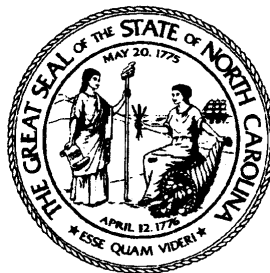


**North Carolina Administrative Code  
Title 15 A  
Department of Environment and Natural  
Resources  
Chapter 4**

**Sedimentation  
Control**



**As amended July 1, 2000  
Sedimentation Control Commission  
Raleigh, North Carolina**

## CHAPTER 4 - SEDIMENTATION CONTROL

This Chapter 4 of Title 15A of the North Carolina Administrative Code (T15A.04); SEDIMENTATION CONTROL; has been transferred and recodified from Chapter 16 of Title 15 of the North Carolina Administrative Code (T15.16), effective November 1, 1989. The recodification was pursuant to G.S. 143B-279.1.

### SUBCHAPTER 4A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

#### **15A NCAC 04A .0101 OFFICES OF THE SEDIMENTATION CONTROL COMMISSION**

Persons may write or visit the North Carolina Sedimentation Control Commission offices at the Archdale Building, 512 N. Salisbury Street, P.O. Box 27687, Raleigh, North Carolina 27611. Persons may write or visit regional offices of the Commission's staff in the Land Quality Section of the Division of Land Resources at the following locations:

- (1) Interchange Building  
59 Woodfin Place  
P.O. Box 370  
Asheville, N.C. 28801
- (2) 585 Waughtown Street  
Winston-Salem, N.C. 27107
- (3) 919 North Main Street  
P.O. Box 950  
 Mooresville, N.C. 28115
- (4) 3800 Barrett Drive  
P.O. Box 27687  
Raleigh, N.C. 27611
- (5) Wachovia Building  
Suite 714  
Fayetteville, N.C. 28301
- (6) 1424 Carolina Avenue  
P.O. Box 2188  
Washington, N.C. 27889
- (7) 127 Cardinal Dr., Ext.  
Wilmington, N.C. 28405-3845

*History Note:* Authority G.S. 143B-298;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1995; February 1, 1992; May 1, 1990; December 1, 1988.

#### **15A NCAC 04A .0102 PURPOSES**

#### **15A NCAC 04A .0103 STRUCTURE**

#### **15A NCAC 04A .0104 DELEGATION**

*History Note:* Authority G.S. 113A-54(b)(d)(3); 113A-56(a)(b); 113A-58(1); 113A-61(d); 143B-298;  
Eff. February 1, 1976;  
Amended Eff. August 1, 1985; November 1, 1984; June 5, 1981; January 31, 1979;  
Repealed Eff. August 1, 1988.

## 15A NCAC 04A .0105 DEFINITIONS

As used in this Chapter, the following terms shall have these meanings:

- (1) "Accelerated Erosion" means any increase over the rate of natural erosion, as a result of land-disturbing activities.
- (2) "Adequate Erosion Control Measure, Structure, or Device" means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.
- (3) "Borrow" means fill material which is required for on-site construction and is obtained from other locations.
- (4) "Buffer Zone" means the strip of land adjacent to a lake or natural watercourse.
- (5) "Ground Cover" means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (6) "Lake or Natural Watercourse" means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.
- (7) "Natural Erosion" means erosion as defined in G.S. 113A-52(5) under natural environmental conditions undisturbed by man.
- (8) "Person Who Violates", as used in G.S. 113A-64, means:
  - (a) the developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or
  - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66, the North Carolina Administrative Code, Title 15A, Chapter 4, or any order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66, as imposes a duty upon him.
- (9) "Person Conducting Land Disturbing Activity" means any person who may be held responsible for a violation unless expressly provided otherwise by the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66, the North Carolina Administrative Code, Title 15A Chapter 4, or any order or local ordinance adopted pursuant to the Sedimentation Pollution Control Act of 1973, G.S. 113A-50 to -66.
- (10) "Phase of Grading" means one of two types of grading, rough or fine.
- (11) "Plan" means an erosion control plan.
- (12) "Sedimentation" means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.
- (13) "Storm Water Runoff" means the direct runoff of water resulting from precipitation in any form.
- (14) "Being Conducted" means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- (15) "Uncovered" means the removal of ground cover from, on, or above the soil surface.
- (16) "Undertaken" means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.
- (17) "Waste" means surplus materials resulting from on-site construction and disposed of at other locations.
- (18) "Energy Dissipator" means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- (19) "Storm Drainage Facilities" means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.
- (20) "Ten Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration which will produce

the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

- (21) "Velocity" means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- (22) "Discharge Point" means that point at which runoff leaves a tract of land.
- (23) "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- (24) "High Quality Waters" means those classified as such in 15A NCAC 2B .0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments.
- (25) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile of and drain to HQW's.
- (26) "Director" means the Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.
- (27) "Coastal counties" means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.
- (28) "Twenty-five Year Storm" means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

*History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;*  
*Filed as a Temporary Amendment Eff. November 1, 1990 for a period of 180 days to expire on April 29, 1991;*  
*Statutory Authority G.S. 113A-52; 113A-54;*  
*Eff. November 1, 1984;*  
*Amended Eff. May 1, 1990;*  
*ARRC Objection Lodged November 14, 1990;*  
*ARRC Objection Removed December 20, 1990;*  
*Amended Eff. October 1, 1995; April 1, 1992; January 1, 1991.*

## SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

### 15A NCAC 04B .0101 AUTHORITY

*History Note:* Authority G.S. 113A-54; 113A-64;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.

### 15A NCAC 04B .0102 PURPOSE

### 15A NCAC 04B .0103 SCOPE

*History Note:* Authority G.S. 113A-54(a)(b);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984;  
Repealed Eff. August 1, 1988.

### 15A NCAC 04B .0104 DEFINITIONS

*History Note:* Authority G.S. 113A-52; 113A-54;  
Eff. February 1, 1976;  
Amended Eff. March 14, 1980; January 31, 1979; July 1, 1978;  
Repealed Eff. November 1, 1984.

### 15A NCAC 04B .0105 PROTECTION OF PROPERTY

Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activities.

*History Note:* Authority G.S. 113A-54(b); 113A-54(d)(2);  
Eff. February 1, 1976;  
Amended Eff. August 1, 1988; November 1, 1984.

### 15A NCAC 04B .0106 BASIC CONTROL OBJECTIVES

(a) An erosion and sedimentation control plan may be disapproved pursuant to 15A NCAC 4B .0118 if the plan fails to address the following control objectives:

- (1) Identify Critical Areas: Identify site areas subject to severe erosion, and off-site areas especially vulnerable to damage from erosion and sedimentation.
- (2) Limit Exposed Areas. Limit the size of the area exposed at any one time.
- (3) Limit Time of Exposure. Limit exposure to the shortest feasible time.
- (4) Control Surface Water. Control surface water run-off originating upgrade of exposed areas in order to reduce erosion and sediment loss during exposure.
- (5) Control Sedimentation. All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
- (6) Manage Storm Water Runoff. When the increased velocity of storm water runoff resulting from a land-disturbing activity causes accelerated erosion of the receiving watercourse, plans shall include measures to control the velocity to the point of discharge.

(b) When deemed necessary by the approving authority a preconstruction conference may be required.

*History Note:* Authority G.S. 113A-54(d)(4); 113A-54.1;  
Eff. February 1, 1976;  
Amended Eff. July 1, 2000; February 1, 1992; May 1, 1990; November 1, 1984; March 14, 1980.

**15A NCAC 04B .0107 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY**

- (a) No land-disturbing activity subject to these Rules shall be undertaken except in accordance with the G.S. 113A-57.
- (b) Pursuant to G.S. 113A-57(3), provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever period is shorter, except as provided in 15A NCAC 4B .0124(e).
- (c) Pursuant to G.S. 113A-57(4) and 113A-54(d)(4), an erosion and sedimentation control plan must be both filed and approved by the agency having jurisdiction.

*History Note:* Authority G.S. 113A-54(d)(4); 113A-57; 113A-57(3)(4);  
Eff. February 1, 1976;  
Amended Eff. July 1, 2000; May 1, 1990; August 1, 1988; November 1, 1984; March 14, 1980.

**15A NCAC 04B .0108 DESIGN AND PERFORMANCE STANDARD**

Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed to provide protection from the run off of that 10 year storm which produces the maximum peak rate of run off as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

*History Note:* Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; July 1, 1978.

**15A NCAC 04B .0109 STORM WATER OUTLET PROTECTION**

(a) Persons shall conduct land disturbing activity so that the post construction velocity of the ten year storm run off in the receiving watercourse to the discharge point does not exceed the greater of:

- (1) the velocity established by the table in Paragraph (d) of this Rule; or
- (2) the velocity of the ten year storm run off in the receiving watercourse prior to development.

If conditions (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by ten percent.

(b) Acceptable Management Measures. The commission recognizes that management of storm water run off to control downstream erosion constitutes a developing technology and consequently invites the use of innovative techniques shown to produce successful results. Alternatives include:

- (1) Compensate for increased run off from areas rendered impervious by designing measures to promote infiltration.
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and paved sections.
- (3) Provide energy dissipators at storm drainage outlets to reduce flow velocities to the discharge points.
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(c) Exceptions. This Rule shall not apply when storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(d) The following table sets maximum permissible velocity for storm water discharges:

Material	Maximum Permissible Velocities For	
	F.P.S.	M.P.S.

Fine Sand (noncolloidal)	2.5	.8
Sandy Loam (noncolloidal)	2.5	.8
Silt Loam (noncolloidal)	3.0	.9
Ordinary Firm Loam	3.5	1.1
Fine Gravel	5.0	1.5
Stiff Clay (very colloidal)	5.0	1.5
Graded, Loam to Cobbles (noncolloidal)	5.0	1.5
Graded, Silt to Cobbles (colloidal)	5.5	1.7
Alluvial Silts (noncolloidal)	3.5	1.1
Alluvial Silts (colloidal)	5.0	1.5
Coarse Gravel (noncolloidal)	6.0	1.8
Cobbles and Shingles	5.5	1.7
Shales and Hard Pans	6.0	1.8

Source: Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

*History Note:* Authority G.S. 113A-54(b)(c);  
Eff. February 1, 1976;  
Amended Eff. February 1, 1992; May 1, 1990; November 1, 1984; July 1, 1978.

#### **15A NCAC 04B .0110 BORROW AND WASTE AREAS**

If the same person conducts the land disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land disturbing activity unless the borrow or waste activity is regulated under the Mining Act of 1971, or is a landfill regulated by the Division of Solid Waste Management. If the land disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered separate land-disturbing activities.

*History Note:* Authority G.S. 74-67; 113A-54(b); 130A-166.21;  
Eff. February 1, 1976;  
Amended Eff. May 1, 1990; November 1, 1984.

#### **15A NCAC 04B .0111 ACCESS AND HAUL ROADS**

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

*History Note:* Authority G.S. 113A-54;  
Eff. February 1, 1976.

#### **15A NCAC 04B .0112 OPERATIONS IN LAKES OR NATURAL WATERCOURSES**

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

*History Note: Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984.*

#### **15A NCAC 04B .0113 RESPONSIBILITY FOR MAINTENANCE**

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the Act, these Rules, or any order or local ordinance adopted pursuant to the Act. After site development, the land owner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right of way or easement accepted for maintenance by a governmental agency.

*History Note: Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; July 1, 1978.*

#### **15A NCAC 04B .0114 GUIDELINES FOR EROSION AND SEDIMENT CONTROL PRACTICES**

*History Note: Authority G.S. 113A-54; 113A-64;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.*

#### **15A NCAC 04B .0115 ADDITIONAL MEASURES**

Whenever the commission or a local government determines that significant erosion and sedimentation continues despite the installation of protective practices, the person conducting the land disturbing activity will be required to and shall take additional protective action.

*History Note: Authority G.S. 113A-54(b);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984.*

#### **15A NCAC 04B .0116 EXISTING UNCOVERED AREAS**

(a) All uncovered areas which:

- (1) existed on the effective date of these Rules;
- (2) resulted from land disturbing activity;
- (3) exceed one acre;
- (4) are experiencing continued accelerated erosion; and
- (5) are causing off-site damage from sedimentation,

shall be provided with ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.



(b) The commission or local government shall serve a notice to comply with the provisions of G.S. 113A-50 et. seq. or any ordinance, rule or order adopted or issued pursuant to G.S. 113A-50 et. seq. by the Commission or by a local government upon the landowner or other person in possession or control of the land by any means authorized under G.S. 1A-1, Rule 4. The notice shall state the measures needed and the time allowed for compliance. The commission or local government issuing the notice shall consider the economic feasibility, technological expertise and quantity of work required, and shall establish reasonable time limits for compliance.

(c) State agency erosion and sedimentation control programs submitted to the commission for delegation of authority to administer such programs shall contain provisions for the treatment of existing exposed areas. Such provisions shall consider the economic feasibility, existing technology, and quantity of work required.

(d) This Rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

*History Note: Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1995; February 1, 1992; May 1, 1990; November 1, 1984.*

#### **15A NCAC 04B .0117 STATEMENT OF FINANCIAL RESPONSIBILITY AND OWNERSHIP**

*History Note: Authority G.S. 113A-54(b);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984;  
Repealed Eff. May 1, 1990.*

#### **15A NCAC 04B .0118 APPROVAL OF PLANS**

(a) Persons conducting land-disturbing activity on a tract which covers one or more acres shall file three copies of the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction, at least 30 days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving a plan, if the Commission or local government determines, either upon review of such plan or on inspection of the job site, that a significant risk of accelerated erosion or off-site sedimentation exists, the Commission or local government shall require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(b) Commission Approval:

- (1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction by statute and all other land-disturbing activity if no local government has jurisdiction.
- (2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person submitting the plan in writing that it has been:
  - (A) approved,
  - (B) approved with modification,
  - (C) approved with performance reservations, or
  - (D) disapproved.
- (3) The Commission's disapproval, modification, or performance reservations of any proposed plan, shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G.S. 150B-23. (This Section does not modify any other rights to a contested case hearing which may arise under G.S. 150B-23).
- (4) Subparagraph (b)(3) of this Rule shall not apply to the approval or modification of plans reviewed by the Commission pursuant to G.S. 113A-61(c).
- (5) Any plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Commission shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to

Subparagraph (b)(2) of this Rule shall not begin until a complete environmental document is available for review.

(c) Erosion and sedimentation control plans may also be disapproved unless they include an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) Local Government Approval:

- (1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. Such procedures shall respect applicable laws, ordinances, and rules, and shall contain procedures for appeal consistent with the local government's organization and operations.
- (2) The secretary shall appoint such employee(s) of the Department as he deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, such departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan should be approved, approved with modifications, approved with performance reservations, or disapproved.
- (3) If either the local government or the person submitting the plan disagrees with the decision reached by an employee of the Department then he may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Land Resources. The director shall make the proposed erosion control plan and the records relating to the local government's and departmental employees' review, available to an appeals review committee consisting of three members of the Commission appointed by the chairman. Within 10 days following receipt of the notification of appeal, the appeals review committee shall notify the local government and the person submitting the plan of a place and time for consideration of the appeal, and shall afford both parties an opportunity to present written or oral arguments. The appeals review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following such hearing.

(e) The applicant's right under G.S. 113A-54.1(d) to appeal the Director's disapproval of an erosion control plan under G.S. 113A-54.1(c) gives rise to a right to a contested case under G.S. 150B, Article 3. An applicant desiring to appeal the Director's disapproval of an erosion control plan shall file with the Office of Administrative Hearings a contested case petition under G.S. 150B, Article 3. The general time limitation for filing a petition, and the commencement of the time limitation, shall be as set out in G.S. 150B-23(f). Contested cases shall be conducted under the procedures of G.S. 150B, Article 3 and applicable rules of the Office of Administrative Hearings. The Commission shall make the final decision on any contested case under G.S. 150B-36.

*History Note: Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;  
Statutory Authority G.S. 113A-2; 113A-54; 113A-54.1; 113A-60(a); 113A-61(b); 113A-61(c);  
150B, Article 3; 150B-23;  
Eff. February 1, 1976;  
Amended Eff. June 1, 1995; February 1, 1992; May 1, 1990; August 1, 1988.*

#### **15A NCAC 04B .0119 COMPLIANCE WITH PLAN REQUIREMENT**

*History Note:* Authority G.S. 113A-54(b);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984;  
Repealed Eff. August 1, 1988.

#### **15A NCAC 04B .0120 INSPECTIONS AND INVESTIGATIONS**

- (a) The Commission, Department of Environment, Health, and Natural Resources or local government may require written statements, or the filing of reports under oath, concerning land disturbing activity.
- (b) Inspection of sites shall be carried out by the staff of Department of Environment, Health, and Natural Resources or other qualified persons authorized by the Commission or Department of Environment, Health, and Natural Resources as necessary to carry out its duties under the Act.
- (c) No person shall refuse entry or access to any representative of the Commission or any representative of a local government who requests entry for purposes of inspection.

*History Note:* Authority G.S. 113A-54(b); 113A-58; 113A-61.1;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1995; May 1, 1990; November 1, 1984.

#### **15A NCAC 04B .0121 PENALTIES**

*History Note:* Authority G.S. 113A-54; 113A-64;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.

#### **15A NCAC 04B .0122 SEVERABILITY CLAUSE**

If any of these provisions are held invalid or unenforceable, all of the other provisions shall nevertheless continue in full force and effect.

*History Note:* Authority G.S. 113A-54;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984.

#### **15A NCAC 04B .0123 EFFECTIVE DATE**

*History Note:* Authority G.S. 113A-54(b);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; November 15, 1976;  
Repealed Eff. August 1, 1988.

#### **15A NCAC 04B .0124 DESIGN STANDARDS IN SENSITIVE WATERSHEDS**

- (a) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this Rule. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.
- (b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25 year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agricultural Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (c) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (d) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
- (e) Pursuant to G.S. 113A-57(3) provisions for a ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

*History Note: Authority G.S. 113A-54(b); 113A-54(c)(1);  
Eff. May 1, 1990.*

#### **15A NCAC 04B .0125 BUFFER ZONE REQUIREMENTS**

- (a) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (b) The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
- (c) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
- (d) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A NCAC 2B .0211 "Fresh Surface Water Classification and Standards", in these waters.

*History Note: Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1);  
Eff. May 1, 1990;  
Amended Eff. February 1, 1992.*

#### **15A NCAC 04B .0126 PLAN APPROVAL FEE**

- (a) A nonrefundable plan review processing fee, in the amount stated in Paragraph (b) of this Rule, shall be paid when an erosion and sedimentation control plan is filed in accordance with 15A NCAC 4B .0118.
- (b) Each plan shall be deemed incomplete until the plan review processing fee is paid.

- (c) The plan review processing fee shall be based on the number of acres, or any part of an acre, of disturbed land shown on the plan.
- (d) No plan review processing fee shall be charged for review of a revised plan unless the revised plan contains an increase in the number of acres to be disturbed. If the revised plan contains an increase in the number of acres to be disturbed, the plan review processing fee to be charged shall be the amount stated in Paragraph (b) of this Rule for each additional acre (or any part thereof) disturbed.
- (e) The nonrefundable plan review processing fee shall be forty dollars (\$40.00) for each acre or part of any acre of disturbed land.
- (f) Payment of the plan review processing fee may be by check or money order made payable to the "N.C. Department of Environment and Natural Resources". The payment shall refer to the erosion and sedimentation control plan.

*History Note:* Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;  
Authority G.S. 113A-54; 113A-54.2;  
ARRC Objection Lodged November 14, 1990;  
ARRC Objection Removed December 20, 1990;  
Eff. January 1, 1991;  
Amended Eff. July 1, 2000.

#### **15A NCAC 04B .0127 PLAN APPROVAL CERTIFICATE**

- (a) Approval of a sedimentation and erosion control plan will be contained in a document called "Certificate of Plan Approval" to be issued by the Commission.
- (b) The Certificate of Plan Approval must be posted at the primary entrance of the job site before construction begins.
- (c) No person may initiate a land-disturbing activity until notifying the agency that issued the Plan Approval of the date that the land-disturbing activity will begin.

*History Note:* Filed as a Temporary Rule Eff. November 1, 1990, for a period of 180 days to expire on April 29, 1991;  
Authority G.S. 113A-54(b);  
ARRC Objection Lodged November 14, 1990;  
ARRC Objection Removed December 20, 1990;  
Eff. January 1, 1991;  
Amended Eff. July 1, 2000.

#### **15A NCAC 04B .0128 RAILROAD COMPANIES**

- (a) The Commission recognizes that under the Federal Railroad Safety Act of 1970 (FRSA), 45 U.S.C. 421 et seq., as interpreted by federal administrative rules and court decisions, existing railroad roadbeds comprise a zone of federal preeminence within which federal law takes precedence over the Act [the SPCA].
- (b) While the specific definition of this zone of federal preeminence is a question of federal law and regulation, in general the zone of federal preeminence extends outward from the center of the railroad roadbed to and including drainage ditches and spoil banks on either side of the roadbed.
- (c) In the event of a derailment, washout, or other emergency condition which requires immediate action to protect public safety, the zone of federal preeminence temporarily expands, for the duration of the emergency condition, to encompass areas adjacent to the roadbed within which emergency repairs are undertaken pursuant to the FRSA and Federal Railroad Administration rules.
- (d) The Act and rules do not apply to activities conducted within the zone of federal preeminence. The Act and rules apply to all other activities conducted by railroad companies. Railroad companies shall take all reasonable measures that are consistent with the requirements of federal law to control sedimentation originating in the zone of federal preeminence.
- (e) A railroad company's failure to comply with a requirement of the Act or rules in order to avoid creating a safety hazard or to avoid noncompliance with a federal safety requirement is not a knowing or willful violation of the Act or rules.
- (f) The Commission will provide advice and technical assistance to railroad companies in the development and implementation of voluntary best management practices to reduce environmental impacts that may otherwise result from activities conducted within the zone of federal preeminence.

*History Note:* Authority G.S. 113A-52(6); 113A-54(b); 113A-54(c); 113A-54(d)(4); 113A-57(1);  
Eff. August 1, 1995.

**15A NCAC 04B .0129 EROSION CONTROL PLAN EXPIRATION DATE**

An erosion control plan shall expire three years following the date of approval, if no land-disturbing activity has been undertaken.

*History Note:* Authority G.S. 113A-54.1(a);  
Eff. October 1, 1995.

**15A NCAC 04B .0130 EMERGENCIES**

Any person who conducts an emergency repair essential to protect human life, that constitutes a land-disturbing activity within the meaning of G.S. 113A-52(6) and these Rules:

- (1) shall notify the Commission of such repair as soon as reasonably possible, but in no event later than five working days after the emergency ends; and
- (2) shall take all reasonable measures to protect all public and private property from damage caused by such repair as soon as reasonably possible, but in no event later than 15 working days after the emergency ends.

*History Note:* Authority G.S. 113A-52.01(4); 113A-54(b);  
Eff. October 1, 1995.

## SUBCHAPTER 4C - SEDIMENTATION CONTROL CIVIL PENALTIES

### 15A NCAC 04C .0101 PURPOSE AND SCOPE

*History Note:* Authority G.S. 113A-54(b); 113A-64(a);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; October 5, 1980;  
Repealed Eff. August 1, 1988.

### 15A NCAC 04C .0102 DEFINITIONS

*History Note:* Authority G.S. 143B-10;  
Eff. February 1, 1976;  
Amended Eff. January 31, 1979; September 3, 1976;  
Repealed Eff. November 1, 1984.

### 15A NCAC 04C .0103 WHO MAY ASSESS

The director may assess civil penalties against any person responsible for a violation.

*History Note:* Authority G.S. 113A-55; 113A-64; 143B-10;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984.

### 15A NCAC 04C .0104 WHEN ASSESSABLE

*History Note:* Authority G.S. 113A-64;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984;  
Repealed Eff. August 1, 1988.

### 15A NCAC 04C .0105 AMOUNT OF ASSESSMENT

*History Note:* Authority G.S. 113A-64;  
Eff. February 1, 1976;  
Repealed Eff. November 1, 1984.

### 15A NCAC 04C .0106 CRITERIA

In determining the amount of the civil penalty assessment, the director shall consider the following criteria:

- (1) severity of the violation,
- (2) degree and extent of the harm,
- (3) type of violation,
- (4) duration,
- (5) cause,
- (6) extent of any off-site damage which may have resulted,

- (7) effectiveness of action taken by violator,
- (8) adherence to plan submitted by violator,
- (9) effectiveness of plan submitted by violator,
- (10) cost of rectifying any damage,
- (11) the violator's previous record in complying with rules of the commission,
- (12) estimated cost of installing and/or maintaining corrective sediment control measures, and
- (13) staff investigative costs.

*History Note:* Authority G.S. 113A-54(b); 113A-55; 113A-64(a);  
Eff. February 1, 1976;  
Amended Eff. November 1, 1984; April 1, 1978.

#### **15A NCAC 04C .0107 PROCEDURES: NOTICES**

- (a) The notice of violation shall describe the violation with reasonable particularity request that all illegal activity cease, and inform the violator that civil penalty may be assessed pursuant to G.S. 113A-64. If particular actions need to be taken to comply with the Sedimentation Pollution Control Act, the notice shall specify the actions to be taken, shall specify a time period for compliance, and shall state that upon failure to comply within the allotted time the person shall become subject to the assessment of a civil penalty for each day of the continuing violation beginning with the date of the violation.
- (b) The stop work order provided in G.S. 113A-65.1 shall serve as the notice of violation for purposes of the assessment of a civil penalty pursuant to G.S. 113A-64(a)(1). Copies of the stop work order shall be served upon persons the Department has reason to believe may be responsible for the violation by any means authorized under G.S. 1A-1, Rule 4.

*History Note:* Filed as a Temporary Amendment Eff. January 14, 1992 for a period of 180 days to expire on July 11, 1992;  
Authority G.S. 113A-54; 113A-61.1; 113-65.1; 143B-10;  
Eff. February 1, 1976;  
Amended Eff. August 1, 2000; October 1, 1995; April 1, 1992; May 1, 1990; November 1, 1984;  
Temporary Amendment Eff. August 1, 2000.

#### **15A NCAC 04C .0108 REQUESTS FOR ADMINISTRATIVE HEARING**

After receipt of notification of any assessment, the assessed person must select one of the following options within 30 days:

- (1) tender payment; or
- (2) file a petition for an administrative hearing in accordance with G.S. 150B-23.

*History Note:* Authority G.S. 113A-64; 143B-10; 150B-23;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1995; October 1, 1988; October 5, 1980; April 1, 1978.

#### **15A NCAC 04C .0109 TENDER OF PAYMENT**

The director shall accept and acknowledge all tenders of payment on behalf of the secretary.

*History Note:* Authority G.S. 113A-55; 143B-10;  
Eff. February 1, 1976;  
Amended Eff. October 5, 1980; April 1, 1978.

#### **15A NCAC 04C .0110 ADMINISTRATIVE HEARING**



Administrative hearings shall be conducted in accordance with the procedures outlined in G.S. 150B-22 et seq. and the contested case procedures in 15A NCAC 1B .0200.

*History Note:* Authority G.S. 113A-55; 150B-22 et seq.;  
Eff. February 1, 1976;  
Amended Eff. October 1, 1995; August 1, 1988; November 1, 1984; October 5, 1980.

**15A NCAC 04C .0111 FURTHER REMEDIES**

No provision of this Subchapter shall be construed to restrict or impair the right of the secretary, the director, or the Sedimentation Control Commission to pursue any other remedy provided by law for violations of the Sedimentation Pollution Control Act.

*History Note:* Authority G.S. 113A-54; 113A-60; 113A-64 through 113A-66;  
Eff. February 1, 1976.

## **SUBCHAPTER 4D - LOCAL ORDINANCES**

### **15A NCAC 04D .0101 SUBMISSION AND APPROVAL OF PROPOSED LOCAL ORDINANCES**

*History Note:* Authority G.S. 113A-54; 113A-60;  
Eff. February 1, 1976;  
Repealed Eff. August 1, 1988.

### **15A NCAC 04D .0102 MODEL ORDINANCE**

The commission has adopted a model ordinance. Local governmental units wishing to establish a local erosion and sedimentation control program may obtain a copy of the model ordinance upon writing to:

North Carolina Department of Environment, Health, and Natural Resources  
Land Quality Section  
P.O. Box 27687  
Raleigh, North Carolina 27611

*History Note:* Authority G.S. 113A-54(d); 113A-60;  
Eff. February 1, 1976;  
Amended Eff. March 14, 1980; February 23, 1979;  
Summary Rule Filed January 26, 1982;  
Amended Eff. October 1, 1995; May 1, 1990; August 1, 1988; November 1, 1984.

### **15A NCAC 04D .0103 REVISIONS TO APPROVED LOCAL ORDINANCES**

*History Note:* Authority G.S. 113A-54(d); 113A-60;  
Eff. May 1, 1990;  
Amended Eff. January 4, 1993;  
Repealed Eff. October 1, 1995.

## **SUBCHAPTER 4E - RULEMAKING PROCEDURES**

### **SECTION .0100 - GENERAL PROVISIONS**

#### **15A NCAC 04E .0101 GENERAL PURPOSE**

Rules at 15A NCAC 1B .0100 are adopted by reference and with the rules of this Subchapter shall govern rule-making hearings conducted under the purview of the commission.

*History Note: Authority G.S. 113A-54; 113A-55; 150B;  
Eff. March 14, 1980;  
Amended Eff. November 1, 1984.*

#### **15A NCAC 04E .0102 DEFINITIONS**

As used in this Subchapter:

- (1) "Commission" means the North Carolina Sedimentation Control Commission.
- (2) "Director" means the Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.

*History Note: Authority G.S. 113A-54; 113A-55;  
Eff. March 14, 1980;  
Amended Eff. May 1, 1990.*

#### **15A NCAC 04E .0103 ADDRESS**

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

#### **15A NCAC 04E .0104 COPIES OF RULES: INSPECTION**

(a) Anyone desiring to obtain a copy of any or all of the rules of the commission may do so by requesting such from the director at the address of the commission as set forth at Rule .0001 of Subchapter A of this Chapter. The request must specify the rules requested, for example, 15A NCAC 4, Sedimentation Control, or 15A NCAC 4E, Rulemaking Procedures. The director may charge reasonable fees to recover mailing and duplication costs for requests of more than one copy of the same rule(s).

(b) The rules of the commission (15A NCAC 4) and other documents specified in G.S. 150B-11 are available for public inspection at the Office of the Director (P.O. Box 27687, 512 N. Salisbury Street, Raleigh, N.C. 27611) during regular office hours.

*History Note: Authority G.S. 113A-54; 113A-55; 150B-11;  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; November 1, 1984.*

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

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

## SECTION .0200 - PETITIONS FOR RULEMAKING

### 15A NCAC 04E .0201 PETITION FOR RULEMAKING HEARINGS

Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the commission shall forward the petition to the director at the address of the commission in Rule .0001 of Subchapter A of this Chapter. The first page of the petition should clearly bear the notation: RULEMAKING PETITION RE and then the subject area (for example, RE PLAN REQUIREMENTS, RE PENALTIES, RE INSPECTIONS) or an indication of any other area over which the commission may have rulemaking authority.

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

### 15A NCAC 04E .0202 CONTENTS OF PETITION

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

### 15A NCAC 04E .0203 DISPOSITION OF PETITIONS

(a) The director will determine whether the petition contains sufficient information for the commission to determine whether the public interest will be served by granting the request. The director may request additional information from the petitioner(s), he may contact interested persons or persons likely to be affected by the proposed rule and request comments, and he may use any other appropriate method for obtaining additional information.

(b) The commission will render a decision within 30 days after the petition is submitted. If the decision is to grant the petition, the director, within 30 days of submission, will initiate a rulemaking proceeding. If the decision is to deny the petition, the director will notify the petitioner(s) in writing, stating the reasons therefor.

(c) If the commission is not scheduled to meet within 30 days of submission of a petition the director may either:

- (1) accept the petition and initiate a rulemaking proceeding; or
- (2) Ask the chairman of the commission to call a special meeting of the commission so that a decision can be made by the commission within the 30 day time period required by 150B-16 and in accordance with the procedures set out in (b) of this Rule.

*History Note:* Authority G.S. 113A-54; 113A-55; 150B-16;  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; November 1, 1984; June 5, 1981.

## SECTION .0300 - NOTICE OF RULEMAKING HEARINGS

### 15A NCAC 04E .0301 TIMING OF NOTICE

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

### 15A NCAC 04E .0302 NOTICE MAILING LIST

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

#### **15A NCAC 04E .0303 ADDITIONAL INFORMATION**

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

### **SECTION .0400 - RULEMAKING HEARINGS**

#### **15A NCAC 04E .0401 REQUEST TO PARTICIPATE**

#### **15A NCAC 04E .0402 CONTENTS OF REQUEST: GENERAL TIME LIMITATIONS**

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

#### **15A NCAC 04E .0403 WRITTEN SUBMISSIONS**

- (a) Any person may file a written submission containing data, comments, or arguments after distribution or publication of a rulemaking notice until the day of the hearing, unless a longer period has been prescribed in the notice or granted upon request. These written comments should be sent to the director at the address of the commission.
- (b) The first page of any written submission shall clearly identify the rulemaking proceeding or proposed rule to which the comments are addressed and include a statement of the position of the person making the submission (for example, "In support of adopting proposed Rule .0000," "In opposition to adopting proposed Rule .0000").
- (c) Upon receipt of written comments, acknowledgment will be made with an assurance that the comments therein will be considered fully by the commission.

*History Note:* Authority G.S. 113A-54; 150B-12(e);  
Eff. March 14, 1980;  
Amended Eff. June 5, 1981.

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

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

#### **15A NCAC 04E .0405 STATEMENT OF REASONS FOR DECISION**

- (a) Any interested person desiring a concise statement of the principal reasons for and against the adoption of a rule by the commission and the factors that led to overruling the considerations urged for or against its adoption may submit a request to the director of the address of the commission.
- (b) The request must be made in writing and submitted prior to adoption of the rule or within 30 days thereafter.

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

#### **15A NCAC 04E .0406 RECORD OF PROCEEDINGS**

A record of all rulemaking proceedings will be maintained by the director for as long as the rule is in effect, and for five years thereafter, following filing with the Office of Administrative Hearings. Record of rulemaking proceedings will be available for public inspection during the hours of 8:30 AM to 5:30 PM on workdays.

*History Note:* Authority G.S. 113A-54; 150B-11(2);  
Eff. March 14, 1980;  
Amended Eff. August 1, 1988; November 1, 1984.

### **SECTION .0500 - DECLARATORY RULINGS**

#### **15A NCAC 04E .0501 SUBJECTS OF DECLARATORY RULINGS**

Any person aggrieved by a statute administered or rule promulgated by the commission may request a declaratory ruling as to either the manner in which a statute or rule applies to a given factual situation, if at all, or whether a particular agency rule is valid. For purposes of this Section, an aggrieved person means a person substantially affected by a statute administered by the commission or a rule promulgated by the commission.

*History Note:* Authority G.S. 113A-54; 150B-17;  
Eff. March 14, 1980.

#### **15A NCAC 04E .0502 SUBMISSION OF REQUEST FOR RULING**

All requests for declaratory rulings shall be written and mailed to the director at the address of the commission. The first page of the request should bear the notation: REQUEST FOR DECLARATORY RULING. The request must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a statement of whether an oral hearing is desired and, if so, the reason therefor.

*History Note:* Authority G.S. 113A-54; 150B-17;  
Eff. March 14, 1980.

#### **15A NCAC 04E .0503      DISPOSITION OF REQUESTS**

(a) Upon receiving a request, the director is authorized to initiate a declaratory ruling proceeding to receive information concerning the request. A declaratory ruling proceeding may consist of written submissions, an oral hearing, or other procedures as may be appropriate in the circumstances of the particular request. If the proceeding takes the form of an oral hearing the director may direct that the proceeding take place before the commission.

(b) The director will compile the information collected in the proceeding, along with other relevant information, in a recommendation to the commission on whether to issue the ruling and what the ruling should be.

(c) A decision whether to issue the ruling will be made by the commission at the next regularly scheduled meeting of the commission within the 60 day period required by 150B-17 and after the director's recommendation is presented. If no meeting is scheduled within that time period, the director will ask the chairman of the commission to call a special meeting so that the commission can comply with the requirements of G.S. 150B-17.

(d) If the decision of the commission is to issue the ruling, the ruling will be issued by the commission with the 60 day period required by G.S. 150B-17. If necessary, the chairman of the commission will call a special meeting so that the commission can comply with this requirement.

(e) If the decision of the commission is to deny the request, the director will notify the petitioner(s) in writing stating the reasons therefor.

(f) For purposes of this Rule, the commission will ordinarily refuse to issue a declaratory ruling:

- (1) unless the rule is unclear on its face;
- (2) unless the petitioner shows that the circumstances are so changed since the adoption of the rule that such a ruling would be warranted;
- (3) unless the petitioner shows that the agency did not give to the factors specified in the request for a declaratory ruling a full consideration at the time the rule was issued;
- (4) where there has been a similar controlling factual determination in a contested case or where the factual context being raised for a declaratory ruling was specifically considered upon the adoption of the rule or directive being questioned, as evidenced by the rulemaking record; or
- (5) where the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina.

*History Note:*      *Authority G.S. 113A-54; 113A-55; 150B-17;*  
*Eff. March 14, 1980;*  
*Amended Eff. August 1, 1988; June 5, 1981.*

#### **15A NCAC 04E .0504      RECORD OF DECISION**

A record of all declaratory rulemaking proceedings will be maintained in the director's office for as long as the ruling is in effect and for five years thereafter. This record will contain: the petition, the notice, all written submissions filed in the request, whether filed by the petitioner or any other person, and a record or summary of oral presentations, if any. Records of declaratory rulemaking proceedings will be available for public inspection during the regular office hours of the director.

*History Note:*      *Authority G.S. 113A-54; 150B-11;*  
*Eff. March 14, 1980.*