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.