

CHAPTER 01 – DEPARTMENTAL RULES

SUBCHAPTER 01A – GENERAL ORGANIZATION

SECTION .0100 - GENERAL

15A NCAC 01A .0101 DEPARTMENT HEAD

History Note: Authority G.S. 143A-11; 143B-279.1;
Eff. February 1, 1976;
Amended Eff. October 1, 1984; February 23, 1979;
Transferred from T15.01A .0001 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. August 1, 2012.

15A NCAC 01A .0102 HOW TO CONTACT THE DEPARTMENT

(a) The Headquarters of the Department is located in the Environment and Natural Resources Building, Raleigh, North Carolina. The mailing address of the Department is 1601 Mail Service Center, Raleigh, North Carolina 27699-1601. The toll free telephone number is (877)623-6748. All citizens wishing to contact the Department are urged to make initial contact through the regional manager at the nearest regional office. Information regarding the location of the regional offices is available through the following website: <http://portal.ncdenr.org/web/guest/contacts>.

History Note: Authority G.S. 143B-10(b);
Eff. February 1, 1976;
Amended Eff. October 1, 1984; February 23, 1979;
Transferred from T15.01A .0004 Eff. November 1, 1989;
Amended Eff. October 1, 2012; March 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 12, 2014.

15A NCAC 01A .0103 COUNCILS AND COMMITTEES

History Note: Authority G.S. 143B-10(d);
Eff. February 1, 1976;
Amended Eff. October 1, 1984; February 23, 1979;
Transferred from T15.01A .0009 Eff. November 1, 1989;
Repealed Eff. August 1, 2012.

SUBCHAPTER 01B - GENERAL ADMINISTRATION

SECTION .0100 - RULEMAKING

15A NCAC 01B .0101 MODEL RULES

History Note: Authority G.S. 143B-10(j); 150B-11; 150B-14(c);
Eff. August 1, 1982;
Amended Eff. May 1, 1988; October 1, 1984;
Transferred from T15.01B .0120 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. August 1, 2012.

SECTION .0200 - CONTESTED CASE HEARING PROCEDURES

15A NCAC 01B .0201 DEFINITIONS

15A NCAC 01B .0202 AVAILABILITY OF CONTESTED CASE HEARING

15A NCAC 01B .0203 REQUEST FOR CONTESTED CASE HEARING
15A NCAC 01B .0204 FINAL AGENCY DECISION IN CONTESTED CASE PROCEEDINGS

History Note: Authority G.S. 143B-10; 150B-2(2); 150B-11; 150B-23(a); 150B-36;
Eff. February 1, 1976;
Readopted (w/change) Eff. October 31, 1980;
Legislative Objection Lodged Eff. July 20, 1982;
Amended Eff. March 1, 1983; August 1, 1982;
Objection Removed Eff. March 9, 1983;
Amended Eff. September 1, 1988; August 1, 1988; July 1, 1988;
Transferred from T15.01B .0201 Eff. November 1, 1989;
Transferred from T15.01B .0202 Eff. November 1, 1989;
Transferred from T15.01B .0204 Eff. November 1, 1989;
Transferred from T15.01B .0221 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. August 1, 2012.

SECTION .0300 - PURCHASING AND CONTRACTING

15A NCAC 01B .0301 SCOPE OF SECTION
15A NCAC 01B .0302 DEFINITIONS

History Note: Authority G.S. 143B-10;
Eff. February 1, 1976;
Readopted (w/change) Eff. August 1, 1982;
Amended Eff. October 1, 1984;
Transferred from T15.01B .0401 Eff. November 1, 1989;
Transferred from T15.01B .0402 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. August 1, 2012.

15A NCAC 01B .0303 CONCESSION CONTRACTS

History Note: Authority G.S. 143B-10; 143-49(2),(3),(4); 143-53; 143B-276;
Eff. August 1, 1982;
Amended Eff. October 1, 1984;
Transferred from T15.01B .0407 Eff. November 1, 1989;
Repealed Eff. August 1, 2012.

SECTION .0400 - PUBLIC RECORDS

15A NCAC 01B .0401 DEFINITIONS
15A NCAC 01B .0402 PUBLIC ACCESS

History Note: Authority G.S. 132-1; 132-1.1; 132-2; 132-6; 132-9; 143B-10(j); 150B-11;
Eff. August 1, 1982;
Amended Eff. July 1, 1988; October 1, 1984;
Transferred from T15.01B .0607 Eff. November 1, 1989;
Transferred from T15.01B .0608 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. August 1, 2012.

SUBCHAPTER 01C - CONFORMITY WITH NORTH CAROLINA ENVIRONMENTAL POLICY ACT

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 01C .0101 STATEMENT OF PURPOSE, POLICY, AND SCOPE

- (a) The purpose of the rules in this Subchapter is to establish procedures within the Department of Environmental Quality (DEQ) related to the North Carolina Environmental Policy Act (NCEPA).
- (b) Environmental documents shall be available to public officials and citizens before decisions are made and before actions are taken. The information shall be reliable and sufficient to allow selection among alternatives.
- (c) The Secretary is the "responsible state official" for DEQ. The Secretary may delegate responsibility for the implementation of the NCEPA to staff.
- (d) The provisions of the rules in this Subchapter, the Department of Administration's rules (01 NCAC 25), and the NCEPA shall be read together as a whole in order to comply with the spirit and letter of the law.
- (e) These Rules establish minimum criteria to determine when preparation of an environmental document is not required when DEQ is the state project agency.

History Note: Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0201 Eff. November 1, 1989;
Amended Eff. April 1, 2003; August 1, 1996; March 1, 1990;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0102 AGENCY COMPLIANCE

History Note: Authority G.S. 113A-2; 113A-5; 113A-6; 113A-10; 143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0202 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. April 1, 2003.

15A NCAC 01C .0103 DEFINITIONS

The definition of any word or phrase used in rules of this Subchapter is the same as given in G.S. 113A-9. The following words and phrases have the following meaning.

- (1) "Channel Disturbance" means activities that permanently remove or degrade the natural functions of the stream such as culverting, relocation, channelization, or streambank stabilization methods including gabions, rip rap, or similar hard structures.
- (2) "Cumulative Impacts" means environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions. Cumulative impacts are the reasonably foreseeable impacts from individually minor but collectively significant activities.
- (3) "Direct Impacts" mean environmental impacts which are caused by an activity and occurring at the same time and place.
- (4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent part of the waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters, or beneath or on the surface of the land.
- (5) "Ecosystem" means all the interrelated organisms and their environment within a defined area.
- (6) "Forestry Management Plan" means a document that guides the practical and sustainable application of biological, physical, quantitative, managerial, economic, social, and policy principles to the regeneration, management, utilization, and conservation of forests to meet specified goals, and objectives while maintaining the productivity of the forest. Forest management includes management for aesthetics, fish, recreation, urban values, water, wilderness, wildlife, wood products and other forest resource values.
- (7) "Hazardous Waste" means a waste, or combination of wastes, in any state or form including gas, liquid, or solid, that because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or contribute to an increase in mortality or an increase in irreversible or

- incapacitating reversible illness, or pose a present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (8) "High Quality Waters (HQW)" has the same meaning as in 15A NCAC 02B .0224.
 - (9) "Inlet" means a waterway between islands connecting a lagoon, estuary, sound, or similar water body with the ocean.
 - (10) "Instream Flow" means the amount of water needed in a stream to adequately provide for downstream uses occurring within the stream channel, including some or all of the following: aquatic habitat, recreation, wetlands maintenance, navigation, hydropower, riparian vegetation, and water quality.
 - (11) "Land-Disturbing Activity" has the same meaning as in G.S. 113A-52.
 - (12) "Lead Division" means the division within DEQ that has been appointed by the Secretary, pursuant to 15A NCAC 01C .0105, to have primary responsibility for preparation of an environmental document when DEQ is the state project agency.
 - (13) "Perennial Stream" means a channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
 - (14) "Prime agricultural and forest land" means lands that possess the best combination of physical and chemical characteristics for producing food, feed, fiber (including forest products), forage, oilseed, and other agricultural products (including livestock), without intolerable soil erosion. This does not apply to lands that are already in or committed to development projects such as water impoundment, transportation, and urban development.
 - (15) "Reclaimed Water" has the same meaning as in 15A NCAC 02U .0103.
 - (16) "Resource" means any natural product or value, not necessarily economic, but including trees, minerals, wildlife, clean air and water, fisheries, ecosystems, landscapes, and open space.
 - (17) "River Basin" means the watershed of a major river system.
 - (18) "Secondary Impacts" mean indirect impacts caused by and resulting from a specific activity that occur later in time or further removed in distance than direct impacts, but are reasonably foreseeable. Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.
 - (19) "Secretary" means the Secretary of DEQ.
 - (20) "State Project Agency" means the state department or council of state agency that has been designated pursuant to 01 NCAC 25 .0210(a) for ensuring compliance with NCEPA.
 - (21) "Stream Enhancement" means the process of implementing stream rehabilitation practices in order to improve water quality or ecological function. These practices are typically conducted on the stream bank or in the flood prone area. Enhancement activities may also include the placement of in-stream habitat structures.
 - (22) "Stream Restoration" means the process of converting an unstable, altered, or degraded stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.
 - (23) "Total Design Withdrawal" means the pumping rate at which water can be removed from the contributing stream. It is the sum of any pre-existing withdrawal capacity plus any withdrawal increase.
 - (24) "Wetlands" has the same meaning as in 15A NCAC 02B .0202.

History Note: Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0104 AGENCY COMPLIANCE

- (a) DEQ shall interpret the provisions of the NCEPA as a supplement to its existing authority and as a mandate to view its policies and programs in the light of the NCEPA's comprehensive environmental objectives.
- (b) As part of making a decision on a project for which an environmental document has been prepared, DEQ shall review the document and incorporate it as part of continuing deliberations. The resulting decision shall be made after weighing all of the impacts and mitigation measures presented in the environmental document, which shall become part of the decision-making record.

History Note: Authority G.S. 113A-2; 113A-5; 113A-6; 113A-10; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0105 LEAD AND COOPERATING DIVISIONS RESPONSIBILITY

Where DEQ is the state project agency and more than one of its divisions must issue a permit or other authorization for the project requiring review under NCEPA, the Secretary shall appoint a lead division to be responsible for preparation of the environmental document. The lead and cooperating divisions' responsibilities shall be established by the Secretary.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0106 SCOPING AND HEARINGS

When DEQ is the state project agency, DEQ shall utilize scoping and hearing processes to the extent appropriate to the complexity, potential for environmental effects, and level of expressed interest associated with the proposed action. Scoping and hearing processes are public processes designed to determine the types of environmental issues to be addressed in environmental documents. They are open processes intended to obtain the view of other agencies and the public in order for state agencies to make informed decisions.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0107 LIMITATION ON ACTIONS DURING NCEPA PROCESS

- (a) If an environmental document is required under NCEPA, DEQ shall not undertake an action until the environmental document for that action is final.
- (b) If DEQ is considering a proposed action for which an environmental document is to be or is being prepared under NCEPA, DEQ shall promptly notify the applicant that DEQ cannot take final action until the environmental document is completed and available for use as a decision-making tool. The notification shall be consistent with the statutory and regulatory requirements of DEQ and may be in the form of a notification that the application is incomplete.
- (c) When a program within DEQ decides that a proposed action, for which other DEQ actions are pending or have been taken, requires environmental documentation, then that program shall promptly notify all the other relevant DEQ programs of the decision.
- (d) When statutory and regulatory requirements prevent DEQ from suspending action, DEQ shall deny any action for which it determines an environmental document is required under NCEPA but not yet available as a decision-making tool.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0108 EMERGENCIES

- (a) If there is an immediate threat to public health, safety, and welfare, DEQ may take otherwise lawful actions with potential environmental effects without preparing an environmental document. In those emergency circumstances, DEQ shall limit actions to those necessary to control and mitigate for the immediate threat to the public health, safety, and welfare.

(b) DEQ may prepare and maintain environmental documents for repetitive emergency programs affecting the public to review the scope of involved activities, identify specific effects to be expected, and identify mitigation measures that can be employed.

History Note: Authority G.S. 113A-4; 113A-6; 113A-7; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0109 PREPARATION OF ENVIRONMENTAL DOCUMENTS

(a) When DEQ is the state project agency, DEQ may request information from an applicant to prepare an environmental document. DEQ shall independently evaluate the information provided and shall be responsible for its accuracy.

(b) When DEQ is the state project agency, an environmental document may be prepared by a consultant, including the applicant for the action's consultant. If DEQ allows an applicant for the action to prepare an environmental document, DEQ shall furnish guidance and participate in the preparation, and take responsibility for its scope, objectivity, content, and accuracy.

(c) The Environmental Assessment Guidance Document available through the State Clearinghouse provides guidance in preparing environmental documents.

(d) When DEQ is the state project agency, the content and finalization of an environmental document shall comply with NCEPA, DEQ's rules, and the Department of Administration's rules (01 NCAC 25).

History Note: Authority G.S. 113A-4; 113A-5; 113A-6; 113A-9; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

SECTION .0200 - INTEGRATION WITH AGENCY ACTIVITY

15A NCAC 01C .0201 EARLY APPLICATION OF THE NCEPA

15A NCAC 01C .0202 WHEN TO PREPARE ENVIRONMENTAL DOCUMENTS

15A NCAC 01C .0203 LEAD AND COOPERATING AGENCY RESPONSIBILITY

15A NCAC 01C .0204 SCOPING AND HEARINGS

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 113A-8; 113A-9; 143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0301; .0302; .0303; .0304 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. April 1, 2003.

15A NCAC 01C .0205 IMPLEMENTATION

History Note: Authority G.S. 113A-2; 113A-4; 113A-5; 113A-6; 143B-10;
Eff. April 1, 2003;
Repealed Eff. June 1, 2022.

15A NCAC 01C .0206 WHEN TO PREPARE ENVIRONMENTAL DOCUMENTS

(a) When an environmental document is required under NCEPA and DEQ is the state project agency, DEQ shall prepare an environmental document unless the action falls below the minimum criteria set forth in Section .0400 of this Subchapter. As described in 15A NCAC 01C .0306, the Secretary may require preparation of an environmental document that would otherwise not be required through application of DEQ's minimum criteria.

(b) An environmental assessment is not necessary if DEQ has decided to prepare an environmental impact statement.

(c) DEQ shall ensure that the activity that is the subject of the environmental document is properly defined. Closely connected activities should be reviewed together. Closely connected activities include:

- (1) activities that automatically trigger other activities that may require environmental impact statements;
- (2) activities that cannot or will not proceed unless other activities occur either previously or simultaneously; and

- (3) activities that are interdependent parts of a larger plan of development and depend on the larger plan of development for justification.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0207 INCORPORATION BY REFERENCE

(a) DEQ shall incorporate material into environmental documents by reference to cut down on bulk without impeding DEQ and public reviews of the action. The incorporated material shall be cited in the document and its contents briefly described.

(b) Incorporated-by-reference material shall be made available by the applicant for inspection by reviewers and potentially interested persons within the time allowed for comment.

History Note: Authority G.S. 113A-4; 113A-6; 113A-10; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0208 INCOMPLETE OR UNAVAILABLE INFORMATION

(a) Where DEQ is evaluating effects upon the environment in an environmental document and there are gaps in relevant information or scientific uncertainty, DEQ shall make clear that such information is lacking or that uncertainty exists.

(b) In considering whether unavailable information should be sought and included in the environmental document, DEQ shall consider whether the information can be obtained, how long it would take to obtain that information, and the significance of the information to understanding the effects of the proposed action or alternative. If, after considering those factors, DEQ proceeds with preparation of the environmental document without the information, DEQ shall include within the environmental document:

- (1) a statement that such information is incomplete or unavailable;
- (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- (4) DEQ's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

(c) For the purposes of this Section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

History Note: Authority G.S. 113A-4; 113A-6; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

SECTION .0300 – SPECIAL CIRCUMSTANCES

15A NCAC 01C .0301 IMPLEMENTATION

15A NCAC 01C .0302 INCORPORATION BY REFERENCE

15A NCAC 01C .0303 INCOMPLETE OR UNAVAILABLE INFORMATION

History Note: Authority G.S. 113A-2; 113A-4; 113A-5; 113A-6; 113A-10; 143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0401; .0402; .0403 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Repealed Eff. April 1, 2003.

15A NCAC 01C .0304 ACTIVITIES ABOVE THE MINIMUM CRITERIA

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-11; 143B-10;
Eff. April 1, 2003;
Repealed Eff. June 1, 2022.

15A NCAC 01C .0305 ACTIVITIES UNDERTAKEN BY DEQ

The following activities, when undertaken by DEQ, shall require preparation of an environmental document unless they satisfy the minimum criteria set out in Section .0400 of this Subchapter.

- (1) Construction of facilities or infrastructures on lands and waters owned or managed by DEQ.
- (2) Demolition of or additions, rehabilitation, and or renovations to a structure listed in the National Register of Historic Places or more than 50 years of age except where agreement exists with the Department of Natural and Cultural Resources that the structure lacks architectural or historical significance.
- (3) Ground disturbances involving National Register listed archaeological sites or areas around buildings 50 years old or older, except where agreement exists with the Department of Natural and Cultural Resources.

History Note: Authority G.S. 113A-4; 113A-6; 113A-8; 113A-9; 113A-10; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0306 ACTIVITIES OF A SPECIAL NATURE

The Secretary may require preparation of an environmental document that would otherwise not be required through application of DEQ's minimum criteria if the Secretary determines:

- (1) the proposed activity may have a potential for significant adverse effects on wetlands; surface waters such as rivers, streams, and estuaries; parklands; game lands; prime agricultural or forest lands; or areas of local, state, or federally recognized scenic, recreational, archaeological, ecological, scientific research, or historical value, including secondary impacts; or would threaten a species identified on the Department of Interior's or the State's threatened and endangered species lists;
- (2) the proposed activity could cause changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, instream flow, air quality, or ground water impacts; or affect long-term recreational benefits, fish, wildlife, or their natural habitats;
- (3) the proposed activity has secondary impacts, or is part of cumulative impacts, not generally covered in the approval process for the state action, and that may result in a potential risk to human health or the environment; or
- (4) the proposed activity is of such an unusual nature or has such widespread implications that a concern for its environmental effects has been identified by DEQ or expressed to DEQ.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

SECTION .0400 – MINIMUM CRITERIA

15A NCAC 01C .0401 AGENCY DECISION-MAKING PROCEDURES

15A NCAC 01C .0402 LIMITATION ON ACTIONS DURING NCEPA PROCESS

15A NCAC 01C .0403 EMERGENCIES

15A NCAC 01C .0404 NON-STATE INVOLVEMENT AND CONTRACTORS

History Note: Authority G.S. 113A-2; 113A-4; 113A-5; 113A-6; 113A-7; 113A-9; 143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0501; .0502; .0503; .0504 Eff. November 1, 1989;
Amended Eff. March 1, 1990;
Temporary Amendment Eff. August 1, 2000;
Amended Eff. April 1, 2001;

Repealed Eff. April 1, 2003.

15A NCAC 01C .0405 PURPOSE OF THE MINIMUM CRITERIA THRESHOLDS

If NCEPA requires preparation of an environmental document and DEQ is the state project agency, the minimum criteria set forth in this Section determine when preparation of an environmental document is not required because the action or class of actions have no significant long-term impact on the environment. An activity shall satisfy each applicable minimum criteria threshold to maintain this status. As set out in Rule .0306 of this Subchapter, the Secretary may require preparation of an environmental document that would otherwise not be required through application of DEQ's minimum criteria.

*History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-11; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.*

15A NCAC 01C .0406 SAMPLING, SURVEY, MONITORING, AND RELATED RESEARCH ACTIVITIES

Sampling, survey, monitoring and research activities do not require the preparation of environmental documents. These activities include, but are not limited to the following:

- (1) Aerial photography projects involving the photographing or mapping of the lands of the state;
- (2) Biology sampling and monitoring of:
 - (a) Fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone; and
 - (b) Wildlife resources through the use of traditional techniques, including but not limited to traps, drugs, and firearms;
- (3) Soil survey projects involving the sampling or mapping of the soils of the state;
- (4) Establishing stream gaging stations for the purpose of measuring water flow at a particular site;
- (5) Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality;
- (6) Gathering surface or subsurface information on the geology, minerals, or energy resources, of the state.
- (7) Placement and use of geodetic survey control points;
- (8) Other routine survey and resource monitoring activities, or other temporary activities required for research into the environment that do not have adverse effects; and
- (9) Investigation and assessment of sites contaminated with regulated substances.

*History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.*

15A NCAC 01C .0407 STANDARD MAINTENANCE OR REPAIR ACTIVITIES

Standard maintenance or repair activities, if needed to maintain the originally defined function of an existing project or facility (but without expansion, increase in quantity, decrease in quality, use, or release of hazardous waste), do not require the preparation of environmental documents. These activities include but are not limited to maintenance and repair of the following:

- (1) Housekeeping projects that maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process;
- (2) Roads, bridges, parking lots, and their related facilities;
- (3) Utilities on their existing rights-of-way;
- (4) Surface drainage systems;
- (5) Boat ramps, docks, piers, bulkheads, rip rap, breakwaters and associated facilities;
- (6) Diked, high ground dredge-material disposal areas;
- (7) Activities necessary to fulfill the existing requirements of in-effect permits for the protection of the environment and human health;
- (8) Other maintenance and repair activities on projects that are consistent with previously approved environmental documents; and

- (9) Routine grounds maintenance and landscaping of sidewalks, trails, walls, gates, and related facilities, including outdoor exhibits.

*History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.*

15A NCAC 01C .0408 MINOR CONSTRUCTION ACTIVITIES

This Rule sets out the general and specific minimum criteria for construction activities. Construction and land disturbing activities that satisfy both the general minimum criteria and any specific minimum criteria applicable to the project do not require preparation of environmental documents.

(1) General criteria.

- (a) In the 20 coastal counties, land disturbing activity that:
 - (i) is located more than 575 feet away from waters classified as High Quality Waters (HQP) or impacts less than five acres located all or in part within 575 feet of waters classified as High Quality Waters (HQP);
 - (ii) is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225; and
 - (iii) impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225.
- (b) Land disturbing activity outside the 20 coastal counties that:
 - (i) is located more than one mile from waters classified as HQW or impacts less than five acres located within one mile of and draining to waters classified as HQW;
 - (ii) is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225;
 - (iii) impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225; and
 - (iv) is located more than 25 feet from any waters classified as Trout (Tr) waters or impacts less than five acres located all or in part within 25 feet of any waters classified as Trout (Tr) waters.
- (c) Channel disturbance and land disturbing activities associated with non-compensatory stream restoration or stream enhancement.
- (d) Land disturbing activities impacting wetlands if the activity will result in the loss of one acre or less of Class WL wetlands.
- (e) Land disturbing activities impacting streams if the activity will result in channel disturbance of less than 500 linear feet of perennial streams. Land disturbing activities that impact 500 linear feet or more of perennial streams do not require preparation of an environmental document if stream restoration or stream enhancement is performed.

(2) Specific Criteria.

- (a) The following activities related to wastewater treatment systems.
 - (i) Relocation of discharge points within the same river basin;
 - (ii) New discharge facilities with a proposed permitted expansion of less than 500,000 gallons per day and producing an instream waste concentration of less than 33 percent during the 7-day 10-year low flow conditions;
 - (iii) Expansion of an existing discharge facility of less than 500,000 gallons per day additional flow;
 - (iv) New surface irrigation, high rate infiltration, or subsurface waste water systems with a proposed permitted capacity not exceeding 100,000 gallons per day;
 - (v) Reclaimed water utilization systems with reclaimed water utilization being the sole disposal option with a proposed permitted capacity not exceeding 200,000 gallons per day;

- (vi) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 500,000 gallons per day when the reclaimed water utilization system is required for compliance with any other wastewater disposal permit;
- (vii) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 1,000,000 gallons per day when the reclaimed water utilization system is not required for compliance with any other wastewater disposal permit;
- (viii) New reclaimed water utilization distribution lines;
- (ix) New permits or modification to existing permits for land application of residuals utilization, where less than 10 acres not previously permitted is prior converted within three years or will be converted from a non-plantation forested area to application area;
- (x) New or expanding surface disposal sites disposing less than 3000 dry tons of residuals per year;
- (xi) Gravity sewer extensions with less than three miles of new lines or lines of less than 18 inches in diameter; and
- (xii) New or expanding individual pump stations and associated force mains with a proposed permitted capacity of less than 1750 gallons per minute.
- (b) The following activities related to potable water systems.
 - (i) Improvements to water treatment plants that involve less than 1,000,000 gallons per day added capacity and total design withdrawal less than one-fifth of the 7-day, 10-year low flow of the contributing stream;
 - (ii) Improvements not intended to add capacity to the facility;
 - (iii) Installation of appurtenances in existing rights-of-way for streets or utilities, or water lines and appurtenances less than five miles in length and having only directional bore stream crossings or no stream crossings; and
 - (iv) Construction of water tanks, or booster pumping or secondary or remote disinfection stations.
- (c) Groundwater withdrawals of less than 1,000,000 gallons per day where such withdrawals are not expected to cause alterations in established land use patterns, or degradation of groundwater or surface water quality.
- (d) The following activities related to solid waste disposal:
 - (i) Construction of solid waste management facilities, other than landfills exempt pursuant to G.S. 130A-294 (a)(4), which store, treat, process incinerate, or dispose of less than 350 tons per day (averaged over one year) of solid waste; and
 - (ii) Disposal of solid waste by land application on 100 total acres or less, where less than 10 percent of the total land application area is converted from a non-plantation forested area.
- (e) Construction of a minor source or modification of a minor source of air emissions as defined in 15A NCAC 02D .0530, that are less than 100 tons per year or 250 tons per year as defined therein.
- (f) Construction relating to the reclamation of underground storage tanks and restoration of groundwater quality.
- (g) The construction, repair or removal of dams less than 25 feet in height and having less than 50 acre-feet of effective storage capacity.
- (h) Any new construction for a building that involves all of the following;
 - (i) A footprint of less than 10,000 square feet;
 - (ii) A location that is not a National Register Archaeological site; and
 - (iii) The building's purpose is not for storage of hazardous waste.
- (i) Demolition of or additions, rehabilitation or renovations to a structure not listed in the National Register of Historic places or less than 50 years of age.
- (j) Routine grounds construction and landscaping of sidewalks, trails, walls, gates and related facilities, including outdoor exhibits.
- (k) Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service.

- (l) Construction or remodeling of swimming pools.
- (m) Construction of a new two-lane road in accordance with DOT accepted design practices and DOT standards and specifications involving less than a total of 25 cumulative acres of ground surface limited to a single project, and not contiguous to any other project making use of this provision.
- (n) Expansion of a two-lane road in accordance with DOT accepted design practices and DOT standards and specifications involving less than a total of 10 cumulative acres of ground surface limited to a single project, and not contiguous to any other project making use of this provision.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003; Readopted Eff. June 1, 2022.

15A NCAC 01C .0409 MANAGEMENT ACTIVITIES

Management activities do not require the preparation of environmental documents. These activities include but are not limited to the following:

- (1) Replenishment of shellfish beds through the placement of seed oysters, seed clams or shellfish cultch on marine or estuarine habitats.
- (2) Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs in accordance with the Division of Marine Fisheries' Artificial Reef Master Plan.
- (3) Placement of fish attractors and shelter in public waters managed by the N.C. Wildlife Resources Commission.
- (4) Translocation and stocking of native or naturalized fish and wildlife in accordance with appropriate DEQ species management plans, watershed management plans, or other state agency approved resource management plans.
- (5) Reintroduction of native endangered or threatened species in accordance with state or federal guidelines or recovery plans.
- (6) Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with fisheries, wildlife, or forestry management plans.
- (7) Forest products harvest in accordance with the forestry Best Management Practices (BMPs) and the performance standards in the Forest Practice Guidelines (FPGs) Related to Water Quality (02 NCAC 60C) and the United States Forest Service or the N.C. Division of Forest Resources forest management plans.
- (8) Reforestation of woodlands in accordance with the United States Forest Service or the N.C. Division of Forest Resources forest management plans.
- (9) Use of forestry best management practices to meet the performance standards in Forest Practice Guidelines Related to Water Quality codified as in 02 NCAC 60C.
- (10) The control of forest or agricultural insects and disease outbreaks by biological treatments, mechanical treatments, or the lawful application of labeled pesticides by licensed applicators, or any combination of those practices, on areas of no more than 100 acres.
- (11) Control of species composition on managed forestlands as prescribed by approved forest management plans by the lawful application of labeled herbicides by licensed applicators, on areas no more than 100 acres.
- (12) Control of aquatic weeds in stream channels, canals and other water bodies, by the lawful application of labeled herbicides by licensed applicators pursuant to Article 15, Chapter 113A of the NC General Statutes.
- (13) Removal of logs, stumps, trees, and other debris from stream channels where there is no channel excavation, and activities are carried out in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging," Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines approved through the Intergovernmental Review process as set out at 01 NCAC 25 .0211.

- (14) Dredging of existing navigation channels and basins to originally approved specifications, provided that the spoil is placed in existing and approved high ground disposal areas.
- (15) Controlled or prescribed burning for wildlife, timber enhancement, and hazard reduction in accordance with applicable management plans.
- (16) Plowing fire lines with tractor plow units, or other mechanized equipment, for the purpose of suppressing wildland (brush, grass, or woodland) fires and prescribed burning.
- (17) Scooping or dipping water from streams, lakes, or sounds with aircraft or helicopters for the purpose of suppressing wild land (brush, grass, or woodland) fires.
- (18) Drainage projects where the mean seasonal water table elevation will be lowered less than one foot over an area of one square mile or less, and riparian and wetland areas will not be affected.
- (19) Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans, for the purpose of providing for water supply storage, flood control, recreation, hydroelectric power, fish and wildlife, downstream water quality and aquatic weed control.
- (20) Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service.
- (21) Continuation of previously permitted activities where no increase in quantity or decrease in quality are proposed.
- (22) Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits.
- (23) Acquisition or acceptance of real property to be managed in accordance with plans for which environmental documents have been approved.
- (24) Care of all trees, plants, and groundcovers on public lands.
- (25) Care, including medical treatment, of all animals maintained for public display.
- (26) Activities authorized for control of mosquitoes such as the following:
 - (a) Mosquito control water management work in freshwater streams performed in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging" Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines reviewed through the Intergovernmental Review process as set out at 01 NCAC 25 .0211;
 - (b) Mosquito control water management work in salt marsh environments performed under Open Marsh Water Management guidelines reviewed through the Intergovernmental Review process as set out at 01 NCAC 25 .0211;
 - (c) Lawful application of chemicals approved for mosquito control by the United States Environmental Protection Agency and the State when performed under the supervision of licensed operators; and
 - (d) Lawful use of established species to control mosquitoes.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
 Eff. April 1, 2003;
 Readopted Eff. June 1, 2022.

15A NCAC 01C .0410 PRIVATE USE OF PUBLIC LANDS

Activities related to the private use of public lands, when conducted in accordance with permit requirements, do not require the preparation of environmental documents. These activities include but are not limited to the following:

- (1) use of pound nets;
- (2) shellfish, relaying and transplanting;
- (3) harvest of shellfish during closed season;
- (4) special fisheries management activities under 15A NCAC 03O .0506;
- (5) aquaculture operations within coastal waters;
- (6) scientific collecting within coastal waters;
- (7) introduction and transfer of marine and estuarine organisms.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
 Eff. April 1, 2003;
 Readopted Eff. June 1, 2022.

15A NCAC 01C .0411 REMEDIATION ACTIVITIES

Activities that seek to clean up, remove, remediate, abate, contain, or otherwise protect public health or the environment from the effect of contamination released to the environment do not require the preparation of environmental documents.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
Eff. April 1, 2003;
Readopted Eff. June 1, 2022.

15A NCAC 01C .0412 HURRICANE RELIEF ACTIVITY WITH MINIMUM POTENTIAL FOR ENVIRONMENTAL EFFECTS

History Note: Authority G.S. 113A-4; 113A-6; 113A-11; 143B-10;
Emergency Adoption Eff. April 25, 2005;
Temporary Adoption Eff. July 29, 2005;
Temporary Adoption Expired on May 12, 2006.

SECTION .0500 - MINIMUM CRITERIA

15A NCAC 01C .0501 PURPOSE

15A NCAC 01C .0502 MAJOR ACTIVITIES

15A NCAC 01C .0503 EXCEPTIONS TO MINIMUM CRITERIA

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0601; .0602; .0603 Eff. November 1, 1989;
Amended Eff. August 1, 1996; March 1, 1990;
Repealed Eff. April 1, 2003.

15A NCAC 01C .0504 NON-MAJOR ACTIVITY

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0604 Eff. November 1, 1989;
Temporary Amendment Eff. December 7, 1992 for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner;
Amended Eff. August 1, 1996; March 1, 1993;
Repealed Eff. April 1, 2003.

15A NCAC 01C .0505 NON-MAJOR HURRICANE RELIEF ACTIVITY

History Note: Authority G.S. 113A-4; 113A-6; 113A-11; 143B-10; S.L. Ex. Session 1999-463, Part IV, c.463, s. 4;
Temporary Adoption Eff. February 4, 2000 to expire on January 1, 2003;
Temporary Adoption expired January 1, 2003.

SUBCHAPTER 01D - PROJECT CERTIFICATION RELATING TO INDUSTRIAL AND PRIVATE POLLUTION CONTROL REVENUE BONDS

This Subchapter 1D of Title 15A of the North Carolina Administrative Code (T15A.01D); PROJECT CERTIFICATION RELATING TO INDUSTRIAL AND POLLUTION CONTROL REVENUE BONDS; has been transferred and recodified from Subchapter 1E of Title 15 of the North Carolina Administrative Code (T15.01E), effective November 1, 1989.

SECTION .0100 - PURPOSE AND DEFINITIONS

15A NCAC 01D .0101 PURPOSE

History Note: Authority G.S. 159C-7;
Eff. June 16, 1977;
Amended Eff. March 1, 1990; July 1, 1988;
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

15A NCAC 01D .0102 DEFINITIONS OF TERMS

The terms used in this Subchapter shall be as defined in G.S. 159C-3 and as follows:

- (1) "DEQ" means the Department of Environmental Quality.
- (2) "Secretary" means the Secretary of DEQ or his or her appointed designee.
- (3) "Project certification" means a written statement by the Secretary, that a proposed industrial project will meet the criteria contained in Rule .0302 of this Subchapter, a proposed pollution control project will meet the criteria contained in Rule .0303 of this Subchapter, or a proposed hazardous waste facility will meet the criteria contained in Rule .0305 of this Subchapter.

History Note: Authority G.S. 159C-7(d);
Eff. June 16, 1977;
Amended Eff. March 1, 1990; July 1, 1988;
Readopted Eff. May 1, 2022.

SECTION .0200 - CERTIFICATION PROCEDURES

15A NCAC 01D .0201 PURPOSE

15A NCAC 01D .0202 REQUEST FROM THE SECRETARY OF THE DEPARTMENT OF ECD

15A NCAC 01D .0203 FORMAL PROJECT CERTIFICATION: ISSUANCE

15A NCAC 01D .0204 FORMAL PROJECT CERTIFICATION: DENIAL

15A NCAC 01D .0205 REIMBURSEMENT OF EXTRAORDINARY EXPENSES

History Note: Authority G.S. 159C-7;
Eff. June 16, 1977;
Amended Eff. March 1, 1990; July 1, 1988;
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

SECTION .0300 - CERTIFICATION CRITERIA

15A NCAC 01D .0301 GENERAL

History Note: Authority G.S. 159C-7;
Eff. June 16, 1977;
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

15A NCAC 01D .0302 PROPOSED INDUSTRIAL PROJECT

In the case where the Secretary of the Department of Commerce requests a project certification for a proposed industrial project or for a proposed industrial project that includes a pollution control project, the Secretary shall certify that the project will not have a materially adverse effect on the environment if the Secretary determines that no applicable State and federal environmental laws, rules, standards, or limitations will be violated, that use of water by the proposed industrial project will not substantially affect other users, and that the proposed project will have no other materially adverse effect on the environment. Issuance to the operator of the proposed project of the required environmental permits indicates that certain environmental impacts of the proposed project were evaluated, and the Secretary may consider such evaluations in making a certification decision.

History Note: Authority G.S. 159C-7(d);
Eff. June 16, 1977;
Amended Eff. March 1, 1990; July 1, 1988;
Readopted Eff. May 1, 2022.

15A NCAC 01D .0303 PROPOSED POLLUTION CONTROL PROJECT

In the case where the Secretary of the Department of Commerce requests a project certification for a proposed pollution control project, the Secretary shall certify that the proposed project will have a materially favorable impact on the environment or will prevent or diminish materially the impact of the pollution that would otherwise occur, as set forth in G.S. 159C-7(d), if the Secretary determines that: the proposed project meets all applicable State and federal emission control standards, water effluent limitations, pretreatment standards, new source performance standards, and toxic substances emission effluent limitations; does not contravene ambient air or water quality standards; and has an otherwise materially favorable impact on the environment. Issuance to the operator of the proposed project of the required environmental permits indicates that certain environmental impacts of the proposed project were evaluated, and the Secretary may consider such evaluations in making a certification decision.

History Note: Authority G.S. 159C-7(d);
Eff. June 16, 1977;
Amended Eff. March 1, 1990; July 1, 1988;
Readopted Eff. May 1, 2022.

15A NCAC 01D .0304 RESPONSIBILITY FOR PROVIDING INFORMATION

History Note: Authority G.S. 159C-7;
Eff. June 16, 1977;
Amended Eff. March 1, 1990; July 1, 1988;
Expired Eff. May 1, 2017 pursuant to G.S. 150B-21.3A.

15A NCAC 01D .0305 PROPOSED HAZARDOUS WASTE FACILITY

In the case where the Secretary of the Department of Commerce requests a project certification for a hazardous waste facility, the Secretary shall certify that the proposed project is environmentally sound, will not have an adverse effect on public health, and will further the waste management goals of North Carolina, in accordance with G.S. 159C-7(d), if the Secretary determines that the proposed project meets applicable State and federal laws and regulations, has applied for and received the required environmental permits, including those outlined in G.S. 130A-295, 130A-295.01, and 130A-295.04 for hazardous waste facilities, and meets the current and anticipated waste management needs of the State. Issuance to the operator of the proposed project of the required environmental permits indicates that certain environmental impacts of the proposed project were evaluated, and the Secretary may consider such evaluations in making a certification decision.

History Note: Authority G.S. 159C-7(d);
Eff. May 1, 2022.

SUBCHAPTER 01E - OIL REFINING FACILITY PERMITS

SECTION .0100 – GENERAL INFORMATION

15A NCAC 01E .0101 PURPOSE

The purpose of this Subchapter is to establish procedures and standards under which permits for the construction and operation of oil refining facilities will be issued or denied.

History Note: Authority G.S. 143-215.101;
Eff. June 16, 1980;
Amended Eff. October 1, 1984;

Readopted Eff. April 1, 2023.

15A NCAC 01E .0102 DEFINITIONS

As used in this Subchapter, unless the context otherwise requires:

- (1) "Act" means the Oil Pollution and Hazardous Substances Control Act, Article 21A, Chapter 143, General Statutes.
- (2) "Construction" means:
 - (a) construction and operation of a new oil refining facility;
 - (b) substantial enlargement and operation of an existing oil refining facility; or
 - (c) substantial change in the physical separation or chemical reaction process of an existing oil refining facility and operation of such facility.
- (3) "Department" means the Department of Environmental Quality.
- (4) "Oil refining facility" means any facility of any kind and related appurtenances located in, on, or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of refining oil. The term "related appurtenances" includes pipelines.
- (5) "Publicly owned parks, forests, or recreation areas" means lands, including beaches, shorelines, and submerged lands, and waters:
 - (a) that are owned or controlled by a governmental body for purposes of conservation of natural resources, public recreation, or general public use; or
 - (b) that the public has a right to use for recreation or as a part of the natural environment.
- (6) "Secretary" means the Secretary of the Department of Environmental Quality.
- (7) "Wildlife" means wild animals and plants.

History Note: Authority G.S. 143-215.77; 143-215.101;
Eff. June 16, 1980;
Amended Eff. July 1, 1988; October 1, 1984;
Readopted Eff. April 1, 2023.

15A NCAC 01E .0103 OIL REFINING FACILITY PERMIT REQUIRED

No person shall construct or operate an oil refining facility unless and until such person applies for and obtains an oil refining facility permit under this Subchapter.

History Note: Authority G.S. 143-215.100; 143-215.101; 143B-10;
Eff. June 16, 1980;
Amended Eff. October 1, 1984;
Readopted Eff. April 1, 2023.

15A NCAC 01E .0104 PERMIT APPLICATION REQUIREMENTS

- (a) An application for a permit shall be in writing and shall be transmitted to the Secretary at the following address:

Secretary's Office
North Carolina Department of Environmental Quality
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

- (b) An application shall be made by and in the names of all persons who will be owners or operators of a proposed oil refining facility or who are owners or operators of an existing facility.

- (c) To apply for an oil refining facility permit, a person or persons shall submit to the Secretary an application which shall contain:

- (1) a cover sheet shall not exceed one page and shall include:
 - (A) the title, APPLICATION FOR PERMIT TO CONSTRUCT OR OPERATE AN OIL REFINING FACILITY;
 - (B) a short statement of the activity for which the permit is sought and the name and location of the oil refining facility involved;
 - (C) the complete name, address, and telephone number of each applicant;
 - (D) the date of the application;

- (E) the name, address, and telephone number of the employee or agent of the applicant who can supply further information; and
 - (F) an abstract of the assessment of the effects which the construction or operation of the oil refining facility will have on the environment;
- (2) a table of contents;
 - (3) a description of the proposed or existing oil refining facility, including a description of the following aspects of the facility's operation:
 - (A) kind of refining process;
 - (B) refining capacity;
 - (C) kind, character, and volume of raw materials, and the source(s) of their supply;
 - (D) kind, character, and volume of products;
 - (E) kind, character, and volume of by-products;
 - (F) kind, character, and volume of effluent discharges to waters or lands of the State;
 - (G) kind, character, and volume of emissions to air;
 - (H) number of persons in the facility's permanent work force; and
 - (I) cost of construction of the facility;
 - (4) if construction is involved, a description of the construction process and the applicant's estimate of the timetable for that process;
 - (5) an electronic copy or two sets of paper copies of the most current reports, drawings, maps, plans, and specifications describing the location, construction, and operation of the oil refining facility;
 - (6) a description of the transfer of oil to and from the oil refining facility, including a statement of the amount and kind of vessel traffic which the facility's operation does or will generate;
 - (7) an electronic copy or two sets of paper copies of the most current reports, drawings, maps, plans, specifications, and other information describing the transfer of oil, including vessel characteristics and ownership, vessel navigation to and from the facility, oil loading equipment, and pipelines, in such detail as the Secretary deems necessary to decide to issue or deny the permit;
 - (8) upon request of the Secretary, a listing of the environmental or health impacts which interested or affected persons or their representatives have indicated are of concern to them. To prepare such a listing, the applicant shall:
 - (A) inform about the facility those persons whom the facility will or may interest or affect, including those living within one mile of any part of the facility; and
 - (B) ascertain the nature of their concerns about the effects of the facility and their suggestions for meeting those concerns. The applicant may coordinate efforts in this regard with similar efforts required by other statutes or regulations, federal or state, so as to reduce duplication of effort;
 - (9) a list of all federal, state, and local permits or approvals related to protection of the environment or environmental resources that the applicant shall obtain for construction or operation of the oil refining facility, the date on which each application was submitted, a copy of each filed application, and a copy of each permit or approval showing that it has been issued;
 - (10) an analysis of the effects that construction or operation of the facility, including the transfer of oil to and from the facility, will or may have on the environment;
 - (11) the applicant's proposals for avoiding or minimizing the adverse effects of the construction and operation of the oil refining facility and the transfer of oil to and from the facility on the environment. The applicant's proposals shall include:
 - (A) a description of the procedures, methods, means, and equipment, including those relating to vessel navigation and design, which the applicant will use to prevent any discharges to the waters or lands of the State;
 - (B) a description of the procedures, methods, means, and equipment by which the applicant will detect and report discharges;
 - (C) a description of the procedures, methods, means, and equipment which the applicant will use in the containment, removal, and cleaning up of discharges and in the restoration of any lands or waters affected by a discharge; and
 - (D) a description and copies of any spill prevention and emergency response plans required under federal, State, or local laws and regulations;

- (12) a list of the names of the persons who were primarily responsible for preparing the application or any part thereof, together with their qualifications, including their expertise, experience, professional disciplines, and licenses. The persons who were responsible for a particular analysis shall be identified;
 - (13) a statement and explanation by the applicant whether the proposed construction or operation of the oil refining facility is subject to Article 1 of G.S. Chapter 113A, the North Carolina Environmental Policy Act.
- (d) The Secretary shall determine the adequacy and completeness of the submitted application based on compliance with the requirements in Paragraph (c) and Paragraph (e) of this Rule.
- (e) The applicant shall supply such other information as the Secretary deems necessary to impose appropriate terms and conditions in the permit and to determine appropriate protective measures to prevent oil discharges to the lands and waters of the State according to the schedule provided by the Secretary.

*History Note: Authority G.S. 143-215.101;
 Eff. June 16, 1980;
 Amended Eff. March 1, 1990; August 1, 1988; October 1, 1984;
 Readopted Eff. April 1, 2023.*

15A NCAC 01E .0105 PERMIT APPLICATION PROCEDURE

- (a) If the Secretary determines the application is incomplete under Rule .0104(d) of this Section, the Secretary shall within 60 days of its receipt describe in writing to the applicant how the application is incomplete. The applicant shall, within 60 days, submit such additional information relating to the oil refining facility for the application to be complete. If the application is complete, the Secretary shall so advise the applicant in writing within 60 days of its receipt.
- (b) Within 30 days of giving notice to the applicant of a completed application, in accordance with Paragraph (a) of this Rule, the Secretary shall give notice of the application and of a public hearing to be held pursuant to Rule .0106 of this Subchapter to all of the following state agencies and other persons:
- (1) the North Carolina Coastal Resources Commission;
 - (2) the North Carolina Department of Commerce;
 - (3) the North Carolina Department of Natural and Cultural Resources;
 - (4) the North Carolina Environmental Management Commission;
 - (5) the North Carolina Forest Service;
 - (6) the North Carolina Department of Health and Human Services;
 - (7) the North Carolina Marine Fisheries Commission;
 - (8) the North Carolina Department of Transportation;
 - (9) the North Carolina State Ports Authority;
 - (10) the North Carolina Wildlife Resources Commission;
 - (11) the Boards of County Commissioners for the county in which the oil refining facility is located or is proposed to be located and for contiguous counties;
 - (12) the governing body of any incorporated municipality within 50 miles of the oil refining facility;
 - (13) any person whose name is on the mailing list required in Rule .0111 of this Section;
 - (14) any owner of real property which is contiguous to the site of the oil refining facility; and
 - (15) the applicant.
- (c) The notice Paragraph (b) of this Rule requires shall contain the following information:
- (1) The title "Notice of Application for Oil Refining Facility Permit," and a statement that the purpose of the notice is to obtain information or comments to assist the Secretary in assessing the effects of the oil refining facility on the environment.
 - (2) The name and address of the applicants and a brief description of the name, character, location, and capacity of the oil refining facility for which the permit is sought.
 - (3) A summary of the analysis of effects submitted in the application under Rule .0104(c) of this Section.
 - (4) An invitation to persons who may be interested or affected by the facility to present, either in writing or at the public hearing held pursuant to Rule .0106 of this Section, their information or comments concerning the impacts of the construction and operation of the oil refining facility, including the effects of the transfer of oil to and from the facility, on the environment.
 - (5) A statement that written information or comments may be submitted to the Secretary at a specified address at any time until 30 days after the close of the public hearing on the application.

- (6) An announcement of the date, time, and place of the public hearing held pursuant to Rule .0106 of this Section.
 - (7) A list of the state agencies that may review and comment on the application pursuant to Paragraph (b) of this Rule and the date by which the agencies' comments shall be submitted to the Secretary, which shall be within 45 days of the date the notice is issued.
 - (8) The address on the Department's website at which anyone may review the complete application.
 - (9) A reference to the particular sections of the North Carolina General Statutes and the North Carolina Administrative Code applicable to the issuance or denial of oil refining facility permits.
 - (10) A description of the nature of the hearing and the rules that shall govern its conduct.
 - (11) The name, email address, and telephone number of a department official from whom additional information may be obtained.
- (d) The Secretary shall arrange for the publication of the notice in a regularly published newspaper of general circulation:
- (1) in the county containing the site of the oil refining facility; and
 - (2) in contiguous counties.

History Note: Authority G.S. 143-215.101;
Eff. June 16, 1980;
Amended Eff. March 1, 1990; July 1, 1988; October 1, 1984;
Readopted Eff. April 1, 2023.

15A NCAC 01E .0106 PUBLIC HEARING ON PERMIT APPLICATION

- (a) The Secretary shall hold a public hearing at which any person will be given a reasonable opportunity to present information or comments concerning the contents of the application and the effects of the construction and operation of the oil refining facility, including the effects of the transfer of oil to and from the facility on the environment.
- (b) The hearing shall be held between 60 and 90 days after the date of the notice required by Rule .0105(b) of this Section. The Secretary may arrange for the sending or publication of a second, abbreviated notice shortly before the hearing.
- (c) The state agencies listed in Rule .0105(b) of this Section may comment on the effects that construction or operation of an oil refining facility will or may have on the environment and in so doing should address matters within their jurisdiction, authority, or expertise. An agency may reply that it has no comment. Agencies shall submit any comments within the time period specified for comment in the notice.
- (d) The hearing shall be held in the county where the oil refining facility for which the applicant seeks a permit is located or is proposed to be located, unless the Secretary finds and directs that, for reasons of public convenience, safety, or health, it should be held in a different location or through a virtual application.
- (e) The hearing shall be informational in nature and shall not be a contested case as defined in G.S. 150B-2. The Secretary shall hold the hearing or appoint a hearing officer to do so. The person holding the hearing has the authority to set reasonable guidelines for the hearing, including the length of the hearing and the length of time a person may speak.
- (f) The record of the hearing shall be open for written submissions until 30 days after the close of hearing. Any oral or written information or comments offered at the hearing and any further written information or comments submitted within 30 days after the close of the hearing shall be made part of the record of the hearing.

History Note: Authority G.S. 143-215.100; 143-215.101;
Eff. June 16, 1980;
Amended Eff. October 1, 1984;
Readopted Eff. April 1, 2023.

15A NCAC 01E .0107 DECISION TO ISSUE OR DENY PERMIT

- (a) Within 60 days of the last day for submitting public comments about the permit application, or the last day on which the applicant provides additional information requested by the Secretary to respond to public comments, the Secretary shall issue or deny the permit for the oil refining facility.
- (b) In deciding to issue or deny the permit, the Secretary shall consider:
 - (1) the permit application;
 - (2) the data, information, and comments which have been submitted during the permit process; and
 - (3) other facts, information, or analyses within the specialized knowledge of the Department.

The Secretary shall base the decision on the effects which the construction or operation of the oil refining facility, including the transfer of oil to and from the facility, will or may have on the environment.

(c) The Secretary shall deny the permit upon a finding that:

- (1) The construction or operation of the oil refining facility, including the transfer of oil to and from the facility, will have substantial adverse effects on wildlife or on freshwater, estuarine, or marine fisheries;
- (2) The construction or operation of the oil refining facility, including the transfer of oil to and from the facility, will violate standards of air or water quality promulgated or administered by the Environmental Management Commission; or
- (3) The construction or operation of the oil refining facility, including the transfer of oil to and from the facility, will have a substantial adverse effect on a publicly owned park, forest, or recreation area.

(d) In the absence of a finding described in Paragraph (c) of this Rule, the Secretary shall issue the permit.

(1) The Secretary shall impose on any permit he issues the following terms and conditions:

- (A) The permit shall not be effective until the applicant has obtained all necessary environmental permits, including without limitation, those permits required by Articles 21, 21A, and 21B of G.S. Chapter 143, Article 9 of G.S. Chapter 130A, and Articles 4 and 7 of G.S. Chapter 113A. When the necessary permits have been obtained by the applicant, the Secretary upon the applicant's request shall confirm the effective date of the oil refining facility permit.
- (B) The applicant, on February 1 of each year following the year in which the applicant's permit became effective, shall submit to the Secretary a description of the following aspects of the facility's operation as of that date:
 - (i) as they are listed in Rule .0104(c)(3)(A), (B), (C), (D), (E), (F), (G), and (H) of this Section; and
 - (ii) transfer of oil to and from the facility, including a statement of the amount and kind of vessel traffic which the facility's operation does or will generate.

History Note: Authority G.S. 143-215.101;
Eff. June 16, 1980;
Amended Eff. October 1, 1984;
Readopted Eff. April 1, 2023.

15A NCAC 01E .0108 SUSPENSION: REVOCATION: OR AMENDMENT OF PERMITS
15A NCAC 01E .0109 ADMINISTRATIVE HEARINGS: FINAL DECISION BY SECRETARY
15A NCAC 01E .0110 SEVERABILITY
15A NCAC 01E .0111 MAILING LIST
15A NCAC 01E .0112 FEES

History Note: Authority G.S. 7A-308(12); 132-6; 143-215.101; 150B-3; 150B-23 through 150B-37;
Eff. June 16, 1980;
Amended Eff. July 1, 1988; October 1, 1984;
Repealed Eff. April 1, 2023.

15A NCAC 01E .0113 EXTENSIONS OF TIME PERIODS

The Secretary may extend any of the time periods prescribed by this Subchapter. Such an extension shall not exceed 15 days.

History Note: Authority G.S. 143-215.100; 143-215.101;
Eff. June 16, 1980;
Amended Eff. October 1, 1984;
Readopted Eff. April 1, 2023.

15A NCAC 01E .0114 DELEGATIONS

History Note: Authority G.S. 143-215.100; 143-215.101; 143B-10; 150B-2(2);
Eff. October 1, 1984;

Repealed Eff. April 1, 2023.

15A NCAC 01E .0115 UNAUTHORIZED DISCHARGES

(a) In addition to any other reporting obligation under State, local, or federal law, the operator of any oil refining facility shall report in writing via electronic mail, facsimile, or first class mail to the Secretary any unauthorized discharge of oil of 500 gallons or more or other occurrence prohibited by the Act. Such reporting shall occur as soon as practicable, but no later than 24 hours after the owner or operator becomes aware of the discharge or occurrence. The report shall include an estimated volume of the discharge.

(b) After an unauthorized discharge of oil, the owner or operator shall submit a report to the Secretary describing the actions taken to respond to and contain the release. In the event that a release cannot be contained within 24 hours after the owner or operator becomes aware, the owner or operator shall submit daily reports on the status of the response as directed by the Department until the discharge is contained.

*History Note: Authority G.S. 143-215.101;
 Eff. April 1, 2023.*

**SUBCHAPTER 01F - TAX CREDIT CERTIFICATION OF REAL PROPERTIES DONATED FOR
CONSERVATION PURPOSES**

This Subchapter 1F of Title 15A of the North Carolina Administrative Code (T15A.01F); TAX CREDIT CERTIFICATION OF REAL PROPERTIES DONATED FOR CONSERVATION PURPOSES; has been transferred and recodified from Subchapter 1G of Title 15 of the North Carolina Administrative Code (T15.01G), effective November 1, 1989.

15A NCAC 01F .0101	PURPOSE AND SCOPE
15A NCAC 01F .0102	DEFINITIONS
15A NCAC 01F .0103	PARTICIPATING DIVISIONS
15A NCAC 01F .0104	APPLICATION: CERTIFICATION
15A NCAC 01F .0105	TIMING
15A NCAC 01F .0106	RECONSIDERATION OF APPLICATION

*History Note: Authority G.S. 105-151.12; 105-151.12(a); 105-130.9; 105-130.34; 105-147(15); 105-147(16);
 143B-276; 143-279.2;
 Eff. November 1, 1984;
 Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); March 1, 1990; July 1, 1988;
 Pursuant to G.S. 150B-21.3A, rule Expired April 1, 2015.*

SUBCHAPTER 1G - RESOLUTION OF SUBMERGED LANDS CLAIMS

This Subchapter 1G of Title 15A of the North Carolina Administrative Code (T15A.01G); RESOLUTION OF SUBMERGED LANDS CLAIMS; has been transferred and recodified from Subchapter 1H of Title 15 of the North Carolina Administrative Code (T15.01H), effective November 1, 1989.

SECTION .0100 - INTRODUCTION AND DELEGATIONS

15A NCAC 01G .0101	INTRODUCTION
15A NCAC 01G .0102	DEFINITIONS
15A NCAC 01G .0103	DELEGATION OF AUTHORITY TO DIRECTOR

*History Note: Authority G.S. 113-205; 113-206(f); 143B-10(a);
 Eff. June 1, 1986;
 Amended Eff. March 1, 1990; October 1, 1987;*

Pursuant to G.S. 150B-21.3A, rules Expired January 1, 2015.

SECTION .0200 - RESOLUTION PROCEDURES

15A NCAC 01G .0201	APPLICATION OF RESOLUTION PROCEDURE
15A NCAC 01G .0202	INITIAL REVIEW OF CLAIM
15A NCAC 01G .0203	LETTER OF NOTIFICATION
15A NCAC 01G .0204	RESPONSE TO LETTER OF NOTIFICATION
15A NCAC 01G .0205	FOLLOW-UP TO UNSERVED NOTIFICATION
15A NCAC 01G .0206	CLAIMS DEEMED COMPLETE
15A NCAC 01G .0207	CLAIM DETERMINATION

*History Note: Authority G.S. 113-205; 113-206(f); 143B-10(a);
Eff. June 1, 1986;
Amended Eff. October 1, 1987;
Repealed Eff. August 1, 2012.*

SECTION .0300 - STATE POLICIES

15A NCAC 01G .0301	INTRODUCTION
15A NCAC 01G .0302	FILLED LANDS
15A NCAC 01G .0303	PRIVATELY OWNED BEDS
15A NCAC 01G .0304	MARSHLANDS AND SWAMPLANDS
15A NCAC 01G .0305	LIMITED RIGHTS

*History Note: Authority G.S. 1-35; 113-205; 113-206; 113-206(f); 143B-10(a); 146-6; 146-20.1;
Eff. June 1, 1986;
Repealed Eff. August 1, 2012.*

SUBCHAPTER 01H - FEDERAL FUNDS: TURTLE EXCLUDER DEVICES

This Subchapter 1H of Title 15A of the North Carolina Administrative Code (T15A.01H); FEDERAL FUNDS: TURTLE EXCLUDER DEVICES; has been transferred and recodified from Subchapter 1I of Title 15 of the North Carolina Administrative Code (T15.01I), effective November 1, 1989.

SECTION .0100 – GENERAL INFORMATION

15A NCAC 01H .0101	SCOPE AND PURPOSE
15A NCAC 01H .0102	ELIGIBILITY STANDARDS
15A NCAC 01H .0103	REQUIREMENTS TO RECEIVE REIMBURSEMENT FOR TED PURCHASE

*History Note: Authority G.S. 113-163; 113-181; 113-226; 143B-277; 150B-13;
Temporary Rule Eff. February 16, 1988 for a Period of 180 Days to Expire on August 14, 1988;
Eff. October 1, 1988;
Pursuant to G.S. 150B-21.3A, rules Expired January 1, 2015.*

SUBCHAPTER 01I - FOREST PRACTICES GUIDELINES RELATED TO WATER QUALITY

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 01I .0101	INTRODUCTION AND PURPOSE (TRANSFERRED TO 02 NCAC 60C .0101 EFF. APRIL 1, 2014)
15A NCAC 01I .0102	DEFINITIONS (TRANSFERRED TO 02 NCAC 60C .0102 EFF. APRIL 1, 2014)

SECTION .0200 - PERFORMANCE STANDARDS

15A NCAC 01I .0201	STREAMSIDE MANAGEMENT ZONE (TRANSFERRED TO 02 NCAC 60C .0201 EFF. APRIL 1, 2014)
15A NCAC 01I .0202	PROHIBITION OF DEBRIS ENTERING STREAMS AND WATERBODIES (TRANSFERRED TO 02 NCAC 60C .0202 EFF. APRIL 1, 2014)
15A NCAC 01I .0203	ACCESS ROAD AND SKID TRAIL STREAM CROSSINGS (TRANSFERRED TO 02 NCAC 60C .0203 EFF. APRIL 1, 2014)
15A NCAC 01I .0204	ACCESS ROAD ENTRANCES (TRANSFERRED TO 02 NCAC 60C .0204 EFF. APRIL 1, 2014)
15A NCAC 01I .0205	PROHIBITION/WASTE ENTERING STREAMS/WATERBODIES/GROUNDWATER (TRANSFERRED TO 02 NCAC 60C .0205 EFF. APRIL 1, 2014)
15A NCAC 01I .0206	PESTICIDE APPLICATION (TRANSFERRED TO 02 NCAC 60C .0206 EFF. APRIL 1, 2014)
15A NCAC 01I .0207	FERTILIZER APPLICATION (TRANSFERRED TO 02 NCAC 60C .0207 EFF. APRIL 1, 2014)
15A NCAC 01I .0208	STREAM TEMPERATURE (TRANSFERRED TO 02 NCAC 60C .0208 EFF. APRIL 1, 2014)
15A NCAC 01I .0209	REHABILITATION OF PROJECT SITE (TRANSFERRED TO 02 NCAC 60C .0209 EFF. APRIL 1, 2014)

SUBCHAPTER 01J - STATE CLEAN WATER REVOLVING LOAN AND GRANT PROGRAM

Editor's Note: This Subchapter 01J of Title 15A of the North Carolina Administrative Code (T15A.01J); STATE CLEAN WATER REVOLVING LOAN AND GRANT PROGRAM; has been transferred and recodified from Subchapter 3L of Title 9 of the North Carolina Administrative Code (T09.03L), effective December 5, 1991.

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 01J .0101	PURPOSE
15A NCAC 01J .0102	DEFINITIONS

History Note: Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rule .0102);
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988 (Rule .0101);
ARRC Objection March 17, 1988;
Authority G.S. 159G-3; 159G-15;
Eff. August 1, 1988;
Amended Eff. July 1, 1994 (Rule .0102); July 1, 1992 (Rule .0102);
Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Repealed Eff. September 1, 2006.

SECTION .0200 - ELIGIBILITY REQUIREMENTS

15A NCAC 01J .0201	ELIGIBLE PROJECT COSTS
15A NCAC 01J .0202	GRANTS FROM THE HIGH-UNIT COST ACCOUNTS
15A NCAC 01J .0203	GRANTS FROM THE GENERAL REVOLVING LOAN AND GRANT ACCOUNTS
15A NCAC 01J .0204	LOANS FROM THE EMERGENCY REVOLVING LOAN ACCOUNTS
15A NCAC 01J .0205	DETERMINATION OF ELIGIBILITY

History Note: Authority G.S. 159G-3(4); 159G-6(a)(2); 159G-6(b)(2); 159G-6(b)(3); 159G-6(c)(2); 159G-6(c)(3); 159G-15;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rule .0201);
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
RRC Objection March 17, 1988;
Eff. August 1, 1988;
RRC Objection due to ambiguity Eff. June 18, 1992 (Rule .0204);
Temporary Amendment Eff. March 31, 1999 (Rule .0202);
Amended Eff. August 1, 2000 (Rule .0202); July 1, 1994 (Rule .0201); July 24, 1992 (Rule .0204);
Repealed Eff. September 1, 2006.

SECTION .0300 - APPLICATIONS

15A NCAC 01J .0301	APPLICATION FILING DEADLINES
15A NCAC 01J .0302	GENERAL PROVISIONS
15A NCAC 01J .0303	FILING OF REQUIRED SUPPLEMENTAL INFORMATION
15A NCAC 01J .0304	APPLICATIONS FOR EMERGENCY LOANS

History Note: Authority G.S. 159G-6(b)(3); 159G-6(c)(3); 159G-8; 159G-9; 159G-10; 159G-10(a); 159G-15;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rules .0303 - .0304);
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
RRC Objection March 17, 1988;
Eff. August 1, 1988;
RRC Objection due to lack of clarity and concisement in Paragraph (d) Eff. July 18, 1992 (Rule .0302);
Amended Eff. July 1, 1994 (Rules .0303 - .0304); July 24, 1992 (Rule .0302); July 1, 1992 (Rules .0301 and .0304);
Temporary Amendment Eff. September 24, 1999 (Rule .0301); March 31, 1999 (Rule .0302);
Temporary Amendment Expired on July 11, 2000;
Amended Eff. August 1, 2000 (Rule .0303); July 1, 1994 (Rule .0304); July 24, 1992 (Rule .0302);
July 1, 1992 (Rule .0302);
Repealed Eff. September 1, 2006.

SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

15A NCAC 01J .0401	GENERAL CRITERIA
15A NCAC 01J .0402	CRITERIA FOR PLANNING AND WATER CONSERVATION
15A NCAC 01J .0403	CRITERIA FOR GRANT INCREASES

History Note: Authority G.S. 159G-10; 159G-15;
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rule .0402);
RRC Objection March 17, 1988;
Eff. August 1, 1988;

*Amended Eff. July 1, 1994 (Rule .0402); July 1, 1992 (.0401);
Temporary Amendment Eff. October 23, 1997 (Rules .0401 and .0402);
Amended Eff. August 1, 1998 (Rules .0401 and .0402);
Temporary Amendment Eff. March 31, 1999 (Rule .0402);
Amended Eff. August 1, 2000 (Rule .0402);
Repealed Eff. September 1, 2006.*

SECTION .0500 - PRIORITY CRITERIA FOR WASTEWATER TREATMENT WORKS PROJECTS

15A NCAC 01J .0501 WATER POLLUTION CONTROL NEEDS

*History Note: Filed as a Temporary Repeal Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Filed as a Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
ARRC Objection March 17, 1988;
Authority G.S. 159G-10; 159G-15;
Eff. August 1, 1988;
Repealed Eff. July 1, 1994.*

15A NCAC 01J .0502 APPLICABLE CONDITIONS 15A NCAC 01J .0503 FINANCIAL NEED OF APPLICANT 15A NCAC 01J .0504 FISCAL RESPONSIBILITY OF THE APPLICANT 15A NCAC 01J .0505 PROPERTY ACQUISITION

*History Note: Authority G.S. 159G-10; 159G-15;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rules .0502, .0503, and .0505);
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
Eff. August 1, 1988;
Amended Eff. July 1, 1994 (Rules .0502, .0503, and .0505);
Temporary Amendment Eff. March 31, 1999 (Rules .0502 and .0504);
Amended Eff. August 1, 2000 (Rule .0502 and .0504);
Repealed Eff. September 1, 2006.*

SECTION .0600 – PRIORITY CRITERIA FOR WASTEWATER COLLECTION SYSTEM PROJECTS

15A NCAC 01J .0601 PUBLIC NEED 15A NCAC 01J .0602 PUBLIC HEALTH NEED 15A NCAC 01J .0603 FINANCIAL NEED OF THE APPLICANT 15A NCAC 01J .0604 FISCAL RESPONSIBILITY OF THE APPLICANT

*History Note: Authority G.S. 159G-10; 159G-15;
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rules .0602 and .0603);
Eff. August 1, 1988;
Amended Eff. September 1, 1994 (Rule .0601); July 1, 1994 (Rules .0602 and .0603);
Temporary Amendment Eff. March 31, 1999 (Rules .0601 and .0604);
Amended Eff. August 1, 2000 (Rules .0601 and .0604);
Repealed Eff. September 1, 2006.*

15A NCAC 01J .0605 FINANCING OF THE PROJECT

History Note: Filed as a Temporary Repeal Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Filed as a Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
ARRC Objection March 17, 1988;
Authority G.S. 159G-10; 159G-15;
Eff. August 1, 1988;
Repealed Eff. July 1, 1994.

15A NCAC 01J .0606 PROPERTY ACQUISITION

History Note: Authority G.S. 159G-10; 159G-15;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
RRC Objection March 17, 1988;
Eff. August 1, 1988;
Amended Eff. July 1, 1994;
Repealed Eff. September 1, 2006.

SECTION .0700 – PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS

15A NCAC 01J .0701	PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE
15A NCAC 01J .0702	PROJECT PLANNING
15A NCAC 01J .0703	FINANCIAL CONSIDERATIONS
15A NCAC 01J .0704	ENVIRONMENTAL ASSESSMENT

History Note: Authority G.S. 159G-10; 159G-15;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rules .0701, .0702, and .0703);
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
RRC Objection March 17, 1988;
Eff. August 1, 1988;
RRC Objection due to clarity Eff. June 18, 1992 (Rule .0701);
Amended Eff. July 1, 1992 (Rules .0702 and .0703);
RRC objection due to ambiguity Eff. June 16, 1994 (Rule .0701);
Amended Eff. August 1, 1994 (Rule .0701); July 1, 1994 (Rules .0702 and .0703); July 24, 1992 (Rule .0701);
Temporary Amendment Eff. March 31, 1999 (Rules .0701 and .0703);
Amended Eff. August 1, 2000 (Rules .0701 and .0703);
Repealed Eff. September 1, 2006.

SECTION .0800 - PRIORITY REVIEW PERIODS: ASSIGNMENT OF PRIORITIES

15A NCAC 01J .0801	PRIORITY REVIEW PERIODS
15A NCAC 01J .0802	ASSIGNMENT OF PRIORITIES
15A NCAC 01J .0803	ASSIGNMENT OF CATEGORY TO WASTEWATER APPLICATIONS

History Note: Authority G.S. 159G-10; 159G-12; 159G-15;
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988 (Rules .0801 and .0803);
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner (Rules .0802 and .0803);
RRC Objection March 17, 1988;
Eff. August 1, 1988;

*Amended Eff. July 1, 1994 (rules .0802 and .0803); July 1, 1992 (Rule .0803);
Temporary Amendment Eff. March 31, 1999 (Rule .0803);
Amended Eff. August 1, 2000 (Rule .0803);
Repealed Eff. September 1, 2006.*

SECTION .0900 - LOAN AND GRANT AWARD AND COMMITMENT: DISBURSEMENT OF LOANS AND GRANTS

15A NCAC 01J .0901 DETERMINATION OF LOAN AND GRANT AWARDS
15A NCAC 01J .0902 CERTIFICATION OF ELIGIBILITY
15A NCAC 01J .0903 CRITERIA FOR LOAN ADJUSTMENTS
15A NCAC 01J .0904 DISBURSEMENT OF LOANS AND GRANTS

*History Note: Authority G.S. 159G-10; 159G-12; 159G-15;
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule
becomes effective, whichever is sooner (Rules .0901 and .0904);
RRC Objection March 17, 1988;
Eff. August 1, 1988;
Amended Eff. July 1, 1994 (Rules .0901 and .0904); July 1, 1992 (Rules .0902, .0903, and .0904);
Temporary Amendment Eff. March 31, 1999 (Rule .0904);
Amended Eff. August 1, 2000 (Rules .0903 and .0904);
Repealed Eff. September 1, 2006.*

15A NCAC 01J .0905 PROJECT ADMINISTRATIVE CLOSEOUT

*History Note: Filed as a Temporary Repeal Eff. March 8, 1994 for a period of 180 days or until the permanent rule
becomes effective, whichever is sooner;
Authority G.S. 159G-12; 159G-15;
Eff. July 1, 1992;
Repealed Eff. July 1, 1994.*

SECTION .1000 - LOAN REPAYMENTS

15A NCAC 01J .1001 INTEREST RATES
15A NCAC 01J .1002 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

*History Note: Authority G.S. 159G-4(c); 159G-13; 159G-15; 159G-18;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule
becomes effective, whichever is sooner (Rule .1002);
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;
RRC Objection March 17, 1988;
Eff. August 1, 1988;
Amended Eff. July 1, 1994; July 1, 1992 (Rule .1002);
Repealed Eff. September 1, 2006.*

SECTION .1100 - INSPECTION AND AUDIT OF PROJECTS

15A NCAC 01J .1101 INSPECTION
15A NCAC 01J .1102 AUDIT OF PROJECTS

*History Note: Authority G.S. 159G-14; 159G-15;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule
becomes effective, whichever is sooner (Rule .1101);
Temporary Rule Eff. February 2, 1988 for a period of 180 days to expire on August 1, 1988;*

*RRC Objection March 17, 1988;
Eff. August 1, 1988;
Amended Eff. July 1, 1994(Rule .1101);
Repealed Eff. September 1, 2006.*

SECTION .1200 - SEVERABILITY

15A NCAC 01J .1201 SEVERABILITY

*History Note: Filed as a Temporary Rule Eff. February 2, 1988 for a Period of 180 Days to Expire on August 1, 1988;
ARRC Objection March 17, 1988;
Authority G.S. 159G-15;
Expired Eff. May 1, 1988.*

SECTION .1300 - FAILED LOW-PRESSURE PIPE SYSTEMS

15A NCAC 01J .1301 REVIEW PERIOD 15A NCAC 01J .1302 GRANT ELIGIBILITY 15A NCAC 01J .1303 DISTRIBUTION OF FUNDS

*History Note: Filed as a Temporary Rule Eff. September 8, 1994, for a period of 115 days to expire on January 1, 1995;
Authority G.S. 159G-10(a1);
Temporary Rule Expired Eff. January 1, 1995.*

SECTION .1400 - GENERAL PROVISIONS

15A NCAC 01J .1401 PURPOSE 15A NCAC 01J .1402 DEFINITIONS

*History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.*

SECTION .1500 - ELIGIBILITY REQUIREMENTS

15A NCAC 01J .1501 ELIGIBLE PROJECT COSTS

*History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.*

SECTION .1600 - APPLICATIONS

15A NCAC 01J .1601 APPLICATION FILING 15A NCAC 01J .1602 GENERAL PROVISIONS

*History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.*

SECTION .1700 - COMMON CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

15A NCAC 01J .1701 COMMON CRITERIA

History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.

SECTION .1800 - ASSIGNMENT OF CATEGORY TO WASTEWATER SYSTEM APPLICATIONS

15A NCAC 01J .1801 ASSIGNMENT OF CATEGORY TO WASTEWATER SYSTEM APPLICATIONS

History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.

SECTION .1900 - CRITERIA FOR EVALUATION OF WASTEWATER SYSTEM APPLICATIONS

15A NCAC 01J .1901 EXISTING CONDITIONS

15A NCAC 01J .1902 WATER QUALITY IMPROVEMENT CRITERIA

History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.

SECTION .2000 - PRIORITY CRITERIA FOR PUBLIC WATER SYSTEM PROJECTS

15A NCAC 01J .2001 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE

15A NCAC 01J .2002 PROJECT PLANNING

15A NCAC 01J .2003 SOURCE WATER PROTECTION

History Note: Authority G.S. 159G-4; 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.

SECTION .2100 – LOAN AND GRANT AWARD AND COMMITMENT: DISBURSEMENT OF LOANS AND GRANTS

15A NCAC 01J .2101 CRITERIA FOR LOAN ADJUSTMENTS

History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.

SECTION .2200 - LOAN REPAYMENTS

15A NCAC 01J .2201 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

History Note: Authority G.S. 159G-44;
Eff. September 1, 2006;
Repealed Eff. August 1, 2012.

SUBCHAPTER 01K - GROUNDWATER PROTECTION LOAN FUND

SECTION .0100 - PROGRAM SCOPE

15A NCAC 01K .0101 GENERAL
15A NCAC 01K .0102 APPLICABILITY
15A NCAC 01K .0103 DEFINITIONS

History Note: Authority G.S. 143-215.94A; 143-215.94P; 143-215.94T; 143B-279.2;
 Eff. December 1, 1992;
 Repealed Eff. August 1, 2012.

SECTION .0200 - APPLICATION

15A NCAC 01K .0201 ELIGIBILITY
15A NCAC 01K .0202 APPLICATION PROCEDURES

History Note: Authority G.S. 143-215.94C; 143-215.94P; 143-215.94T;
 Eff. December 1, 1992;
 Repealed Eff. August 1, 2012.

SECTION .0300 - LOAN ADMINISTRATION

15A NCAC 01K .0301 BANK ELIGIBILITY
15A NCAC 01K .0302 LOAN PROCESSING BY BANKS
15A NCAC 01K .0303 DUTIES OF THE LOAN FUND COORDINATOR
15A NCAC 01K .0304 LOAN APPROVAL CRITERIA
15A NCAC 01K .0305 DELINQUENT ACCOUNTS

History Note: Authority G.S. 143-215.94O(g); 143-215.94P;
 Eff. December 1, 1992;
 Repealed Eff. August 1, 2012

SECTION .0400 - LOAN CONDITIONS

15A NCAC 01K .0401 LOAN ADMINISTRATION FEES AND COSTS
15A NCAC 01K .0402 INTEREST AND TERM
15A NCAC 01K .0403 ADDITIONAL CONDITIONS
15A NCAC 01K .0404 FUNDING OF LOAN

History Note: Authority G.S. 143-215.94P; 143-215.94T;
 Eff. December 1, 1992;
 Temporary Amendment Eff. June 1, 1993 for a period of 180 days or until the permanent rule
 becomes effective, whichever is sooner;
 Amended Eff. October 1, 1993;
 Repealed Eff. August 1, 2012.

SUBCHAPTER 01L – STATE CLEAN WATER BOND LOAN PROGRAM

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 01L .0101 PURPOSE
15A NCAC 01L .0102 DEFINITIONS

History Note: Authority S.L. 1998, c. 132, s. 10
 Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes
 effective, whichever is sooner;
 Eff. July 1, 1994;

*Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.*

SECTION .0200 - ELIGIBILITY REQUIREMENTS

15A NCAC 01L .0201 ELIGIBLE PROJECT COSTS 15A NCAC 01L .0202 DETERMINATION OF ELIGIBILITY

*History Note: Authority S.L. 1998, c. 132, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.*

15A NCAC 01L .0203 LIMITATION OF LOANS

*History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Authority S.L. 1998, c. 132, s. 10;
Eff. July 1, 1994;
Temporary Repeal Eff. March 31, 1999;
Repealed Eff. August 1, 2000.*

SECTION .0300 - APPLICATIONS

15A NCAC 01L .0301 APPLICATION FILING DEADLINES 15A NCAC 01L .0302 GENERAL PROVISIONS 15A NCAC 01L .0303 FILING OF REQUIRED SUPPLEMENTAL INFORMATION

*History Note: Authority S.L. 1998, c. 132, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner
Eff. July 1, 1994;
Temporary Amendment Eff. March 31, 1999;
Temporary Amendment Eff. September 24, 1999;
Temporary Amendment Expired on July 11, 2000;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.*

SECTION .0400 - CRITERIA FOR EVALUATION OF ELIGIBLE APPLICATIONS

15A NCAC 01L .0401 GENERAL CRITERIA

*History Note: Authority 1993 S.L., c. 542, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.*

SECTION .0500 – PRIORITY CRITERIA FOR WASTEWATER WORKS PROJECTS

15A NCAC 01L .0501 APPLICABLE CONDITIONS 15A NCAC 01L .0502 FINANCIAL NEED OF APPLICANT 15A NCAC 01L .0503 FISCAL RESPONSIBILITY OF THE APPLICANT

15A NCAC 01L .0504 PROPERTY ACQUISITION

History Note: Authority S.L. 1998, c. 132, s. 10;
Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0600 – PRIORITY CRITERIA FOR WASTEWATER COLLECTIONS SYSTEM PROJECTS

- 15A NCAC 01L .0601 PUBLIC NEED**
- 15A NCAC 01L .0602 PUBLIC HEALTH NEED**
- 15A NCAC 01L .0603 FINANCIAL NEED OF APPLICANT**
- 15A NCAC 01L .0604 FISCAL RESPONSIBILITY OF THE APPLICANT**
- 15A NCAC 01L .0605 PROPERTY ACQUISITION**

History Note: Authority G.S. 130A-2(3); S.L. 1998, c. 132, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0700 – PRIORITY CRITERIA FOR WATER SUPPLY SYSTEMS PROJECTS

- 15A NCAC 01L .0701 PUBLIC NECESSITY: HEALTH: SAFETY AND WELFARE**
- 15A NCAC 01L .0702 PROJECT PLANNING**
- 15A NCAC 01L .0703 FINANCIAL CONSIDERATIONS**

History Note: Authority S.L. 1998, c. 132, s. 10;
Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0800 – CRITERIA FOR WATER CONSERVATION

- 15A NCAC 01L .0801 PLANNING AND WATER CONSERVATION**

History Note: Authority S.L. 1998, c. 132, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0900 - PRIORITIES

- 15A NCAC 01L .0901 ASSIGNMENT OF PRIORITIES**

15A NCAC 01L .0902 ASSIGNMENT OF CATEGORY TO WASTEWATER APPLICATIONS

History Note: Authority S.L. 1998, c. 132, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .1000 - LOAN AWARD, COMMITMENT, AND DISBURSEMENT

15A NCAC 01L .1001 DETERMINATION OF AWARD

15A NCAC 01L .1002 CERTIFICATION OF ELIGIBILITY

15A NCAC 01L .1003 CRITERIA FOR LOAN ADJUSTMENTS

15A NCAC 01L .1004 DISBURSEMENT OF LOANS

History Note: Authority S.L. 1998, c. 132, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Temporary Amendment Eff. March 31, 1999;
Amended Eff. August 1, 2000;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .1100 - LOAN REPAYMENTS

15A NCAC 01L .1101 INTEREST RATES

History Note: Authority 1993 S.L., c. 542, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

15A NCAC 01L .1102 REPAYMENT OF PRINCIPAL AND INTEREST ON LOANS

History Note: Filed as a Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Statutory Authority 1993 S.L., c. 542, s. 10;
Temporary Rule Expired.

SECTION .1200 - INSPECTION AND AUDIT

15A NCAC 01L .1201 INSPECTION

15A NCAC 01L .1202 AUDIT OF PROJECTS

History Note: Authority 1993 S.L., c. 542, s. 10;
Temporary Rule Eff. March 8, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. July 1, 1994;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 1M - CERTIFICATION OF OPERATORS ORANIMAL WASTE MANAGEMENT SYSTEMS

SECTION .0100 - GENERAL PURPOSE/DEFINITIONS

- 15A NCAC 01M .0101 PURPOSE**
- 15A NCAC 01M .0102 DEFINITIONS**

History Note: *Authority G.S. 143-215.74C-E;*
 Temporary Adoption Eff. June 19, 1996;
 Temporary Repeal Eff. January 7, 1997.

SECTION .0200 - DUTIES AND REQUIREMENTS

- 15A NCAC 01M .0201 DUTIES AND REQUIREMENTS OF OWNERS**
- 15A NCAC 01M .0202 DUTIES AND REQUIREMENTS OF OPERATORS IN CHARGE**

History Note: *Authority G.S. 143-215.74C-E;*
 Temporary Adoption Eff. June 19, 1996;
 Temporary Repeal Eff. January 7, 1997.

SECTION .0300 - CERTIFICATION OF OPERATORS

- 15A NCAC 01M .0301 QUALIFICATIONS**
- 15A NCAC 01M .0302 APPLICATION PROCEDURES**
- 15A NCAC 01M .0303 EXAMINATION PROCEDURES**
- 15A NCAC 01M .0304 RENEWAL OF CERTIFICATION**
- 15A NCAC 01M .0305 REVOCATION, RELINQUISHMENT OR INVALIDATION OF CERTIFICATION**
- 15A NCAC 01M .0306 RECERTIFICATION FOLLOWING REVOCATION OR RELINQUISHMENT**

History Note: *Authority G.S. 143-215.74C-E;*
 Temporary Adoption Eff. June 19, 1996;
 Temporary Repeal Eff. January 7, 1997.

SUBCHAPTER 01N - DRINKING WATER STATE REVOLVING FUND RULES

SECTION .0100 - GENERAL PROVISIONS

- 15A NCAC 01N .0101 PURPOSE**
- 15A NCAC 01N .0102 DEFINITIONS**
- 15A NCAC 01N .0103 APPLICABLE PROCEDURES**

History Note: *Authority G.S. 159G-22; 159G-35; 159G-44;*
 Temporary Adoption Eff. January 31, 1998;
 Eff. April 1, 1999;
 Amended Eff. February 1, 2008;
 Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0200 - AVAILABILITY OF LOANS

- 15A NCAC 01N .0201 AVAILABILITY OF LOANS**

15A NCAC 01N .0202 LOANS RESTRICTIONS
15A NCAC 01N .0203 ADMINISTRATIVE EXPENSES

History Note: Authority G.S. 159G-5; 159G-15; 159G-22; 159G-35; 159G-44;
Temporary Adoption Eff. January 31, 1998;
Eff. April 1, 1999;
Amended Eff. February 1, 2008; August 1, 2004.
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0300 - ELIGIBILITY REQUIREMENTS

15A NCAC 01N .0301 DETERMINATION OF ELIGIBILITY
15A NCAC 01N .0302 ELIGIBLE PROJECTS
15A NCAC 01N .0303 ELIGIBLE PROJECT COSTS

History Note: Authority G.S. 159G-1; 159G-5; 159G-22; 159G-35; 159G-44;
Temporary Adoption Eff. January 31, 1998;
Eff. April 1, 1999;
Amended Eff. February 1, 2008;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0400 – APPLICATIONS

15A NCAC 01N .0401 FILING DEADLINES
15A NCAC 01N .0402 APPLICATION PROCEDURES

History Note: Authority G.S. 159G-22; 159G-35; 159G-44;
Temporary Adoption Eff. January 31, 1998;
Eff. April 1, 1999;
Amended Eff. February 1, 2008;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0500 - REVIEW AND ASSIGNMENT OF PRIORITIES

15A NCAC 01N .0501 PRIORITY REVIEW PERIOD
15A NCAC 01N .0502 ASSIGNMENT OF PRIORITIES
15A NCAC 01N .0503 INTENDED USE PLAN

History Note: Authority G.S. 159G-5; 159G-15; 159G-35; 159G-44;
Temporary Adoption Eff. January 31, 1998;
Eff. April 1, 1999;
Amended Eff. February 1, 2008;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0600 - PRIORITY CRITERIA

15A NCAC 01N .0601 GENERAL CRITERIA
15A NCAC 01N .0602 PUBLIC HEALTH AND COMPLIANCE
15A NCAC 01N .0603 CONSOLIDATION
15A NCAC 01N .0604 RELIABILITY
15A NCAC 01N .0605 AFFORDABILITY
15A NCAC 01N .0606 SOURCE PROTECTION AND MANAGEMENT

History Note: Authority G.S. 159G-35; 159G-44;
Temporary Adoption Eff. January 31, 1998;

Eff. April 1, 1999;
Amended Eff. August 1, 2004;
Repealed Eff. February 1, 2008.

SECTION .0700 - AWARD, COMMITMENT AND DISBURSEMENT OF LOANS

- 15A NCAC 01N .0701 DETERMINATION OF AWARDS AND BYPASS PROCEDURES**
- 15A NCAC 01N .0702 CERTIFICATION OF ELIGIBILITY**
- 15A NCAC 01N .0703 CRITERIA FOR LOAN ADJUSTMENTS**
- 15A NCAC 01N .0704 DISBURSEMENT OF LOANS**
- 15A NCAC 01N .0705 TERMINATION OF LOANS**

History Note: Authority G.S. 159G-5; 159G-15; 159G-22; 159G-35; 159G-36; 159G-44;
Temporary Adoption Eff. January 31, 1998;
Eff. April 1, 1999;
Amended Eff. February 1, 2008; August 1, 2004;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0800 - LOAN REPAYMENTS

- 15A NCAC 01N .0801 INTEREST RATES**
- 15A NCAC 01N .0802 REPAYMENT OF PRINCIPAL AND INTEREST**

History Note: Authority G.S. 159G-5; 159G-15; 159G-22; 159G-35; 159G-44;
Temporary Adoption Eff. January 31, 1998;
Eff. April 1, 1999;
Amended Eff. February 1, 2008;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SECTION .0900 - INSPECTION AND AUDIT OF PROJECTS

- 15A NCAC 01N .0901 INSPECTION**
- 15A NCAC 01N .0902 AUDIT**

History Note: Authority G.S. 159G-5; 159G-15; 159G-22(c);
Temporary Adoption Eff. January 31, 1998;
Eff. April 1, 1999;
Amended Eff. February 1, 2008;
Expired Eff. May 1, 2016 pursuant to G.S. 150B-21.3A.

SUBCHAPTER 010 – ENVIRONMENTAL HEALTH

SECTION .0100 – DELEGATION OF AUTHORITY TO ENFORCE THE COMMISSION FOR PUBLIC HEALTH SANITATION RULES

15A NCAC 010 .0101 SCOPE OF DELEGATED AUTHORITY

No person shall act as an authorized agent of the state in enforcing the provisions of G.S. 130A and the rules of the Commission for Public Health, and the rules of the Environmental Management Commission, who is not a current employee of a local health department or the North Carolina Alliance of Public Health Agencies, registered with the North Carolina State Board of Sanitarian Examiners as a Registered Sanitarian or Sanitarian Intern and authorized pursuant to these Rules. Except as provided in Rule .0105 of this Section, an authorization shall be valid only in the county or district served by the local health department which employs the agent. There shall be eight areas of

authorization to enforce the provisions of G.S. 130A and the rules of the Commission for Public Health found in 15A NCAC 18A and the rules of the Environmental Management Commission found in 15A NCAC 02C as follows:

- (1) Food, Lodging, and Institution Sanitation including the following:
 - (a) .1000 Sanitation of Summer Camps;
 - (b) .1300 Sanitation of Hospitals; Nursing and Rest Homes; Sanitariums, Sanitoriums; Educational and other Institutions;
 - (c) .1500 Sanitation of Local Confinement Facilities;
 - (d) .1600 Sanitation of Residential Care Facilities;
 - (e) .1800 Sanitation of Lodging Establishments;
 - (f) .2100 Rules Governing the Sanitation & Safety of Migrant Housing;
 - (g) .2200 Sanitation of Bed and Breakfast Homes;
 - (h) .2400 Sanitation of Public, Private, and Religious Schools;
 - (i) .2600 Sanitation of Restaurants and Other Foodhandling Establishments;
 - (j) .2700 Sanitation of Meat Markets; and
 - (k) .3000 Bed and Breakfast Inns.
- (2) On-Site Wastewater, including the following:
 - (a) .1900 Sewage Treatment and Disposal Systems;
 - (b) .1603 and .1606, 1611(a) and (b) and .1613 Sanitation of Residential Care Facilities (Family Foster Homes); and
 - (c) .2100 Rules Governing the Sanitation and Safety of Migrant Housing.
- (3) .2800 Sanitation of Child Care Centers.
- (4) .3100 Lead Poisoning Prevention in Children Program.
- (5) .2500 Public Swimming Pools.
- (6) .3200 Tattooing.
- (7) .1603, .1606, .1611(a) and (b), .1613 Sanitation of Residential Care Facilities (Family Foster Homes) and .2100 Rules Governing the Sanitation and Safety of Migrant Housing.
- (8) G.S. 87-97 and 15A NCAC 02C .0100 Standards of Construction: Water-Supply Wells.

*History Note: Authority G.S. 87-87; 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Temporary Amendment Eff. March 28, 2006;
Amended Eff. October 1, 2008; August 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.*

15A NCAC 010 .0102 ELIGIBILITY FOR DELEGATION OF AUTHORITY

- (a) The applicant for authorization shall successfully complete the centralized training course provided by the Division.
- (b) The applicant shall successfully complete field practice by evaluating sites and establishments with an authorized environmental health specialist to assure that the applicant knows the rules of the Commission for Public Health and the Environmental Management Commission, as applicable, and how to properly enforce them.
- (c) When the supervisor determines that the applicant has progressed sufficiently to work independently, the applicant may request to be evaluated for authorization. Documentation of the satisfactory completion of all required orientation activities and field practice, including any inspection or evaluation forms completed by the applicant and comments of the supervisor shall be forwarded to the regional specialist.
- (d) If, upon reviewing the file, the regional specialist finds that the applicant needs additional study or field practice, the evaluation for authorization may be postponed until that study or practice has been completed.
- (e) Upon satisfactory completion of the requirements in Paragraphs (a) through (d) of this Rule, the regional specialist shall coordinate the administration of a written test which the applicant must pass by a score of 70 percent or more. The test may be repeated if necessary.
- (f) An applicant requesting authorization for 15A NCAC 18A .3100 Lead Poisoning Prevention in Children Program shall take and successfully complete the North Carolina State of Practice course entitled "Lead Investigation and Abatement" and shall pass the written test provided by that course. An applicant requesting authorization for only 15A NCAC 18A Lead Poisoning Prevention in Children Program shall not be required to take the exam required in Paragraph (e) of this Rule.

(g) An applicant requesting authorization for 15A NCAC 02C .0100 to enforce the private well construction rules of the Environmental Management Commission shall take and successfully complete the North Carolina State of Practice course entitled Basic Private Wells Authorization Training: Groundwater Protection and Public Health or the Private Well portion of Centralized Intern Training, including any written test(s) associated with the course he or she takes. An applicant requesting authorization for 15A NCAC 02C .0100 Standards of Construction: Water-Supply Wells who has more than 18 months of experience in a well inspection program approved by the Department shall be required to take only the exam required in Paragraph (e) of this Rule.

(h) After the applicant has successfully completed the written test, the regional specialist shall conduct a field evaluation of the applicant's knowledge, skills, and ability to enforce the provisions of G.S. 130A and the rules of the Commission. Following the field evaluation, the regional specialist shall make a recommendation to the Director of the Division of Environmental Health regarding issuance or denial of authorization.

History Note: Authority G.S. 87-87; 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Amended Eff. October 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 010 .0103 DELEGATION OF AUTHORITY

Upon determination that the criteria in Rules .0101 and .0102 of this Section have been met and none of the reasons for denial listed in Rule .0107 of this Section exist, and upon a review of the recommendation of the regional specialist, the Director, Division of Environmental Health, shall issue or deny authorization. An Identification Card shall be issued by the Division to each person authorized to enforce provisions of G.S. 130A and the rules of the Commission for Public Health and G.S. 87-87, G.S. 87-97 and the rules of the Environmental Management Commission. The card shall be carried by the agent at all times when on duty. The card is the property of the Division and shall be returned to the Division upon separation of employment, suspension, or revocation of authorization or failure to maintain registration with the N.C. Board of Sanitarian Examiners.

History Note: Authority G.S. 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Amended Eff. October 1, 2008;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 010 .0104 LAPSED DELEGATIONS

When one or more areas of authorization has lapsed, an applicant for reauthorization shall comply with the following:

- (1) An individual whose authorization in an area of authorization has lapsed for a period of up to three years shall complete training, which may also include portions of the centralized training course, as determined by the regional specialist after a field evaluation of the applicant's knowledge, skills, and ability to enforce the rules.
- (2) An individual whose authorization in an area of authorization has lapsed for a period of three years to five years shall meet all of the requirements which apply to new applicants, except that the individual shall be required to attend only the portions of the centralized training course which are directly applicable to the area of authorization requested.
- (3) An individual whose authorization in an area of authorization has lapsed for a period longer than five years shall meet all requirements which apply to new applicants.

History Note: Authority G.S. 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 010 .0105 AGENTS SERVING AS CONTRACTORS

(a) An agent who is authorized in a specific local health department may contract with another local health department to provide services to the other local health department. The North Carolina Alliance of Public Health Agencies may also provide authorized agents who may perform contract services for any local health department. When a local health department contracts for such services, the contracting department shall provide a statement to the Division on progress made to employ an individual who may be considered for authorization.

(b) A contract shall be created between the contracting local health department and the agent (contractor) or with the North Carolina Alliance of Public Health Agencies to include at least the following provisions:

- (1) Names and addresses of each party.
- (2) Scope of work to be performed.
- (3) A requirement that the original public records remain in the local health department in which the work is performed. The public records shall be left at the local health department or with an individual employed by the local health department who shall be responsible for returning said records to the local health department within two business days of the service provided.
- (4) Designation of the party responsible for maintaining public records created by the agent.
- (5) A requirement that the contracting agent be available for consultation to the public being served during usual business hours.
- (6) A requirement that the contracting agent be available for any hearing or other legal proceeding which may ensue from activities conducted by the agent.

(c) The contracting agent shall maintain a list of each activity and the date performed for review in accordance with Paragraph (d) of this Rule.

(d) Each public record created by the contracting agent shall be reviewed, dated, and initialed by an authorized agent of the contracting local health department. In addition, at least 10 percent of the activities performed by the agent shall be reviewed in the field by an authorized agent employed by the contracting local health department. If the contracting local health department has no authorized agent, the Division shall conduct a review of each public record created by the contracting agent. In addition, at least 10 percent of the activities performed by the agent shall be reviewed on-site in the field by the Division. The review shall be conducted each month and shall cover the previous month's activities conducted by the agent.

*History Note: Authority G.S. 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Temporary Amendment Eff. March 28, 2006;
Amended Eff. August 1, 2006;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.*

15A NCAC 010 .0106 EVALUATION

The regional specialist may, at any time, evaluate the performance of an authorized agent.

*History Note: Authority G.S. 130A-4
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.*

15A NCAC 010 .0107 DENIAL, SUSPENSION AND REVOCATION

(a) The Director, Division of Environmental Health, may deny, suspend, or revoke the authorization to act as an agent of the State for any of the following:

- (1) failure to satisfy the requirements for authorization in Rules .0101, .0102 .0103, .0105 and .0106 of this Section;
- (2) fraud, deceit, dishonesty, or perjury in obtaining authorization or in performing authorized duties;
- (3) drug or alcohol induced intoxication on duty;
- (4) incompetency or unprofessionalism in performing authorized duties;
- (5) neglect of duty; or

- (6) failure to properly interpret and enforce laws, rules, and policies.
- (b) The Director, Division of Environmental Health may place an individual on conditional status for a period not to exceed six months if the individual's failure to properly enforce laws, rules and policies may be corrected with additional education and oversight. The Director may suspend or revoke the authorization anytime during the conditional period if satisfactory progress is not made and the Director shall suspend or revoke the authorization after the conditional period if the individual does not demonstrate the necessary knowledge, skills and ability to warrant an unconditional authorization.

History Note: Authority G.S. 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 010 .0108 RE-AUTHORIZATION

If an individual's authorization has been suspended, the authorization shall be reinstated upon determination by the Division that the reasons for suspension no longer exist. If an agent's authorization has been revoked for failure to comply with the requirements found in Rule .0107(a)(2) of this Section, the agent may not apply for reinstatement until five years after the revocation becomes effective. If an individual's authorization has been revoked for reasons other than those found in Rule .0107(a)(2) of this Section, the agent may reapply for authorization after six months from the date the revocation becomes effective by satisfying the requirements of Rules .0101 .0102 and .0103 of this Section. The Division may refuse to re-authorize an individual if the Division determines that the actions which were the basis for the revocation or suspension are likely to reoccur.

History Note: Authority G.S. 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 010 .0109 APPEALS PROCEDURES

Appeals concerning denials, suspensions and revocations of authorization under these Rules shall be made in accordance with G.S. 150B. An individual whose authorization has been suspended or revoked and who timely requests an appeal may continue to work as an authorized agent until a final agency decision is made pursuant to G.S. 150B-36; however, all inspection forms and permits completed by the agent during that period must be countersigned by another authorized agent who concurs with the findings and conclusions reflected on the inspection forms and permits.

History Note: Authority G.S. 130A-4;
Temporary Adoption Eff. March 1, 1998;
Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

SUBCHAPTER 1P - GRANTS TO COMMERCIAL FISHERMEN FOR HURRICANE DAMAGE

SECTION .0100 - GRANTS TO COMMERCIAL FISHERMEN FOR HURRICANE DAMAGE

15A NCAC 01P .0101 GENERAL

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Effective July 1, 2000; February 4, 2000 to expire on January 1, 2003;
Temporary Adoption expired January 1, 2003.

15A NCAC 01P .0102 DEFINITIONS

History Note: Authority 1999 S.L. Extra Session 1999, c. 463;
Temporary Adoption Effective February 4, 2000 to expire on January 1, 2003;
Temporary Adoption expired January 1, 2003.

15A NCAC 01P .0103 APPLICATION AND ELIGIBILITY REVIEW PROCESS

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Eff. August 1, 2000; July 1, 2000; February 4, 2000 to expire on January 1, 2003;
Temporary Adoption expired January 1, 2003.

15A NCAC 01P .0104 ELIGIBILITY NOTIFICATION - DISPUTE PROCESS

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Eff. July 1, 2000; February 4, 2000 to expire on January 1, 2003;
Temporary Adoption expired January 1, 2003.

15A NCAC 01P .0105 APPEAL PROCESS

History Note: Authority S.L. 1999, c. 463(Extra Session);
Temporary Adoption Effective July 1, 2000; February 4, 2000 to expire on January 1, 2003;
Temporary Adoption expired January 1, 2003.

SUBCHAPTER 01Q – JUNKYARDS AND OTHER HIGH-RISK SOLID WASTE SITES

SECTION .0100 - EVALUATION OF HIGH-RISK JUNKYARDS AND OTHER HIGH-RISK SOLID WASTE SITES

15A NCAC 01Q .0101 REMEDIATION OF HIGH-RISK JUNKYARDS AND SOLID WASTE SITES

History Note: Authority G.S.: 113A-4; 113A-6; 113A-11; 143B-10; S.L. Ex. Session 1999-463, Part IV, c.463, s. 4;
Temporary Adoption Eff. February 4, 2000 to expire on January 1, 2003;
Temporary Adoption expired January 1, 2003.

SUBCHAPTER 01R - NORTH CAROLINA AQUARIUMS

SECTION .0100 – FEES

15A NCAC 01R .0101 FEE SCHEDULE

History Note: Authority G.S. 143B-289.41(b); 143B-289.44;
Eff. March 1, 2004;
Amended Eff. January 1, 2006;
Transferred and recodified to 15A NCAC 28 .0302 Eff. August 1, 2007.

SUBCHAPTER 01S - OFFICE OF ENVIRONMENTAL EDUCATION

SECTION .0100 - NORTH CAROLINA ENVIRONMENTAL EDUCATION CERTIFICATION PROGRAM

15A NCAC 01S .0101 FEES

For enrollment in the North Carolina Environmental Education Certification Program an applicant shall submit to the Office of Environmental Education an enrollment application, provided by the Office of Environmental Education, accompanied by a fee of fifty dollars (\$50.00).

History Note: Authority G.S. 143B-285.21; 143B-285.22; 143B-285.23; 150B-19(5)(d);
Eff. January 1, 2009;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. November 12, 2014.

SUBCHAPTER 01T - WATER RESOURCES GRANT PROGRAMS

SECTION .0100 - AQUATIC WEED FUND

15A NCAC 01T .0101 APPLICABILITY

The rules in this Section apply to the Aquatic Weed Fund in G.S. 143-215.73F.

History Note: Authority G.S. 113A-223; 113A-227; 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0102 DEFINITIONS

For purposes of the rules in this Section,

- (1) "Department" means the North Carolina Department of Environmental Quality;
- (2) "Director" means the Director of the Division of Water Resources, Department of Environmental Quality or his or her designee;
- (3) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality; and
- (4) "Council" means the North Carolina Aquatic Weed Control Council.

History Note: Authority G.S. 113A-223; 113A-227; 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0103 PROJECT ELIGIBILITY

An aquatic weed control project proposed by a unit of local, state, or federal government; academic institution; public utility; or other entity may be eligible for grant funds from the Aquatic Weed Fund provided that:

- (1) the project targets one or more aquatic weed species included on the Noxious Aquatic Weed List in 15A NCAC 02G .0602 with subsequent amendments;
- (2) the cost share requirements of G.S. 143-215.73F(c)(3) are met; and
- (3) the project provides at least one of the following benefits:
 - (A) protects and preserves human health;
 - (B) protects public safety;
 - (C) protects the beneficial use of the water(s) of the State;
 - (D) prevents injury to property; or
 - (E) prevents injury to beneficial plant and animal life.

History Note: Authority G.S. 113A-223; 113A-227; 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0104 AQUATIC WEED CONTROL GRANT APPLICATIONS

(a) To request state cost share funding for an eligible aquatic weed control project, an application shall be sent to the Division of Water Resources Aquatic Weeds Control Program, at 1611 Mail Service Center, Raleigh, NC 27699-1611 or electronically to aquaticweeds@ncdenr.gov. The application shall be made on a form provided by the Division, available

electronically via the following website: <https://deq.nc.gov/about/divisions/water-resources/water-planning/water-supply-planning/aquatic-weed-control-program>. The application form can also be obtained by emailing a request to aquaticweeds@ncdenr.gov; by contacting the Division of Water Resources Aquatic Weeds Control Program, 1611 Mail Service Center, Raleigh, NC, 27699-1611; or by calling 919-707-9000. The application shall include the following:

- (1) the date of application;
 - (2) the name, address and phone number of the applicant;
 - (3) the project name and location;
 - (4) if applicable, the specific waterbody or waterbodies in which the proposed project will occur;
 - (5) the aquatic weed(s) associated with the project;
 - (6) acknowledgement that the applicant will fund no less than 50 percent of the project cost and that full obligation for project cost share will be assumed;
 - (7) the anticipated benefit or benefits the project will provide as outlined in Rule .0103 of this Section; and
 - (8) a signature by the applicant.
- (b) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

History Note: Authority G.S. 113A-223; 113A-227; 143-215.70; 143-215.72; 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0105 GRANT APPLICATION REVIEW AND APPROVAL

- (a) To be eligible for funding from the Aquatic Weed Fund, applications shall be received before October 16 of the year prior to when the project will occur.
- (b) All applications shall be reviewed by the Council. Following review by the Council, the Council shall provide a list of recommended projects proposed for cost share funding to the Director, with total funding by the Department for all cost shared projects not to exceed the amount in G.S. 143-215.73F(b)(2).
- (c) Recommendations from the Council and project selection by the Director shall be based on the extent to which the project meets the criteria listed in G.S. 143-215.72(b).
- (d) The Director, with concurrence of the Council and provided funds are available, reserves the right to make an exception to Paragraph (a) of this Rule for the purposes of conducting a rapid response to an aquatic weed infestation. In addition, all conditions of Rules .0103, .0104, and .0106 of this Section shall apply.

History Note: Authority G.S. 113A-223; 113A-227; 143-215.70; 143-215.72; 143-215.73; 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0106 INSTRUMENT OF AGREEMENT

- (a) For a project sponsored by a unit of local government, the applicant shall provide a resolution from the local government's governing board and, per G.S. 143-6-23(b), a copy of their conflict of interest policy prior to the Department beginning any approved cost share project or fund disbursement. The resolution shall include:
- (1) the specific waterbody or location in which the proposed project will occur;
 - (2) the aquatic weed(s) associated with the project;
 - (3) a statement of assumption for the full obligation for payment of the balance of project costs, to be no less than fifty percent of the total cost of the project;
 - (4) a statement of agreement to assist the Department in determining the full scope of the aquatic weed control project.
 - (5) when applicable, assurance that the public will have access to the waters that are included in the proposed project;
 - (6) a statement that the Department will be held harmless from any damages that may result from the implementation of the project.
 - (7) when applicable, a statement that the applicant will be responsible for notifying all landowners with property adjacent to the waterbody on which the project will be located, providing details of the project to those landowners, and for sponsoring any necessary public information meetings and outreach; and

- (8) when applicable, an agreement to notify the public of any temporary water-use restrictions associated with the project.
- (b) For a project sponsored by an entity that is not a unit of local government, the applicant shall sign a binding written agreement with the Department prior to the Department beginning any approved cost share project or fund disbursement. The cost sharing agreement shall include the items listed in Paragraph (a) of this Rule.

History Note: Authority G.S. 113A-223; 143-215.73; 143-215.73F; 143-6-23;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0107 NORTH CAROLINA AQUATIC WEED CONTROL COUNCIL

The Council shall serve as an advisory group for the Division regarding the control, eradication, and regulation of noxious weeds. The Division shall invite each of the following agencies to designate one representative to serve on the Council:

- (1) Department of Agriculture and Consumer Services – Plant Industry Division;
- (2) Department of Agriculture and Consumer Services – Structural Pest Control & Pesticides Division;
- (3) Department of Environmental Quality – Division of Coastal Management;
- (4) Department of Environmental Quality – Division of Marine Fisheries;
- (5) Department of Environmental Quality – Division of Water Resources – Water Sciences Section;
- (6) Department of Environmental Quality – Division of Water Resources – Water Planning Section;
- (7) Department of Health and Human Services;
- (8) Department of Natural and Cultural Resources – Division of Parks and Recreation;
- (9) Department of Natural and Cultural Resources – Natural Heritage Program;
- (10) Department of Transportation;
- (11) North Carolina State University – Crop and Soil Science Department;
- (12) North Carolina State University – North Carolina Agricultural Research Service;
- (13) U.S. Fish and Wildlife Service; and
- (14) Wildlife Resources Commission.

History Note: Authority G.S. 113A-223;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0108 NOXIOUS AQUATIC WEED LIST

The Secretary of the Department of Environment and Natural Resources has designated the following plants as noxious aquatic weeds:

- (1) Species Listed on the Federal Noxious Weed List.
Azolla pinnata R. Brown - Pinnate mosquitofern
Eichhornia azurea (Sw.) Kunth - Anchored waterhyacinth
Hydrilla verticillata (L.f.) Royle - Hydrilla
Hygrophila polysperma (roxb.) T. Anderson - Indian hygrophila
Ipomoea aquatica Forsk. - Swamp morning glory, water spinach
Lagarosiphon major (Ridley) Moss - African elodea
Limnophila sessiliflora (Vahl) Blume-Limnophila
Melaleuca quinquenervia (Cav.) Blake-Melaluca
Monochoria hastata (L.) Solms - Arrowleaved monochoria
Monochoria vaginalis (Burm. f.) Kunth - Monochoria
Sagittaria sagittifolia L. - Arrowhead
Salvinia auriculata Aubl. - Giant salvinia
Salvinia biloba Raddi - Giant salvinia
Salvinia herzogii de la Sota - Giant salvinia
Salvinia molesta Mitch. - Giant salvinia
Sparganium erectum L. - Branched burreed
Stratiotes aloides L. - Crab's claw, Water-aloe
- (2) Additional species.

Alternanthera philoxeroides (Mart.) Griseb - Alligatorweed
 Crassula helmsii (Kirk) - Swamp stonecrop
 Egeria densa Planch. - Brazilian elodea, Anacharis
 Eichhornia crassipes (Mart.) Solms. - Water hyacinth
 Lagarosiphon spp. (All species) - African elodea
 Ludwigia hexapetala (Hooker & Arnott) Zardi. - Uruguay waterprimrose, Creeping waterprimrose
 Lythrum salicaria L. - Purple loosestrife
 Myriophyllum aquaticum (Vell.) Verdc. - Parrotfeather
 Myriophyllum spicatum L. - Eurasian watermilfoil
 Najas minor All. - Brittleleaf naiad, Slender naiad
 Phragmites australis (Cav.) Trin. ex Steud. - Common reed
 Pistia stratiotes L. - Water lettuce
 Salvinia spp. (All except S. rotundifolia) - Water fern
 Trapa spp. (All species) - Water chestnut

History Note: Authority G.S. 113A-222;
 Eff. September 1, 1992;
 Amended Eff. April 1, 2006;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
 Transferred from 15A NCAC 02G .0602 Eff. May 1, 2023.

15A NCAC 01T .0109 THE AQUATIC WEED CONTROL ACT

History Note: Authority G.S. 106-420; 113A-222; 113A-223; 113A-224;
 Eff. September 1, 1992;
 Repealed Eff. April 1, 2006;
 Transferred from 15A NCAC 02G .0601 Eff. May 1, 2023.

SECTION .0200 - SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND

15A NCAC 01T .0201 APPLICABILITY

The rules in this Section apply to the Shallow Draft Navigation Channel Dredging Fund in G.S. 143-215.73F, including projects related to dredging federally authorized channels where the work is performed by the United States Army Corps of Engineers.

History Note: Authority G.S. 143-215.73F;
 Temporary Adoption Eff. February 8, 2023;
 Eff. June 1, 2024.

15A NCAC 01T .0202 DEFINITIONS

For purposes of the rules in this Section,

- (1) "Department" means the North Carolina Department of Environmental Quality;
- (2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality; and
- (3) "shallow draft navigation channel" has the same meaning as set forth in G.S. 143-215.73F(e).

History Note: Authority G.S. 143-215.73F;
 Temporary Adoption Eff. February 8, 2023;
 Eff. June 1, 2024.

15A NCAC 01T .0203 PROJECT ELIGIBILITY SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND

(a) A shallow draft navigation channel dredging project proposed or sponsored by a local government may be eligible for grant funds from the Shallow Draft Navigation Channel Dredging Fund provided that:

- (1) the project is designed to keep shallow draft navigation channels located in State waters or waters of the state located within lakes navigable and safe or the project is for siting and acquisition of dredged disposal easement sites; and
 - (2) the cost share requirements of G.S. 143-215.73F(c) are met.
- (b) The following are ineligible costs that may not be reimbursed from the Shallow Draft Navigation Channel Dredging Fund:
- (1) dredging underneath or immediately adjacent to privately owned ship berths, piers, docks, or similar facilities or businesses;
 - (2) costs incurred for fines, penalties, legal fees, or litigation costs (including but not limited to litigation of a permit, penalty, enforcement action, or contract dispute);
 - (3) costs incurred outside of the term of the grant contract between the Department and the local government;
 - (4) purchase of equipment (including but not limited to barges and excavators);
 - (5) indirect or overhead costs of the municipality, such as rent, telephone service, and general administrative support; or
 - (6) salaries and other expenses of elected officials, whether incurred for purposes of project direction, execution, or legislation.

History Note: Authority G.S. 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0204 GRANT APPLICATIONS FOR THE SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND CHANNELS PERFORMED BY LOCAL UNITS OF GOVERNMENT

(a) To apply for grant funds from the Shallow Draft Navigation Channel Dredging Fund for non-federally authorized channels, the application shall be on forms provided by the Division and submitted to the Division's Coastal Infrastructure Grant Coordinator. The grant coordinator's contact information and the application forms are available at <https://deq.nc.gov/about/divisions/water-resources/water-resources-grants/water-resources-development-grant-program>. The application shall include the following:

- (1) the applicant's primary contact or project manager's name, title, organization, tax ID number (if applicable), email address, mailing address, telephone number;
 - (2) the contact and address to which the Department should send grant reimbursements and grant/project correspondence;
 - (3) project title, description, scope and location;
 - (4) description of existing conditions and land use within the project area;
 - (5) anticipated contract start and end dates;
 - (6) address the criteria in Rule .0205 of this Section;
 - (7) description of the location and method of dredge spoil disposal;
 - (8) itemized project budget;
 - (9) project plans and location maps;
 - (10) official resolution in accordance with 15A NCAC 02G .0104;
 - (11) a statement of no overdue tax debts; and
 - (12) the local government's conflict of interest policy.
- (b) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

History Note: Authority G.S. 143-215.73F; 143C-6-23;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0205 GRANT APPLICATION REVIEW AND APPROVAL FOR CHANNELS DREDGED BY A LOCAL UNIT OF GOVERNMENT

(a) The Division shall review grant applications and may either approve, approve in part, or disapprove applications based on the following criteria:

- (1) the economic, social, and environmental benefits to be provided by the projects;

- (2) regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;
 - (3) the financial resources of the local sponsoring entity;
 - (4) the environmental impact of the project; and
 - (5) any direct benefit to the State-owned lands.
- (b) Notwithstanding the criteria set forth in this Rule, the Division shall prioritize funding those projects that improve shallow draft navigation channels that are accessible by and used by the general boating public.

History Note: Authority G.S. 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0206 POST FUNDING AWARD FOR CHANNELS DREDGED BY A LOCAL UNIT OF GOVERNMENT

- (a) If the Division awards a grant from the Shallow Draft Navigation Channel Dredging Fund and the local government accepts the grant award, then a grant contract must be executed prior to any grant reimbursements. Prior to any reimbursements, the local unit of government shall submit invoices signed by a representative of the local unit of government.
- (b) Any changes to the scope of the project or project budget after submission of a grant application will, at minimum, require written approval by the Division and the Division may require a grant contract amendment.
- (c) The term of the grant contract may be extended at the discretion of the Division. A request from a grantee to extend the grant contract shall be submitted at least 45 days prior to the grant contract expiration date and shall include:
- (1) justification for the extension request;
 - (2) summary of the current project status; and
 - (3) anticipated project schedule moving forward.
- (d) The grantee shall use the funds for only those purposes set forth in G.S. 143-215.73F and shall return unspent grant funds.

History Note: Authority G.S. 143-215.73F;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0207 GRANT APPLICATIONS FOR THE SHALLOW DRAFT NAVIGATION CHANNEL DREDGING FUND FOR CHANNELS DREDGED BY THE UNITED STATES ARMY CORPS OF ENGINEERS

To apply for grant funds from the Shallow Draft Navigation Channel Dredging Fund for federally authorized channels, the application shall include the following:

- (1) a letter signed by an official from the local unit of government requesting funds from the Shallow Draft Navigation Channel Fund that includes the requested amount funds (State, local unit of government, and total amount);
- (2) the name of the project;
- (3) the project title, description, scope and location;
- (4) description of existing conditions;
- (5) anticipated work start and end dates;
- (6) description of the location and method of dredge spoil disposal;
- (7) the local government's conflict of interest policy.
- (8) a project cost estimate and timeline from the United States Army Corps of Engineers;
- (9) a project location map and;
- (10) the local governments matching funds.

History Note: Authority G.S. 143-215.73F;
Eff. June 1, 2024.

15A NCAC 01T .0208 POST FUNDING AWARD FOR CHANNELS DREDGED BY THE UNITED STATES ARMY CORPS OF ENGINEERS

If the Division awards a grant from the Shallow Draft Navigation Channel Dredging Fund and the local government accepts the grant award:

- (1) The sponsoring local unit of government may submit a request for additional funds after funds have been awarded. To request additional funds or a change in scope, the local government shall submit a letter with the information in Rule .0207(a) of this Section.
- (2) The grantee shall use the funds for only those purposes set forth in G.S. 143-215.73F.
- (3) If funds remain after the project has been completed or the project is not awarded by the United States' Army Corps of Engineers, the local government may submit a written request to return any unspent funds. The written communication shall be signed by an official of the sponsoring local government and include the project name and amount of funds that are being requested to be returned.

History Note: Authority G.S. 143-215.73F;
Eff. June 1, 2024.

SECTION .0300 - COASTAL STORM DAMAGE MITIGATION FUND

15A NCAC 01T .0301 APPLICABILITY

The rules in this Section apply to the Coastal Storm Damage Mitigation Fund in G.S. 143-215.73M.

History Note: Authority G.S. 143-215.73M;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0302 DEFINITIONS

For purposes of the rules in this Section,

- (1) "Department" means the North Carolina Department of Environmental Quality; and
- (2) "Division" means the Division of Water Resources, which is within the North Carolina Department of Environmental Quality.

History Note: Authority G.S. 143-215.73M;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0303 PROJECT ELIGIBILITY

(a) A coastal storm damage mitigation project proposed by a local government may be eligible for grant funds from the Coastal Storm Damage Mitigation Fund provided that:

- (1) the project is for beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State; and
- (2) the cost share requirements of G.S. 143-215.73M(c) are met.

(b) The following are ineligible costs that may not be funded from the Coastal Storm Damage Mitigation Fund:

- (1) indirect or overhead costs of the local government, such as rent, telephone service, and general administrative support;
- (2) costs incurred for fines, penalties, legal fees, or litigation costs (including but not limited to litigation of a permit, penalty, enforcement action, or contract dispute);
- (3) any activities related to a terminal groin and its accompanying beach fill project permitted pursuant to G.S. 113A-115.1; or
- (4) salaries and other expenses of elected officials, whether incurred for purposes of project direction, execution, or legislation.

History Note: Authority G.S. 143-215.73M;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0304 COASTAL STORM DAMAGE MITIGATION FUND APPLICATION

(a) To apply for grant funds from the Coastal Storm Damage Mitigation Fund, the application shall be on forms provided by the Division and submitted to the Division's Coastal Infrastructure Grant Coordinator. The grant coordinator's contact information and the application forms are available at <https://deq.nc.gov/about/divisions/water-resources/water-resources-grants/water-resources-development-grant-program>.

(b) The application shall include the following:

- (1) primary contact or project manager's name, title, organization, tax ID number (if applicable), email address, mailing address, telephone number;
- (2) the contact and address to which the Department should send grant funds and grant/project correspondence;
- (3) project title, description, scope and location;
- (4) description of existing conditions and land use within project area;
- (5) anticipated contract start and end dates;
- (6) address the criteria in Rule .0305 of this Section;
- (7) itemized project budget;
- (8) project plans and locations maps;
- (10) official resolution in accordance with Rule .0404 of this Subchapter;
- (11) the local government's conflict of interest policy; and
- (12) a statement of no overdue tax debts.

(c) In signing the application, the applicant(s) certifies that all information contained therein and in support thereof is accurate and true to the best of their knowledge.

History Note: Authority G.S. 143-215.73M; 143C-6-23;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0305 GRANT APPLICATION REVIEW AND APPROVAL

The Division shall review grant applications and may either approve, approve in part, or disapprove applications based on the following criteria:

- (1) the economic, social, and environmental benefits to be provided by the project;
- (2) mitigation measures to be implemented to avoid and minimize detrimental environmental impacts
- (3) expected useful life of the project;
- (4) the source and availability of other funding sources for the project; and
- (5) viability and efficiencies of the project, including but not limited to regional planning, beneficial use of clean, beach quality dredged material from navigation channels within the nearshore, beach or inlet shoal system, and readiness to process based on the project phase, permitting status, property access, and construction schedule.

History Note: Authority G.S. 143-215.73M;
Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.

15A NCAC 01T .0306 POST FUNDING AWARD

(a) If the Division awards a grant from the Coastal Storm Damage Mitigation Fund and the local government accepts the grant award, then a grant contract must be executed prior to any grant funds being dispersed.

(b) Any changes to the scope of the project or project budget after submission of a grant application will, at minimum, require written approval by the Division and the Division may require a grant contract amendment.

(c) The term of the grant contract may be extended at the discretion of the Division. A request from a grantee to extend the grant contract shall be submitted at least 45 days prior to the grant contract expiration date and shall include:

- (1) justification for the extension request;
- (2) summary of the current project status; and
- (3) anticipated project schedule moving forward.

(b) The grantee shall use the funds for only those purposes set forth in G.S. 143-215.73M and shall return unspent grant funds.

History Note: Authority G.S. 143-215.73M;

*Temporary Adoption Eff. February 8, 2023;
Eff. June 1, 2024.*

SECTION .0400 – STATE PARTIPIATION IN WATER RESOURCES PROJECTS

15A NCAC 01T .0401 PREAMBLE

*History Note: Authority G.S. 143-215.70 through 143-215.73; 143-355;
Eff. February 1, 1976;
Amended Eff. April 1, 1983;
Repealed Eff. October 1, 1984;
Transferred from 15A NCAC 02G .0101 Eff. May 1, 2023.*

15A NCAC 01T .0402 PROJECT ELIGIBILITY

The following types of water resource development projects are eligible for state cost-sharing by the Department of Environment, Health, and Natural Resources (department):

- (1) general navigation improvement;
- (2) recreational navigation improvement;
- (3) water management (flood control and drainage);
- (4) stream restoration (clearing and snagging and limited channel excavation);
- (5) beach protection; and
- (6) land acquisition and facility development for water-based recreation sites.

Projects planned and constructed by a federal agency with a local cost-share and projects without federal assistance are both eligible for state financial assistance. Small watershed projects of the U.S. Soil Conservation Service reviewed by the North Carolina Soil and Water Conservation Commission are not eligible for cost-sharing under this Section. Questions about eligibility should be directed to the Division of Water Resources, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, N. C. 27611, (919) 733-4064.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.70 through 143-215.73; 143-355;
Eff. February 1, 1976;
Amended Eff. December 1, 1991; October 1, 1984; December 1, 1983; April 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
Transferred from 15A NCAC 02G .0102 Eff. May 1, 2023.*

15A NCAC 01T .0403 PROJECT COST-SHARING AMOUNTS

The department may provide state funds in amounts not to exceed the percentages stated in G.S. 143-215.71 of either the non-federal costs (in the case of a federal agency project) or the total costs (in the case of a project not receiving federal funds).

In the case of a local government water resources project where the department thinks a preliminary feasibility study or engineering study is necessary to more accurately determine project costs and/or benefits and/or scale of development, the department may provide up to 50 percent state funding of such studies. The sponsoring local government would provide the remainder of the funds necessary.

In the case where projects provide broad regional benefits, or where assignment of non-federal responsibilities to local government is not appropriate in the opinion of the department, the department may assume sponsorship on behalf of the state and may pay up to 100 percent of the total (or the non-federal share of the cost) of planning, construction, or operation of said water resources project.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.41; 143-215.71; 143-355;
Eff. February 1, 1976;
Amended Eff. October 1, 1984; December 1, 1983; April 1, 1983; November 1, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
Transferred from 15A NCAC 02G .0103 Eff. May 1, 2023.*

15A NCAC 01T .0404 GRANT APPLICATIONS BY LOCAL GOVERNMENT

To request state cost-sharing for an eligible water resources development project, a local political subdivision or unit of government shall send to the Division of Water Resources an official resolution describing the nature of the proposed project and the benefits to be received from it and requesting a specific cost-sharing amount (based on the percentages given in G.S. 143-215.71).

In addition, the resolution must state that the local unit of government will perform the following where appropriate to the nature of the project:

- (1) Assume full obligation for payment of the balance of project costs.
- (2) Obtain all necessary state and federal permits.
- (3) Comply with all applicable laws governing the award of contracts and the expenditure of public funds by local governments.
- (4) Supervise construction of the project to assure compliance with permit conditions and to assure safe and proper construction according to approved plans and specifications.
- (5) Obtain suitable spoil disposal areas and all other easements or rights-of-way that may be necessary for the construction and operation of the project without cost or obligation to the state.
- (6) Assure that the project is open for use by the public on an equal basis with no restrictions.
- (7) Hold the state harmless from any damages that may result from the construction, operation and maintenance of the project.
- (8) Accept responsibility for the operation and maintenance of the completed project.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.72; 143-355;
Eff. February 1, 1976;
Amended Eff. December 1, 1991; October 1, 1984; April 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
Transferred from 15A NCAC 02G .0104 Eff. May 1, 2023.

15A NCAC 01T .0405 GRANT APPLICATION REVIEW AND APPROVAL

The secretary of the department shall receive and review grant applications for water resources development projects. If the proposed project described in the application is not subject to environmental review under federal law, the department shall follow environmental review procedures established under the State Environmental Policy Act.

After review of grant applications, the secretary shall forward those approved or approved in part to the Advisory Budget Commission, which shall review the recommendations for the transfer of funds from the department's reserve fund into accounts for specific projects. After review by the Advisory Budget Commission, project funds shall be disbursed and monitored by the Department of Environment, Health, and Natural Resources (as described in Rule .0106 of this Section).

History Note: Authority G.S. 113A-4; 143-215.3(a)(1); 143-215.72; 143-215.73; 143-355;
Eff. February 1, 1976;
Amended Eff. December 1, 1991; July 1, 1988; October 1, 1984; April 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
Transferred from 15A NCAC 02G .0105 Eff. May 1, 2023.

15A NCAC 01T .0406 GRANT PAYMENTS

When state cost-sharing for the water resource development project has been approved by the department and reviewed by the Advisory Budget Commission, the department shall pay its portion of the non-federal costs of a federal project when requested by the sponsoring federal agency and shall pay its portion of the costs of a non-federal project when the project has been completed, unless the local political subdivision or unit of government requests a partial payment in writing. A portion of the funds, normally 10 percent, will not be paid until the project has been inspected and is complete.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.73; 143-355;
Eff. February 1, 1976;
Amended Eff. July 1, 1988; October 1, 1984; April 1, 1983;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
Transferred from 15A NCAC 02G .0106 Eff. May 1, 2023.*

15A NCAC 01T .0407 SPECIAL BEACH EROSION CONTROL REQUIREMENTS

The following requirements are applicable to any beach erosion control or hurricane protection project in which the state participates by action of the department:

- (1) Before the start of project construction, the sponsoring local government(s) will establish land-use controls to conserve protective dunes and to insure that the damage potential is not significantly increased by further development. Such land use controls must meet or exceed all requirements of the state guidelines for Areas of Environmental Concern (15A NCAC 7H) and be consistent with the approved local land use plan prepared under the provisions of the state guidelines for Land Use Planning (15A NCAC 7B).
- (2) The sponsoring local government must provide adequate public access to the project area. All such accessways must be designed to adequately protect the beach and dune system.
- (3) No beach erosion control project shall significantly interfere with or create a hazard to public enjoyment of the beach.
- (4) Any building line established as a part of a beach erosion control project shall not be seaward of the oceanfront setback line as established in 15A NCAC 7H .0306(a) GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.71; 143-355;
Eff. February 1, 1976;
Amended Eff. April 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019;
Transferred from 15A NCAC 02G .0107 Eff. May 1, 2023.*

15A NCAC 01T .0408	APPLICATION FOR STATE FUNDING
15A NCAC 01T .0409	PAYMENT OF LOCAL SHARE
15A NCAC 01T .0410	STATE PARTICIPATION IN BEACH EROSION CONTROL PROJECTS
15A NCAC 01T .0411	NON-QUALIFIED PROJECTS
15A NCAC 01T .0412	SPECIAL PROJECT REQUIREMENTS

*History Note: Authority G.S. 143-354; 143-355;
Eff. February 1, 1976;
Amended Eff. November 1, 1978;
Repealed Eff. April 1, 1983;
Transferred from 15A NCAC 02G .0108-.0112 Eff. May 1, 2023.*

SUBCHAPTER 01U – STATE ENERGY OFFICE

SECTION .0100 - ORGANIZATION

15A NCAC 01U .0101	PURPOSE
15A NCAC 01U .0102	DEFINITIONS
15A NCAC 01U .0103	SCOPE AND PURPOSE OF STATE SET-ASIDE

*History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Made Permanent Eff. July 3, 1978;
Amended Eff. April 1, 1991; May 15, 1979;
Transferred from 04 NCAC 12C .0102, .0104, .0106 Eff. May 15, 2007;*

*Expired Eff. March 1, 2019 pursuant to G.S. 150B-21.3A;
Transferred from 01 NCAC 41A .0101-.0103 Eff. September 1, 2024.*

SECTION .0200 - GENERAL PROVISIONS

15A NCAC 01U .0201 DEFINITIONS

For the purposes of this Subchapter, the following definitions apply:

- (1) "Allowable Costs" means origination cost, letter of credit fee (first year), engineering design fee, and implementation of an eligible energy conservation measure. All allowable costs to be included in the loan shall be incurred after the execution date of the Letter of Intent.
- (2) "Applicant" means any commercial or industrial business, nonprofit organization local government entity, or resident applying for a loan under the Program.
- (3) "Combustion efficiency test" means a test performed as part of a heating system maintenance to measure how well the furnace or boiler is performing.
- (4) "Commercial or industrial business" means a commercial or industrial concern that provides goods or services for profit from a location in North Carolina.
- (5) "Commercially available" means available to the general public and does not include experimental or research-related technologies.
- (6) "Credit worthiness" means the ability of the applicant to meet the lending institution's standard lending criteria.
- (7) "Energy conservation measure" means a commercially available energy efficient device, technique, or technology, designed to reduce energy consumption, peak demand, or utility costs at an existing or proposed commercial or industrial business, nonprofit organization, local government entity, or residence.
- (8) "Financial Services Division" means the Fiscal Management Division within the N.C. Department of Environmental Quality.
- (9) "Letter of Intent" means written notification of the Department of Environmental Quality's intent to originate the loan, subject to the conditions and limitations of the Energy Improvement Loan Program.
- (10) "Payback" means the total energy conservation measure costs (including installation, equipment, and engineering design) divided by the total annual estimated utility cost savings for a period of years.
- (11) "Program" means the Energy Improvement Loan Program.
- (12) "Recycling Projects" means projects that extract and reprocess energy, water, and materials for reuse in buildings, transportation systems, environmental management, consumer products, or outreach.
- (13) "Renewable" means solar, wind, biomass, or hydropower resources.
- (14) "Repayment Schedule" means a schedule of periodic payments based upon payback as projected in the Technical Analysis rounded to the next quarter. Prepayments shall reduce the term of the loan with periodic payments remaining unchanged.
- (15) "State Energy Office" means the State Energy Office, Division of Energy, within the N. C. Department of Environmental Quality.
- (16) "Technical Analysis " means a report identifying and analyzing the cost-effective capital energy conservation improvements that the applicant wishes to implement.
- (17) "Technical Analyst" means a licensed engineer, architect, or certified Home Energy Rating System, "HERS" ®, rater that conducts the technical analysis for the purposes of this Subchapter.
- (18) "Third-Party Technical Analyst" means a Technical Analyst who performs the Technical Analysis and does not have a financial interest in the commercial or industrial business, nonprofit organization, residence or local government entity, or in the sale and installation of any proposed energy conservation measure.
- (19) "Useful life" means the period during which an asset or property is expected by the manufacturer to continue by the manufacturer to function for the purpose for which the asset or property was acquired.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0101 Eff. September 1, 2024.*

15A NCAC 01U .0202 ELIGIBILITY

The following are eligible to apply for loans:

- (1) A commercial or industrial business, nonprofit organization, local government entity, or resident located in North Carolina that owns the existing building or site of planned construction where the energy conservation measures will be made, or that has a lease or management agreement for the proposed building site or building extending beyond the term of the loan. However, when the owner of the building or building site authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.
- (2) A commercial or industrial business, nonprofit organization, local government entity, or resident relocating to North Carolina that owns the site of planned construction where the energy conservation measures will be made, or that has a lease or management agreement for such proposed building or building site extending beyond the term of the loan. However, when the owner of the building or building site authorizes the approved energy conservation measures, the lease or management agreement need not extend beyond the term of the loan.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0201 Eff. September 1, 2024.*

15A NCAC 01U .0203 CRITERIA FOR ENERGY CONSERVATION LOANS

Energy conservation projects for which the loans are desired shall meet the following criteria:

- (1) The building site where the measures are to be installed shall be in North Carolina.
- (2) The project shall demonstrate in the Technical Analysis the ability to conserve energy through efficient energy use or the utilization of renewable energy resources that results in energy savings based upon a net reduction in the use of nonrenewable resources. The energy conservation measure shall be based on a Technical Analysis report as defined in Rule .0201 of this Section, conducted within the previous year.
- (3) A maximum total loan indebtedness in accordance with G.S. 143B-344.44(b)(2).
- (4) The project shall utilize commercially available energy conservation measures.
- (5) The installation of the energy conservation measure may, at the discretion of the applicant, commence after the Financial Services Division issues the Letter of Intent; however, the origination of the loan shall still be subject to the conditions and limitations of the Program, pursuant to Rule .0203 of this Section.
- (6) The energy conservation measure shall be demonstrated, within the Technical Analysis, to have a payback of less than one over a period of 20 years or less.
- (7) Each energy conservation measure shall be demonstrated to have a payback of less than one over the useful life of the energy conservation measure.
- (8) Eligible energy conservation measures shall fall under one of the following categories:
 - (a) lighting systems;
 - (b) heating, ventilation, and air conditioning systems;
 - (c) electrical distribution systems (motors, variable speed drives, fans, etc.);
 - (d) energy management systems;
 - (e) boiler efficiency systems;
 - (f) energy recovery systems, including on-site generation of electricity;
 - (g) alternate/renewable energy systems;
 - (h) building envelope (doors, windows, roofs, etc.);
 - (i) industrial process or fabrication systems;
 - (j) load management systems;
 - (k) fuel conversion projects;
 - (l) other demand-related improvements; and
 - (m) recycling projects.
- (9) The energy conservation measure shall meet applicable State air and water quality standards, in accordance with 15A NCAC 02B, 02D, and 02L, which are incorporated by reference, including all subsequent amendments.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0202 Eff. September 1, 2024.*

15A NCAC 01U .0204 LOAN PERCENTAGE AND CONDITIONS AND LIMITATIONS

(a) The interest rate on the loan shall be set pursuant to G.S. 143B-344.44(c) by the State Energy Office based on the following:

- (1) previous State Energy Office loan recipients get one percent deduction with closed loans and no defaults to zero percent;
- (2) loans made to residents and small businesses shall receive a one percent interest rate;
- (3) loans made to nonprofit organizations and local governments projects shall receive a two percent interest rate; and
- (4) loans made to commercial and industrial entities shall receive a three percent interest rate.

(b) Loans shall be made subject to the following conditions:

- (1) the repayment schedule shall be based on the estimated payback as shown in the Technical Analysis Report, pursuant to Rule .0303 of this Subchapter;
- (2) the commercial or industrial business, nonprofit organization, local government entity, or resident shall make payments at least once a month;
- (3) the total amount of the loan, or any portion thereof, may be repaid at any time before the total amount is due, without penalty;
- (4) rebates received through other program offerings of the State Energy Office for projects undertaken from loan proceeds shall be used to reduce the amount of principal;
- (5) the borrower shall warrant that all work or construction done with the proceeds of a loan under this program shall comply with all building codes;
- (6) project implementation shall begin within 90 days after approval of the application. If delays are encountered following loan closing, any arbitrage profits will be repaid to the Energy Loan Fund;
- (7) loan payments or drafts shall be sent or delivered to the Financial Service Division, in accordance with Rule .0601 of this Subchapter; and
- (8) a letter of credit from a bank approved to do business in North Carolina shall secure the loan against non-payment and also serve as a quarterly drafting mechanism for loan repayment from the bank.

(c) Loans shall be made subject to the following limitations:

- (1) the amount of the loan shall not exceed allowable costs;
- (2) loans shall not be used to replace an existing loan; and
- (3) no loans shall be forgiven.

*History Note: Authority G.S. 143B-344.44;
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0203 Eff. September 1, 2024.*

15A NCAC 01U .0205 PRE-APPLICATION CONFERENCE

(a) The potential applicant shall schedule a pre-application conference with the State Energy Office by email, telephone, or office visit at least one week prior to submission of a project application. During the pre-application conference, the parties shall:

- (1) ensure the application procedures are understood; and
- (2) reach an understanding among all parties that the project is eligible for approval in accordance with Rule .0203 of this Section.

(b) Parties present at the pre-application conference shall include representatives from the Financial Services Division, the State Energy Office, and the applicant or the applicant's engineer.

(c) The applicant shall offer verbal, and if available, written project descriptions.

(d) The applicant shall provide water and air quality permits required for the project.

(e) The applicant shall provide the final Technical Analysis.

History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0204 Eff. September 1, 2024.

15A NCAC 01U .0206 APPLICATION PROCEDURES

The applicant shall complete an application on a form provided by the Financial Service Division, which can be found at <http://portal.ncdenr.org/web/lr/state-energy-office>. The application shall contain the following information:

- (1) the name and mailing address, including the county, of the applicant;
- (2) the address, building name (where applicable) or site description, including photographs, to locate where the energy conservation measure(s) will be installed;
- (3) the name of a contact person, including title and telephone number;
- (4) the loan amount requested;
- (5) the estimated dates of implementation and completion of the project;
- (6) a copy of the Technical Analysis approved by the State Energy Office;
- (7) identification of the commercial lending institution that is providing the letter of credit, depository, and repayment services;
- (8) commercial or industrial business, nonprofit organizations, or local government entity applicants shall provide financial data, including financial statements from the last five years and profit and loss statements, on which to base a determination of the applicant's creditworthiness. Residential applicants shall provide a credit report.

History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0205 Eff. September 1, 2024.

15A NCAC 01U .0207 APPLICATION REVIEW

(a) The Department shall conduct concurrent administrative and Technical Analysis reviews as follows:

- (1) the administrative review shall be conducted by the Financial Services Division and may include any financial data or information needed to complete the review. Additional data may be requested if the initial data is incomplete.
- (2) the Technical Analysis review shall be conducted by the State Energy Office and shall consider each energy conservation measure for which funding is requested, including the accuracy of energy calculations, engineering principles considered, and labor and material costs relative to the current local market.

(b) Following the reviews in Paragraph (a) of this Rule, the State Energy Office shall approve those energy conservation measures that were determined to meet the requirements of this Subchapter.

History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0206 Eff. September 1, 2024.

15A NCAC 01U .0208 LOAN APPROVAL

Following the review set forth in Rule .0207 of this Section, the State Energy Office shall approve the application provided:

- (1) the administrative and Technical Analysis reviews satisfy the requirements of this Subchapter;
- (2) the credit worthiness of the applicant is established; and
- (3) funds are available.

History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0207 Eff. September 1, 2024.

15A NCAC 01U .0209 LOAN AGREEMENT AND PROMISSORY NOTE

After an application for a loan is approved, a loan agreement shall be executed between the Financial Services Division and the borrower. The loan agreement shall include a promissory note and other documents including security agreements, mortgages, and recordings. It shall also contain the covenants and representations as to the borrower's qualification to borrow for the loan, intended use of the loan proceeds, conditions under which the loan will be repaid, as well as events requiring the acceleration, the rights and responsibilities of the parties, and the terms and conditions of the loan. The requirements to secure the loan shall be included in the loan agreement. Loans shall be secured through bank letter of credit.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0208 Eff. September 1, 2024.*

15A NCAC 01U .0210 REPORTS

Reports shall be submitted by the borrower as follows:

- (1) progress reports shall be submitted quarterly to the State Energy Office during the period of implementation or while installation is in progress and shall include a description of:
 - (a) the current status;
 - (b) any problems; and
 - (c) a forecast of expectations or deviations from the Technical Analysis, prepared in accordance with Rule .0303 of this Subchapter.
- (2) a final report certified by the Technical Analyst shall be submitted to the State Energy Office upon completion of the project. The report shall include a description of:
 - (a) the measures implemented;
 - (b) the actual cost of each measure; and
 - (c) the adjusted estimated payback, based on the actual cost.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0209 Eff. September 1, 2024.*

15A NCAC 01U .0211 MONITORING

The Financial Service Division shall monitor the use of the funds under this program through review of reports. The State Energy Office shall monitor those buildings or projects where the energy conservation projects are in progress to verify the installation of the energy conservation measures conforms to the approved Technical Analysis. At least one visit shall be made to the site of each energy conservation project during the life of the loan.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0210 Eff. September 1, 2024.*

15A NCAC 01U .0212 DEFAULT

If the borrower violates any of the terms of the loan agreement, the Financial Services Division shall place the borrower in default. Borrowers determined to be in default shall be notified by certified mail and the terms of the loan agreement and letter of credit shall be executed.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. August 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0211 Eff. September 1, 2024.*

SECTION .0300 - TECHNICAL ANALYSIS

15A NCAC 01U .0301 TECHNICAL ANALYSIS REQUIRED

(a) An application for an energy conservation loan shall be accompanied by a Technical Analysis that has been conducted by a third-party Technical Analyst and approved by the State Energy Office as fulfilling the energy aspects of the Program.

(b) The Technical Analysis shall address only the specific energy conservation measures for which the loan is being requested. Each energy conservation measure analyzed shall be an individual recommendation incorporating technical and economic analyses of the measure, considering building, process, and equipment characteristics, and energy use patterns pertinent to the improvement. The Technical Analysis shall include the estimated cost of the implementation, a construction schedule, and expected energy savings.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0301 Eff. September 1, 2024.*

15A NCAC 01U .0302 TECHNICAL ANALYST DISQUALIFICATIONS

(a) A third-party Technical Analyst shall not have a financial interest in the commercial or industrial business, nonprofit organization, local government entity, or residence or in the sale and installation of any proposed energy conservation measure. However, the third-party Technical Analyst is permitted to provide construction management services to an approved applicant.

(b) An outline of qualifications of the Technical Analyst, documenting previous experience in energy conservation in building construction, mechanical systems, or manufacturing processes shall be submitted in writing to the State Energy Office.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0302 Eff. September 1, 2024.*

15A NCAC 01U .0303 REPORT REQUIRED

A third-party Technical Analyst shall submit three copies of the results of a Technical Analysis in writing on a form provided by the State Energy Office, which can be found at <http://portal.ncdenr.org/web/lr/state-energy-office>. The report shall include the following:

- (1) a description of the facility characteristics and energy data, including the operational characteristics of the energy-using systems;
- (2) a description and engineering analysis of each energy conservation measure, including the following:
 - (a) an estimate of the cost of design, acquisition, and installation, including monitoring equipment to assess the performance of the measure, discussing assumptions as the Technical Analyst deems necessary;
 - (b) an estimate of the annual energy saved and energy cost savings by fuel type, using engineering standards and practices that are recognized by the North Carolina State Board of Examiners for Engineers and Surveyors, including all formulae, data, and assumptions presented in arriving at the estimate;
 - (c) the results of a combustion efficiency test, if furnace or boiler modifications or replacements are being implemented;
 - (d) the payback period of each energy conservation measure; and
 - (e) a proposed construction schedule for each energy conservation measure; and
- (3) the energy use and cost data for each fuel type used for the prior billing period.

*History Note: Authority G.S. 143B-344.44(b)(3); 143B-344.44(b)(4);
Eff. September 1, 2004;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41C .0303 Eff. September 1, 2024.*

SECTION .0400 – GENERAL PROVISIONS

15A NCAC 01U .0401 PURPOSE AND ORGANIZATION

History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Repealed Eff. July 1, 2021;
Transferred from 01 NCAC 41D .0101 Eff. September 1, 2024.

15A NCAC 01U .0402 DEFINITIONS

For the purposes of this Chapter, the following definitions apply:

- (1) "AFV" means the same as defined in G.S.143-58.4.
- (2) "Alternative fuel" means the same as defined in G.S. 143-58.4.
- (3) "B20" means the same as defined in G.S. 143-58.4.
- (4) "Biodiesel Fuel Use Credit" means an EPA credit given by the U.S. Department of Energy (DOE) for each 450 gallons of pure biodiesel purchased for use in blends of 20% or higher. No credit shall be granted for the petroleum portion of biodiesel fuel blends, pursuant to 10 CFR 490.703.
- (5) "Department" means the same as defined in G.S. 143-58.4. [
- (6) "E85" means the same as defined in G.S. 143-58.4.
- (7) "Energy Policy Act" means the same as defined in G.S. 143-58.4.
- (8) "EPA credit" means the same as defined in G.S. 143-58.4.
- (9) "FFV" means a flexible fuel vehicle that is capable of operating on both E85 and gasoline.
- (10) "LDV" means a light duty vehicle that has less than an 8,500 lb gross vehicle weight rating (GVWR).
- (11) "NC Alternative Fuel Consortium" means a voluntary group of State agencies, institutions, and interested entities that meet quarterly and is hosted by the State Energy Office to coordinate alternative fuel and petroleum displacement activities in North Carolina.
- (12) "OEM" means original equipment manufacturer.
- (13) "SEO" means the State Energy Office.
- (14) "U.S. DOE" means the United States Department of Energy.
- (15) "U.S. EPA" means the United States Environmental Protection Agency.

History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41D .0102 Eff. September 1, 2024.

15A NCAC 01U .0403 BANKING

(a) EPA credits shall be accrued and banked according to the following:

- (1) The U.S. DOE Alternative Fuel Transportation Program 10 CFR Part 490, which is incorporated by reference including subsequent amendments and editions and can be found at no charge at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>, requires that 75% of LDVs acquired by state fleets shall be FFVs, compressed natural gas vehicles, propane vehicles, or electric vehicles;
- (2) One credit shall be earned for each OEM or EPA certified retrofit FFV, compressed natural gas vehicle, propane vehicle, or electric vehicle purchased;
- (3) Credits that exceed the annual minimum State AFV acquisition requirements shall be banked through the U.S. Department of Energy's Alternative Fuel Transportation Program to meet future year requirements or traded;
- (4) State fleet cars can earn Biodiesel Fuel Use Credits to meet 50% of their annual AFV acquisition requirements by purchasing and using biodiesel; and
- (5) Biodiesel Fuel Use Credits cannot be traded or banked.

(b) Credits shall be determined by State agencies in cooperation with the State Energy Office in the following manner:

- (1) Each year by December 1st, every State department, institution, and agency subject to EPA requirements shall provide the State Energy Office with the types of vehicles purchased, the vehicle

identification numbers, and the dates of purchase to determine the number of EAct credits generated by the State; and

- (2) The SEO shall submit an annual EAct credit report to the U.S. DOE by December 31st.
- (c) The following provisions shall be used in determining credits:
 - (1) EAct credits eligible for sale include FFVs if the FFVs are operating on E85;
 - (2) EAct credits generated through the use of B20 are not eligible for sale or transfer; however, they shall be used by the State to meet 50% of Energy Policy Act requirements; and
 - (3) State agencies and institutions that purchase FFVs shall record the use of E85 for the FFVs.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41D .0201 Eff. September 1, 2024.*

15A NCAC 01U .0404 SELLING

- (a) The State Energy Office shall form a Credit Selling Work Group to determine the number of excess credits to be sold as follows:
 - (1) The Credit Selling Work Group shall consist of:
 - (A) the Department of Administration Motor Fleet Management designee;
 - (B) the Department of Transportation Equipment Unit designee;
 - (C) the State Energy Office designee; and
 - (D) the Designees of other State agencies and institutions that generate EAct credits; and
 - (2) The Credit Selling Work Group shall determine the asking price for credits.
- (b) The State Office shall obtain approval from the Energy Policy Council prior to selling EAct credits, pursuant to G.S. 113B-6(3).
- (c) The State Office shall sell EAct credits in accordance with the provisions of the Energy Policy Act.

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41D .0202 Eff. September 1, 2024.*

15A NCAC 01U .0405 PROCEEDS AND DISTRIBUTION

- (a) Funds generated by the sale or transfer of EAct credits by the State Energy Office shall be deposited into the Alternative Fuel Revolving Fund.
- (b) The following shall be undertaken to determine the distribution of proceeds from the Alternative Fuel Revolving Fund:
 - (1) The State Energy Office shall annually inform the NC Alternative Fuel Consortium of the amount of revenue accrued to the Alternative Fuel Revolving Fund and the percentage of these funds that were generated by participating State agencies, institutions, or entities;
 - (2) The State Energy Office shall organize meetings of the NC Alternative Fuel Consortium and the Credit Selling Work Group to discuss and prioritize distribution of funds;
 - (3) An annual plan for the dispersion of Alternative Fuel Revolving Funds shall be prepared by the State Energy Office based on recommendations of the Alternative Fuels Consortium and the Credit Selling Work Group; and
 - (4) The Energy Policy Council shall review and approve the annual plan, pursuant to G.S. 113B-6(3).

*History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41D .0301 Eff. September 1, 2024.*

15A NCAC 01U .0406 FUND DISBURSEMENTS

History Note: Authority G.S. 143-58.4; 143-58.5;

Eff. May 1, 2007;
Repealed Eff. July 1, 2021;
Transferred from 01 NCAC 41D .0302 Eff. September 1, 2024.

15A NCAC 01U .0407 REPORTS

- (a) Progress reports shall be submitted biannually by State departments, agencies, and institutions that receive funds from the Alternative Fuel Revolving Fund.
- (b) The progress report shall include a description of the current project, number of gallons of alternative fuel or vehicles purchased, and forecast of expectation or deviation from the project schedule.

History Note: Authority G.S. 143-58.4; 143-58.5;
Eff. May 1, 2007;
Readopted Eff. June 1, 2021;
Transferred from 01 NCAC 41D .0401 Eff. September 1, 2024.

15A NCAC 01U .0408 FUNCTIONS

History Note: Authority G.S. 113B-2; 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Made Permanent Eff. July 3, 1978;
Transferred from 04 NCAC 12E .0103 Eff. May 15, 2007;
Expired Eff. March 1, 2019 pursuant to G.S. 150B-21.3A;
Transferred from 01 NCAC 41E .0101 Eff. September 1, 2024.

SECTION .0500 - ORGANIZATION

15A NCAC 01U .0501	LOCATIONS AND HOURS OF OPERATION
15A NCAC 01U .0502	PURPOSE
15A NCAC 01U .0503	ORGANIZATION OF THE DIVISION
15A NCAC 01U .0504	DEFINITIONS
15A NCAC 01U .0505	FORMS
15A NCAC 01U .0506	PURPOSE AND SCOPE OF STATE SET-ASIDE
15A NCAC 01U .0507	WHO MAY APPLY FOR STATE SET-ASIDE
15A NCAC 01U .0508	WHAT MUST BE FILED FOR STATE SET-ASIDE
15A NCAC 01U .0509	WHERE TO FILE AN APPLICATION FOR STATE SET-ASIDE
15A NCAC 01U .0510	WHEN TO FILE AN APPLICATION FOR STATE SET-ASIDE
15A NCAC 01U .0511	ASSIGNMENT OR ADJUSTMENT OF BASE PERIOD VOLUME
15A NCAC 01U .0512	BASE PERIOD VOLUME
15A NCAC 01U .0513	TIMELINESS OF STATE ACTION
15A NCAC 01U .0514	PROCEDURE FOR APPEALS

History Note: Filed as an Emergency Repeal Eff. March 6, 1978, for a period of 120 days to be reinstated on July 3, 1978;
Statutory Authority G.S. 113B-1(e); 143B-10; 143B-250; 143B-254;
Eff. February 1, 1976;
Emergency Repeal Made Permanent Eff. July 3, 1978;
Transferred from 04 NCAC 12A .0101-.0114.

15A NCAC 01U .0515	LOCATION
15A NCAC 01U .0516	ORGANIZATION
15A NCAC 01U .0517	FUNCTIONS

History Note: Filed as an Emergency Repeal Eff. March 6, 1978, for a period of 120 days to be reinstated on July 3, 1978;
Statutory Authority G.S. 113B-2; 113B-3; 113B-5;

*Eff. February 1, 1976;
Emergency Repeal Made Permanent Eff. July 3, 1978;
Transferred from 04 NCAC 12B .0101-.0103 Eff. September 1, 2024.*

SECTION .0600 – PETITION FOR RULEMAKING AND DECLATORY RULINGS

15A NCAC 01U .0601 DELEGATION OF AUTHORITY FOR RULEMAKING HEARINGS AND STATE ENERGY OFFICE CONTACT INFORMATION

(a) The Secretary of the Department of Environmental Quality designates the State Energy Director or his or her designee as the hearing officer to conduct rulemaking hearings in matters pertaining to rules and regulations of the State Energy Office.

(b) All notices required by the rules in this Subchapter to be submitted to the State Energy Office or the Financial Services Division shall be made to: The North Carolina State Energy Office, 1613 Mail Service Center, Raleigh, NC 27699-1613. The physical address of the State Energy Office is 217 W. Jones St., Raleigh, NC 27603.

*History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-20;
Emergency Rule Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 3, 2017;
Amended Eff. April 1, 2021;
Transferred from 04 NCAC 12D .0101 Eff. September 1, 2024.*

15A NCAC 01U .0602 SUBMISSION AND CONTENTS OF PETITION FOR RULEMAKING

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the State Energy Office, within the Department of Environmental Quality shall petition the State Energy Director by submitting the information required in Paragraph (b) of this Rule. The petitioner shall send the petition in accordance with Rule .0101 of this Section.

(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 the adoption of a proposed rule(s), amendment or repeal of existing rule(s);
- (3) a statement of the effect on existing rules or orders;
- (4) any documents and data supporting the proposed rule(s);
- (5) the name(s) and addresses(es) of petitioner(s); and
- (6) a request to present the petition to the hearing officers in accordance with Rule .0101 of this Section, if desired.

(c) The petitioner may include the following information within the request:

- (1) the statutory authority for the agency to promulgate the rule(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 costs factors; and
- (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s).

(d) The State Energy Director shall return petitions that do not contain the information required by Paragraph (b) of this Rule to the petitioner.

*History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-20;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Readopted Eff. April 1, 2021;
Transferred from 04 NCAC 12D .0102 Eff. September 1, 2024.*

15A NCAC 01U .0603 CONTENTS OF PETITION

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Repealed Eff. April 1, 2021;
Transferred from 04 NCAC 12D .0103 Eff. September 1, 2024.

15A NCAC 01U .0604	DISPOSITION OF PETITIONS
15A NCAC 01U .0605	TIMING OF NOTICE
15A NCAC 01U .0606	NOTICE MAILING LIST
15A NCAC 01U .0607	ADDITIONAL INFORMATION
15A NCAC 01U .0608	REQUEST TO PARTICIPATE
15A NCAC 01U .0609	CONTENTS OF REQUEST
15A NCAC 01U .0610	RECEIPT OF REQUEST: SPECIFIC TIME LIMITS
15A NCAC 01U .0611	WRITTEN SUBMISSIONS
15A NCAC 01U .0612	PRESIDING OFFICER; POWERS AND DUTIES
15A NCAC 01U .0613	STATEMENT OF REASONS FOR DECISION
15A NCAC 01U .0614	RECORD OF PROCEEDINGS
15A NCAC 01U .0615	SUBJECTS OF DECLARATORY RULINGS

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A;
Transferred from 04 NCAC 12D .0104-.0115 Eff. September 1, 2024.

15A NCAC 01U .0616 ISSUANCE OF DECLARATORY RULINGS

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

History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3);
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Readopted Eff. April 1, 2021;
Transferred from 04 NCAC 12D .0116 Eff. September 1, 2024.

15A NCAC 01U .0617 DISPOSITION OF REQUEST FOR DECLARATORY RULING

(a) The State Energy Director shall make a determination on the completeness of the request for a declaratory ruling based on Rule .0133 of this Section.

(b) Before deciding the merits of the request, and upon consideration of the complete request for a declaratory ruling, the Director shall determine if additional information or presentation(s) are needed and if so:

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

(c) The Director shall decline to issue a declaratory ruling if any of the following are found:

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

(d) The Department shall keep a record of each request for declaratory ruling, which shall include the following items;

- (1) the request for a ruling;
- (2) any written submission by a party;

- (3) the facts on which the ruling was based;
 - (4) any transcripts of oral proceedings, if available, and recordings of oral arguments;
 - (5) any other information such as documents, photographs, recordings, maps, plats, articles, and studies considered by the Director in the making of the decision; and
 - (6) the declaratory ruling, or the decision to decline to issue a declaratory ruling, together with the reasons therefore.
- (e) The Department shall notify the petitioner in writing of the Director's decision on the request for declaratory ruling, including the basis for the decision.
- (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 Courts of Justice construes the statute or rule that is the subject of a declaratory ruling to be irreconcilable with the declaratory ruling; or
 - (3) any court sets aside the declaratory ruling in litigation between the Department and the party requesting the ruling.
- (g) Any Division of the Department may be a party to any request for declaratory ruling upon written request. The request shall be made to the Director within five days of receipt of notice of the request for a declaratory ruling.
- (h) Upon written request, the petitioner(s), intervener(s), and the Division each shall be allowed to present oral arguments to the Director. No party shall offer testimony or conduct cross-examination before the Director.
- (i) The Director shall issue a decision on whether to grant or deny the request for declaratory ruling within 30 days of the receipt of the petition. If granted, the Director shall have 45 days from the date of granting the request to issue a ruling on the merits of the request.
- (k) A declaratory ruling, or failure to issue a declaratory ruling, is subject to judicial review as provided in G.S. 150B-4(a)(1).

History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-4;
 Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
 Eff. July 3, 1978;
 Readopted Eff. April 1, 2021;
 Transferred from 04 NCAC 12D .0117.

15A NCAC 01U .0618 RECORD OF DECISION
15A NCAC 01U .0619 DEFINITION

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
 Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
 Eff. July 3, 1978;
 Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A;
 Transferred from 04 NCAC 12D .0118-.0119 Eff. September 1, 2024.

15A NCAC 01U .0620 RIGHT TO ADMINISTRATIVE HEARING IN A CONTESTED CASE

History Note: Authority G.S. 150B-23; 143B-429; 143B-430; 143B-431; 143B-449;
 Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
 Made Permanent Eff. July 3, 1978;
 Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
 Transferred from 04 NCAC 12D .0120 Eff. September 1, 2024.

15A NCAC 01U .0621 REQUEST FOR ADMINISTRATIVE HEARING IN A CONTESTED CASE

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
 Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
 Made Permanent Eff. July 3, 1978;
 Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);

Transferred from 04 NCAC 12D .0121 Eff. September 1, 2024.

15A NCAC 01U .0622 GRANTING OR DENYING HEARING REQUESTS

*History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0122 Eff. September 1, 2024.*

15A NCAC 01U .0623 NOTICE OF HEARING

*History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on
July 3, 1978;
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0123 Eff. September 1, 2024.*

15A NCAC 01U .0624 WHO SHALL HEAR CONTESTED CASES

*History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on
July 3, 1978;
Statutory Authority G.S. 143B-429; 143B-30; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0124 Eff. September 1, 2024.*

15A NCAC 01U .0625 PETITION FOR INTERVENTION

*History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on
July 3, 1978;
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred to 04 NCAC 12D .0125 Eff. September 1, 2024.*

15A NCAC 01U .0626 TYPES OF INTERVENTION

*History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on
July 3, 1978;
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0126 Eff. September 1, 2024.*

15A NCAC 01U .0627 DISQUALIFICATION OF HEARING OFFICERS

*History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on
July 3, 1978;
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0127 Eff. September 1, 2024.*

15A NCAC 01U .0628 FAILURE TO APPEAR

History Note: *Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;*
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0128 Eff. September 1, 2024.

15A NCAC 01U .0629 SIMPLIFICATION OF ISSUES

History Note: *Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;*
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0129 Eff. September 1, 2024.

15A NCAC 01U .0630 SUBPOENAS

History Note: *Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;*
Statutory Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c);
Transferred from 04 NCAC 12D .0130 Eff. September 1, 2024.

15A NCAC 01U .0631 FINAL DECISIONS IN ADMINISTRATIVE HEARINGS

History Note: *Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449;*
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A;
Transferred from 04 NCAC 12D .0131 Eff. September 1, 2024.

15A NCAC 01U .0632 DISPOSITION OF PETITIONS FOR RULEMAKING

- (a) If the State Energy Director determines the petition to be complete in accordance with Rule .0102 of this Section, the Director shall notice a hearing at least 15 days before the hearing's scheduled date.
- (b) The petitioner shall be afforded the opportunity to present the petition to the Director if so requested in accordance with Rule .0102(b)(6) of this Section. The State Energy Office may also make a presentation to the Director.
- (c) The Director shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Director shall determine whether additional interested persons are permitted to make oral presentations during the hearing. Interested persons shall request the opportunity to make a presentation to the Director through the State Energy Office, in accordance with Rule .0101 of this Section, at least five days prior to the scheduled hearing. The request shall:
- (1) state the interest of the person in the petition for rulemaking;
 - (2) state the person's position on the petition; and
 - (3) be accompanied by any supporting materials.

History Note: *Authority G.S. 143-58.4(c); 143B-344.44(b)(3); 150B-20;*
Eff. April 1, 2021;
Transferred from 04 NCAC 12D .0132 Eff. September 1, 2024.

15A NCAC 01U .0633 SUBMISSION OF REQUEST FOR DECLARATORY RULING

- (a) All requests for a declaratory ruling shall be filed in accordance with Rule .0101 of this Section.
- (b) All requests for declaratory rulings shall include the following:

- (1) the name and address of petitioner(s);
- (2) the statute, rule, 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 statute, rule, or order to a given factual situation;
- (4) arguments or data demonstrating that the petitioner is aggrieved by the statute, rule, or order, or by its potential application to the petitioner;
- (5) a statement of the consequences of failure to issue a declaratory ruling in favor of the petitioner;
- (6) a statement of the desired outcome; and
- (7) a statement of whether an oral argument is desired, and if so, the reason(s) for requesting such an oral argument.

(c) A petitioner may request a declaratory ruling on the applicability of a statute, rule, or order to the petitioner, or on the validity of a Department rule. The petitioner may request both types of declaratory ruling in a single request. A request on the applicability of a statute, rule, or order shall include a statement of the facts and documentation supporting such facts, in addition to the requirements of Paragraph (b) of this Rule. A request to determine the validity of a Department rule shall state the petitioner's reason(s) for the request and a written argument, in addition to the requirements of Paragraph (b) of this Rule.

(d) Any other person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. The State Energy Director shall determine whether to grant the motion to intervene in accordance with Rule 24 of the North Carolina Rules of Civil Procedure.

History Note: Authority G.S. 143-58.4(c); 143B-344.44(b)(3);
Eff. April 1, 2021;
Transferred from 04 NCAC 12D . 0133 Eff. September 1, 2024.

SECTION .0700 - ENERGY POLICY COUNCIL

15A NCAC 01U .0701 LOCATION **15A NCAC 01U .0702 ORGANIZATION**

History Note: Authority G.S. 113B-2; 143B-429; 143B-430; 143B-431; 143B-449;
Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Eff. July 3, 1978;
Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A;
Transferred from 04 NCAC 12E .0101-.0102 Eff. September 1, 2024.

15A NCAC 01U .0703 FUNCTIONS

History Note: Filed as an Emergency Regulation Eff. March 6, 1978, for a period of 120 days to expire on July 3, 1978;
Statutory Authority G.S. 113B-2; 143B-429; 143B-430; 143B-431; 143B-449;
Made Permanent Eff. July 3, 1978;
Recodified to 01 NCAC 41E .0101 Eff. May 15, 2007;
Transferred from 04 NCAC 12E .0103 Eff. September 1, 2024.

15A NCAC 01U .0704 PURPOSE **15A NCAC 01U .0705 IDENTIFYING STATE REGIONS** **15A NCAC 01U .0706 LOCAL AND REGIONAL COORDINATORS** **15A NCAC 01U .0707 IDENTIFYING EXISTING OR UNDER CONSTRUCTION HOMES** **15A NCAC 01U .0708 FILLING IN MISSING HOMES** **15A NCAC 01U .0709 TIMETABLE AND TRAINING FOR THE SHOWCASE** **15A NCAC 01U .0710 CARRYING OUT THE PROMOTIONAL CAMPAIGN AND SHOWCASE** **15A NCAC 01U .0711 FOLLOWING UP THE PROJECT**

History Note: Authority G.S. 143B-429; 143B-430; 143B-431; 143B-449; 150B-12;
Eff. December 1, 1981;

*Expired Eff. November 1, 2017 pursuant to G.S. 150B-21.3A;
Transferred from 04 NCAC 12F .0101-.0108 Eff. September 1, 2024.*

**subchapter 01v — DECOMMISSIONING AND FINANCIAL ASSURANCE requirements for UTILITY-
SCALE SOLAR PROJECTs**

**SECTION .0100 — DECOMMISSIONING AND FINANCIAL ASSURANCE REQUIREMENTS FOR
UTILITY-SCALE SOLAR PROJECTS**

15A NCAC 01V .0101 APPLICABILITY AND DEFINITIONS

(a) The project owners of a utility-scale solar project (USSP) shall comply with Part 2J of Article 9 of Chapter 130A of the General Statutes, "Management of Solar Energy Equipment," in accordance with the applicability and effective dates of S.L. 2023-58, s. 2.(e) and s. 4, and the requirements of this Section. Non-compliance shall be addressed through penalties issued in accordance with Part 2 of Article 1 of Chapter 130A of the General Statutes, as provided in G.S. 130A-309.243, including G.S. 130A-22 for the issuance of penalties and G.S. 130A-24 for the appeal of enforcement decisions.

(b) The definitions found in G.S. 130A-290, G.S. 130A-309.240(a), and the following definitions shall apply to the rules of this Section:

- (1) "Corporation," "fiscal year," "parent," and "subsidiary" mean these terms as defined in G.S. 105-130.2.
- (2) "Project Owner" means the legal entity or entities that own the personal property that has been constructed or assembled for a USSP, which may be a different legal entity than the owner of the real property (landowner) on which the USSP has been constructed.
- (3) "Substantial Business Relationship" means the extent of a business relationship necessary under applicable State law to make a guarantee contract issued incident to that relationship valid and enforceable. A "substantial business relationship" shall arise from a pattern of recent or ongoing business transactions, in addition to the guarantee itself, that demonstrates to the Department that a business relationship between the guarantor and the project owner exists.
- (4) "USSP" means utility-scale solar project as defined in G.S. 130A-309.240(a). The Department's determination of whether a USSP meets the threshold in the statute definition of being "capable of generating 2 megawatts AC" shall be consistent with the determination made by the NC Utilities Commission as to whether a generating facility meets the two-megawatt capacity threshold for certification requirements pursuant to G.S. 62-110.1(g).
 - (A) "Existing USSP" means a USSP for which an application for a certificate of public convenience and necessity (CPCN) was submitted to the NC Utilities Commission (NCUC) pursuant to G.S. 62-110.1 before June 26, 2023.
 - (B) "New USSP" means a USSP for which an application for a CPCN was submitted to the NCUC pursuant to G.S. 62-110.1 on or after June 26, 2023, or a USSP that was generating solar energy or was interconnected to a transmission facility on June 26, 2023, but was later rebuilt or expanded after June 26, 2023.

*History Note: Authority G.S. 130A-309.240(j);
Eff. April 1, 2025.*

15A NCAC 01V .0102 REGISTRATION AND FEE REQUIREMENTS FOR NEW AND EXISTING USSPS

(a) The project owner of a USSP shall submit the registration information, periodic updates, and registration fee required by G.S. 130A-309.240(e) and (h) in a registration form prescribed by the Department. The registration form may be accessed from the Department's USSP Management Program website at <https://www.deq.nc.gov/about/divisions/waste-management/utility-scale-solar-management-program>. The initial registration and fee shall be submitted to the Department by the following deadlines:

- (1) by November 1, 2025, or
- (2) at least 90 days prior to the commencement of construction if the project is constructed after November 1, 2025; and

- (3) at least 90 days prior to commencement of rebuild or expansion of a USSP.
- (b) The subsequent registration updates and fees shall be submitted to the Department every five years in accordance with G.S. 130A-309.240(e) and (h). The deadline for submittal of the five-year registration updates and registration fee shall be the last day of the month in which the five-year anniversary of the due date for the initial submittal occurs in accordance with Paragraph (a) of this Rule for each USSP.
- (c) The Department shall not be required to provide notice to the project owner that the initial registration, periodic updates, or registration fee are due. The project owner shall be responsible for submittal of the registration, periodic updates, and fees by the deadlines established in this Rule.
- (d) In accordance with G.S. 130A-309.240(c), the project owner of a new USSP shall submit a decommissioning plan, and subsequent updates to the plan, with the registration required to be submitted by this Rule. The Department shall review the plan and shall inform the project owner in writing of deficiencies in the plan, if any, within 60 days of submittal. The project owner shall correct the deficiencies identified by the Department and submit the corrected decommissioning plan to the Department no more than 30 days after the Department issued the notification of deficiencies. The project owner shall not commence construction, rebuild, or expansion of the project until the Department has received the decommissioning plan that complies with the requirements of G.S. 130A-309.240 and the rules of this Section.
- (e) In accordance with G.S. 130A-309.240(d) the project owner of a new USSP shall submit a draft copy of the financial mechanism, or updates to the mechanism, with the registration required to be submitted by this Rule. The Department shall review the draft mechanism and shall inform the project owner in writing of deficiencies in the draft mechanism, if any, within 60 days of submittal. The project owner shall correct the deficiencies identified by the Department and submit the corrected and executed financial mechanism to the Department no more than 30 days after the Department issued the notification of deficiencies. The project owner shall not commence construction, rebuild, or expansion of the new USSP until the Department has received the executed financial assurance mechanism that complies with the requirements of G.S. 130A-309.240 and the rules of this Section.
- (f) Project owners of existing USSPs shall submit copies of any decommissioning plan executed, and documentation of financial assurance established, in accordance with G.S. 130A-309.240(e)(6), with the registration required to be submitted by this Rule.
- (g) In accordance with G.S. 130A-309.240(g), the project owner shall also upload with the registration a copy of any additional documentation required by the local government to comply with any more stringent local government requirements.
- (h) The project owner of a USSP that is constructed on more than one parcel of land shall include with the registration the following information for each parcel on which the project is or will be constructed:
- (1) landowner name, address, and contact information;
 - (2) parcel identification number; and
 - (3) copies of agreements with the landowner as required by G.S. 130A-309.240(e)(6) for each parcel.

*History Note: Authority G.S. 130A-309.240(j);
Eff. April 1, 2025.*

15A NCAC 01V .0103 REGISTRATION FEE AMOUNT FOR NEW AND EXISTING USSPS

- (a) Existing USSPs. The amount of the registration fee required by G.S. 130A-309.240(h), submitted to the Department in accordance with Rule .0102 of this Section, for each existing USSP shall be as follows, and shall be adjusted in accordance with Paragraph (c) of this Rule:
- (1) The amount of the first registration fee for an existing USSP shall be one hundred and seventy-five dollars (\$175.00) per megawatt alternating current (MW AC) of nameplate capacity.
 - (2) The amount of the second registration fee, and all subsequent registration fees for an existing USSP, shall be twenty-five dollars (\$25.00) per MW AC of nameplate capacity.
- (b) New USSPs. The amount of the registration fees required by G.S. 130A-309.240(h), submitted to the Department in accordance with Rule .0102 of this Section, for each new USSP shall be as follows, and shall be adjusted in accordance with Paragraph (c) of this Rule:
- (1) New USSPs capable of generating 20 MW AC or less:
 - (A) The amount of the first registration fee shall be five hundred dollars (\$500.00) per MW AC of nameplate capacity.
 - (B) The amount of the second registration fee, and all subsequent registration fees, shall be fifty dollars (\$50.00) per MW AC of nameplate capacity.

- (2) New USSPs capable of generating more than 20 MW AC:
 - (A) The amount of the first registration fee shall be the lesser of three hundred dollars (\$300.00) per MW AC of nameplate capacity or fifty thousand dollars (\$50,000).
 - (B) The amount of the second registration fee, and all subsequent registration fees, shall be the lesser of twenty-five dollars (\$25.00) per MW AC of nameplate capacity for the USSP or twenty-five thousand dollars (\$25,000).

(c) Adjustment for Legislatively Mandated Salaries and Benefits. Beginning July 1, 2029, and every five years thereafter, the Department may adjust the fee amounts in Paragraphs (a) and (b) of this Rule in accordance with the Consumer Price Index computed by the Bureau of Labor Statistics during the prior two bienniums. The Department may also increase or decrease the fees or adjust the fee structures in Paragraphs (a) and (b) of this Rule, on the same five-year schedule, to meet the requirements in G.S. 130A-309.240(h) and G.S. 130A-309.242 that the fees be used to fund program administration. No amendment to this Rule shall be necessary for the Department to adjust the fees in accordance with this Paragraph. The adjustment to the fee amounts shall be rounded to the nearest dollar (\$1.00). No less than 180 days prior to a registration fee adjustment, the Department shall publish the adjusted fee amounts on the Department's website at <https://www.deq.nc.gov/about/divisions/waste-management/utility-scale-solar-management-program>.

(d) The Department may charge the project owner a late fee of seventy-five dollars (\$75.00) per month, per USSP, for every month or partial month that payment of the registration fee is delinquent.

*History Note: Authority G.S. 130A-309.240(j);
Eff. April 1, 2025.*

15A NCAC 01V .0104 DECOMMISSIONING COST ESTIMATE REQUIREMENTS FOR NEW AND EXISTING USSPS

(a) The project owner of a new or existing USSP shall submit a cost estimate for decommissioning with the registration required by Rule .0102 of this Section, in accordance with G.S. 130A-309.240(e)(4). The project owner of a new USSP shall also include the cost estimate in the decommissioning plan, in accordance with G.S. 130A-309.240(c)(5).

(b) The calculation of the cost estimate for decommissioning shall meet the following requirements:

- (1) The cost estimate shall be based on costs for decommissioning of the USSP in accordance with G.S. 130A-309.240(b) and the rules of this Section for new and existing USSPs, the decommissioning plan required for a new USSP pursuant to G.S. 130A-309.240(c), and any decommissioning plan submitted with the registration for existing USSPs pursuant to G.S. 130A-309.240(e)(6).
- (2) The cost estimate shall be based on the costs at the time of submittal of the estimate.
- (3) The cost estimate for new USSPs shall be based on costs for a third party to conduct decommissioning, and shall be itemized to show how the total amount was determined, including itemizing costs for:
 - (A) personnel time and expenses;
 - (B) transportation of materials to the receiving facility or location, such as the nearest existing recycling or disposal facility; and
 - (C) the fees charged by the receiving facility or location to accept the materials, such as the nearest existing recycling or disposal facility.
- (4) During decommissioning, every effort shall be made to prevent breakage of photovoltaic modules. Photovoltaic modules shall not be disassembled, deconstructed, or removed from the frame at the USSP location or at a facility or location other than the facility or location that receives the modules for management, such as the recycling or disposal facility. Decommissioning activities and the management of all equipment, materials, and waste from the USSP shall comply with Article 9 of Chapter 130A of the General Statutes, and 15A NCAC 13A and 13B, which are incorporated by reference including subsequent amendments and editions. These rules may be accessed at <http://reports.oah.state.nc.us/ncac.asp> at no charge.
- (5) The cost estimate shall be adjusted in accordance with Paragraphs (d) and (e) of this Rule.

(c) The project owner of a new USSP shall also include with the decommissioning cost estimate, a separate estimate of the salvage value of the project equipment in accordance with G.S. 130A-309.240(c)(3). The salvage value estimate shall meet the following requirements:

- (1) The salvage value estimate shall be based on values for a third party to salvage the equipment. If salvage values were considered in the cost estimate provided by a third party as provided in Subparagraph (b)(1) of this Rule, the salvage value estimate shall refer to the estimate from the third party.

- (2) The salvage value estimate shall be based on the current values at the time of each submittal of the decommissioning cost estimate.
- (3) The salvage value estimate shall clarify which tasks required for decommissioning would be completed by the third-party salvage company, and whether that company would also be providing the transportation costs and paying the fees, if any, for the receiving facility or location in accordance with Paragraph (b) of this Rule.

An estimate of salvage value shall not be required for equipment, or a subset of equipment, if the value is not included in a request to reduce the amount of financial assurance for new USSPs based on salvage value in accordance with Paragraph (g) of this Rule.

(d) The project owner of a new or existing USSP shall update the decommissioning cost estimate every five years to reflect changes in costs over time, even if there are no other changes to the status, size, or operation of the USSP. The adjusted decommissioning cost estimate shall be submitted with the registration submitted in accordance with Rule .0102 of this Section.

(e) If changes to the decommissioning plan or USSP conditions or circumstances increase the decommissioning cost estimate at any time during the active life of the USSP, the project owner of a new USSP shall increase the amount of financial assurance proportionally, and shall submit the adjusted financial mechanism to the Department during their next scheduled registration update in accordance with Rule .0102 of this Section.

(f) The project owner of a new USSP may request to decrease the amount of financial assurance if changes to the decommissioning plan or project conditions over time decrease the decommissioning cost estimate during the active life of the project. The request shall comply with Paragraph (h) of this Rule.

(g) The project owner of a new USSP may request to reduce the amount of financial assurance based on the salvage value of the equipment submitted in accordance with Paragraph (c) of this Rule. The request shall comply with Paragraph (h) of this Rule. Beginning at 20 years after the project begins operation or five years prior to the end of the initial power purchase agreement, whichever is earlier, and through the end-of-life of the project, a reduction based on salvage value shall not cause the amount of financial assurance to be less than the total cost estimate to:

- (1) detach the photovoltaic modules from the base;
- (2) transport the photovoltaic modules and any hazardous waste from the USSP to the receiving facility or location; and
- (3) pay the fees charged by the receiving facility or location to accept the photovoltaic modules and any hazardous waste from the USSP.

(h) If the project owner of a new USSP requests to decrease the amount of financial assurance in accordance with Paragraphs (f) or (g) of this Rule, the request and a written justification shall be submitted with the registration submitted in accordance with Rule .0102 of this Section. The reduction to the financial assurance amount shall not be executed until the Department has issued a written approval that the adjusted cost estimates, financial assurance amount, and financial assurance mechanism comply with G.S. 130A-309.240 and the rules of this Section. No reduction of the amount of financial assurance shall be approved until the project owner of a new USSP has resolved any unresolved violations issued by the Department for non-compliance with Article 9 of Chapter 130A of the General Statutes, 15A NCAC 13B or 13C, or the rules of this Section. If the Department approves the request to reduce the amount of financial assurance, the Department shall provide written notice of the approval to the project owner of a new USSP. Upon receipt of approval, the project owner may adjust the amount of financial assurance and submit the adjusted financial assurance mechanism to the Department.

*History Note: Authority G.S. 130A-309.240(j);
Eff. April 1, 2025.*

15A NCAC 01V .0105 GENERAL REQUIREMENTS FOR FINANCIAL ASSURANCE FOR NEW USSPS

(a) Project owners of a new USSP shall establish, submit, and update an allowable financial mechanism, or a combination of mechanisms, provided in Rule .0106 of this Section, to ensure sufficient funds are available to cover the cost of decommissioning in accordance with G.S. 130A-309.240(d)(1).

(b) The language of the mechanism shall be identical to the instrument templates provided in Rule .0107 of this Section, and shall ensure that the instruments satisfy the following criteria:

- (1) the financial assurance mechanism shall ensure that the amount of funds assured is sufficient to cover the cost of decommissioning at any time;
- (2) the financial assurance mechanism shall ensure that the funds will be available to the Department at the time of decommissioning; and

- (3) the financial assurance mechanism shall be legally valid, binding, and enforceable in accordance with State and federal law.

The project owner of a new USSP may submit a request in writing to the Department to revise the language of the mechanism if it is necessary to accommodate USSP-specific circumstances. The request shall be submitted to the Department in the draft mechanism for approval by the Department prior to submittal of the executed mechanism.

(c) The project owner of a new USSP may use one financial assurance mechanism to ensure sufficient funds are available for decommissioning of more than one new USSP located in North Carolina and owned by the same project owner.

(d) A project owner of a new USSP may demonstrate financial assurance for decommissioning by establishing more than one mechanism per project. The mechanism shall be as specified in Rule .0106 of this Section, except that financial assurance for an amount no less than the current cost estimate for decommissioning may be provided by a combination of mechanisms rather than a single mechanism. When multiple financial assurance mechanisms are established, no more than one allowable mechanism shall be provided by the same financial institution or its corporate entities. The financial test provided by a corporation, and the corporate guarantee provided by a corporate parent, sibling, grandparent, or a substantial business relationship, shall not be combined if the financial statements of the two firms are consolidated.

(e) The amount of the financial mechanism shall be the amount of the cost estimate calculated in accordance with Rule .0104 of this Section.

(f) In accordance with G.S. 130A-309.240(d)(2), the project owner of a new USSP shall not be released from the requirement to provide continuous financial assurance for decommissioning until the Department has provided the project owner of a new USSP with written notification that the decommissioning and restoration requirements for the USSP, set forth in Part 2J of Article 9 of Chapter 130A of the General Statutes, the requirements of this Section, and the requirements of the decommissioning plan for the USSP, have been met.

(g) If the project owner of a new USSP elects to change the type of financial mechanism selected at any time, the project owner shall submit a proposal for the new mechanism and a draft copy of the new financial assurance mechanism to the Department to determine if the mechanism complies with the rules of this Section. The existing executed mechanism for a new USSP shall not be cancelled until after the Department issues written notice to the project owner that the new mechanism complies with the requirements of the rules of this Section and the project owner has executed the new mechanism.

(h) If there is a change in ownership of a new USSP, the new project owner shall establish financial assurance for the new USSP and submit the executed financial assurance mechanism to the Department no more than 30 days after the change in ownership. The prior project owner shall maintain the financial assurance mechanism until the Department releases them from the requirement in writing, and upon confirmation that the financial assurance established by the new project owner meets the requirements of Part 2J of Article 9 of Chapter 130A of the General Statutes and the rules of this Section.

(i) Maintenance of financial assurance in the amounts required by the rules of this Section does not limit the responsibility of project owners for the full cost of decommissioning of the USSP, the expenses of any on-site or off-site environmental restoration necessitated by activities at the USSP, or liability for all damages to third parties or private or public properties caused by the establishment and operation of the USSP.

(j) A corporate seal shall be required to complete the certification of acknowledgement required in the mechanism language in Rule .0107 of this Section for a corporate project owner using a trust fund, surety bond guaranteeing payment, financial test, and corporate guarantee as set forth in Rule .0106 of this Section. When a corporate seal is required to certify a financial assurance mechanism but the corporation does not have a corporate seal, a member of the corporation's senior management or a representative of the board of directors shall submit to the Department a copy of the corporation's bylaws, a corporate ownership organization chart describing the relationship of the project owner to the corporation and its parent companies, contact information for the board of directors or senior management for the corporation, and a statement on corporate letterhead stating the signee has the authority to execute correspondence and financial assurance mechanisms on behalf of the corporation, pursuant to G.S. 130A-309.240. The documentation shall be submitted to the Department of Environmental Quality, care of the Division of Waste Management at 1646 Mail Service Center, Raleigh, NC 27699. Senior management for the corporation shall be one of the following positions: the Chief Executive Officer or President, the Chief Operating Officer or Vice President, or the Chief Financial Officer or Treasurer.

(k) The executed mechanism shall be submitted to the Department as original signed hard copies.

(l) Financial assurance established for a USSP shall be an environmental liability for accounting purposes.

(m) If a local government requires financial assurance, the project owner of a new USSP may request that the Department accept evidence of executed financial assurance provided to and approved by the local government, in lieu of

making the financial assurance accessible directly to the Department, to satisfy the explanation as to how the funds will be available to the Department in accordance with G.S. 130A-309.240(c)(6). In making such a request, the project owner of a new USSP shall demonstrate that the local government financial assurance mechanism otherwise meets the requirements of G.S. 130A-309.240 and Rules .0101 through .0105 of this Section. The project owner of a new USSP shall submit the request and demonstration with the registration required by Rule .0102 of this Section, and the request shall include a copy of the local government financial assurance mechanism and a written justification for Department approval that the local government financial assurance mechanism meets the requirements of G.S. 130A-309.240 and Rules .0101 through .0105 of this Section.

*History Note: Authority G.S. 130A-309.240(j);
Eff. April 1, 2025.*

15A NCAC 01V .0106 ALLOWABLE MECHANISMS FOR FINANCIAL ASSURANCE FOR NEW USSPS
Project owners of a new USSP shall use any combination of the following mechanisms to meet the requirements of this Section for financial assurance, unless otherwise approved in accordance with Rule .0105(m) of this Section.

- (1) Trust Fund.
 - (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by establishing a trust fund that conforms to the requirements of this Item. The trustee shall be an entity or person that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or State agency.
 - (b) The trust fund shall be fully funded for the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section.
 - (c) The trust agreement shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section.
 - (d) The project owner or a third party authorized by the Department to conduct decommissioning may request reimbursement from the trustee for these expenditures. Requests for reimbursement shall be granted only if sufficient funds are remaining in the trust fund to cover the remaining costs of decommissioning, and if justification and documentation of the cost is submitted to the Department and approved by the Department as complying with G.S. 130A-309.240, the rules of this Section, and the decommissioning plan.
 - (e) The trust fund may be terminated by the project owner only if the project owner has substituted alternate financial assurance as specified in this Rule, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.
 - (f) The trust fund may be elected as a standby trust mechanism to accompany the surety bond mechanism in Item (2) of this Rule, or the letter of credit mechanism in Item (3) of this Rule; or may be elected as a standalone funded trust mechanism.
 - (g) The trust agreement shall be accompanied by a certification of acknowledgement following the language of the trust agreement as specified in Rule .0107(1) of this Section.
 - (h) Schedule A of the trust agreement shall be updated no less than 60 days after any change in the amount of the current cost estimate covered by the agreement.
- (2) Surety Bond Guaranteeing Payment into a Trust Fund.
 - (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by obtaining a payment surety bond that conforms to the requirements of this Item. The surety bond shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury and shall be licensed to do business in North Carolina.
 - (b) The project owner who uses a surety bond to satisfy the requirements of the rules of this Section shall also establish a standby trust fund prior to submittal of the initial executed financial mechanism, pursuant to Rule .0102(e) of this Section. Under the terms of the bond, all payments shall be deposited by the surety directly into the standby trust fund. An originally signed duplicate of the trust agreement shall be submitted to the Department with the surety bond. This standby trust fund shall meet the requirements specified in Item (1) of

this Rule, except that the following are not required until the standby trust fund is funded pursuant to the requirements of this Item:

- (i) payment into the trust fund as specified in Sub-Item (1)(b) of this Rule;
 - (ii) updating of Schedule A of the trust agreement as specified in Sub-Item (1)(h) of this Rule;
 - (iii) annual valuations as required by the trust agreement outlined in Rule .0107(1) of this Section; and
 - (iv) notices of nonpayment as required by the trust agreement outlined in Rule .0107(1) of this Section.
- (c) The bond shall guarantee that the project owner shall:
- (i) fund the standby trust fund in an amount equal to the penal sum of the bond prior to initiating final decommissioning of the USSP, and no more than one year after cessation of operations of the USSP;
 - (ii) fund the standby trust fund in an amount equal to the penal sum of the bond within 15 days after an order to decommission the USSP is issued by a U.S. district court or other court of competent jurisdiction; or
 - (iii) provide alternate financial assurance that complies with the rules of this Section within 90 days after receipt by both the project owner and the Department of a notice of cancellation of the bond from the surety.
- (d) Under the terms of the bond, the surety shall become liable on the bond obligation when the project owner fails to perform as guaranteed by the bond.
- (e) The penal sum of the bond shall be in an amount equal to the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section.
- (f) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the project owner and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the project owner and the Department, as evidenced by the certified mail return receipts. If the surety cancels the bond, the project owner shall obtain alternate financial assurance that complies with the rules of this Section prior to cancellation.
- (g) The penal sum of the surety bond shall be adjusted for any increase or decrease in the amount of financial assurance in accordance with Rule .0104 of this Section.
- (h) The surety bond may be terminated by the project owner only if the project owner has substituted alternate financial assurance that complies with the rules of this Section, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with Rule .0105(f) of this Section.
- (3) Letter of Credit.
- (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by obtaining an irrevocable standby letter of credit that conforms to the requirements of this Item. The letter of credit shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The issuing institution shall be an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or State agency.
 - (b) A letter from the project owner referring to the letter of credit by number, issuing institution, and date, and providing the following information: name, project identification number, address of the USSP, and the amount of funds assured, shall be included with the letter of credit submitted to the Department.
 - (c) The letter of credit shall be irrevocable and issued for a period of no less than one year, in an amount no less than the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section. The letter of credit shall provide that the expiration date will be automatically extended for a period of no less than one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the project owner and to the Department 120 days in advance

of cancellation. If the letter of credit is cancelled by the issuing institution, the project owner shall obtain alternate financial assurance prior to cancellation.

- (d) The project owner of a new USSP shall establish a standby trust fund. The standby trust fund shall meet the requirements of Item (1) of this Rule, except for the requirement to fully fund the trust as specified in Sub-Item (1)(b) of this Rule. Payments made under the terms of the letter of credit shall be deposited by the financial institution directly into the standby trust fund.
- (e) No payments shall be made from the trust fund unless approved by the trustee and the Department.
- (f) The letter of credit shall be adjusted for any increase or decrease in the amount of financial assurance in accordance with Rule .0104 of this Section.
- (g) The letter of credit and standby trust fund may be terminated by the project owner only if the project owner has substituted alternate financial assurance as specified in this Rule, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.

(4) Insurance.

- (a) A project owner of a new USSP may demonstrate financial assurance for decommissioning by obtaining insurance that conforms to the requirements of this Item. The insurance shall be effective prior to submittal of the initial executed financial mechanism pursuant to Rule .0102(e) of this Section. The insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in North Carolina.
- (b) The decommissioning insurance policy shall guarantee that funds will be available to decommission the USSP by cessation of operations. The policy shall also guarantee that once decommissioning begins, the insurer shall be responsible for the paying out of funds to the project owner or a third party authorized by the Department to conduct decommissioning, up to an amount equal to the face amount of the policy.
- (c) The insurance policy shall be issued for a face amount no less than the entire amount of decommissioning established by Rule .0104 of this Section, except as provided in Rule .0105(d) of this Section. The term face amount means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
- (d) A project owner or a third party authorized by the Department to conduct decommissioning may receive reimbursements for decommissioning expenditures. Requests for reimbursement shall be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of decommissioning, and if justification and documentation of the itemized cost is submitted to the Department, and the Department provides written approval that this requirement has been met. The project owner or third party shall notify the Department that reimbursement has been received.
- (e) Each policy shall contain a provision allowing assignment of the policy to a successor project owner.
- (f) The insurance policy shall provide that the insurer shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel, terminate, or fail to renew the policy by sending notice by certified mail to the project owner and to the Department 120 days in advance of cancellation, termination, or failure to renew the policy. If the insurer cancels the policy, the project owner shall obtain alternate financial assurance as specified in this Rule prior to cancellation.
- (g) The insurance policy may be terminated by the project owner only if the project owner has substituted alternate financial assurance as specified in this Rule, or if the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.

- (5) Financial Test. A project owner of a new USSP that satisfies the requirements of this Item may demonstrate financial assurance for decommissioning using a financial test. To pass this test the project owner shall meet the criteria of either Sub-Item (a) or (b) of this Item.
- (a) The project owner of a new USSP shall have:
 - (i) two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5;
 - (ii) net working capital and tangible net worth each no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section;
 - (iii) tangible net worth of no less than 10 million dollars (\$10,000,000); and
 - (iv) assets located in the United States amounting to no less than 90 percent of their total assets or no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section.
 - (b) The project owner of a new USSP shall have:
 - (i) a current rating for their most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's;
 - (ii) tangible net worth no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section;
 - (iii) tangible net worth of no less than 10 million dollars (\$10,000,000); and
 - (iv) assets located in the United States amounting to no less than 90 percent of their total assets or no less than six times the sum of the decommissioning cost estimate established by Rule .0104 of this Section.
 - (c) To pass this test, the project owner shall submit the following items to the Department with the registration and subsequent updates required by Rule .0102 of this Section:
 - (i) a letter signed by the project owner's chief financial officer and as specified in Rule .0107(5) of this Section;
 - (ii) a copy of the independent certified public accountant's report of the project owner's financial statements for the latest completed fiscal year; and
 - (iii) a special report from the project owner's independent certified public accountant to the project owner. The special report shall be based upon agreed upon procedures, in accordance with professional auditing standards, and shall describe the procedures performed in comparing the data in the chief financial officer's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
 - (d) The project owner is no longer required to submit the documentation specified in Sub-Item (c) of this Item or comply with the requirements of this Item when:
 - (i) the project owner substitutes alternate financial assurance as specified in the rules of this Section; or
 - (ii) the project owner receives written notice from the Department that they are no longer required to provide continuous financial assurance for decommissioning in accordance with the requirements of Rule .0105(f) of this Section.
 - (e) If at any time the project owner of a new USSP no longer meets the requirements of Sub-Item (a) or (b) of this Item, the project owner shall send notice to the Department of intent to establish alternate financial assurance as specified in the rules of this Section. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the project owner no longer meets the requirements. The project owner shall provide the alternate financial assurance that meets the rules of this Section to the Department within 120 days after the end of such fiscal year.
 - (f) The Department may, based on a reasonable belief that the project owner may no longer meet the requirements of Sub-Item (a) or (b) of this Item, require reports of financial condition at any time from the project owner in addition to the documentation specified in Sub-Item (c) of this Item. If the Department finds, on the basis of such reports and documentation, that the project owner no longer meets the requirements of Sub-Item (a) or (b) of this Item, the

Department shall provide written notice to the project owner of this determination. The project owner shall obtain alternate financial assurance that meets the requirements of this Rule and submit that alternate financial assurance that complies with the rules of this Section to the Department within 90 days of the issuance of the written notice from the Department.

- (g) When calculating the amount of financial assurance, the project owner shall include the cost estimates for all USSPs owned by the project owner and for which they are required to obtain financial assurance. The amount of financial assurance for the financial test shall be adjusted in accordance with Rule .0104 of this Section.
- (h) The Department may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in their report on examination of the project owner's financial statements pursuant to Sub-Item (c)(ii) of this Item. An adverse opinion or a disclaimer of opinion shall be cause for disallowance. The Department may evaluate other qualifications on an individual basis. The project owner shall provide alternate financial assurance that complies with the rules of this Section within 90 days of the issuance of the written notice from the Department.

(6) Corporate Guarantee:

- (a) A project owner of a new USSP may also meet the requirements of the financial test in Item (5) of this Rule by obtaining a written guarantee. The guarantor shall be the direct or higher-tier parent corporation of the project owner, a firm whose parent corporation is also the parent corporation of the project owner, or a firm with a substantial business relationship with the project owner. The guarantor shall meet the requirements for project owners in Item (5) of this Rule and shall comply with the terms of the guarantee. A certified copy of the guarantee shall be submitted to the Department with the copies of the letter from the guarantor's chief financial officer and the independent certified public accountant's opinion for the guarantor as required by Item (5) of this Rule. If the guarantor's parent corporation is also the parent corporation of the project owner, the letter from the guarantor's chief financial officer shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a substantial business relationship with the project owner, this letter shall describe this substantial business relationship and the value received in consideration of the guarantee. The project owner shall submit a corporate ownership organization chart describing the relationship of the project owner to the guarantor with the submittal of the initial executed financial mechanism, and during periodic registration updates thereafter.
- (b) The guarantee shall be effective prior to submittal of the initial executed financial mechanism and all submissions required pursuant to this Item and Rule .0102(e) of this Section.
- (c) The terms of the guarantee shall provide that:
 - (i) If the project owner fails to perform decommissioning of a USSP covered by the corporate guarantee, in accordance with the requirements and timelines of G.S. 130A-309.240, the rules of this Section, and the decommissioning plan, the guarantor shall either perform, or pay a third party to perform, decommissioning; or establish a fully funded trust fund as specified in Item (1) of this Rule in the name of the project owner.
 - (ii) The corporate guarantee shall remain in force for as long as the project owner is required to comply with the applicable financial assurance requirements in the rules of this Section unless the guarantor sends prior notice of cancellation by certified mail to the project owner and to the Department. Cancellation shall not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the project owner and the Department, as evidenced by the return receipts.
 - (iii) If notice of cancellation is given, the project owner shall, within 90 days following receipt of the cancellation notice by the project owner and the Department, obtain alternate financial assurance that complies with the rules of this Section and obtain written approval from the Department that the alternate financial assurance complies with the rules of this Section. If the project owner fails to provide alternate financial assurance within the 90-day period, the guarantor shall obtain alternate financial assurance in the name of the project owner that complies with the rules of

this Section within 120 days of the cancellation notice and obtain written approval from the Department that the alternate financial assurance complies with the rules of this Section.

*History Note: Authority G.S. 130A-309.240(j);
Eff. April 1, 2025.*

15A NCAC 01V .0107 REQUIRED LANGUAGE FOR FINANCIAL ASSURANCE MECHANISMS FOR NEW USSPS

The financial assurance mechanisms set forth in Rule .0106 of this Section for new USSPs shall use the language provided in this Rule unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, and shall be in accordance with the rules of this Section.

- (1) Trust Agreement. A trust agreement for a trust fund, as specified in Rule .0106(1) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

TRUST AGREEMENT

Trust Agreement, the "Agreement," entered into as of [date] by and between [name of the project owner], a [name of State] [insert "corporation," "partnership," "association," or "proprietorship"], the "Grantor," and [name of corporate trustee], [insert "incorporated in the State of [name of state]" or "a national bank"], the "Trustee."

Whereas, the Department of Environmental Quality, the "Department," an agency of the State of North Carolina, has established certain regulations applicable to the Grantor, requiring that a project owner of a utility-scale solar project (USSP) shall provide assurance that funds shall be available when needed for decommissioning of the USSP,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the USSPs identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee.

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the project owner who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

Section 2. Identification of Projects and Cost Estimates. This Agreement pertains to the USSPs and cost estimates identified on schedule A [on schedule A, for each USSP list the name, address, project identification number, and the current decommissioning, or portions thereof, for which financial assurance is demonstrated by this Agreement].

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the Department. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property that is acceptable to the Trustee described in Schedule B. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible, nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the Department.

Section 4. Payment for Decommissioning. The Trustee shall make payments from the Fund as the Department shall direct, in writing, to provide for the payment of the costs of decommissioning of the USSPs covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Department from the Fund for decommissioning expenditures in such amounts as the Department shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Department specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund. Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines that the Grantor may communicate in writing to the Trustee from time to time, subject to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall

discharge his or her duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing that persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (i) Securities or other obligations of the Grantor, or any other project owners, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2.(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or State government;
- (ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and
- (iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment. The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee. Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses. All taxes of any kind that may be assessed or levied against, or in respect of, the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the fund.

Section 10. Annual Valuation. The Trustee shall annually, no less than 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the Department a statement confirming the value of the Trust. Any securities in the fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the Department shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 13. Successor Trustee. The Trustee may resign, or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor Trustee, and this successor accepts the appointment. The successor Trustee shall have the same powers and duties as those conferred upon the Trustee

hereunder. Upon the successor Trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor Trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the Department, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in section 9.

Section 14. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the exhibit or such other designees as the Grantor may designate by amendment to Exhibit A. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Department to the Trustee shall be in writing, signed by the Department, or his designee, and the Trustee shall act, and shall be fully protected in acting, in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or Department hereunder has occurred. The trustee shall have no duty to act in the absence of such orders, requests, and instructions from the grantor or Department, except as provided for herein.

Section 15. Notice of Payment. The Trustee shall notify the Grantor and the Department of payment to the Trust by certified mail within 10 days following receipt of said payment. The notice shall contain the name of the Grantor, the date of payment, the amount of payment, and the current value of the trust fund.

Section 16. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the Department, or by the Trustee and the Department if the Grantor ceases to exist.

Section 17. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Department, or by the Trustee and the Department, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Department issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of North Carolina.

Section 20. Interpretation. As used in this agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written: The parties below certify that the wording of this agreement is identical to the wording specified in 15A NCAC 01V .0107(1) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]"] as were constituted on the date first above written.

[Signature of Grantor]

[Title]

Attest: [insert name of Corporation's Senior Management]

[Title]

[Seal]

State of North Carolina

County of [Name of County]

On this [date], before me personally came [name of project owner] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and that executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary
[Notary's printed or typed name]
Notary Public
[Official Seal]

My commission expires: [insert Date of Commission Expiration]
[Or for no corporate seal, see 15A NCAC 01V .0105(j) and utilize the certification of acknowledgement below]
State of North Carolina

County of [Name of County]

I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]
Official Signature of Notary
[Notary's printed or typed name]
Notary Public
[Official Seal]

My commission expires: [insert Date of Commission Expiration]

[Signature of Trustee]

[Title]

Attest: [insert name]

[Title]

[Seal]

State of North Carolina

County of [Name of County]

I, [Name of Officer Taking Acknowledgment], a [Official Title of Officer Taking Acknowledgment], certify that [Name of Corporate Officer] personally came before me this day and acknowledged that he/she is [Title of Corporate Officer] of [insert Legal Name of Corporation], a corporation, and that he/she, as [insert Title of Officer], being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]
Official Signature of Notary
[Notary's printed or typed name]
Notary Public
[Official Seal]

My commission expires: [insert Date of Commission Expiration]

Schedule A for Trust Agreement

[For Each Utility-Scale Solar Project (USSP):]

Project Name: [Project Name]

Project Address: [Project Address]

Project ID Number: [Project ID Number]

Total Amount of Decommissioning Costs to be Funded by this Trust: \$ [Amount]

Schedule B for Trust Agreement

[For Standby Trust]

Trust Property: This Fund shall consist of funds drawn from [insert type of mechanism; ex. Letter of credit] No. [insert number] dated [date] issued by [name of bank] at such time said funds are directly deposited into the Trust account.

[For Funded Trust]

Trust Property: This Fund shall consist of cash in the amount of \$[insert cash amount]. [Aggregate full amount of decommissioning from Schedule A.]

Account Information:

Account Number assigned to this Trust Agreement: [Account Number]

Amount of Deposit: [Amount of Deposit (zero dollars if used for a standby trust)]

Date: [Date]

Bank/Branch location for this trust account:

Bank/Branch Name: [Bank/Branch Name]

Location Address: [Location Address]

City & State: [City & State]

Contact Person at Bank:

Name: [Name]

Title: [Title]

Phone Number: [Phone Number]

Exhibit A for Trust Agreement

The following persons, acting singly or collectively, shall have the right to issue instructions to the Trustee pursuant to Section 14 of the Agreement:

Name: [insert name]

Position: [insert position]

- (2) A surety bond guaranteeing payment of decommissioning as specified in Rule .0106(2) of this Section shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL GUARANTEE BOND

Date bond executed: [insert date of bond execution]

Effective date: [insert effective date]

Principal: [legal name and business address of project owner]

Type of organization: [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: [insert state of incorporation]

Surety(ies): [name(s), business address(es), and contact information]

[For Each Utility-Scale Solar Project (USSP)]

Project ID number: [insert project ID number]

Project name: [insert project name]

Project address: [insert project address]

Decommissioning cost: [insert dollar amount for decommissioning]

Total penal sum of bond: \$[insert total cost of the bond]

Liability Limit: \$[insert underwriting limit of the surety company]

Surety's bond number: [insert bond number issued by surety]

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the N.C. Department of Environmental Quality (hereinafter called the Department), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas, said Principal is required by G.S. 130A-309.240 and 15A NCAC 01V to provide financial assurance for decommissioning for each utility-scale solar project (USSP) identified above, and

Whereas, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, Therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final decommissioning of each USSP identified above, fund the standby trust fund in the amount(s) identified above for the USSP,

Or, if the Principal shall fund the standby trust fund in such amount(s) within 15 days after a final order to begin decommissioning is issued by the Department or a U.S. district court or other court of competent jurisdiction,

Or, if the Principal shall provide alternate financial assurance and obtain the Department's written approval of such assurance, within 90 days after the date notice of cancellation is received by both the Principal and the Department from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above. Upon notification by the Department that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the USSP(s) into the standby trust fund as directed by the Department.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the Department, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Department, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Department.

[The following paragraph is an optional rider that may be included but is not required.]

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new decommissioning amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Department.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this bond is identical to the wording specified in 15A NCAC 01V .0107(2) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]"] as were constituted on the date this bond was executed.

Principal

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

[For no corporate seal, see Rule .0105(j)]

Corporate Surety(ies)

[Name and address]

State of incorporation: [Surety's state of incorporation]

Liability limit: \$[Surety's liability limit]

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For no corporate seal, see Rule .0105(j)]

[For each co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$[bond premium]

- (3) A letter of credit, as specified in Rule .0106(3) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

IRREVOCABLE STANDBY LETTER OF CREDIT

N.C. Department of Environmental Quality

c/o Division of Waste Management

1646 Mail Service Center

Raleigh, N.C. 27699-1646

Dear Sir/Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. [insert mechanism number] in your favor, at the request and for the account of [project owner's name and address] up to the aggregate amount of [in words] U.S. dollars \$[insert U.S. dollar amount], available upon presentation of

- (1) your sight draft, bearing reference to this letter of credit No. [insert mechanism number], and
- (2) your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to requirements of N.C.G.S. 130A-309.240 and 15A NCAC 01V because the applicant has failed to properly decommission the utility-scale solar project (USSP) in accordance with applicable statutes and rules."

This letter of credit is effective as of [date] and shall expire on [date no less than 1 year], but such expiration date shall be automatically extended for a period of [no less than 1 year] on [date] and on each successive expiration date, unless, no less than 120 days before the current expiration date, we notify both you and [project owner's name] by certified mail that

we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and [project owner's name], as shown on the signed return receipts.

Whenever this letter of credit is drawn on, under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [project owner's name] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in 15A NCAC 01V .0107(3) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]"] as were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution], [Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

- (4) A certificate of insurance, as specified in Rule .0106(4) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CERTIFICATE OF INSURANCE FOR DECOMMISSIONING

Name and Address of Insurer

(herein called the "Insurer"):

Name and Address of Insured

(herein called the "Insured"):

Projects Covered: [List for each utility-scale solar project (USSP): the name, address, project identification number, and the amount of insurance for decommissioning (these amounts for all USSPs covered shall total the face amount shown below).]

Face Amount: [insert dollar amount of face value]

Policy Number: [insert insurance policy number]

Effective Date: [insert effective date]

The Insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for decommissioning for the utility-scale solar projects (USSPs) identified above.

The Insurer further warrants that such policy conforms in all respects with the requirements of G.S. 130A-309.240 and 15A NCAC 01V, as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the N.C. Department of Environmental Quality (hereinafter called the Department), the Insurer agrees to furnish to the Department a duplicate original of the policy listed above, including all endorsements thereon. I hereby certify that the wording of this certificate is identical to the wording specified in 15A NCAC 01V .0107(4) [if wording is otherwise approved by the Department as provided in 15A NCAC 01V .0105(b), then state here: "except as approved by the Department on [date]"] as were constituted on the date shown immediately below.

[Authorized signature for Insurer]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

[Date]

- (5) A letter from the chief financial officer for a financial test, as specified in Rule .0106(5) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

FINANCIAL TEST

LETTER FROM THE CHIEF FINANCIAL OFFICER

[Date]

N.C. Department of Environmental Quality

c/o Division of Waste Management

1646 Mail Service Center

Raleigh, NC 27699-1646

Dear Sir/Madam:

I am the chief financial officer of [name and address of firm]. This letter is in support of this firm's use of the financial test to demonstrate financial assurance for decommissioning of a utility-scale solar project (USSP) as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V.

[Fill out the following five paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each USSP, including its project identification number, name, address, and decommissioning cost estimates.]

1. This firm is the project owner of the following USSPs for which financial assurance for decommissioning is demonstrated through the financial test as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V. The current cost estimates for decommissioning covered by the test are shown for each USSP:

Name: [insert legal entity /principal name]

Office Address: [insert physical address of legal entity/principal]

Project Address: [insert physical address of project]

Project ID Number: [insert project ID number]

Decommissioning Cost Estimate: [insert dollar amount for decommissioning]

[Repeat the information above for each USSP included in the corporate test]

2. This firm guarantees, through the corporate guarantee as specified in Rule .0106(6) of this Section, the current cost estimates for decommissioning of the following facilities owned or operated by the guaranteed party. The current cost estimates for decommissioning so guaranteed are shown for each USSP: _____. The firm identified above is [insert one or more: (1) The direct or higher-tier parent corporation of the project owner; (2) owned by the same parent corporation as the parent corporation of the project owner, and receiving the following value in consideration of this guarantee _____. or (3) engaged in the following substantial business relationship with the project owner _____, and receiving the following value in consideration of this guarantee _____. [Attach a written description of the substantial business relationship or a copy of the contract establishing such relationship to this letter].
3. This firm is the project owner or guarantor of the following USSPs, or projects substantially similar to USSPs, for which they are demonstrating financial assurance for decommissioning in other states through the use of a financial test specified in Rule .0106(5) of this Section or a mechanism substantially equivalent to the financial test, the current decommissioning cost estimates covered by such a test are shown for each USSP: _____.
4. This firm is the project owner of the following USSPs, or projects substantially similar to USSPs for which financial assurance for decommissioning is not demonstrated either to EPA or another state through the financial test or any other financial assurance mechanism specified in Rule .0106 of this Section or substantially equivalent mechanism. The current decommissioning cost estimates not covered by such financial assurance are shown for each USSP: _____.

This firm [insert "is required" or "is not required"] to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year.

The fiscal year of this firm ends on [month, day]. The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended [date].

[Fill in Alternative I if the criteria of Rule .0106(5)(a) of this Section is used to pass the test.

[Fill in Alternative II if the criteria of Rule .0106(5)(b) of this Section is used to pass the test.

Alternative I

1. Sum of current decommissioning cost estimate [total of all cost estimates shown in the five paragraphs above] \$ _____

*2. Total liabilities [if any portion of the decommissioning cost estimates is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4] \$ _____

*3. Tangible net worth \$ _____

*4. Net worth \$ _____

*5. Current assets \$ _____

*6. Current liabilities \$ _____

7. Net working capital [line 5 minus line 6] \$ _____

*8. The sum of net income plus depreciation, depletion, and amortization \$ _____

*9. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____

10. Is line 3 no less than \$10 million? (Yes/No) _____

11. Is line 3 no less than 6 times line 1? (Yes/No) _____
12. Is line 7 no less than 6 times line 1? (Yes/No) _____
- *13. Are no less than 90% of firm's assets located in the U.S.? If not, complete line 14 (Yes/No) _____
14. Is line 9 no less than 6 times line 1? (Yes/No) _____
15. Is line 2 divided by line 4 less than 2.0? (Yes/No) _____
16. Is line 8 divided by line 2 greater than 0.1? (Yes/No) _____
17. Is line 5 divided by line 6 greater than 1.5? (Yes/No) _____

Alternative II

1. Sum of current decommissioning cost estimates [total of all cost estimates shown in the five paragraphs above] \$ _____
2. Current bond rating of most recent issuance of this firm and name of rating service _____
3. Date of issuance of bond _____
4. Date of maturity of bond _____
- *5. Tangible net worth [if any portion of the decommissioning cost estimates is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line] \$ _____
- *6. Total assets in U.S. (required only if less than 90% of firm's assets are located in the U.S.) \$ _____
7. Is line 5 no less than \$10 million? (Yes/No) _____
8. Is line 5 no less than 6 times line 1? (Yes/No) _____
- *9. Are no less than 90% of firm's assets located in the U.S.? If not, complete line 10 (Yes/No) _____
10. Is line 6 no less than 6 times line 1? (Yes/No) _____

[Signature]

[Name]

[Title]

[Date]

- (6) A corporate guarantee, as specified in Rule .0106(6) of this Section, shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

CORPORATE GUARANTEE

Corporate Guarantee Terms for Decommissioning

For [Project Owner], [Project ID Number]

Guarantee made this [date] by [name of guaranteeing entity], [address and state of guaranteeing entity], herein referred to as Guarantor. The guarantee is made on behalf of the [project owner name] of [business address], which is [one of the following: "our subsidiary"; a subsidiary of [name and address of common parent corporation] or "an entity with which the Guarantor has a substantial business relationship"] to the N.C. Department of Environmental Quality (hereinafter called the Department).

Recitals:

1. Guarantor meets or exceeds the Financial Test criteria and agrees to comply with the reporting requirements for guarantors, as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V.

2. [Project owner] owns the following USSPs covered by this guarantee: List for each USSP the following information
Name: [insert project name]

Project Address: [insert project address]

Project ID No.: [insert Department-issued project number]

Decommissioning Cost Estimate: [insert dollar amount for decommissioning]

3. Decommissioning Cost Estimate as used above refers to the plans maintained as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V for decommissioning cost estimate of USSPs identified above.

4. For value received from [insert project owner name], pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V, Guarantor guarantees to the Department that in the event that [insert project owner name] fails to perform decommissioning of the above USSPs in accordance with the G.S. 130A-309.240, 15A NCAC 01V, and the decommissioning plan whenever required to do so, the Guarantor shall perform the required activities, or pay a third party to do so, or establish a fully-funded trust fund in conformance with G.S. 130A-309.240 and 15A NCAC 01V, in the name of the project owner in the amount of the current decommissioning cost estimate as specified in 15A NCAC 01V .0104.

5. Pursuant to G.S. 130A-309.240, Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the Guarantor fails to meet the Financial Test criteria the Guarantor shall, within 90 days, send by certified mail notice to the Department and to [project owner name] that the Guarantor is providing alternate financial assurance in

accordance with 15A NCAC 01V in the name of [project owner name]. Within 120 days after the end of such fiscal year, the Guarantor shall establish such financial assurance unless [project owner name] has done so.

6. Guarantor agrees to notify the Department by certified mail of voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming Guarantor as debtor, within 10 days after commencement of the proceeding.

7. Guarantor agrees that within 30 days after being notified by the Department of a determination that Guarantor no longer meets the Financial Test criteria or that they are disallowed from continuing as a Guarantor for decommissioning of a USSP, they shall establish alternate financial assurance as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V, as applicable, in the name of [project owner name] unless [project owner name] has done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: modification or amendment of the decommissioning plan, the extension or reduction of the time of performance of the decommissioning of a USSP, or any other modification or alteration of an obligation of the project owner pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V.

9. Pursuant to 15A NCAC 01V .0106(6)(c)(ii), Guarantor agrees to remain bound under this guarantee for as long as [project owner name] shall comply with N.C.G.S. 130A-309.240 and 15A NCAC 01V for the above-listed USSP(s), except as provided in paragraph 10 of this agreement.

10. [Insert the following language if the Guarantor is (a) a direct or higher-tier corporate parent, or (b) a firm whose parent corporation is also the parent corporation of the project owner]:

Guarantor may terminate this guarantee by sending noticed by certified mail to the Department and to [project owner name], provided that this guarantee may not be terminated unless and until [project owner name] obtains, and the Department approves, alternate financial assurance as required by N.C.G.S. 130A-309.240 and 15A NCAC 01V.

[Insert the following language if the Guarantor is a firm qualifying as a Guarantor due to its substantial business relationship with the project owner]:

Guarantor may terminate this guarantee 120 days following the receipt of notification of its intended cancellation by certified mail by both the Department and by [project owner name].

11. Guarantor agrees that if [project owner name] fails to provide alternate financial assurance as specified in N.C.G.S. 130A-309.240 and 15A NCAC 01V and obtain written approval of such assurance from the Department within 90 days after a notice of cancellation from the Guarantor is received by the Department, Guarantor shall provide such alternate financial assurance in the name of [project owner name].

12. Guarantor expressly waives notice of acceptance of this guarantee by the Department or by [project owner name]. Guarantor also expressly waives notice of amendments or modifications of the decommissioning plan, and of rebuilding or expansion of the project.

Effective date: [insert mechanism effective date]

[Name of Guarantor]

[Corporate Seal]

[For no corporate seal, see Rule .0105(j)]

[Authorized signature for Guarantor]

[Name of person signing]

[Title of person signing]

[Telephone Number]

[Email Address]

State of North Carolina

County of [Name of County]

On this [day] day of [month], [year], before me personally came [name signing for Guarantor] to me known, who, being by me duly sworn, did depose and say that she/he resides at [Guarantor address], that she/he is [title at Guarantor Firm] described in and that executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

Witness my hand and official seal this [Day] day of [Month], 20[Year].

[insert Signature of Notary]

Official Signature of Notary

[Notary's printed or typed name]

Notary Public

[Official Seal]

My commission expires: [insert Date of Commission Expiration]

- (7) A special report from an independent certified public accountant (CPA) is a supplemental report mechanism to the financial test mechanism as specified in Rule .0106(5) and the corporate guarantee mechanism as specified in Rule .0106(6) of this Section, and shall be worded as follows unless otherwise approved by the Department as provided in Rule .0105(b) of this Section, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted:

SPECIAL REPORT
INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT'S REPORT
ON APPLYING AGREED-UPON PROCEDURES

The Board of Directors

[Name of Company]

[Mailing and location address]

[Project No.]

We have performed the procedures enumerated below that were agreed to by management of [Name of Company] pursuant to N.C.G.S. 130A-309.240 and 15A NCAC 01V with respect to the letter dated [insert date] from the [insert Corporate Official name and title] to the N.C. Department of Environmental Quality (hereinafter called the Department), solely to assist you in filing the Letter (prepared in accordance with the criteria specified therein) for the year ended [insert date of end of corporate fiscal year]. [Name of Company] is responsible for this Letter. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of [Name of Company] and the Department. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures, which were limited solely to the identified item numbers, are as follows:

We compared the amounts in Item Nos. [insert applicable item numbers based on Alternative I or II] of the Financial Test in the Chief Financial Officer's (CFO) Letter to corresponding amounts reported as total liabilities [amount], Tangible Net Worth [amount], and total assets [amount], respectively, in the audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

We computed the amounts in Item Nos. [insert applicable item numbers based on Alternative I or II] of the Financial Test in the CFO's Letter as of [insert date of end of corporate fiscal year] based on amounts reported as Net Worth [amount] and the net income plus depreciation, depletion, and amortization [amount] in the audited financial statements as of [insert date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or "to be in agreement"].

We computed the amount of environmental obligations (as determined by current decommissioning cost estimate or guarantees) that are recognized as liabilities in the amount of [amount] in the audited financial statement as of [insert date of end of corporate fiscal year], compared them to the amounts in the CFO's Letter and found them [insert either, "not to be in agreement" or "to be in agreement"].

We compared the amount in Item No. [insert applicable item number based on Alternative I or II] of the Financial Test in the CFO's Letter and the Company's total assets located in the United States in the amount of [insert amount] in the audited financial statement as of [insert date of end of corporate fiscal year] and found them [insert either, "not to be in agreement" or "to be in agreement"].

[If not in agreement, describe the procedures performed in comparing the data in the CFO's letter derived from the audited financial year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.]

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the selected financial information included in the Letter. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report is intended solely for the use of management of the Company and is not intended to be and should not be used by anyone other than these specified parties.

[Date]

[Name of Accounting Firm]

*History Note: Authority G.S. 130A-309.240(j);
Eff. April 1, 2025.*

Chapter 01 - Departmental Rules

SUBCHAPTER 01W - EMERGENCY INFRASTRUCTURE BRIDGE LOAN PROGRAM FOR COMMERCIAL USTS

SECTION .0100 - EMERGENCY INFRASTRUCTURE BRIDGE LOAN PROGRAM FOR COMMERCIAL USTS

15A NCAC 01W .0101 APPLICABILITY AND DEFINITIONS

(a) Applicability. The rules of this Subchapter shall apply to emergency infrastructure bridge loans for commercial underground storage tanks as established by S.L. 2024-53, s. 4C.8 for short-term financial liquidity necessary to immediately conduct emergency services in the affected area, pending federal disaster relief or payment or reimbursement by insurance. The requirements of S.L. 2024-53, s. 3.1.(b), (c), and (d) are applicable to the rules of this Subchapter, including subsequent amendments or editions. 15A NCAC 02N is incorporated by reference including subsequent amendments or editions.

(b) Documents and payments required to be submitted to the Division by the rules of this Subchapter may be submitted to the Division of Waste Management's Underground Storage Tank Section at the Division's mailing address at 1646 Mail Service Center, Raleigh, NC 27699-1646.

(c) Definitions. The definitions found in Part 2A of Article 21A of Chapter 143 of the General Statutes, the definitions in 15A NCAC 02N, and the definitions in Sections 1.4 and 4C.8 of S.L. 2024-53 shall apply to the rules of this Subchapter. For the purposes of this Subchapter, "applicant" means the owner or operator of a commercial underground storage tank permitted by the Division in accordance with 15A NCAC 02N that is located in the affected area, and that is submitting an application for an emergency infrastructure bridge loan.

History Note: Authority S.L. 2024-53, s. 4C.8.(l);
Emergency Adoption Eff. February 14, 2025;
Temporary Adoption Eff. April 8, 2025.

15A NCAC 01W .0102 LOAN APPLICATION

(a) An owner or operator of a commercial underground storage tank permitted by the Division in accordance with 15A NCAC 02N that is located in the affected area may apply for an emergency infrastructure bridge loan in accordance with S.L. 2024-53, s. 4C.8 and the rules of this Subchapter. The application shall be submitted on a form provided by the Division, which can be found on the Division's website at <https://www.deq.nc.gov/about/divisions/waste-management/underground-storage-tanks-section/bridge-loan-program>, and shall include the following information and attachments:

- (1) the owner's contact information, including the name, phone number, email address, and mailing address for the contact person or authorized representative for the owner, and the business name if the owner is a business;
- (2) the operator's contact information, including the name, phone number, email address, and mailing address for the contact person or authorized representative for the operator, and the business name if the operator is a business;
- (3) the UST facility name, UST facility identification number for the operating permit issued by the Division in accordance with 15A NCAC 02N, and the physical address and the county in which the UST system is located;
- (4) a description of the impacts and damage to the UST system from Hurricane Helene, including photographs of the impacts or damage;
- (5) a description of the testing and repairs and the scope of work for which the applicant is requesting funds;
- (6) a list of contractors the applicant is proposing to use for completion of the scope of work;
- (7) the project costs, including costs expended at the time of application and estimated future costs;
- (8) a description and the amount of federal disaster relief funds and private insurance reimbursement that the applicant has applied for and the source of those funds;

- (9) a description and the amount of disaster relief funds that the applicant has already received from other sources as of the date of the application;
 - (10) copies of repair cost estimates, contracts, or receipts that comply with Paragraphs (d), (e), and (f) of this Rule;
 - (11) a description of the attachments included with the application; and
 - (12) a certification signed by the applicant or the applicant's authorized representative certifying that the application and documentation provided to the Division are true and accurate to the best of the applicant's knowledge.
- (b) The application shall be submitted by December 31, 2025.
- (c) The Division shall review the submitted application and provide a response in writing stating either that the application is complete and under review, or that the application is incomplete and stating the information or attachments that are required to be submitted for the application to meet the requirements of Paragraph (a) of this Rule. The owner or operator shall submit any additional information requested by the Division in the response within 30 days following the date the Division's response was issued.
- (d) The UST system testing and repairs for which the loan is being requested shall comply with S.L. 2024-53 and the rules of this Subchapter.
- (e) Copies of receipts from testing or repairs in accordance with Paragraph (d) of this Rule that have been completed and paid for at the time the application is submitted shall be submitted with the application. The receipts shall include the name and contact information for the contractor, a description of the testing or repair, and the actual cost for the testing or repair.
- (f) Copies of cost estimate documentation such as quotes, invoices, contracts, or similar documents for testing and repairs in accordance with Paragraph (d) of this Rule shall be submitted with the application for testing or repairs that are proposed or in progress and have not been paid for at the time the application is submitted. The testing or repair estimates shall include the name and contact information for the contractor, a description of the proposed testing or repair, and the estimated cost of the proposed testing or repair.

History Note: Authority S.L. 2024-53, s. 4C.8.(l);
Emergency Adoption Eff. February 14, 2025;
Temporary Adoption Eff. April 8, 2025.

15A NCAC 01W .0103 APPLICATION REVIEW AND LOAN ELIGIBILITY

- (a) The Division shall review an application submitted that complies with Rule .0102 of this Section and determine whether the loan is eligible for approval. The Division may determine that the loan is not eligible for approval, that the loan is eligible for the amount requested, or that the loan is eligible for a portion of the amount requested. In making the determination for loan approval and the amount approved, the Division may consider the following criteria:
- (1) the information submitted in the application;
 - (2) the remaining amount of loan funds available;
 - (3) the location of the UST system within the affected areas as defined in S.L. 2024-53, with priority given to the areas with the greatest impacts from Hurricane Helene;
 - (4) whether the costs included in the scope of work are significantly different from a range of expected or reasonable costs for such work, as determined by the Division;
 - (5) federal disaster relief or private insurance reimbursement received for Hurricane Helene response prior to submittal of the application;
 - (6) the level of need for other submitted applications under review by the Division that have not yet been awarded pursuant to S.L. 2024-53, s. 4C.8.(h);
 - (7) the type of work included in the scope of work, with funding priority given to the specific examples of repairs and testing listed in the definition of emergency services in S.L. 2024-53, s. 4C.8.(b); and
 - (8) the operational status of the UST system and the status of the scope of work submitted.
- (b) If the Division determines that the loan is eligible for approval, either for the requested amount or a portion of the requested amount, the Division shall send the applicant a letter of intent to award the loan in accordance with S.L. 2024-53, s. 4C.8.(i) with a copy of the loan agreement developed in accordance with Rule .0104 of this Section within 60 days after receipt of the application. Within 30 days after the offer is issued, the recipient shall:
- (1) accept the offer by executing a loan agreement in accordance with Rule .0104(c) of this Section and returning it to the Division; or

- (2) provide a written response to the Division rejecting the offer.
- (c) If the applicant has not accepted or rejected the offer in accordance with Paragraph (b) of this Rule within 30 days after the offer is issued, the Division may rescind the offer to award the loan by providing written notice to the applicant. The awarding of new loans shall cease on June 30, 2028.
- (d) If the Division determines that the loan is not eligible for approval because it does not comply with S.L. 2024-53 or the rules of this Subchapter, the Division shall send the applicant a letter via certified mail outlining the reasons that the applicant is not eligible within 60 days after receipt of the application.
- (e) If the applicant disagrees with the Division's determination, the applicant may elect to submit an informal appeal to the Division supplying additional supporting information. The appeal must be submitted within 30 days of the date the Division issued the notification of the Division's determination. The Division shall review the additional information and shall issue a final written agency decision via certified mail. Pursuant to S.L. 2024-53, s. 4C.8(h), the Division's determination of need is conclusive.

History Note: Authority S.L. 2024-53, s. 4C.8.(l);
Emergency Adoption Eff. February 14, 2025;
Temporary Adoption Eff. April 8, 2025.

15A NCAC 01W .0104 LOAN AGREEMENT

- (a) Within 10 business days after an applicant elects to accept a loan after it is awarded in accordance with S.L. 2024-53, s. 4C.8.(i), the recipient shall submit a signed NC Substitute W-9 form to the Division. The Substitute W-9 form may be obtained from the NC Office of the State Controller website at: <https://www.osc.nc.gov/state-north-carolina-sub-w-9>.
- (b) Loan Agreement. If an applicant elects to accept a loan after it is offered in accordance with S.L. 2024-53, s. 4C.8.(i), a loan agreement shall be executed between the Division and the recipient. The loan agreement shall include the terms and conditions of the agreement such as:
- (1) the conditions for issuance of the loan, including the requirements in Paragraph (a) of this Rule;
 - (2) information regarding the intended use of the loan proceeds;
 - (3) a deadline by which the applicant shall have entered into a construction contract to begin testing and repairs;
 - (4) conditions under which the loan will be repaid including any payment plan schedules requested by the applicant;
 - (5) the rights and responsibilities of the parties;
 - (6) the loan identification number assigned by the Division; and
 - (7) any other applicable terms and conditions of the loan as outlined in Rule .0105 of this Section.
- (c) The loan agreement shall be signed and notarized by the recipient and an original signed copy shall be returned to the Division. The Division shall also sign and notarize the agreement to execute the agreement. The agreement shall be effective on the date the agreement is signed and notarized by the Division.
- (d) After the loan agreement is executed, the applicant may submit a request in writing for an amendment to the loan amount or the terms of the loan agreement. The request shall include the amendment being requested and supporting evidence for the request, including supporting documentation such as updates to any information that was provided in the application that has changed since the application was submitted. The Division shall review and respond to the request in accordance with Rule .0103 of this Section. If approved, the agreement shall be revised accordingly and shall be signed and notarized by the Division and the recipient. No amendments to awarded loans shall be approved after June 30, 2028.

History Note: Authority S.L. 2024-53, s. 4C.8.(l);
Emergency Adoption Eff. February 14, 2025;
Temporary Adoption Eff. April 8, 2025.

15A NCAC 01W .0105 LOAN TERMS, LIMITATIONS, AND CONDITIONS

- (a) In addition to the loan terms in S.L. 2024-53, s. 4C.8 and the applicable requirements of s. 3.1, a bridge loan from the program is subject to the following terms and conditions:
- (1) The total amount awarded for the loan shall be repaid in full by the maturity date as defined in S.L. 2024-53, s. 4C.8, and no later than June 30, 2030.
 - (2) A loan may be repaid early or on a payment plan outlined in the loan agreement prior to the maturity date without penalty.
 - (3) Loan payments shall be submitted to the Division of Waste Management Underground Storage Tank Section by certified check or money order.

(b) In addition to the loan limitations in S.L. 2024-53, s. 4C.8, a bridge loan from the program shall not be used for purposes that do not comply with the requirements of S.L. 2024-53, such as the following purposes:

- (1) removal of a commercial underground storage tank unless the applicant provides evidence in the loan application that damage or impacts from Hurricane Helene necessitated the removal, and the removal is necessary to restore the UST system to operational capacity;
- (2) work or testing or repairs related to aboveground storage tanks or non-commercial underground storage tanks, notwithstanding new action from the General Assembly;
- (3) purposes that are or may be eligible for reimbursement from the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund in accordance with G.S. 143-215.94B;
- (4) any repairs or testing that have already been paid for or reimbursed by federal disaster relief or private insurance or other emergency funding sources; or
- (5) any repairs or testing that occurred or were necessary prior to the date of Hurricane Helene, or that were not a result or impact of Hurricane Helene.

(c) The recipient shall submit a final report within 90 days after completion of testing and repairs. The report shall include a description of:

- (1) the operational capacity of the UST system;
- (2) any deviations from the scope of work submitted in the application; and
- (3) receipts for completed repairs that were not submitted in the application.

(d) If a recipient fails to comply with S.L. 2024-53, the rules of this Subchapter, or the loan agreement, the Division shall notify the recipient in writing that they are in default, and provide the actions the recipient must take in order to cure the default and the deadlines to take those actions. If the recipient fails to take the required actions by the deadlines stated in the notice, the loan shall be considered to be in default and the Division will refer the loan for collection in accordance with State law.

History Note: Authority S.L. 2024-53, s. 4C.8.(1);
Emergency Adoption Eff. February 14, 2025;
Temporary Adoption Eff. April 8, 2025.