If the department determines that there exists a significant public interest in an application for a new mining permit, the director shall appoint a hearing officer to conduct a public hearing on the application which shall be held no sooner than 20 or later than 60 days of the filing of the application and before the department makes its final decision regarding the application.

(b) At least ten days prior to the public hearing, the department shall publish notice thereof in a newspaper of general circulation in the county in which the proposed mine is located. The department may also give notice to the public by other means. In addition, the department shall cause written notice of the hearing to be sent by certified or registered mail to the applicant and to the known owners of all adjoining land.

(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 after the hearing within a period of time he deems appropriate which shall not exceed ten days.

(d) Within ten days after the hearing or time for additional comment, the hearing officer shall prepare a written report summarizing the comments that were submitted regarding the application. The report shall include copies of all written comments that were submitted. Copies of the report shall be made available to the applicant or members of the public upon request. The department shall give full consideration to all comments contained in the hearing record in making its final determination on the application.

*History Note: Authority G.S. 74-51; 74-63;  
Eff. May 1, 1982.*

**15A NCAC 05B .0112 PERMIT APPLICATION PROCESSING FEES**

(a) A non-refundable permit application processing fee, in the amounts stated in Paragraphs (b), (c) and (d) of this Rule, shall be paid when an application for a new mining permit, a permit modification or a renewal permit, is filed in accordance with G.S. 74-51 or G.S. 74-52 and 15A NCAC 5B .0003, .0004, and .0005.

(b) A non-refundable fifty dollar (\$50.00) permit application processing fee is required for minor permit modifications. Minor permit modifications include administrative changes such as ownership transfers, name changes, and bond substitutions. A minor permit modification also includes lands added to a permitted area, outside of the minimum permit buffer zone requirements, where no plans for mining related disturbance of the added lands have been approved. All other changes to the permit are major modifications. No fee is required for administrative changes initiated by the Director to correct processing errors, to change permit conditions or to implement new standards.

(c) A non-refundable fifty dollar (\$50.00) permit application processing fee is required for permit renewal of an inactive site, provided that any previously disturbed areas have been reclaimed in a manner acceptable to the Department. Once renewed, prior to initiating any mining related disturbance, an application for a major modification and a processing fee shall be submitted to and approved by the Department. For purposes of this Paragraph, and notwithstanding Paragraph (d) of this Rule, the acreage for a major modification shall be the total acreage at the site. All other modifications to the renewed permit shall be governed by Paragraphs (b) and (d) of this Rule.

(d) For the purposes of this Rule, acres for new permits and renewal permits means the total acreage at the site; and acres for major modification of permits means that area of land affected by the modification within the permitted mine area, or any additional land that is to be disturbed and added to an existing permitted area, or both. Each permit application shall be deemed incomplete until the permit application processing fee is paid. Schedule of Fees:

TYPE	ACRES	MAJOR		
		NEW PERMIT	MODIFICATION	RENEWAL
CLAY	1 but less than 25	\$ 500	\$ 250	\$ 250
	25 but less than 50	1000	500	500
	50 or more	1500	500	500
SAND & GRAVEL, GEMSTONE AND BORROW PITS	1 but less than 5	150	100	100
	5 but less than 25	250	100	100
QUARRY, INDUSTRIAL MINERALS, DIMENSION STONE	25 but less than 50	500	250	500
	50 or more	1000	500	500
	1 but less than 10	250	100	100
PEAT & PHOSPHATE GOLD (HEAP LEACH), TITANIUM & OTHERS	10 but less than 25	1000	250	500
	25 but less than 50	1500	500	500
	50 or more	2500	500	500
GOLD (HEAP LEACH), TITANIUM & OTHERS	1 or more	2500	500	500
	1 or more	2500	500	500

(e) Payment of the permit application processing fee shall be by check or money order made payable to the "N.C. Department of Environment, Health, and Natural Resources". The payment shall refer to the new permit, permit modification or permit renewal.

(f) In order to comply with the limit on fees set forth in G.S. 143B-290(4)b, the Director shall, in the first half of each state fiscal year, project revenues for the fiscal year from fees collected pursuant to this Rule. If this projection shows that the

statutory limit will be exceeded, the Director shall order a pro rata reduction in the fee schedule for the remainder of the fiscal year to avoid revenue collection in excess of the statutory limits.

*History Note:* Filed as a Temporary Rule Eff. November 1, 1990, for a Period of 180 Days to Expire on April 29, 1991;  
Authority G.S. 143B-290;  
ARRC Objection Lodged November 14, 1990;  
ARRC Objection Removed December 20, 1990;  
Eff. January 1, 1991;  
Amended Eff. December 1, 1991.

**15A NCAC 05B .0113 RESPONSE DEADLINE TO DEPARTMENT'S REQUEST(S)**

An applicant or permittee shall submit to the Department supplemental information regarding an application for a new permit, modified permit, or permit renewal within 180 days after the date of receipt of the Department's written request(s) for such information. Upon written request of the applicant or permittee to the Director, an additional reasonable specified period of time not to exceed one year shall be granted upon determination of good cause by the Director. Additional time may be granted by the Mining and Energy Commission, provided written request is made by the applicant or permittee before the expiration of the one-year period.

*History Note:* Authority G.S. 74-51; 74-52; 74-63; 143B-290;  
RRC Objection Eff. September 15, 1994 due to lack of statutory authority;  
Eff. November 1, 1994;  
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(d)).