SUBCHAPTER 1B - GENERAL ADMINISTRATION

SECTION .0100 - RULEMAKING

15A NCAC 01B .0101 MODEL RULES

(a) The model administrative procedures for rulemaking, codified as Title 26 of the North Carolina Administrative Code, Subchapter 2A and Subchapter 2B 1986, are hereby adopted by reference to apply to actions of the Department of Environment, Health, and Natural Resources (hereinafter referred to as Department). This adoption by reference shall include any later amendments and editions of the model administrative rules pursuant to G.S. 150B-14(c).
(b) Copies of 26 NCAC, Subchapters 2A and 2B may be inspected in the APA Coordinator's Section, Division of Planning and Assessment of the Department, 512 North Salisbury Street, Raleigh, North Carolina 27611. Copies may also be obtained from the Rules Division of the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, North Carolina 27604.

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.

SECTION .0200 - CONTESTED CASE HEARING PROCEDURES

15A NCAC 01B .0201 DEFINITIONS

The following definitions shall apply throughout this Section:

(1) "Agency" means the Department of Environment, Health, and Natural Resources, and its units.
(2) "Commission" means, as appropriate, Environmental Management Commission, Marine Fisheries Commission, Coastal Resources Commission, Sedimentation Control Commission, Mining Commission, Soil and Water Conservation Commission, Wastewater Treatment Plant Operators Certification Commission, or such other commission that adopts these hearing regulations.
(3) "Department" means the Department of Environment, Health, and Natural Resources.
(4) "Party" means:
  (a) a person to whom the agency action is specifically directed;
  (b) a person named as a party to the contested case proceedings or allowed to intervene or participate as a party in the contested case proceedings; or
  (c) a person who is entitled under any provision of law to participate as a party in the contested case proceedings and who makes an appearance or request to be admitted as a party.
(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, body politic, or public or private organization of any character able to sue or be sued under a common name, including another agency or unit of government.
(6) "Presiding officer" means the person or persons designated by the agency head to conduct the contested case proceedings.
(7) "Secretary" means the Secretary of the Department of Environment, Health, and Natural Resources, or his designee, or commission or its designee, as appropriate, depending on whether the Secretary or the commission has the authority to make the final decision.

History Note: *Authority G.S. 143B-10;*
Eff. February 1, 1976;
Readopted (w/change) Eff. October 31, 1980;
Amended Eff. August 1, 1982;
Transferred from T15.01B .0201 Eff. November 1, 1989;
Amended Eff. March 1, 1990.

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

Contested case hearings are available as provided in G.S. 150B, and petitions for contested case hearings shall be filed in accordance with the provisions of that Chapter.

History Note: *Authority G.S. 143B-10; 150B-2(2); 150B-11; 150B-23(a);*
Eff. February 1, 1976;
Readopted (with change) Eff. October 31, 1980;
Amended Eff. July 1, 1988;
Transferred from T15.01B .0202 Eff. November 1, 1989.

15A NCAC 01B .0203 REQUEST FOR CONTESTED CASE HEARING

(a) Any person entitled to a hearing under this Section may request a hearing within 60 days after receipt of notification of the action taken or proposed to be taken.
(b) The hearing is to be conducted in accordance with G.S. 150B and 26 NCAC 3 - Office of Administrative Hearings, Hearings Division.

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

15A NCAC 01B .0204 FINAL AGENCY DECISION IN CONTESTED CASE PROCEEDINGS

(a) If the proposed findings of fact and conclusions of law have been submitted to the Secretary pursuant to G.S. 150B-36, the Secretary shall fully review the record and any submissions by the parties.
(b) If the review of the record and any submissions by the parties indicates that the administrative hearing proceedings were fairly and properly conducted, the Secretary shall issue in writing a final agency decision in the matter. The Secretary may approve, with or without modification, the findings, conclusions, opinions, and recommendations of the presiding officer; or the Secretary may substitute independent findings, conclusions, opinions, and recommendations based on the evidence and on matters officially noticed.
(c) Any action by the Secretary pursuant to this Rule shall be made in writing and attached to the record of proceedings.
(d) The final agency decision is the preprequisite to the right of judicial review in the matter under G.S. 150B-43.

History Note: *Authority G.S. 143B-10; 150B-36;*
Eff. February 1, 1976;
Readopted (w/change) Eff. October 31, 1980;
Amended Eff. August 1, 1988; August 1, 1982;
Transferred from T15.01B .0221 Eff. November 1, 1989.

SECTION .0300 - PURCHASING AND CONTRACTING

15A NCAC 01B .0301 SCOPE OF SECTION

The Department establishes and operates its own internal purchasing facility and issues its own purchase orders, subject to provisions of the State Purchasing Manual, amended effective April 1981, and the guidelines in this Section.

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.

15A NCAC 01B .0302 DEFINITIONS

As used in this Section:

(1) "Director" means the Director of the Division of General Services of the Department.

(2) "Division" means the Division of General Services of the Department.

(3) "Division address":

Division of General Services
Department of Environment, Health, and Natural Resources
P. O. Box 27687
Raleigh, North Carolina 27611.

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

15A NCAC 01B .0303 CONCESSION CONTRACTS

The awarding procedure for concession contracts or leases is as follows:

(1) One or more advertisements will be placed in a newspaper serving the local area of the concession and in a major newspaper in Raleigh inviting prospective concessionaires to submit proposals on the concession operation.

(2) The newspaper advertisement shall state the time and place bid proposals are opened.

(3) A successful bidder shall be provided 30 days to secure necessary liability and workmen's compensation insurance in amounts determined by the Department and based on the size of the concession and number of employees.

(4) If no bidders make proposals for the operation of the concession, authority may be granted by the division to negotiate for a concessionaire, or the Secretary may approve the concession operation as a department function.

(5) The secretary shall approve licenses based on criteria determined to be in the public interest.

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.

SECTION .0400 - PUBLIC RECORDS

15A NCAC 01B .0401 DEFINITIONS

As used in this Section:

(1) "Agency" means the Department of Environment, Health, and Natural Resources, or any of its divisions or offices.

(2) "Custodian" means the public official in charge of an office having public records, or any person given personal control of such records by the public official.

History Note: *Authority G.S. 132-1; 132-1.1; 132-2;*
Eff. August 1, 1982;
Amended Eff. October 1, 1984;
Transferred from T15.01B .0607 Eff. November 1, 1989;
Amended Eff. March 1, 1990.

15A NCAC 01B .0402 PUBLIC ACCESS

(a) Any person may seek the custodian's permission to inspect public records by describing the records in terms sufficient to secure their retrieval. If the person is aware of the specific division or program which is in custody of the requested public record, that person may contact the director of the appropriate division or program directly.

(b) The custodian shall provide adequate space during office hours to all persons making a reasonable request for public records, and the custodian shall supervise the inspection in order to protect the public records and to prevent the disruption of the office.

(c) All persons making a request for public records may copy such records or may ask the custodian to provide copies at a charge consistent with the provisions of G.S. 7A-308 (a)(12).

(d) If the custodian denies access to any public record, the custodian shall give the person making the request a written statement of the reasons for the denial.

History Note: *Authority G.S. 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 .0608 Eff. November 1, 1989.