15A NCAC 2I .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.

Authority G.S. 150B-4

15A NCAC 2I .0602 PROCEDURE FOR ~~SUBMISSION OF PETITION~~ REQUESTING DECLARATORY RULING

(a) All requests for a declaratory ruling shall be filed in writing with the Director of the appropriate Division of the Department of Environment and Natural Resources, and ~~25~~ one complete ~~copies~~ written copy and one copy in digital format 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 for declaratory ruling shall be submitted no sooner than 65 days and no later than 50 days prior to the next regularly scheduled business meeting of the Commission.

(c) ~~All requests~~ A request for declaratory ruling shall include the following:

(1) name and address of the petitioner(s);

(2) a copy of the rule, statute or order upon which a ruling is ~~desired~~ requested;

(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; or resolution of conflicting interpretations of a rule or law implemented by the agency,

(4) ~~arguments or data which demonstrate~~ information demonstrating that the petitioner is a person aggrieved in accordance with G.S. 150B-2 ~~by~~ with respect to the interpretation or application of the rule, order 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.

(d) A request for a ruling on the applicability of a rule, order, or statute as described in (b)(3) of this Rule shall ~~must~~ include a statement of the specific facts that shall be the basis for the declaratory ruling ~~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 all three 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.

Authority G.S. 150B-4

15A NCAC 2I .0603 DISPOSITION OF REQUEST FOR DECLARATORY RULING

(a) The Commission Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements in 15A NCAC 2I .0602 ~~of this Section~~, and shall, within 30 days of the receipt of the request, make a decision whether to grant or deny the request for declaratory ruling and shall inform the petitioner in writing of the decision and the reasons for the decision. ~~he shall make a recommendation to the Commission on whether to issue or decline to issue a declaratory ruling.~~ If the Chairman determines that a ruling on the merits of the request is warranted then the request shall be placed on the agenda for the Commission's next regularly scheduled business meeting. The Chairman may set reasonable time limits for oral arguments or other presentations that may be given at the meeting.

(b) Before the Commission decides the merits of the request, the Chairman may:

(1) prior to the next scheduled business meeting request additional written submissions from the petitioner(s);

(2) prior to the next scheduled business meeting request a written response from the Department of Environment and Natural Resources staff or any other person; and

(3) prior to the next scheduled business meeting, grant or deny a request for 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.~~

(c) Unless the Division waives the opportunity to participate, it shall be a party to the request for declaratory ruling. Upon written request, and within the Chairman's discretion, the petitioner and the Division may each be allowed to present oral arguments to the Commission at a regularly scheduled business meeting. Neither party may offer testimony or conduct cross-examination before the Commission.

~~(d) "Good cause" as set out in Paragraph (c) of this Rule shall include:~~

(d) Whenever the Commission, through its Chairman, believes for the reasons set forth in this Rule that the issuance of a declaratory ruling is contrary to the purposes of the authorizing legislation or other related matters should prevent the Commission from hearing the matter, the Chairman may deny the request for declaratory ruling, stating in writing the reason(s) for the denial of the request for declaratory ruling. The Commission, through its Chairman, may deny a request for declaratory ruling if the Chairman finds one or more of the following:

(1) ~~finding that there has been~~ the Commission has issued 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 as to the interpretation of a rule or law implemented by the Commission; ~~or~~

(4) ~~finding that the factual context~~ the facts put forward as the ~~subject of~~ basis for the declaratory ruling ~~was~~ were specifically considered upon the adoption of the rule or statute that is the subject of the declaratory ruling request. ~~being questioned, as evidenced by the rulemaking record~~.

(5) the request for declaratory ruling is incomplete under 15A NCAC 2I .0602 or otherwise fails to provide an adequate basis for a declaratory ruling; or

(6) the Commission will be unable to act on the merits of the request for declaratory ruling within the time remaining under G.S 150B-4(a).

(e) The petitioner may agree to extend the time for the request for declaratory ruling to be heard by

withdrawing the request in writing and resubmitting it as a new request in accordance with 15A NCAC 2I .0602.

(f) A declaratory ruling as well as a denial of a request for declaratory ruling shall be ~~is~~ subject to judicial review

~~(e)~~ (g) 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)~~ (h) 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.~~

Authority G.S. 150B-4