

SUBCHAPTER 2I - HEARINGS

SECTION .0100 - SCOPE: DEFINITIONS: DELEGATIONS

15A NCAC 02I .0101 PURPOSE OF THIS SUBCHAPTER

These rules and regulations authorize the designation of certain employees of the Department of Natural Resources and Community Development as hearing officers, sets out the types of hearings which the designated employees are authorized to conduct, and delineates and references the rules of procedure for conducting rule making, administrative, and special hearings.

History Note: Authority G.S. 143-215.3(a)(1),(3);
Eff. February 1, 1976;
Amended Eff. November 1, 1978.

15A NCAC 02I .0102 DEFINITIONS

The terms used herein shall be as defined in G.S. 143-213 and 150B-2 and as follows:

- (1) "Commission" means the North Carolina Environmental Management Commission.
- (2) "Department" means the Department of Natural Resources and Community Development, and its successor.
- (3) "Director" means the Director, Division of Environmental Management.
- (4) "Division" means the Division of environmental management and its successor.

History Note: Authority G.S. 143-215.3(a)(1);
Eff. February 1, 1976;
Amended Eff. July 1, 1988; November 1, 1978.

15A NCAC 02I .0103 DELEGATIONS

The Director is authorized to designate hearing officers, establish the hearings, issue notices and perform other administrative functions in accordance with these regulations. The Director shall advise the Commission at its regularly scheduled meetings of any public hearings held or scheduled since the Commission's last meeting.

History Note: Authority G.S. 143-215.3(a)(3),(4); 150B-32;
Eff. February 1, 1976.

15A NCAC 02I .0104 AUTHORIZED HEARING OFFICERS

Any employee of the department of the grade of regional engineer or above may be designated as a hearing officer for hearings held pursuant to this Subchapter.

History Note: Authority G.S. 143-215.4(e); 150B-32;
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 02I .0105 REQUIREMENTS OF HEARING OFFICER OR PANEL

One or more hearing officers may be designated to sit as a hearing panel for all hearings. The Commission may, in its discretion, sit as a whole or designate one or more of its members to sit as hearing officers for any hearing.

History Note: Authority G.S. 143-215.3(a)(3);
Eff. February 1, 1976;
Amended Eff. July 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 02I .0106 DEPARTMENT HEARING RULES

Rules of the department at 15A NCAC 1B .0200, which are not inconsistent with these Rules and laws of the Commission, are adopted, and in addition to these Rules, shall govern the conduct of hearings under this Subchapter.

History Note: G.S. 87-87; 87-92; 143-215.3(a)(1); 143-215.4; 150B-14;
Eff. May 1, 1986.

SECTION .0200 - RULE MAKING HEARINGS: NOTICE: PROCEDURES

15A NCAC 02I .0201 REQUIREMENT

History Note: Authority G.S. 150B-12;
Eff. February 1, 1976;
Repealed Eff. July 1, 1988.

15A NCAC 02I .0202 NOTICE

History Note: Authority G.S. 150B-12; 143-214.1(e); 143-215.13(c); 87-87;
Eff. February 1, 1976;
Repealed Eff. March 1, 1988.

15A NCAC 02I .0203 PROCEDURES

- (a) Any person desiring to comment on the proposed action may do so either in writing or by oral presentation. Any person may file a written statement or argument concerning the proposed action prior to the close of the hearing record.
- (b) The hearing officer(s) shall consider all written and oral submissions and submit recommendations concerning the proposed action to the Commission following the close of the hearing record.
- (c) Requests for reasons for or against adoption shall be responded to in accordance with G.S. 150B-12(e).

History Note: Authority G.S. 150B-12; 143-214.1(e); 143-215.13(c); 87-87;
Eff. February 1, 1976;
Amended Eff. July 1, 1988.

SECTION .0300 - ADMINISTRATIVE HEARINGS

15A NCAC 02I .0301 OPPORTUNITY FOR HEARING

An opportunity for hearing shall be provided to parties in a contested case as defined in G.S. 150B-2.

History Note: Authority G.S. 87-87; 87-92; 143-215.3(a); 143-215.4; 150B-2;
Eff. February 1, 1976;
Amended Eff. July 1, 1988; May 1, 1986; June 15, 1980;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

15A NCAC 02I .0302 REQUEST FOR HEARING

Any person entitled to a hearing under this Section may request a hearing with 60 days after receiving notification of the action taken or proposed to be taken. Failure to timely file a request for hearing constitutes waiver of the opportunity for a hearing.

History Note: Authority G.S. 143-215.3(a)(1); 150B-23;
Eff. February 1, 1976;
Amended Eff. September 1, 1988.

15A NCAC 02I .0303 NOTICE: WAIVER

15A NCAC 02I .0304 PLACE OF THE HEARING

15A NCAC 02I .0305 PROCEDURES

15A NCAC 02I .0306 HEARING OFFICERS: POWERS AND DUTIES

History Note: Authority G.S. 87-92; 143-215.1(a)(3),(4); 143-215.4; 143-215.15(f);
143-215.113; 150B-1,-23,-24,-27,-33,-34,-37; 150B, Article 3;

Eff. February 1, 1976;
Amended Eff. June 15, 1980; November 1, 1978;
Repealed Eff. July 1, 1988.

SECTION .0400 - SPECIAL HEARINGS

15A NCAC 02I .0401 CLEAN WATER BOND ACT: REQUESTS: NOTICE: PROCEDURE

History Note: Authority 1971 Session Laws c. 909; 1973 Session Laws c. 232;
Eff. February 1, 1976;
Repealed Eff. July 1, 1988.

15A NCAC 02I .0402 WATER QUALITY DISCHARGE PERMITS: NOTICE: PROCEDURES

- (a) Any person may request a public hearing on any application for a permit or permit renewal filed under G.S. 143-215.1(c) by submitting such request in writing to the Director within 30 days following publication of the notice of application. A hearing will be held if the Director determines that there is significant public interest.
- (b) Notice shall be given in accordance with Regulation .0109(b) of Subchapter 2H of this Title.
- (c) Any person desiring to comment on the proposed action may do so either in writing or by oral presentation. Persons desiring to be heard shall give notice to the Division on or before the date set for the hearing.
- (d) The hearing officer shall prepare a hearing record which shall include detailed minutes, written comments, and exhibits or documents submitted prior to or at the hearing. This record and the hearing officer's recommendations shall be submitted to the Director for final action on the application.

History Note: Authority G.S. 143-215.1(c)(3);
Eff. February 1, 1976;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 16, 2019.

SECTION .0500 - PETITIONS FOR RULEMAKING

15A NCAC 02I .0501 FORM AND CONTENTS OF PETITION

- (a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Environmental Management Commission (hereinafter referred to as the Commission) shall make the request in a petition addressed to the Director of the appropriate division of the Department of Environmental Quality, and a copy in electronic or digital form shall also be sent to the Recording Clerk of the Commission:

Director
Division of Air Quality
1641 Mail Service Center
Raleigh, North Carolina 27699-1641

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

Director
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

Director
Division of Water Resources
1611 Mail Service Center
Raleigh, North Carolina 27699-1611

Recording Clerk of the Commission
Directors Office
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611
EMCclerk@ncdenr.gov

- (b) The petition shall contain the following information:
- (1) the text of the proposed rule(s) for adoption or amendment;
 - (2) a statement of the reasons for adoption or amendment of the proposed rule(s), or the repeal of an existing rule(s);
 - (3) a statement of the effect on existing rules or orders;
 - (4) the name(s) and address(es) of the petitioner(s); and
 - (5) a request to present the petition to the committee in accordance with Rule .0502 of this Section, if desired.
- (c) In its review of the proposed rule, the Commission shall consider whether it has authority to adopt the rule; the effect of the proposed rule on existing rules, programs, and practices; probable costs and cost factors of the proposed rule; and the impact of the rule on the public and regulated entities. The petitioner may include the following information within the request:
- (1) the statutory authority for the agency to promulgate the rules(s);
 - (2) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
 - (3) a statement explaining the computation of the cost factors;
 - (4) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
 - (5) documents and data supporting the proposed rule(s).
- (d) Petitions that do not contain the information required by Paragraph (b) of this Rule shall be returned to the petitioner by the Director on behalf of the Commission.

*History Note: Authority G.S. 143B-282; 150B-20;
Eff. April 1, 2003;
Amended Eff. December 1, 2016; November 1, 2012.*

15A NCAC 02I .0502 REVIEW BY A COMMITTEE OF THE COMMISSION

- (a) The Chairman shall refer complete petitions to the appropriate subject area committee of the Commission for review and recommended action. Copies of Petitions for Rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.
- (b) Within 10 days of the assignment of the complete petition, the chairman of the committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition.
- (c) At least 15 days before the committee meeting, notice of the committee meeting shall be sent to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.
- (d) The petitioner shall be afforded the opportunity to present the petition for rulemaking to the committee. The Director, through staff, may make a presentation to the committee.
- (e) The Chairman of the committee shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Chairman of the committee may determine whether additional interested persons shall make oral presentations before the committee. Interested persons must request the opportunity to make a presentation to the committee through the Director. The request shall:
- (1) state the interest of the person;
 - (2) state the person's position on the petition for rulemaking; and
 - (3) be accompanied by supporting materials.
- (f) During the committee's review, members of the Commission, other than committee members, who are present may participate as a member of the committee in discussions of the petition but may not vote on the recommended action on the petition.

History Note: Authority G.S. 143B-282; 150B-20;

Eff. April 1, 2003.

15A NCAC 02I .0503 PRESENTATION TO THE COMMISSION

(a) Petitions for Rulemaking, after review by the appropriate committee under 15A NCAC 02I .0502, shall be presented to the Environmental Management Commission for its consideration and determination at a regularly scheduled meeting of the Commission within 120 days following the date of referral of the petition to the appropriate committee. The Petition for Rulemaking and the committee's recommended action shall be presented through the committee chairman or other designated member of the committee during the business session of the Commission. Unless the Chairman of the Commission rules otherwise, discussion on the petition shall be limited to the members of the Commission, counsel to the Commission, and the Director.

(b) Within 120 days following referral of the petition to the appropriate committee, the Environmental Management Commission shall:

- (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; or
- (2) deny the petition in writing, stating the reason or reasons for the denial, and send the written denial to the person(s) who submitted the petition.

*History Note: Authority G.S. 143B-282; 150B-20;
Eff. April 1, 2003.*

15A NCAC 02I .0504 RECOURSE TO DENIAL OF PETITION

If the Environmental Management Commission denies the Petition for Rulemaking, the petitioner(s) may seek judicial review of the denial under G.S. 150B, Article 4.

*History Note: Authority G.S. 143B-282; 150B-20;
Eff. April 1, 2003.*

SECTION .0600 - DECLARATORY RULINGS

15A NCAC 02I .0601 ISSUANCE OF DECLARATORY RULING

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Environmental Management Commission shall issue a declaratory ruling as provided in G.S. 150B-4.

*History Note: Authority G.S. 150B-4;
Eff. August 1, 2004.*

15A NCAC 02I .0602 PROCEDURE FOR SUBMISSION OF PETITION

(a) All requests for a declaratory ruling shall be filed with the Director of the appropriate Division of the Department of Environment and Natural Resources, and 25 complete copies shall also be sent to the Recording Clerk of the Commission:

Director
Division of Air Quality
1641 Mail Service Center
Raleigh, NC 27699-1641

Director
Division of Water Quality
1617 Mail Service Center
Raleigh, NC 27699-1617

Director
Division of Water Resources
1611 Mail Service Center
Raleigh, NC 27699-1611

EMC Recording Clerk
1617 Mail Service Center
Raleigh, NC 27699-1617

- (b) All requests shall include the following:
- (1) name and address of petitioner(s);
 - (2) the rule, statute or order upon which a ruling is desired;
 - (3) a concise statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute to a given factual situation;
 - (4) arguments or data which demonstrate that the petitioner is aggrieved by the rule or statute or its potential application to him;
 - (5) a statement of the consequences of a failure to issue a declaratory ruling in favor of the petitioner;
 - (6) a draft of the proposed ruling; 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 request for a ruling on the applicability of a rule, order, or statute must include a statement of the specific facts to a given factual situation and documentation supporting those facts. A request for a ruling on the validity of a Commission rule must state the aggrieved person's reason(s) for questioning the validity of the rule and a brief or legal memorandum supporting the aggrieved person's position. A person may ask for both types of declaratory rulings in a single request.
- (d) In the manner provided in G.S. 150B-23(d), any other person may request to intervene in the request for declaratory ruling. The request to intervene shall be determined by the Chairman.

*History Note: Authority G.S. 150B-4;
Eff. August 1, 2004.*

15A NCAC 02I .0603 DISPOSITION OF REQUEST

- (a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of this Section, and he shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.
- (b) Before deciding the merits of the request, the Commission may:
- (1) request additional written submissions from the petitioner(s);
 - (2) request a written response from the Department staff or any other person; and
 - (3) hear oral arguments from the petitioner(s) and Department staff or their legal counsel.
- (c) Whenever the Commission believes for "good cause" that the issuance of a declaratory ruling is undesirable, the Commission may refuse to issue such ruling. The Commission shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.
- (d) "Good cause" as set out in Paragraph (c) of this Rule shall include:
- (1) finding that there has been a similar determination in a previous contested case or declaratory ruling;
 - (2) finding that the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
 - (3) finding that no genuine controversy exists as to the application of a statute, order or rule to the specific factual situation presented; or
 - (4) finding that the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.
- (e) The Commission shall keep a record of each declaratory ruling, which shall include at a minimum the following items:
- (1) the request for a ruling;
 - (2) any written submission by a party;
 - (3) the given state of facts on which the ruling was based;
 - (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
 - (5) any other matter considered by the Commission in making the decision; and
 - (6) the declaratory ruling, or the decision to refuse to issue a declaratory ruling, together with the reasons therefore.
- (f) For purposes of this Section, a declaratory ruling shall be deemed to be in effect until:
- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;

- (2) any court of the Appellate Division of the General Court of Justice shall construe the statute or rule which is the subject of the declaratory ruling in a manner plainly irreconcilable with the declaratory ruling;
 - (3) the Commission changes the declaratory ruling prospectively; or,
 - (4) any court sets aside the declaratory ruling in litigation between the Commission or Department of Environment and Natural Resources and the party requesting the ruling.
- (h) The requesting party may agree to allow the Commission to issue a ruling on the merits of the request beyond the 60 days allowed by G.S. 150B-4.
- (i) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

*History Note: Authority G.S. 150B-4;
Eff. August 1, 2004.*