

**INTERNAL OPERATING PROCEDURES  
OF THE ENVIRONMENTAL MANAGEMENT COMMISSION  
OF NORTH CAROLINA**

**ARTICLE I**

**Authority**

These procedures are adopted pursuant to the authority contained in North Carolina General Statutes §143B-18 and §143B-282, et seq.

**ARTICLE II**

**Purpose**

The purpose of the Commission shall be to fulfill the duties prescribed for it in the General Statutes of North Carolina, particularly those provided at N.C.G.S. §87-83, et seq., §143-211, et seq. (including Articles 21, 21A, and 21B), and §143B-282, et seq.

**ARTICLE III**

**Membership**

The membership of this Commission shall be as set forth in North Carolina General Statute §143B-283.

**ARTICLE IV**

**Officers**

Statutory officers of this Commission are the Chairman appointed by the Governor, and the Vice-Chairman, to be elected by and from the members of the Commission for a term of two years or until his or her regular term expires, whichever comes first.

**ARTICLE V**

**Meetings**

**Section 1.** The Commission shall meet at such times and places as may become necessary to discharge its statutory duties as set forth in the General Statutes. N.C.G.S. §143B-285 requires a regular meeting at least once in each quarter, and allows special meetings at the call of the Chairman or upon the written request of at least five members. Regular meetings shall generally convene on the second Thursday of January, March, May, July, September, and November in the Ground Floor Hearing Room, Archdale Building, Raleigh, North Carolina. In addition, work sessions may be scheduled by the Commission Chairman as needed.

**Section 2.** The Commission Chairman may call such special meetings as he or she deems necessary; provided, timely notice in advance of all special meetings must be given to each and every member of the Commission; further provided, said notice requirement shall be adequately discharged by letter or comparable electronic means to the members of the Commission at their last known address.

**Section 3.** A majority of duly appointed members of the Commission shall constitute a quorum.

**Section 4.** Meetings of the Commission shall be open to the public; provided, the Commission may hold an executive session where allowed by N.C.G.S. §143-318.11.

## ARTICLE VI

### Records

**Section 1.** Minutes and other records of all Commission meetings shall be kept under the direction of the Director of the Division of Water Quality, said record to be supplemented, where possible, by electronic recording. Minutes shall be maintained according to the retention schedule approved by the Division of Archives and History.

**Section 2.** The Secretary of the Department of Environment and Natural Resources, or his designee, shall be responsible for filing all rules (as defined in N.C.G.S. §150B-2) of the Commission in proper form as required by Chapter 150B, Articles 2 and 5, of the North Carolina General Statutes.

## ARTICLE VII

### Standard Order of Business

**Section 1.** The Environmental Management Commission adopts the following as its Standard Order of Business, provided that the order of business may be altered by the Chairman in his discretion, or at the request of the Steering Committee, in order to more efficiently carry out the Commission's business or for the convenience of the public:

1. Preliminary Matters
  - a. Call to Order
  - b. Approval of minutes of previous meeting
  - c. Summary of approval documents
  - d. Revisions or additions to the agenda
2. Action Items
3. Status Reports
4. Informational Items
5. Concluding Remarks
  - a. By Commission members
  - b. By Chairman
6. Adjournment

**Section 2.** Except as provided for in this or other sections of the bylaws, the Commission shall take no actions on rulemaking issues that have not been acted on by the appropriate committee at a scheduled meeting of the committee which was held prior to a previous Commission meeting. The Commission may suspend this rule by the affirmative vote of at least a two-thirds majority of those present and voting.

## ARTICLE VIII

### Notice Requirements

**Section 1.** In accordance with General Statutes, Chapters 87, 143, 143B and 150B, the Secretary of the Department of Environment and Natural Resources, or an appropriate designee shall be responsible for the timely issuance of any applicable notices to those parties upon whom the right of legal notice of Commission hearings, meetings, decisions, and official actions is conferred.

**Section 2.** The Commission may adopt special notice procedures as it deems necessary, subject to the requirements of the General Statutes.

## ARTICLE IX

### Committees

**Section 1.** The Chairman of the Commission shall appoint such committees, standing or special, as the Chairman or Commission shall from time to time deem necessary. The Chairman shall designate the chairman of each committee from among its members and shall be an ex officio member of all committees. A majority of duly appointed members of committees shall constitute a quorum.

**Section 2.** Duly appointed committees may adopt at their discretion any internal procedures necessary to the discharge of their business; provided, no procedures adopted by any committee shall be inconsistent with these procedures or any other rules adopted by the Commission, or with any statutes applicable to the Commission. The chairman of the committee shall report the committee's recommendation.

**Section 3.** A Steering Committee composed of the Commission Chairman, the Commission Vice-Chairman and the Chairman of the each of the Commission's standing committees shall be appointed by the Commission Chairman. The Chairman of the Commission shall be Chairman of the Steering Committee and the Vice-Chairman of the Commission shall be Vice-Chairman of the Steering Committee. The Steering Committee shall carry out such administrative functions as the Commission Chairman may direct and may make recommendations to the full Commission on any matters it deems relevant to the Commission's work.

**Section 4.** The following committees are established as standing committees of the Commission:

- NPDES Committee
- Air Quality Committee
- Groundwater Quality and Waste Management Committee
- Water Quality Committee
- Water Allocation Committee
- Civil Penalty Remissions Committee

The Chairman of the Commission shall appoint all members of each such committee and designate the Chairman of each committee. Additional one-issue special committees may be appointed by the Chairman of the Commission as needed. In addition, committees may establish sub-committees as needed.

## ARTICLE X

### Parliamentary Authority

**Section 1.** The rules contained in the current edition of Robert's Rules of Order shall govern the Commission in all meetings, where applicable and not inconsistent with these procedures and any special rules of order the Commission may adopt, or with any statutes applicable to the Commission.

**Section 2.** The Chairman of the Commission and the chairman of any committee may or may not vote on any issue before the body over which that person is presiding. If a tie occurs, the motion fails.

## ARTICLE XI

### Hearings

**Section 1.** The Chairman shall appoint any Commission member or members, or appropriate qualified employee or employees of the Department of Environment and Natural Resources, as hearing officer for any required public hearing to receive comments on regulations or as presiding officer for any public hearing conducted under any statutes applicable to the Commission.

**Section 2.** In making hearing officer appointments, the Chairman shall consider the geographic location of the hearing, the technical complexity of the matter being considered, the public interest in the matter, and the necessity of having an impartial hearing officer without personal bias.

**Section 3.** All hearing officers appointed pursuant to this Article shall report their recommendations, along with the record of the hearing, to the full Commission for decision or action, and may move adoption thereof.

**Section 4.** The Commission at its regularly scheduled meetings will frequently hear reports and recommendations for the adoption of rules which have been subjected to public notice, comment period and hearing. The Commission will refrain from allowing additional public comment at the meeting, since the matter is not then in public hearing; but the Commission may allow limited public discussion if the circumstances warrant and all positions appear to be adequately represented by those present.

**Section 5.** With respect to any individual contested case pending before the Commission, including permit appeals and variance petitions, all members of the Commission and hearing officers shall refrain from directly or indirectly communicating outside of formal hearing procedures with any person, party or their representative regarding issues of fact or law pertaining to the pending matter unless all parties are provided notice of the communication and given an opportunity to participate therein. This section shall not be deemed to limit discussion of such pending matters among Commission members or to limit discussion with state employees not directly involved in investigating or prosecuting the pending case.

**Section 6.** Contested case hearings, or administrative hearings, are governed by Article 3 of Chapter 150B of the General Statutes, and require a Final Decision by the Commission or its NPDES Committee. It is each member's responsibility to review and become familiar with the hearing record and proposals for decision prior to the meeting at which the decision is to be made. Pursuant to N.C.G.S. §150B-36, a decision shall not be made except upon consideration of the record as a whole or such portion as may be cited by any party to the proceeding and shall be supported by substantial evidence. Parties to the proceeding, but not the general public, will be given the opportunity to address the Commission or its NPDES Committee, after the recommendation of the staff hearing officer or panel is received. Oral presentations are limited to issues of record, and should not exceed 15 minutes unless the Chairman rules otherwise. After all presentations, discussion and voting shall proceed. Pursuant to N.C.G.S. §143-318, executive sessions may be called for discussions of legal questions.

**Section 7.** Motions filed with the Commission by persons seeking leave to file amicus curiae briefs in pending contested cases shall state the nature of the applicant's interest, the reasons why the brief is desirable, the questions of law to be addressed in the brief and the applicant's position on those questions. The proposed brief may be conditionally filed with the motion for leave. The motion shall be referred to the Chairman who shall rule on the motion. The chairman's ruling shall be served upon the applicant, the Department, and parties of record.

**Section 8.** Motions filed with the Commission by persons seeking leave to intervene in pending proceedings for declaratory rulings, variances or interpretive statements shall be referred, with any response timely filed by the Department or parties, to the Chairman who shall rule on the motion. The Chairman's ruling shall be served upon the applicant, the Department and parties of record.

**Section 9.** Any written argument, memorandum, or brief submitted to the Commission or any of its Committees pursuant to any section of this Article XI, shall be limited to thirty-five pages if the font used in the brief is a non-proportional type and to 8,750 words if the brief uses proportional type.

## ARTICLE XII

### Remission Requests

**Section 1.** The Chairman shall designate at least three members of the Committee on Civil Penalty Remissions to meet together when necessary to review the remission requests that were unable to be resolved by the Secretary and the violator and have been delivered to the Committee. The members will conduct a review of the documents comprising each remission request and the Division Director's recommendation before making a recommendation to the Committee on the best manner of handling the individual remission requests when the full Committee meets to make the final decision.

**Section 2.** After reviewing the record documents for each remission request sent to the Committee, the designated members will make a recommendation of one of the following possible actions:

- a. that no grounds for remission under N.C.G.S. §143B-282.1 (c) or (d) are shown by the record and the civil penalty should be upheld without further oral presentation before the Committee;
- b. that one or more grounds for remission under N.C.G.S. §143B-282.1 (c) or (d) are shown by the record and the civil penalty should be remitted in some amount without further oral presentation to the Committee;
- c. that the Commission Chairman, under the authority of N.C.G.S. §143B-282.1 (a), allow a violator's request for oral presentation before the Committee.

**Section 3.** The Committee on Civil Penalty Remissions will meet as necessary to consider requests for remission and make the final decisions. When the Chairman of the Commission has allowed a violator's request for oral argument, the Committee will hear oral presentations by the violator and the staff of the Department of Environment and Natural Resources. The violator will be notified of the date, time and location of the meeting when his oral argument on the remission request will be heard and the matter decided.

**Section 4.** By submitting a request for remission of a civil penalty assessed by the Department under N.C.G.S. §143-215.6A (f), the Committee recognizes that the violator has agreed that an evidentiary hearing is unnecessary, that all facts alleged in the assessment by the Department are stipulated, and that the only issue for resolution is the reasonableness of the penalty imposed. The amount of the penalty will be determined by the Committee in accordance with N.C.G.S. §143B-282.1 and the Internal Operating Procedures of the Environmental Management Commission. The Secretary's recommendation on the remission request shall be the final agency decision unless it is modified by the Committee through a motion and vote of a majority of the Committee members in attendance. The Committee may order the full penalty be paid, accept the recommendation of the Director or reduce the penalty in accordance with N.C.G.S. §143B-282.1. When a request to make an oral presentation is allowed, parties to the proceeding, but not the general public, will be given the opportunity to address the Committee, after the recommendation of the staff is received. Oral presentations are limited to issues of record, and should not exceed 5 minutes per side unless the Committee Chairman rules otherwise. Pursuant to N.C.G.S. §143-318, executive sessions may be called for discussion of legal questions.

### ARTICLE XIII

#### Attendance

Regular attendance at Commission meetings is a duty of each member. Commission members recognize that, pursuant to N.C.G.S. §143B-13(b)(iv), their membership becomes vacant by their ceasing to discharge the duties of their office over a period of three consecutive meetings except when prevented by sickness.

### ARTICLE XIV

#### Conflict of Interest

**Section 1.** The Commission is subject to the State Government Ethics Act, G.S. § 138A-1, et. seq., establishing the State Ethics Commission, as amended and as it may later be amended. The members of the Commission, regardless of appointing authority, are bound by the standards enunciated in the State Government Ethics Act and the interpretations of the standards as developed through promulgations and advisory opinions of the State Ethics Commission.

**Section 2.** Members of the Commission must police themselves against actual and potential conflicts in the discharge of their statutory duties. In circumstances involving actual conflict of interest, the member must immediately discontinue any involvement in the matter including discussions of it with other members of the Commission or staff to the Commission. Members who disqualify themselves for actual conflict of interest must file a statement with the Chairman of the Commission or announce their decision in the next meeting of the Commission. Members of the Commission may appear to defend themselves if regulatory actions are initiated against them by the State Ethics Commission.

**Section 3.** Unless a member of the Commission with a potential conflict of interest places it in the public record, the member must withdraw from participation in the matter. When a member withdraws from a matter due to a potential conflict of interest, no further explanation is required. Should the potential conflict of interest be disclosed in a written document, it must be read into the minutes of the Commission before deliberation or discussion of the matter begins. A member with a potential conflict of interest who decides to participate in the pending matter must disclose, in the Commission meeting when the matter is called as an agenda item, the nature of

the potential conflict of interest and the reason it does not cause them to withdraw from further participation in the matter.

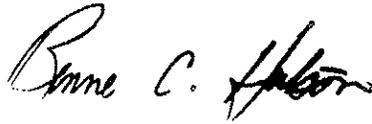
**Section 4.** The members of the NPDES Committee shall be selected from those nine members, and any others, meeting the conflict of interest requirements of N.C.G.S. §143B-283(c); i.e., they shall be persons who do not derive any significant portion of their income from persons subject to permits or enforcement orders under Chapter 143 of the General Statutes. The NPDES Committee will act on all matters involving the issuance of NPDES permits.

## ARTICLE XVI

### Amendments

These procedures may be amended at any regular or special meeting of the Commission by a three-fourths vote of the members present; provided that a copy of the amendment must be sent by first-class mail or electronically mailed to each Commission member seven days prior to the adoption of the amendment or otherwise be made available to each commission member five days prior to the adoption of the amendment.

Effective: January 8, 2015

A handwritten signature in black ink, reading "Benne C. Hutson". The signature is written in a cursive, flowing style.

Benne C. Hutson, Chairman  
Environmental Management Commission