

## ARTICLE XI

*proposed revision October 23, 2013 (new language underlined)*

### 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.