15A NCAC 05H.0XX1 DEFINITIONS

Comment [TED1]: Note that as with other rule sets, definitions are being provided here for reference but will be moved to an overall definitions rule section later.

(1) "Deepen" for cased well shall mean an operation where a well is drilled to a measured depth below the cement casing shoe; for an open-hole well shall mean an operation where a well is drilled below the original depth of the well.

(2) "Drill" shall mean the commencement of an operation to set conductor casing or the moving in of a drill rig capable of drilling to a depth to set the requisite amount of surface casing and spudding the well.

(3) "Drilling Unit" means the area which can be efficiently and economically drained by one or more wells.

(4) "Re-Enter" shall mean an operation where access to a previously plugged wellbore is reestablished for any purpose including replugging.

(5) "Permit" means an authorization or equivalent control document issued by the Department to implement the requirements of the rules of this Section.

(5) "Permittee" shall mean a person or entity to which the Department has issued a permit.

(6) "Production Well" shall mean a well drilled, deepened, or re-entered, for the exploration or production of oil and gas.

(7) "Reclamation" means the rehabilitation of the affected land by establishing an adequate groundcover to prevent erosion and offsite sedimentation and pre-drilling water quality conditions within the site and within stream reaches or other surface water bodies adjacent to or intersecting the drilling unit.

(8) "Spud" shall mean the commencement of drilling a wellbore.

History Note: *Authority*
Eff

15A NCAC 05H.0XX2 OIL AND GAS OPERATIONS REGISTRATION

Comment [TED2]: NOTE: DENR will need statutory authority to support these rules!!!!

(a) Prior to the commencement of operations, all producers, operators, transporters, refiners, gasoline or other extraction plant operators, and initial purchasers who are conducting

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operations, shall file an Organization Report with the North Carolina Department of the Secretary of State.

(b) The applicant, and any person providing financial assurance for oil and gas operators, shall complete a Financial Responsibility/ Ownership (FRO) Form- Form 1, with the Department of Environment and Natural Resources (Department). All changes of address of the parties required to file a Form 1 shall be immediately reported by submitting a new Form 1.

(c) Operator employees approved to submit documents shall be listed on a completed Form 1. A company/individual other than the applicant may be designated as an agent, and its representatives shall be listed on the completed Form 1. All changes to reported agent information shall be immediately reported by submitting a new Form 1. If the applicant is not a resident of North Carolina, designate a North Carolina agent for the purpose of receiving notice from the Commission or the Secretary of compliance or noncompliance with the permit, this Article, or any rules adopted pursuant to this Article.

History Note: *Authority*
Eff

15A NCAC 05H.0XX3 APPLICATION FOR PERMIT TO DRILL

(a) Before any person shall commence operations for the drilling, recompletion, deepening, or re-entry of any oil and gas well, such person shall file with the Department an application on Form 2 - Permit-to-Drill Application, pay a permit fee, secure required bonds pursuant to (BONDING RULES) , and obtain the Department's approval before commencement of operations with heavy equipment;

The applicant must also submit:

(1) a Form 2 filled out in its entirety with all required supplemental plans and forms attached;

(2) a nonrefundable permit application review fee of $3,000 per well in the form of a check or bank draft payable to the "North Carolina Department of Environment and Natural Resources." The payment shall include a reference to the well name listed on the application;

(3) the bond amounts for all required bonds in rule BONDING RULES must be received by the Department;

(i) bond of $5,000 plus one-dollar per each liner foot drilled in accordance with §113-378; and

(ii) a surface reclamation bond that is sufficient to cover the reclamation of the surface property in accordance with § 113-421; and

(4) Documentation that shows authorization to drill on and under the properties within the subject tract, or drilling unit, such as copies of Lease(s) or Memoranda of Lease(s).

(b) The application must be made on forms prescribed by the Department. The forms and required attachments shall be submitted electronically;

(c) No person may install or operate a well unless the following conditions have been met:

(1) the person has obtained an approved permit from the Department; and

(2) the person has registered the well.

History Note: *Authority*
Eff

15A NCAC 05H.0XX4 CONTENTS OF APPLICATION

(a) The Form 2 - Permit to Drill Application to drill, deepen, or re-enter a plugged oil and gas well(s) shall include:

(1) The proposed name of the production well(s);

(2) The latitude and longitude (in decimal degrees) of the proposed oil and gas well location(s) provided on the drawing with a minimum of five decimal places of accuracy and precision using the North American Datum (NAD) of 1983. The location coordinates shall be a field measurement and not a calculated or conversion measurement.

(3) A plat showing:

(i) the subject tract of land, or drilling unit, upon which the oil and gas well(s) is/are to be drilled and the property lines with surface and mineral owner name(s);

(ii) the location of the proposed well(s) on the subject tract, or drilling unit, based on a field survey showing the distances in feet from the proposed well site to the boundary lines of the subject tract or drilling unit; and

(iii) the location and their distances of all buildings, public roads, railroads, private and public water supply wells, surface water bodies, utility rights-of-way, and drilling or producing wells which meet the setback requirements.

(4) All plats submitted as a part of the application for a permit to drill must contain the following identifying information and be sealed by a professional land surveyor (PLS):

(i) Name of applicant;

(ii) Name of oil and gas well;

(iii) North arrow;

(iv) County;

(v) Map scale meeting the following guideline: 0-49 acres, 1 inch=50 feet; 50-199 acres, 1 inch=100 feet; and 200+ acres, 1 inch=200 feet;

(vi) Legend with symbols used and corresponding names;

(vii) Date prepared and revised; and

(viii) Name and title of person preparing the plat.

(5) A topographic and site overlay on a base color aerial map for the site based on a LiDAR derived map showing the location of the well pad and wellhead(s), tank battery, pits, access roads, and other structures and features onsite.

(6) A statement as to whether the proposed well location is within the limits of any incorporated city, town, or village or respective extra-territorial jurisdiction. If the consent of municipal authorities for the drilling of a well is required, a certified copy of the official consent must be submitted.

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(7) The name of the proposed drilling contractor and any other service companies involved with construction and completion of the oil and gas well(s);

(8) The total estimated depth of the wellbore and proposed well path report showing inclination and azimuth every 100 feet with the North American Vertical Datum of 1988 (NAVD88) as the vertical control;

(9) A road use agreement plan that has been reviewed and approved, or is under review, by the North Carolina Department of Transportation.

(b) The applicant must provide copies of the notifications that were sent to landowners in accordance with § 113-420 with copies of the signed return receipt mail "green" cards or other proof of notification.

History Note: *Authority*
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15A NCAC 05H.0XX5 APPLICATION SUPPLEMENTAL SECTIONS

(a) An applicant shall include the following supplemental plan sections as necessary for a complete review of the intended site construction and development.

(1) The applicant shall submit the Baseline Analytical Report–Form 3, in accordance with the baseline sampling and reporting requirements found in rule XX. In addition, the following information shall be provided:

(i) Property map showing the area of presumptive liability with all water wells and receptors identified on it;

(ii) Copies of available water well construction records from the County Public Health office or the DENR- Division of Water Resources;

(iii) Table with water well/receptor identification information;

(iv) Baseline monitoring notification with approval or denials by landowners;

(v) Copies of any returned analytical records and chains of custody received from the analytical company or data in electronic format???
(need to establish this for direct input into a database)

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(vi) Provide maps with tables showing concentrations of any constituents above reportable limits.

(2) The applicant shall submit an oil and gas Well Construction Design Plan that includes the following components as plan sheets or narrative, where applicable, attached to Well Design Plan- Form 4, for review in accordance with the WELL CONSTRUCTION RULES and WELL STIMULATION RULES:

(i) the anticipated diameter of each wellbore segment;

(ii) the proposed casing type, outside diameter, and setting depth for each proposed string of casing;

(iii) the drilling fluid program that will be used during the drilling of each proposed string of casing;

(iv) the cementing program including type and volume for each proposed string of casing;

(v) blowout prevention equipment and other wellhead equipment;

(vi) the number of well stimulation/hydraulic fracturing stages within the vertical and non-vertical portions of the wellbore;

(3) The applicant shall submit an Erosion and Sedimentation Control and Stormwater Management Plan as a part of the site construction sheets and details for review and shall include the following items as a part of the plan in accordance with SITE CONSTRUCTION RULES:

(i) phases of site construction from initial site clearing and grubbing to final site reclamation;

(ii) wellpad construction and proposed secondary containment methods;

(iii) outline of and acreage of all settling and/or processing wastewater pits and tank batteries;

(iv) location and dimensions of all proposed erosion and sedimentation control measures and stormwater management measures;

(v) temporary and permanent seeding mixtures and appropriate amendments for year-round vegetative stabilization; and

(vi) location of 100-year floodplain limits and wetland boundaries.

Comment [KM3]: From TD: Regarding E&SC requirements, it appears that we need to consider amending the Sedimentation Pollution Control Act of 1973 to expressly exempt oil and gas operations from the SPCA (similar to the mining exemption – so E&SC can be handled by MEC rules) or amend the SPCA to expressly state that a separate E&SC plan approval can be issued or the E&SC plan approval can be incorporated into a comprehensive environmental protection permit encompassing multiple regulatory programs that would achieve equal or greater regulatory protection against sedimentation (similar to what we are proposing for stormwater permits and associated draft rules related to oil and gas operations that are being presented to the EMC for approval). Could a similarly worded rule be done for E&SC that could be presented to the SCC for approval – handle this by rule without a statutory change? Need legal guidance.

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(4) The applicant shall submit Water Use Plan- Form 5, and shall include the following items and all accompanying documentations and maps in accordance with the WATER USE RULE:

(i) source documentation including notification;

(ii) monitoring and maintenance schedules;

(iii) invasive/Noxious Plant species survey;

(5) The applicant shall submit Waste Management Plan- Form 6, and shall include the following items and all accompanying documentations and maps in accordance with the WASTE MANAGEMENT RULE:

(i) anticipated volume of drill cuttings produced at the time of drilling the well, the method of storing cuttings onsite prior to disposal, and the permitted facility that the cuttings will be transported to for disposal;

(ii) anticipated volume of drilling fluids, flowback water, and produced water that will be generated onsite during initial well construction and development activities; method of storage onsite prior to disposal; and identification of final treatment and disposal methods and facilities.

(6) The applicant shall submit Heritage and Endangered Species Reviews in accordance with the WATER USE RULE and CONSULTATION RULE (?) for review by the Department, the NC Wildlife Resources Commission, the US Fish and Wildlife Service and the North Carolina Department of Cultural Resources.

(i) Existing GIS layers in NC One Map may be used by the applicant to locate known endangered or threatened species and cultural heritage sites within the proposed project area.

(7) The applicant shall submit a Site Reclamation Plan (Form 7) showing interim and final reclamation phases and shall include the following items in accordance with the RECLAMATION RULES:

(i) interim reclamation, including grading and stabilization of site for transition from the construction and development phase to the production phase of the well-site. This reclamation phase should include pit closure in

accordance with the WASTE MANGEMENT RULES or surface use agreement with the landowner.

(ii) final reclamation, including final grading and stabilization of site at the end of oil and gas well(s) production life when the oil and gas well is permanently plugged and abandoned and surface features are restored to as near to the predevelopment state of the site as reasonably possible.

History Note: *Authority*
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15A NCAC 05H.0XX6 EMERGENCY RESPONSE PLAN

Comment [KM4]: To be written

15A NCAC 05H.0XX7 FEES

Comment [KM5]: To be written

15A NCAC 05H.0XX8 PUBLIC NOTIFICATIONS

Comment [KM6]: To be written

15A NCAC 05H.0XX9 APPLICATION REVIEW PROCESS

Comment [KM7]: To be written and Pending sections

(a) When the Department receives an application for a new Permit to Drill or for a modification of a Permit to Drill to add land to the permitted area, the Department shall send a notice of the application to each of the following agencies with a request that each agency review and provide written comment on the application within XX days of the date on which the request is made:

(1) Division of Air Quality, Department of Environment and Natural Resources.
(2) Division of Parks and Recreation, Department of Environment and Natural Resources.
(3) Division of Water Resources, Department of Environment and Natural Resources.
(4) North Carolina Geological Survey, Division of Energy, Mineral, and Land Resources, Department of Environment and Natural Resources.
(5) Natural Heritage Program, Department of Environment and Natural Resources.
(6) North Carolina Wildlife Resources Commission.
(7) Office of Archives and History, Department of Cultural Resources.

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(8) United States Fish and Wildlife Service, United States Department of the Interior.

(9) Any other federal or State agency that the Department determines to be appropriate, including the Division of Coastal Management, Department of Environment and Natural Resources; the Division of Marine Fisheries, Department of Environment and Natural Resources; the Division of Waste Management, Department of Environment and Natural Resources; and the Department of Transportation.

15A NCAC 05H.0X10 BONDING

Comment [KM8]: To be written

15A NCAC 05H.0X11 DENIAL OF APPLICATION

(a) The Department, upon making a determination on a Form 2, shall have the authority to deny a permit to any person upon finding that the site for which a permit is requested is in violation of any of the rules contained in this Section or the issuance of the permit would result in a violation of this rule or other applicable law or rule:

(1) The permit application is incomplete;

(2) Unresolved objections to the well location by the owner or operator remain;

(3) The requirements of bonding have not been met;

(4) That the operation will have unduly adverse effects on potable groundwater supplies, wildlife, habitats of rare and endangered flora and fauna and other critical communities, or fresh water, estuarine, or marine fisheries;

(5) That the operation will violate standards of air quality, surface water quality, or groundwater quality that have been promulgated by the Department;

(6) That the operation will constitute a direct and substantial physical hazard to public health and safety or to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road or other public property;

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(7) That the operation will have a significantly adverse effect on the purposes of a publicly owned park, forest or recreation area or historical and archeological sites listed on the Federal or State list of historic places;

(8) That previous experience with similar operations indicates a substantial possibility that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or acid water pollution; or

(9) The Department finds that the applicant or any parent, subsidiary, or other affiliate of the applicant has not been in substantial compliance with the Oil and Gas Conservation Act, rules adopted under said Act, other laws or rules of this State for the protection of the environment administered by the Department, any plan approval, permit or order issued by of the Department or has not corrected all violations that the applicant or any parent, subsidiary, or other affiliate of the applicant or parent may have committed under this Act or rules adopted under said Act and that resulted in:

(i) Revocation of a permit;

(ii) Forfeiture of part of all of a bond or other security;

(iii) Conviction of a misdemeanor or any other court order;

(iv) Final assessment of a civil penalty.

(b) In the absence of any findings set out above, or if adverse effects are mitigated by the applicant as determined necessary by the Department, a permit shall be granted.

(c) The Department shall issue a permit approval within XX business days of the submission of a complete permit application, unless the Department denies the permit application for one or more of the reasons set out above; and

(d) The Department may impose such permit terms and conditions as are necessary to assure compliance with the applicable statutes and rules administered by the Department.

History Note: *Authority*
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15A NCAC 05H.0X12 PERMIT MODIFICATIONS

Comment [KM9]: To be written

15A NCAC 05H.0X13 PERMIT TRANSFERS

(a) A permit transfer may result from a sale, assignment by a court, a change in operating agreement or other transaction.

(b) Within 30 days of the sale or other transfer, the new owner or operator shall notify the Department, in writing, of the transfer of ownership. The notice shall include:

(1) The names, addresses and telephone numbers of the former and new owner, and the agent if applicable. The new permittee information shall be attached to the notice on Form 1- FRO;

(2) The well permit and assigned API number;

(3) The effective date of the transfer of ownership;

(4) That the information on the original application is still accurate and complete;

(c) The new permittee must secure the required bond prior the Department approving the transfer.

(d) A permit transfer may be denied by the Department based on previous revocation, unaddressed, or outstanding violations on a previous permit, in accordance with section 11(a)(9) of this rule.

History Note: *Authority*
Eff

15A NCAC 05H.0X14 PERMIT EXPIRATION

(a) A permittee shall have 12 months from the date of issuance to commence drilling an oil and gas well or the permit will expire; if drilling is commenced but not completed within the 12 month period the permit shall be active and drilling shall continue with due diligence.

(b) A permittee may request a one year renewal of the permit. The permittee shall provide an affidavit affirming that the information on the original application is still accurate and complete and that the well location restrictions are still met and that the surface owners. The request shall be received by the Department at least 30 business days prior to the expiration of the original permit.

Comment [KM10]: Many other states do not allow for transfer due to the review process likely to occur.
No fee in statue for this either.
To AOG- should transfers be allowed or just have the new permittee submit a "new" permit?

Comment [TED11]: Should renewal of an issued permit, if all terms stay the same as the original permit, need to be noticed to the public? If so, this would need to be addressed in the public notification section in .OXX8 above.

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History Note: *Authority*
Eff

15A NCAC 05H.0X15 PERMIT REVOCATION

(a) The Director shall revoke a permit if:

(1) the Permit Holder fails to meet the operating conditions specified in the permit;

(2) the Permit Holder falsified or otherwise misstated any required information in the application; and

(3) if the Department issued the permit in error because the submitted information was incorrect and the error was not identified during the Department's review but came to light after the permit was issued and the correct information directly affected the validity of the issued permit.

(b) Notification of revocation of the permit, including specific justification for the revocation, shall be issued in writing. The Permittee shall have 30 days from receipt of the notification to appeal the revocation to the Mining and Energy Commission. The Permittee shall temporary abandon the oil or gas well in such a manner that drilling and production cannot occur from any well from which a permit was revoked until a decision has been rendered by the Commission. If the appeal is denied, the Permit Holder will have to permanently abandon the oil and gas well. If the appeal is upheld, the Permit Holder's permit shall be reinstated subject to any conditions required by the Commission.

History Note: *Authority*
Eff

15A NCAC 05H.0X16 PERMIT RELEASE

Comment [KM12]: To be written

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