

CHAPTER 21 - BOARD OF GEOLOGISTS

SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

21 NCAC 21 .0101 AUTHORITY: NAME AND LOCATION OF BOARD

The "North Carolina Geologists Licensing Act", Chapter 89E of the General Statutes of North Carolina, establishes and authorizes the "North Carolina Board for Licensing of Geologists," hereafter called the "Board". Unless otherwise directed, all communications should be addressed to the Board at Post Office Box 27402, Raleigh, North Carolina 27611.

*History Note: Authority G.S. 89E-4;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.*

21 NCAC 21 .0102 PURPOSE OF THE ACT

*History Note: Authority G.S. 89E-2;
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.*

21 NCAC 21 .0103 ORGANIZATION OF THE BOARD

- (a) Meetings shall be open and public except that the Board may meet in closed sessions to prepare, approve, administer, or grade examinations, to deliberate the qualifications of an applicant for license, or to deliberate on the disposition of a proceeding to discipline a licensed geologist.
- (b) The Board shall have power to compel the attendance of witnesses, to administer oaths, and to take testimony and proofs of all matters within its jurisdiction.
- (c) The chairman and ex-officio member shall be full voting members of the Board.

*History Note: Authority G.S. 89E-4; 89E-5; 143-318.18(6);
Eff. February 1, 1986;
Amended Eff. April 1, 1989.*

21 NCAC 21 .0104 DUTIES OF OFFICERS

- (a) Chairman. The chairman shall, when present, preside at all meetings, appoint all committees, sign all certificates issued and perform all other duties pertaining to his office.
- (b) Vice-chairman. The vice-chairman, in the absence of the chairman, shall perform all of the duties of the chairman.
- (c) Secretary-treasurer:
 - (1) The secretary-treasurer, with the assistance of an executive director or such other officers or employees as may be approved by the Board, shall conduct and care for all the correspondence of the Board, keep the minutes of all the meetings, keep all books and records, and shall sign all certificates issued. He shall have charge, care and custody of the official documents by order of the Board. He shall provide due notice of the time and place of all meetings of the Board to each member of the Board.
 - (2) The secretary-treasurer, with the assistance of an executive director or such other officers or employees as may be approved by the Board, shall receive all moneys from applicants for annual renewal or other fees and deposit them in an authorized depository of the Board. The secretary treasurer shall give bond to be conditioned on the faithful performance of the duties of his office and on the faithful accounting of all monies and other property as shall come into his hands.
 - (3) The secretary-treasurer, with the assistance of an executive director or such other officers or employees as may be approved by the Board, shall provide to each applicant for a license or registration a current copy of G.S. 89E and the rules of this Chapter. Copies of the Geologists Licensing Act and the rules of this

Chapter shall be provided by mail with the application packet or in electronic format on the Board's Internet website (www.ncblg.org) with the on-line application packet.

History Note: Authority G.S. 89E4; 89E5;
Eff. February 1, 1986;
Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0105 SEAL OF BOARD

The seal shall have the words "North Carolina Board for Licensing of Geologists" and the secretary-treasurer shall have charge, care and custody thereof.

History Note: Authority G.S. 89E-5;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0106 FORMS

History Note: Authority G.S. 55B-2(6); 55B-10; 89E-8; 89E-10; 89E-11; 89E-12;
Eff. February 1, 1986;
Amended Eff. January 1, 1992; April 1, 1989; March 1, 1988;
Repealed Eff. May 1, 2003.

21 NCAC 21 .0107 FEES

(a) Completed application forms must be accompanied by the prescribed fee. Application fees shall not be refunded regardless of Board approval or disapproval of the application. Fees shall be:

(1)	Application for license	\$ 55.00
(2)	Application for registration	\$ 50.00
(3)	Examination per part: cost plus	\$ 30.00
(4)	Annual renewal of license	\$ 85.00
(5)	Annual renewal of certificate of registration for corporation or limited liability company	\$ 25.00
(6)	Application for reinstatement of license	\$150.00
(7)	Application for reinstatement of registration	\$ 10.00
(8)	Replacement of license or registration certificate	\$ 10.00
(9)	Licensed geologist stamp or seal: cost plus	\$ 7.50
(10)	Registered geological corporation or limited liability company stamp or seal: cost plus	\$ 7.50

(b) All licenses shall expire on July 1. Annual license renewal fees received after July 1 and before August 1 of the year due shall be accompanied by a late payment penalty of fifty dollars (\$50.00).

(c) Licenses that have not been renewed by August 1 may only be renewed by:

- (1) filing a reinstatement application, demonstrating that the applicant is otherwise qualified and entitled to license renewal, in accordance with Rule .0302 of this Chapter;
- (2) payment of any delinquent annual fees having accrued since the last timely renewal of the license; and
- (3) payment of the reinstatement fee specified in Subparagraph (a)(6) of this Rule.

(d) All registrations shall expire on July 1. If a corporation or limited liability company fails to apply for renewal of its certificate of registration by August 1 of the year due, the registration may only be renewed by:

- (1) filing a reinstatement application, demonstrating that the firm is otherwise qualified and entitled to a renewal of its certificate of registration, in accordance with Rule .0302 of this Chapter;
- (2) payment of the required renewal fee; and
- (3) payment of the reinstatement fee specified in Subparagraph (a)(7) of this Rule.

(e) Licenses and registrations that have been revoked under G.S. 89E-19 may be reinstated by filing a reinstatement application in accordance with Rule .0302 of this Chapter and paying the reinstatement fee specified in Subparagraph (a)(6) or (a)(7) of this Rule, as applicable.

(f) Extensions for certain members of armed forces. Individuals who are serving in the armed forces of the United States to whom an extension of time to file a tax return has been granted by G.S. 105-249.2 shall be granted the same extension of time to pay their annual license fee. Such individuals shall provide to the Board documentation to support their request for extension.

History Note: Authority G.S. 55B-2(6); 55B-10; 55B-11; 89E-5; 89E-8; 89E-10; 89E-12; 89E- 13; 89E-19; 93B-15; 105-249.2;
Eff. February 1, 1986;
Amended Eff. April 1, 2003; May 1, 1994; April 1, 1993; January 1, 1992; April 1, 1990.

SECTION .0200 - RECORDS AND REPORTS OF BOARD: RETENTION AND DISPOSITION

21 NCAC 21 .0201 RECORDS OF BOARD PROCEEDINGS

History Note: Authority G.S. 89E-14(a);
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.

21 NCAC 21 .0202 RECORDS OF APPLICATIONS

All records of applications for registration shall be retained by the Board.

History Note: Authority G.S. 89E-14;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0203 ROSTER OF LICENSED GEOLOGISTS

Every individual licensee has the continuing responsibility of keeping the Board currently advised of the licensee's proper and current mailing address and the name or names under which the licensee is practicing. Each licensee shall immediately notify the Board of any and all changes of association or address.

History Note: Authority G.S. 89E-15;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0204 APPLICABILITY OF BOARD RULES

History Note: Authority G.S. 89E-5(h);
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.

SECTION .0300 - LICENSING OF GEOLOGISTS

21 NCAC 21 .0301 REQUIREMENTS FOR LICENSING

(a) Education. In determining whether an applicant meets the minimum education requirements of the Geologists Licensing Act, the Board shall accept transcripts from colleges and universities that are accredited by a national or regional accrediting organization such as the Southern Association of Colleges and Schools. The Board requires 30 hours of geological study,

with 24 hours of upper-level courses in areas including: geology, geophysics, geochemistry, oceanography, paleontology, hydrology, soil science, economic geology and engineering geology.

(b) References. Five letters of reference submitted to the Board which shall satisfy the Board as to the character, reputation, responsibility, integrity and competence of the applicant. These letters of reference must be submitted by licensed or qualified geologists or professional engineers. No member of the Board shall act as a reference for any applicant for licensing. At least two of the five letters of reference must be submitted by licensed or qualified geologists who are familiar with the applicant's work in the field of geology.

(c) Written Examination. Except as provided in Paragraph (e) of this Rule, all applicants shall pass the written examination administered by the Board in conjunction with the Association of State Boards of Geology (A.S.B.O.G.). The applicant shall be notified, not less than 30 days before the examination, as to the time and place of the examination. A person who has failed an examination is allowed to take the examination again at the next regularly scheduled examination period. A person having a record of three failures shall not be allowed to take that examination again until a written appeal is made to the Board and qualifications for examination are reviewed and reaffirmed by the Board. The applicant shall demonstrate to the Board that actions have been taken to improve the applicant's possibility of passing the exam.

(d) Experience. In determining whether an applicant meets the minimum experience requirements of the Geologists Licensing Act, the Board shall consider the total work experience record of the applicant. The Board shall look for the applicant's ability to conduct geological work in a satisfactory manner with little or no supervision.

(e) Certificate by comity. The Board shall grant a license without further examination to a person holding a license to engage in the practice of geology, which license has been issued by another jurisdiction, when the applicant meets the following conditions:

- (1) the applicant has filed an application for license and paid the fee required by Rule .0107 of this Chapter;
- (2) the applicant has provided evidence of education and experience equal to the requirements of Paragraphs (a), (b), and (d) of this Rule as indicated in Rule .0302 of this Section;
- (3) the applicant is in good standing with the agency regulating the practice of geology in any jurisdiction in which the applicant holds a license to practice geology; and
- (4) the applicant has successfully passed a written examination deemed to be equal or equivalent to the examination required by the Board pursuant to G.S. 89E-9 and Paragraph (c) of this Rule.

*History Note: Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11;
Eff. February 1, 1986;
Amended Eff. April 1, 2003; April 1, 1990; April 1, 1989; March 1, 1988.*

21 NCAC 21 .0302 APPLICATION PROCEDURE

(a) All applicants for licensing are required to furnish with their applications the following:

- (1) A legible official copy of their college transcript(s), and verification of graduation sent directly from the institution to the Board;
- (2) Verification of experience in the practice of geology on forms provided by the Board;
- (3) Five references as defined in Rule .0301(b) of this Section;
- (4) A notarized copy of a completed application form as prescribed by the Board; and
- (5) The application fee as prescribed in Rule .0107 of this Chapter.

(b) Applicants for reinstatement of an expired license or registration shall submit a reinstatement application and shall submit the fee as provided by Rule .0107 of this Chapter.

(c) Applicants for reinstatement of a revoked license or registration shall submit such information as is required by the Board to determine eligibility for reinstatement pursuant to G.S. 89E-21, and shall submit the fee as provided by Rule .0107 of this Chapter.

(d) Additional information required by the Board to approve or deny approval on any application shall be filed with the Board within 60 days of the applicant's receipt of notice to provide such information. This may include any of the applicant's written reports, maps, published articles or other materials the Board determines are appropriate to document the applicant's experience as a geologist. Failure to submit the supplemental information requested within the time specified by this Rule may result in the Board's rejection of the application without further notice prior to such rejection.

*History Note: Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11; 89E-12; 89E-21;
Eff. February 1, 1986;
Amended Eff. April 1, 2003; April 1, 1990; April 1, 1989; March 1, 1988.*

SECTION .0400 - CERTIFICATE AND SEAL

21 NCAC 21 .0401 CERTIFICATE
21 NCAC 21 .0402 SEAL

*History Note: Authority G.S. 89E-5(d); 89E-18(d);
 Eff. February 1, 1986;
 Repealed Eff. April 1, 1989.*

SECTION .0500 – DISCIPLINARY ACTION AND PROCEDURE

21 NCAC 21 .0501 FILING OF CHARGES AND DISCIPLINARY ACTIONS

- (a) Any person may file with the Board a charge of negligence, incompetence, dishonest practice, or other misconduct or of any violation of G.S. 89E or of these Rules.
- (b) Upon receipt of such charge or upon its own initiative, the Board may, consistent with procedures required by G.S. 150B, suspend or revoke the license or certificate of registration, may issue a reprimand as provided in Rule .0502 of this Section or may, upon a statement of the reasons therefore, dismiss the charge as unfounded or trivial, which statement shall be mailed to the geologist and the person who filed the charge. If the Board determines that a licensee is professionally incompetent, the Board may require the licensee to demonstrate fitness to practice as allowed in G.S. 89E-19(b). In addition to issuing a reprimand or suspending or revoking a license or certificate of registration, the Board, pursuant to G.S. 89E-19, may impose a civil penalty for any violation of G.S. 89E or these Rules.
- (c) The Board may publish in the Board's newsletter or other public media any disciplinary action taken against a licensee or registrant or any legal action taken against any person found to be in violation of G.S. 89E or these Rules.

*History Note: Authority G.S. 89E-5; 89E-17; 89E-19; 89E-20;
 Eff. February 1, 1986;
 Amended Eff. April 1, 1989;
 Temporary Amendment Eff. November 24, 1999;
 Amended Eff. April 1, 2003; August 1, 2000.*

21 NCAC 21 .0502 REPRIMAND

- (a) If evidence of a violation is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party and within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a Hearing be held pursuant to G.S. 150B. Such refusal and request shall be addressed to the Board and filed with the Executive Director of the Board.
- (b) Upon timely filing of a notice refusing the reprimand and requesting a hearing, the Board shall determine whether the Board shall conduct the evidentiary hearing or whether it shall refer the matter to the Office of Administrative Hearings for designation of an administrative law judge to conduct the hearing. If the Board elects to conduct the hearing, the legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the Board refers the matter to the Office of Administrative Hearings, that agency shall prepare and serve all subsequent notices related to the evidentiary hearing, including the Notice of Hearing.
- (c) If the Letter of Reprimand is accepted, a copy of the reprimand shall be maintained in the office of the Board. If a party receiving a reprimand wishes merely to file a letter rebutting his reprimand, he may in writing waive his right to hearing and submit a letter of rebuttal to be placed in his file.

*History Note: Authority G.S. 89E-5; 89E-19; 89E-20;
 Eff. February 1, 1986;
 Amended Eff. April 1, 1989;
 Temporary Amendment Eff. November 24, 1999;
 Amended Eff. April 1, 2003; August 1, 2000.*

21 NCAC 21 .0503 APPLICABLE HEARING RULES
21 NCAC 21 .0504 CAUTION

History Note: Authority G.S. 89E-5; 89E-20; 150B-38;
Eff. February 1, 1986;
Amended Eff. April 1, 1989;
Repealed Eff. April 1, 2003.

21 NCAC 21 .0505 RIGHT TO HEARING

When the Board, other than in a rulemaking or declaratory ruling proceeding, acts or proposes to act in a manner which will affect the rights, duties, or privileges of a specific identifiable person or persons, those persons have a right to an administrative hearing. When the Board proposes to act in such manner, it shall give to any such person or persons notice of their right to a hearing by mailing by certified mail to such person at his last known address a notice of the proposed action and a notice of a right to a hearing.

History Note: Authority G.S. 89E-20; 150B-11; 150B-38;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0506 REQUEST FOR HEARING

(a) When an individual believes his rights, duties or privileges have been or may be affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, he may file a formal request for a hearing.

(b) The formal request shall bear the notation: RE: REQUEST FOR ADMINISTRATIVE HEARING. That request should contain the following information:

- (1) name and address of the petitioner;
- (2) a concise statement of the action taken by the Board which is challenged;
- (3) a concise statement of the way in which the petitioner has been aggrieved; and
- (4) a clear and specific statement of request for a hearing.

(c) Such a request will be acknowledged promptly and, if deemed appropriate under Rule 21 NCAC 21 .0507, a hearing will be scheduled.

History Note: Authority G.S. 89E-20; 150B-11; 150B-38;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0507 GRANTING OR DENYING HEARING REQUESTS

(a) The Board will grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6).

(b) The denial of a request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.

(c) Approval of a request for a hearing will be signified by issuing a notice as required by G.S. 150B-38(b).

History Note: Authority G.S. 89E-20; 150B-11; 150B-38;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0508 NOTICE OF HEARING

(a) In addition to the items specified in General Statutes 150B-38(b) to be included in the notice, notices of administrative hearings of the Board:

- (1) shall give the name, position, address and telephone number of a person in the Board office to contact for further information or discussion;
- (2) may give notice of the date, time, and place for a prehearing conference, if any; and

- (3) may include any other information deemed relevant to informing the party or parties as to the procedure of the hearing.
- (b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of geology in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

History Note: Authority G.S. 89E-19; 89E-20; 150B-3; 150B-11; 150B-38;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0509 NO EX PARTE COMMUNICATIONS

History Note: Authority G.S. 89E-20; 150B-35;
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.

21 NCAC 21 .0510 PETITION FOR INTERVENTION

- (a) A person desiring to intervene in a contested case must file a written petition with the Board. The request should bear the notation: RE PETITION TO INTERVENE IN THE CASE OF (name of case).
- (b) The petition must contain the information specified in Rule 24 of the North Carolina Rules of Civil Procedure.
- (c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties and to the petitioner.
- (d) If the Board denies intervention, the petitioner will be notified promptly. Such notice will be in writing, will state the reasons for the decision, and will be issued to the petitioner and all parties.

History Note: Authority G.S. 89E-20; 150B-38;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0511 TYPES OF INTERVENTION

- (a) Intervention of Right. A petition to intervene of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that Rule and his petition is timely.
- (b) Permissive Intervention. A petition to intervene permissively as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that Rule and the Board determines that:
- (1) there is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearings; and
 - (2) permitting intervention by the petitioner as a party would aid the purpose of the hearing.

History Note: Authority G.S. 89E-20; 150B-38;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

21 NCAC 21 .0512 HEARING OFFICERS: DESIGNATION: POWERS

History Note: Authority G.S. 89E-20; 150B-32; 150B-33;
Eff. February 1, 1986;

Repealed Eff. April 1, 1989.

21 NCAC 21 .0513 DISQUALIFICATION OF BOARD MEMBERS

(a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render him unable to participate in a contested case hearing and perform all duties in an impartial manner, he shall submit, in writing, to the Board, his disqualification and the reasons.

(b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to participate in a contested case hearing and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (name of case).

(c) Contents of Affidavit. The affidavit must state all facts the party deems relevant to the disqualification of the Board member.

(d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that the Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.

(e) Procedure for Determining Disqualification:

- (1) the Board, will appoint a Board member to investigate the allegations of the affidavit.
- (2) the investigator will report to the Board the findings of the investigation.
- (3) the Board shall decide whether to disqualify the challenged individual.
- (4) the person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.
- (5) when a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
- (6) if three or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

*History Note: Authority G.S. 89E-20; 150B-11; 150B-38; 150B-40;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.*

21 NCAC 21 .0514 INVESTIGATION

(a) As provided in G.S. 89E-17, valid complaints received by the Board shall be forwarded to an investigator for further inquiry as to whether the acts or omissions alleged violate the provisions of G.S. 89E, the Board's code of professional conduct, or any other rules of this Chapter. The Board's executive director shall notify the licensee or corporate registrant of the complaint and advise the licensee or corporate registrant that:

- (1) He has a duty to cooperate fully with the investigation by the Board; and
- (2) He may submit a written response to the complaint.

(b) The investigator shall collect all information needed to determine whether a violation has occurred and the nature and severity of the violation. Information gathered during the course of an investigation shall be treated by the Board as confidential information in accordance with G.S. 89E-17(c) until the Board takes disciplinary action against the licensee or registrant; however, the Board cannot ensure the confidentiality of any information introduced into evidence in a hearing conducted by the Office of Administrative Hearings upon referral from the Board, because the information becomes part of the public record of that agency at the time of introduction.

(c) After collecting information relevant to the complaint, the investigator shall submit a report consisting of the complaint, information gathered in the course of investigation, and the investigator's conclusion to a peer review committee for

evaluation. The peer review committee shall consist of at least two professional geologists, each of whom hold a currently valid license issued by the Board.

(d) The investigation report (including, but not limited to, the supporting information relevant to the complaint) and the written evaluation of the peer review committee shall be submitted to the Executive Director of the Board to be combined with the licensee's written response to the complaint, if any, for further proceedings in accordance with Rule .0515 of this Section.

*History Note: Authority G.S. 89E-5; 89E-17; 89E-20;
Temporary Adoption Eff. November 24, 1999;
Eff. August 1, 2000;
Amended Eff. April 1, 2003.*

21 NCAC 21 .0515 DISCIPLINARY PROCEDURE

(a) Upon receipt of an investigation report and evaluation from the Board's investigator and peer review committee in accordance with Rule .0514 of this Section, the Board's Executive Director shall forward to the Chairman of the Board (or to a member of the Board designated by the Chairman) the investigation report, evaluation, and the supporting documentation along with the licensee's or registrant's written response to the complaint, if any.

(b) The Chairman (or a member of the Board designated by the Chairman) shall propose the disciplinary action for the violation(s) revealed by the investigation consistent with the provisions of G.S. 89E-19. The Chairman (or a member of the Board designated by the Chairman) may issue a summary suspension pursuant to G.S. 150B-3(c). The Chairman or his designee, may also propose dismissal of the complaint.

(c) After review of the investigation report, evaluation, and supporting documentation, the Chairman shall notify the licensee or registrant of the proposed disciplinary action by certified mail sent to the last known address of the licensee or registrant as indicated by the Board's official roster. This notification shall contain a summary of the alleged facts or conduct upon which the proposed disciplinary action is based, the effective date of the proposed disciplinary action, and an explanation of the licensee's or registrant's hearing rights pursuant to G.S. 150B, Article 3A. Notification for summary suspensions shall meet the requirements of G.S. 150B-3(c).

(d) The licensee or registrant has 15 days from receipt of notification of proposed disciplinary action to file with the Board a written request for hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due. If the licensee or registrant does not file a written request for hearing with the Board, the Board shall receive the Chairman's recommendation on disciplinary action at its next meeting. If, after limited review of the facts of the case, a majority of the Board agrees with the Chairman's recommendation, the proposed disciplinary action becomes a final agency decision. If a majority of the Board does not agree with the Chairman's recommendation, the Board shall review of the investigator's report without supporting documentation for the purpose of proposing an appropriate disciplinary action or dismissal. The Chairman shall not participate in the deliberations or the voting with regard to either his recommendation or the Board's decision regarding a substitute disciplinary action. A new notice of proposed disciplinary action will be sent to the licensee or registrant, if necessary, in accordance with the procedure set out in Paragraph (c) of this Rule, and the licensee or registrant has 15 days from receipt of the new notice of proposed disciplinary action to file with the Board a written request for a hearing. Requests for hearing must be received at the Board's office by 5:00 p.m. on the date due.

(e) The licensee or registrant may request a settlement conference; however, neither the request for settlement conference nor the Board's agreement to enter into settlement negotiations will extend the 15-day deadline for requesting an opportunity for a hearing or any other deadlines in the hearing process. The Chairman (or a member of the Board designated by the Chairman) is delegated authority to negotiate a settlement; however, the settlement agreement must be approved by a majority of the members of the Board before the proposed disciplinary action will be rescinded.

(f) Upon receipt of written request for hearing, the Board may conduct an administrative hearing as authorized by G.S. 150B-38 or the Board may request the Office of Administrative Hearings to conduct the hearing as authorized by G.S. 150B-40. Hearings shall be conducted in accordance with the rules of this Chapter.

(g) A majority of the members of the Board shall render the final agency decision, in accordance with G.S. 150B-42, after a hearing on the proposed disciplinary action. The Chairman, or if applicable the designated member, who proposed the disciplinary action after a full review of the facts available to the investigator and peer review committee shall not participate in the discussion of the contested case and shall not vote on the final decision for disciplinary action. Nothing in this Rule shall prevent members of the Board from participating in the discussion and vote on a final agency decision with regard to proposed disciplinary action if they have reviewed the investigator's report without supporting documentation solely for the purpose of determining whether probable cause existed to support the allegations of violation and for the purpose of proposing an appropriate disciplinary action.

*History Note: Authority G.S. 89E-5; 89E-19; 89E-20; 150B-3; 150B-38 through 150B-42;
Temporary Adoption Eff. November 24, 1999;
Eff. August 1, 2000;
Amended Eff. April 1, 2003.*

SECTION .0600 - ADMINISTRATIVE HEARINGS: DECISIONS: RELATED RIGHTS

21 NCAC 21 .0601 WITNESSES

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*History Note: Authority G.S. 89E-20; 150B-11; 150B-25(a); 150B-38; 150B-40;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.*

21 NCAC 21 .0602 SIMPLIFICATION OF ISSUES

The parties to a contested case, specifically including the Board, may agree in advance to simplify the hearing by: decreasing the number of the issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

*History Note: Authority G.S. 89E-20; 150B-11; 150B-41;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.*

21 NCAC 21 .0603 SUBPOENAS

(a) The Board shall use the following procedure to issue a subpoena pursuant to the authority granted the Board by G.S. 150B-39:

- (1) Subpoenas shall be issued in duplicate, with a "Return of Service" form attached to each copy. The person serving the subpoena shall fill out the "Return of Service" form for each copy and promptly return one copy of the subpoena, with the attached "Return of Service" form completed to the Board;
- (2) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the Sheriff's service fee;
- (3) In accordance with G.S. 150B-39, the Board may quash any subpoena issued in a case for which the Board is conducting a hearing. Any person receiving a subpoena in such case may object thereto by filing a written objection to the subpoena with the Board by mailing same to the Board office;
- (4) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, lack of particularity in the description of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.
- (5) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.
- (6) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.
- (7) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party who is challenging it, and may notify all other parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response, if any.

- (8) Promptly after the close of such hearing, the Board shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.
- (9) Subpoenas shall contain the following:
 - (A) the caption of the case;
 - (B) the name and address of the person subpoenaed;
 - (C) the date, hour and location of the hearing in which the witness is commanded to appear;
 - (D) a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any;
 - (E) the identity of the party on whose application the subpoena was issued, and the date of issue;
 - (F) the signature of the person issuing the subpoena; and
 - (G) a return of service form, fully executed, which shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the location and manner in which service was made, and the signature of the person making service.

(b) Where the Board grants a request for hearing and elects to conduct the evidentiary hearing without referral, subpoenas may be issued by the attorney for any party in accordance with the provisions of G.S. 1A-1, Rule 45. Upon objection by any person receiving a subpoena in such case, the Board may quash the subpoena after following the procedure specified in Part (A) of this Rule.

(c) Where the Board grants a request for hearing and elects to refer the contested case to the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing, the issuance or quashing of subpoenas will be governed by G.S. 150B-27 or other applicable rules of the Office of Administrative Hearings.

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-39; 150B-40;
 Eff. February 1, 1986;
 Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0604 FINAL DECISIONS IN ADMINISTRATIVE HEARINGS

- (a) In all cases heard by the Board, the Board shall issue its decision after its next regularly scheduled meeting following the close of the hearing, but no later than 120 days after the close of the hearing as required by G.S. 150B-44.
- (b) In all cases where a request for hearing is granted by the Board, but the case has been referred to the Office of Administrative Hearings for designation of an administrative law judge to conduct the hearing, the Board will issue its decision within 60 days after its next regularly scheduled meeting following receipt of the proposal for decision, hearing transcript, and other evidence submitted or offered as proof at the hearing conducted by the administrative law judge.
- (c) The time for issuing a final agency decision may be extended by agreement of the parties.

History Note: Authority G.S. 89-5; 89E-20; 150B-38; 150B-40; 150B-42; 150B-44;
 Eff. February 1, 1986;
 Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0605 EXCEPTIONS AND PROPOSED DECISIONS

- (a) When a request for hearing has been granted and the case referred to the Office of Administrative Hearings and the administrative law judge has made a proposal for decision, each party shall do the following:
 - (1) file written exceptions to the proposal for decision, unless the party accepts the decision in its entirety. Any party may choose to submit alternative findings of fact and conclusions of law. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion or recommendation shall be proposed. Exceptions and alternative findings of fact and conclusions of law shall be received by the Board no later than 30 calendar days after the receipt of the proposal for decision and accompanying evidentiary materials by the Board. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, and the specific reason(s) the Board should not adopt the administrative law judge's finding of fact or conclusion of law. Each exception and proposed alternative finding or conclusion shall also reference the specific evidence in the record which supports the rejection of the administrative law judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses and any evidentiary exhibits. Any new findings of fact proposed to the Board must be supported by a preponderance of the admissible evidence in the record. Reference must be made to the transcript of the hearing;

- (2) file a Proposed Decision and Order for consideration by the Board to accompany the party's written exceptions. The proposed Decision and Order shall be received by the Board no later than 30 calendar days after the receipt of the administrative law judge's proposal for decision and evidentiary materials by the Board. The Proposed Decision and Order shall indicate separately and in detail, for each finding of fact to be rejected by the Board and for each alternative finding of fact, the reasons therefore and the supporting evidence in the record. The Proposed Decision and Order shall demonstrate that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the record, and shall set forth its reasoning, which shall also describe the exercise of discretion by the Board, if any; and
- (3) file a brief, if any, to accompany any filed exceptions and Proposed Decision and Order. Responsive briefs are not encouraged, but shall be considered if received by the Board no later than five days after a party's receipt of the other party's brief, exceptions or proposed final agency decision. Briefs shall be limited to 15 pages in length, unless prior approval is obtained.

(b) When a request for hearing has been granted and the Board elects to conduct the evidentiary hearing, the parties may file a hearing brief outlining the issues of law to be determined by the Board as a result of the evidentiary hearing. These briefs must be filed with the Board no later than 30 days prior to the date of hearing. Response briefs are not encouraged, but shall be accepted if filed with the Board no later than five days after receipt of the other party's brief. The parties also may file a proposed decision with findings of fact and conclusions of law. Proposed decisions must be filed with the Board within 15 days of the conclusion of the hearing or within 15 days of the Boards' receipt of the transcript of the hearing, if any, whichever is later. The findings of fact and conclusions of law in the proposed decision must make specific reference to the evidence admitted at the hearing and to the transcript.

(c) Unless otherwise directed, parties shall file these documents at the Board's office by 5:00 p.m. on the date due. Parties shall submit eight copies of each set of written exceptions, proposed decision, and any brief. Copies of parts of the record which may be useful to the Board may be included in an appendix to pleadings, document or other papers. A copy of any document filed with the Board shall be served on all parties.

(d) Upon receipt of request for further oral argument, notice shall be issued promptly to all parties designating time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; 150B-42;
Eff. February 1, 1986;
Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0606 ORAL ARGUMENT

(a) The parties shall be notified of the date, time and place of oral argument before the Board (if held separately from an evidentiary hearing). Oral argument in all cases shall be limited to 15 minutes per presentation, unless prior approval is obtained. Such arguments shall be based solely on the information contained in the record as compiled by the Board or as submitted to the Board by the Office of Administrative Hearings. If a party fails to appear after receiving notice of the time for oral argument, the Board may proceed to issue a decision in the absence of the party.

(b) If the evidentiary hearing was conducted by an administrative law judge, the party which did not prevail before the administrative law judge is entitled to make the first oral argument and to present a rebuttal. If both parties are seeking changes in the administrative law judge's recommended decision, both parties may present a rebuttal and the party with the burden of proof shall make the first oral argument and the first rebuttal.

(c) If the oral argument is part of an evidentiary hearing conducted by the Board, the attorney representing the Board may make the first oral argument and present a rebuttal.

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40;
Eff. April 1, 2003.

21 NCAC 21 .0607 EXTENSION OF TIME; NOTIFICATION OF FINAL DECISION

(a) An extension of time to take any action required by these Rules may be granted by the Board after considering the following circumstances:

- (1) the age of the case;
- (2) whether the circumstances necessitating the extension are outside of the control of the moving parties;
- (3) whether the moving parties have previously received an extension of time;
- (4) the potential prejudice, inconvenience, or other harm to any party; and
- (5) the likelihood that an extension will delay the ultimate resolution of the matter.

(b) A final agency decision shall be made within the time limits of G.S. 150B-44, and the parties may receive notice of the decision by telephone, electronic mail, facsimile, or any other method deemed by the Board to be helpful in assuring prompt notification of the parties. The written final decision shall be filed at the Board's office and served on all parties by certified mail, return receipt requested at the last address given by the party. Service on other persons receiving notice of the final decision shall be made by first class mail. The Board shall maintain the records of all contested cases in accordance with its records disposition schedule.

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; 150B-44;
Eff. April 1, 2003.

SECTION .0700 - JUDICIAL REVIEW

21 NCAC 21 .0701 RIGHT TO JUDICIAL REVIEW **21 NCAC 21 .0702 MANNER OF SEEKING REVIEW**

History Note: Authority G.S. 83-4; 89E-20; 150B-43; 150B-45;
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.

SECTION .0800 - RULEMAKING PROCEDURES

21 NCAC 21 .0801 GENERAL PURPOSE

History Note: Authority G.S. 150B, Article 2;
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.

21 NCAC 21 .0802 COPIES OF RULES: INSPECTION

(a) Anyone desiring to obtain a copy of the rules of the Board may do so by requesting such from the Board. The Board shall charge twenty-five cents (\$0.25) per page and actual postage costs.

(b) The rules of the Board and other public documents maintained by the Board are available for public inspection at the office of the Board (3733 Benson Drive, Raleigh, N.C. 27609) during regular office hours.

History Note: Authority G.S. 89E-5; 89E-14; 89E-17; 132-1; 132-2; 132-6.
Eff. February 1, 1986;
Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0803 PETITION FOR RULEMAKING HEARINGS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule(the "proposed rule") by the Board shall file the petition with the Board. The first page of the petition shall clearly bear the notation: RULEMAKING PETITION RE and then state the subject area. The Petition shall contain the following information:

- (1) the text of the proposed rule(s);

- (2) the statutory authority for the agency to promulgate the rule(s);
 - (3) a statement of the reasons for adoption of the proposed rule(s);
 - (4) a statement of the effect on existing rules or orders;
 - (5) copies of any documents and data supporting the proposed rule(s);
 - (6) a statement of the effect of the proposed rule(s) on existing practices in the area involved, including cost factors for persons affected by the proposed rule(s);
 - (7) a statement explaining the computation of the cost factors;
 - (8) a description, including the names and addresses, if known, of those most likely to be affected by the proposed rule(s); and
 - (9) the name(s) and address(es) of the petitioner(s).
- (b) An original and eight copies of the petition and supporting documents shall be filed with the Board.
- (c) Filings failing to contain the information required by this Rule shall not be accepted. Incomplete filings shall be returned by the Chairman to the person(s) making the filing.

History Note: Authority G.S. 89E-5; 150B-20;
Eff. February 1, 1986;
Amended Eff. April 1, 2003.

21 NCAC 21 .0804 DISPOSITION OF PETITIONS

- (a) The Chairman may request additional information from the petitioner(s), may contact any interested person or persons likely to be affected by the proposed rule and request comments, and may use any other appropriate method for obtaining additional information.
- (b) When deemed complete by the Chairman, petitions for rulemaking shall be presented to the Board for its consideration and determination at a regularly scheduled meeting of the Board within 120 days following submission of the complete petition. The Chairman shall determine the order and duration of discussion regarding the petition, including discussion by members of the public if any.
- (c) Within 120 days following submission of the complete petition requesting rulemaking, unless the parties have agreed to an extension of time, the Board shall:
- (1) initiate rulemaking proceedings in accordance with G.S. 150B-20 and notify the person(s) who submitted the petition of the decision in writing; or
 - (2) deny the petition in writing, stating the reason(s) for the denial, and send the written denial to the person(s) who submitted the petition.

History Note: Authority G.S. 89E-5; 150B-20;
Eff. February 1, 1986;
Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0805 WRITTEN SUBMISSIONS **21 NCAC 21 .0806 STATEMENT OF REASONS FOR DECISION**

History Note: Authority G.S. 150B-12(e);
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.

21 NCAC 21 .0807 RECORD PROCEEDINGS

A record of all rulemaking proceedings will be maintained by the Board for as long as the rule is in effect, and for five years thereafter, following filing with the Office of Administrative Hearings. This record will contain: the original petition, if any, the notice, and all written memoranda and presentations. Records of rulemaking proceedings will be available for public inspection at the office of the Board during regular office hours.

History Note: Authority G.S. 150B-12;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.

SECTION .0900 - DECLARATORY RULINGS

21 NCAC 21 .0901 SUBJECTS OF DECLARATORY RULINGS

*History Note: Authority G.S. 150B-17;
Eff. February 1, 1986;
Repealed Eff. April 1, 1989.*

21 NCAC 21 .0902 SUBMISSION OF REQUEST FOR DECLARATORY RULING

(a) All requests for declaratory rulings shall be written and filed with the Board. The first page of the request shall bear the notation: REQUEST FOR DECLARATORY RULING. The request must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule or order of the Board on which a ruling is desired;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a concise statement as to whether the request is for a ruling on the validity of a rule, statute or order or on the applicability of a rule, statute or order to a given factual situation;
- (5) arguments or data which demonstrate that the petitioner is aggrieved by the rule, statute or order or by the potential application to him;
- (6) a statement of the consequences of a failure to issue a declaratory ruling in favor of petitioner; and
- (7) a statement of whether an oral argument is desired and, if so, the reason(s) for requesting such an oral argument.

(b) A request for a ruling on the applicability of a rule, order, or statute must include a description of the specific factual situation on which the ruling is to be based. A request for a ruling on the validity of a Board rule must state the aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request. A request for a ruling must include or be accompanied by:

- (1) a statement of the specific statement of facts proposed for adoption by the Board; and
- (2) a draft of the proposed ruling.

*History Note: Authority G.S. 89E-5; 89E-20; 150B-4;
Eff. February 1, 1986;
Amended Eff. April 1, 2003.*

21 NCAC 21 .0903 DISPOSITION OF REQUESTS

(a) The Board's Chairman shall make a determination on the completeness of the request for declaratory ruling based on the requirements of Rule .0902 of this Section, and he shall make a recommendation to the Board on whether to issue or decline to issue a declaratory ruling.

(b) Before deciding the merits of the request, the Board may:

- (1) request additional written submissions from petitioner(s);
- (2) request a written response from any other person; or
- (3) hear oral argument from the petitioner and other persons on the issues raised by the request.

(c) Upon written request, the party requesting the declaratory ruling and any other person by leave of the Board may be allowed to present oral arguments to the Board at a regularly scheduled meeting or special meeting called for the purpose of considering the request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Board in a declaratory ruling proceeding.

(d) Whenever the Board determines for "good cause" that the issuance of a declaratory ruling is undesirable, the Board may refuse to issue such ruling. The Board shall notify in writing the person requesting the ruling, stating the reasons for the refusal to issue a ruling on the request.

(e) For purposes of Paragraph (e) of this Rule, the Board will ordinarily refuse to issue a ruling on a request for declaratory ruling on finding that:

- (1) the facts are in dispute;
 - (2) there has been a similar determination in a previous contested case or declaratory ruling;
 - (3) the matter is the subject of a pending contested case hearing or litigation in any North Carolina or federal court;
 - (4) the factual context put forward as the subject of the declaratory ruling was specifically considered upon the adoption of the rule being questioned, as evidenced by the rulemaking record;
 - (5) no genuine controversy exists as to the application of a statute or rule to the specific factual situation presented; or
 - (6) other good cause exists for declining to issue the requested ruling.
- (f) A declaratory ruling is binding on the Board and on the person(s) requesting it unless it is altered or set aside by the court. The Board may not retroactively change a declaratory ruling, but nothing in this Section prevents the Board from prospectively changing a ruling.
- (g) A declaratory ruling shall be deemed to be "in effect" until:
- (1) the statute or rule interpreted by the declaratory ruling is amended, altered, or repealed;
 - (2) the Board changes the declaratory ruling prospectively for good reasons;
 - (3) any court sets aside the ruling in litigation between the Board and the party requesting the ruling; or
 - (4) until 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.
- (h) The requesting party may agree to allow the Board to issue a ruling on the merits of the request beyond the 60 days allowed by G.S. 150B-4.

*History Note: Authority G.S. 89E-5; 89E-20; 150B-4;
Eff. February 1, 1986;
Amended Eff. April 1, 2003; April 1, 1989.*

21 NCAC 21 .0904 RECORD OF DECISION

A record of all declaratory ruling proceedings will be maintained in the Board's office for as long as the ruling is in effect and for five years thereafter. This record will contain: the petition, the notice, all written submissions filed in the request, whether filed by the petitioner or any other person, and a record or summary of oral presentations, if any. Records of declaratory ruling proceedings will be available for public inspection during regular office hours.

*History Note: Authority G.S. 150B-11;
Eff. February 1, 1986;
Amended Eff. April 1, 1989.*

SECTION .1000 - PROFESSIONAL CORPORATIONS

21 NCAC 21 .1001 PRACTICE OF GEOLOGY BY CORPORATIONS AND LIMITED LIABILITY COMPANIES

(a) Application. Application for a Certificate of Registration for corporations and limited liability companies to practice geology within the State of North Carolina shall be made upon forms provided by the Board. Completed applications must conform to the requirements of Rule .0302 of this Chapter and be accompanied by the fee prescribed in Rule .0107 of this Chapter. Certificates of Registration shall be issued only to corporations meeting the provisions of the Professional Corporation Act, G.S. 55B, and companies meeting the provisions of the Limited Liability Company Act, G.S. 57C, except as provided in Paragraph (b) of this Rule.

(b) Corporations and Limited Liability Companies Exempt from G.S. 55B. Applications for a Certificate of Registration as exempt from the Professional Corporation Act or the Limited Liability Company Act under the provisions of G.S. 55B-15 or G.S. 57C-2-01 shall be made upon forms provided by the Board. To be eligible as an exempt corporation under the provisions of G.S. 55B-15 the following conditions must exist:

- (1) The corporation or limited liability company shall have been incorporated or organized prior to June 5, 1969 and permitted by law to render professional services or must be a corporate successor to such a corporation or limited liability company as defined by G.S. 55B-15; or

- (2) The corporation or limited liability company must have been incorporated or organized prior to September 1, 1991, and before and after September 1, 1991 the corporation or limited liability company must have been a bonafide firm engaged in the practice of geology and such services as may be ancillary thereto within the State of North Carolina.
- (c) **Renewal of Certificate.** The renewal of Certificates of registration for corporations and limited liability companies shall follow the requirements as set out in Rule .0107 of this Chapter.
- (d) **Seal.** Each registered corporation or limited liability company shall obtain from the Board a seal approved by the Board. Such seal shall contain the name of the corporation or limited liability company, its North Carolina registration number and the words "registered geological corporation" or "registered geological limited liability company" as applicable.
- (e) **Approval of Name.** The name used by a geological corporation or limited liability company shall be approved by the Board before being used. Names shall be approved by the Board pursuant to the requirements and limitations of G.S. 55, 55B and G.S. 57C unless the name has been registered previously by another geological corporation or limited liability company. This Rule shall not prohibit the continued use of any corporate name adopted in conformity with the General Statutes of North Carolina and board rules in effect at the date of such adoption.

History Note: Authority G.S. 55B-5; 55B-10; 55B-11; 55B-14; 55B-15; 57C-2-01; 89E- 5; 89E-12; 89E-13; Eff. January 1, 1992; Amended Eff. April 1, 2003.

21 NCAC 21 .1002 FOREIGN CORPORATIONS AND LIMITED LIABILITY COMPANIES

- (a) **Formation in Other States.** Corporations and Limited Liability Companies formed in other states may be granted Certificates of Registration for the practice of geology in this State on the receipt by the Board of a completed application as specified in Rules .0301 and .0302 of this Chapter and the payment of the appropriate application fee indicated in Rule .0107 of this Chapter. In addition to the other requirements as set out in G.S. 89E-12, foreign corporations and limited liability companies must, prior to registration, receive from the Secretary of State of North Carolina a Certificate of Authority to transact business within the State.
- (b) **Designated Individuals.** Foreign corporations and limited liability companies shall be permitted to practice geology within the State of North Carolina provided that the corporation or limited liability company must designate at least one geologist who is licensed by the State of North Carolina to be in responsible charge for the firm's practice of geology within the State of North Carolina.

History Note: Authority G.S.; 55B-16; 57C-2-01; 89E-5; 89E-12; Eff. January 1, 1992; Amended Eff. April 1, 2003.

SECTION .1100 – PROFESSIONAL CONDUCT

21 NCAC 21 .1101 RULES OF PROFESSIONAL CONDUCT

- (a) In order to safeguard the life, health, property and welfare of the public and to establish and maintain a high standard of integrity, skills, and practice in the profession of geology, these rules of professional conduct shall be binding upon every person holding a certificate of license as a geologist, and on all partnerships or corporations or other legal entities authorized to offer or perform geologic services in this state. All persons licensed or registered under the provisions of G.S. 89E are charged with having knowledge of the existence of these Rules of professional conduct.
- (b) The geologist shall conduct his practice in order to protect the public health, safety, and welfare.
- (1) The geologist shall at all times recognize his primary obligation to protect the safety, health, and welfare of the public in the performance of his professional duties. If his geologic judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, he shall inform his employer of the possible consequences and notify other proper authority of the situation, as may be appropriate.
- (2) The geologist shall protect the public health, safety, and welfare by maintaining sufficient personal on-site involvement and continual direction and review of the activities of subordinates that constitute public practice of geology while such activities are in progress. The licensee must provide such supervision and have sufficient knowledge of the project and site conditions necessary to assure accuracy and compliance with all applicable laws and regulations (including, but not limited to, G.S. 89E and the rules of this Chapter).
- (c) The geologist shall perform his services only in areas of his competence:

- (1) The geologist shall undertake to perform geologic assignments only when qualified by education or experience in the specific technical field of geology involved.
 - (2) The geologist may accept an assignment requiring education or experience outside of his own field of competence, but only to the extent that his services are restricted to those phases of the project in which he is qualified. All other phases of such project shall be performed by qualified associates, consultants, or employees.
 - (3) The geologist shall not affix his signature and seal to any document dealing with subject matter for which he lacks competence by virtue of education or experience or to any such plan or document not prepared under his direct supervisory control, except that the geologist may affix his seal and signature to drawings and documents depicting the work of two or more professionals provided he designates by note under his seal the specific subject matter for which he is responsible.
- (d) The geologist shall issue public statements only in an objective and truthful manner:
- (1) The geologist shall be completely objective and truthful in all professional reports, statements, or testimony. He shall include all relevant and pertinent information in such reports, statements or testimony.
 - (2) The geologist when serving as an expert or technical witness before any court, commission, or other tribunal shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony.
 - (3) The geologist will issue no statements, criticisms, or arguments on geologic matters connected with public policy which are inspired or paid for by an interested party or parties unless he has prefaced his comments by explicitly identifying himself, by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest he may have in the instant matters.
 - (4) The geologist shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of another geologist, nor shall he maliciously criticize another geologist's work in public. If he believes that another geologist is guilty of misconduct or illegal practice, he shall present such information to the Board for action.
- (e) The geologist shall not attempt to supplant another geologist in a particular employment after becoming aware that the other has been selected for the employment.
- (f) The geologist shall avoid conflicts of interest:
- (1) The geologist shall conscientiously avoid conflicts of interest with his employer or client, but when unavoidable, the geologist shall forthwith disclose the circumstances to his employer or client.
 - (2) The geologist shall avoid all known conflicts of interest with his employer or client, and shall promptly inform his employer or client of any business association, interest, or circumstances which could influence his judgment or the quality of his services.
 - (3) The geologist shall not accept compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed to, by all those parties.
 - (4) The geologist shall not solicit or accept financial or other valuable considerations from material or equipment suppliers for specifying their products.
 - (5) The geologist shall not solicit or accept substantial gratuities, directly or indirectly, from contractors, their agents, or other parties dealing with his client or employer in connection with work for which he is responsible.
 - (6) When in public service as a member, advisor, or employee of a governmental body or department, the geologist shall not participate in considerations or actions with respect to services provided by him or his organization in private geological practices.
 - (7) The geologist shall not solicit or accept a geologic contract from a governmental body on which a principal or officer of his business serves as a member.
- (g) The geologist shall solicit or accept work only on the basis of his qualifications:
- (1) The geologist shall not offer to pay, either directly or indirectly, any commission, political contribution, gift, or other consideration in order to secure work, exclusive of securing salaried positions through employment agencies.
 - (2) The geologist shall compete for professional employment on the basis of qualification and competence for proper accomplishment of the work. He shall not solicit or submit proposals for professional services containing a false, fraudulent, misleading, deceptive, or unfair statement or claim regarding the cost, quality or extent of services to be rendered.

- (3) The geologist shall not falsify or permit misrepresentation of his, or his associates', academic or professional qualifications. He shall not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments. Brochures or other presentations incident to the solicitation of employment shall not misrepresent pertinent facts concerning employers, employees, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and those of his work associates.
- (h) The geologist shall associate only with reputable persons or organizations:
- (1) The geologist shall not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows, or has reason to believe, is engaging in business or professional practices of a fraudulent or dishonest nature.
 - (2) If the geologist has knowledge or reason to believe that another person or firm may be in violation of any of these provisions or of the North Carolina Geologist Licensing Act, he shall present such information to the Board and furnish such further information or assistance as may be required by the Board.
- (i) Conviction of a felony without restoration of civil rights, or the revocation or suspension of the license of a geologist by another jurisdiction, if for a cause which in the State of North Carolina would constitute a violation of G.S. 89E or of these rules, shall be grounds for a charge of violation of these Rules and may result in the revocation of the certificate of licensure or corporate registration issued by this Board and the imposition of a civil penalty not to exceed five thousand dollars (\$5,000).

*History Note: Authority G.S. 89E-5; 89E-16;
Temporary Adoption Eff. November 24, 1999;
Eff. August 1, 2000.*

21 NCAC 21 .1102 RULES OF CONDUCT OF ADVERTISING

- (a) The geologist shall not make exaggerated, misleading, deceptive or false statements or claims about his professional qualifications, experience or performance in his brochures, correspondence, listing, or other public communications.
- (b) The prohibitions listed in this Rule include, but are not limited to, the use of statements containing a material misrepresentation of fact or omitting a material fact necessary to keep the statement from being misleading; statements intended or likely to create an unjustified expectation; statements containing prediction of future success; or statements containing an opinion as to the quality of services.
- (c) Consistent with the foregoing, the geologist may advertise for recruitment of personnel.
- (d) Consistent with the foregoing, the geologist may prepare articles for the lay or technical press. Such articles shall not imply credit to the author for work performed by others.

*History Note: Authority G.S. 89E-5; 89E-16;
Temporary Adoption Eff. November 24, 1999;
Eff. August 1, 2000.*