

15A NCAC 04E .0503 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 Rule .0502 of this Section, and the Chairman shall make a recommendation to the Commission on whether to grant or deny a request for 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, or any other person; and
 - (3) hear oral arguments from the petitioner(s) and the Department 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 reason(s) for the refusal to issue a ruling on the request.
- (d) "Good cause" as the term is used 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 rule, statute, or order to the specific factual situation presented; or
 - (4) finding that the factual context put forward as the subject of the declaratory ruling was considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record.
- (e) The Commission, through the Department, 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 or recordings of oral proceedings, or, in the absence of a transcript or recording, 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.
- (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- (1) the statute or rule interpreted by the declaratory ruling is repealed or the relevant provisions of the statute or rule are amended or altered;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 that is the subject of the declaratory ruling in a manner 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 Environmental Quality and the party requesting the ruling.
- (g) The party requesting a declaratory ruling may agree to allow the Commission to extend any of the deadlines beyond the timeframes provided in G.S. 150B-4.
- (h) 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 decision or a ruling on the merits within the time provided in G.S. 150B-4 shall constitute a denial of the request as well as a denial on the merits of the request and shall be subject to judicial review.

History Note: Authority G.S. 113A-54; 113A-55; 150B-4
Eff. March 14, 1980;
Amended Eff. August 1, 1988; June 5, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016;
Amended Eff. April 1, 2020.