

# NORTH CAROLINA

## IN THIS ISSUE



## REGISTER

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.*

**TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE**

<b>TITLE</b>	<b>DEPARTMENT</b>	<b>LICENSING BOARDS</b>	<b>CHAPTER</b>
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**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2002 – December 2002

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
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16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
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17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### FILING DEADLINES

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### NOTICE OF RULE-MAKING PROCEEDINGS

**END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:** This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.

**EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:** The date of the next issue following the end of the comment period.

### NOTICE OF TEXT

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
(1) **RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.  
(2) **RULE WITH SUBSTANTIAL ECONOMIC IMPACT:** An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b1) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**EXECUTIVE ORDER**

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**EXECUTIVE ORDER NO. 16  
EXTENDING THE NORTH CAROLINA  
STATE HEALTH COORDINATING COUNCIL**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED THAT:

The North Carolina State Health Coordinating Council, authorized by Governor James B. Hunt, Jr. in Executive Order No. 43 and later extended by Governor Hunt in Executive Order No. 166, is hereby extended for an additional two years from this date. This order is effective immediately.

Done in Raleigh, North Carolina, this the 31<sup>st</sup> day January, 2002.

\_\_\_\_\_  
Michael F. Easley  
Governor

**ATTEST:**

\_\_\_\_\_  
Elaine F. Marshall  
Secretary of State

*This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.*

**U.S. Department of Justice**

Civil Rights Division

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JDR:TCH:SMC:nj  
DJ 166-012-3  
2001-3944

*Voting Section – NWB.  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530*

February 11, 2002

Deborah R. Stagner, Esq.  
Tharrington Smith  
P.O. Box 1151  
Raleigh, NC 27602-1151

Dear Ms. Stagner:

This refers to the 2001 redistricting plan for the Union County School District in Union County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on December 11, 2001.

The Attorney General does not interpose any objection to the specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich  
Acting Chief  
Voting Section

**SUMMARY OF NOTICE OF INTENT  
TO REDEVELOP A BROWNFIELDS PROPERTY**

**Kathryne Brown Trust**

Pursuant to G.S. 130A-310.34, the Kathryne Brown Trust has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of approximately five (5) acres and is located at 3821 Barringer Drive. Environmental contamination exists on the Property in groundwater. The Kathryne Brown Trust has sold the Property for redevelopment as industrial condominiums. In light of previous environmental investigation conducted at the Property, the land use restrictions included in the proposed Notice of Brownfields Property referenced below and the well abandonment, groundwater monitoring, and maintenance of impervious surface requirements of the proposed Brownfields Agreement referenced below are sufficient to protect public health and the environment. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the Kathryne Brown Trust, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, and (d) the above-stated description of the intended future use of the Property; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed in the Carolina Room at the Main Branch of the Public Library of Charlotte and Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202, (704) 336-2980; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson  
Head, Special Remediation Branch  
Superfund Section  
Division of Waste Management  
NC Department of Environment and Natural Resources  
401 Oberlin Road, Suite 150  
Raleigh, North Carolina 27605

A Notice of Rule-making Proceedings is a statement of subject matter of the agency's proposed rule making. The agency must publish a notice of the subject matter for public comment at least 60 days prior to publishing the proposed text of a rule. Publication of a temporary rule serves as a Notice of Rule-making Proceedings and can be found in the Register under the section heading of Temporary Rules. A Rule-making Agenda published by an agency serves as Rule-making Proceedings and can be found in the Register under the section heading of Rule-making Agendas. Statutory reference: G.S. 150B-21.2.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

CHAPTER 35 – FAMILY SERVICES

CHAPTER 42 – INDIVIDUAL AND FAMILY SUPPORT

Notice of Rule-making Proceedings is hereby given by Social Services Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 10 NCAC 35E; 42Q; 42H. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 131 D-6

Statement of the Subject Matter:

10 NCAC 35E – defines the services eligible for funding under SSBG (Title XX) and identifies the services which may be provided without regard to income.

10 NCAC 42Q – identifies the services eligible for funding under the State In-Home Services Fund.

10 NCAC 42H – governs the provision of In-Home Aide Services for Adults, Children, and their Families for the Division of Social Services.

Reason for Proposed Action: The NC Division of Social Services is reviewing and updating the rules pertinent to In-Home Aide Services to make them consistent with current needs and practices. (A concurrent review of rules for this service is occurring in several other DHHS Divisions.)

Comment Procedures: Anyone wishing to comment should contact Sharnese Ransome, APA Coordinator, Social Services Commission, NC Division of Social Services, Albemarle Building, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919-733-3055.

TITLE 11 – DEPARTMENT OF INSURANCE

CHAPTER 10 – PROPERTY AND CASUALTY DIVISION

Notice of Rule-making Proceedings is hereby given by NC Department of Insurance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 10 .1106. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 58-2-190; 58-36-30(a), (c)

Statement of the Subject Matter: NC Rate Bureau premium rate deviations

Reason for Proposed Action: Needed to comply with statute changes

Comment Procedures: Written comments may be sent to Charles Swindell, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611.

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CHAPTER 11 – FINANCIAL EVALUATION DIVISION

Notice of Rule-making Proceedings is hereby given by NC Department of Insurance in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 11 NCAC 11F .0200 and .0300. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 58-2-40; 58-24-120-58-58-50(i),(j), (k)

Statement of the Subject Matter:

11 NCAC 11F .0200 – Health insurance minimum reserve standards

11 NCAC 11F .0300 – Actual opinion and memorandum requirements

Reason for Proposed Action: These amendments will make the rules commensurate with new NAIC revisions.

Comment Procedures: Written comments may be sent to Bob Potter, NC Department of Insurance, Actuarial Division, PO Box 26387, Raleigh, NC 27611.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 07 – COASTAL MANAGEMENT



RULE-MAKING PROCEEDINGS

Notice of Rule-making Proceedings is hereby given by Coastal Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 07B .0702. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113A-102, 113A-107(a); 113A-110; 113A-124(c)(8)

Statement of the Subject Matter: Substitute a definition for "probable 404 Wetlands" instead of relying on this term from federal law to convey to local governments what to show on a planning map.

Reason for Proposed Action: The intent of the proposed amendment is to provide an accurate definition of wetland areas mapped by local governments.

Comment Procedures: Kathy Vinson, Planning and Public Access Manager, Division of Coastal Management, 151-B, HWY 24, Hestron Plaza II, Morehead City, NC 28557. 252-808-2808.

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CHAPTER 07 – COASTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by Coastal Resources Commission in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 07H .1100-.1101, .1200-.1201, .1300-.1301, .1400-.1401, .2000-.2001, .2100-.2101, .2200-.2201, .2400-.2401. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 113A-107(a)(b), 113A-113(b), 113A-118.1, 113A-124

Statement of the Subject Matter: Permit Eligibility Changes

Reason for Proposed Action: The proposed changes would allow more projects to become eligible for CAMA and Dredge and Fill General Permits if they are located on the sound side of a barrier island and within the Ocean Hazard Area of Environmental Concern (AEC). Presently, many General Permits are prohibited from being used within the Ocean Hazard AEC. Recently, the High Hazard Flood Area component of the Ocean Hazard Area has been significantly expanded across entire portions of some barrier islands. This has caused a delay in the permitting process for many projects which could have been routinely permitted by a general permit had not it been for the expansion of the High Hazard Flood Area. Because of these expanded flood areas, the Coastal Resources Commission feels that there is a need to expand the geographical area that general permit may be issued.

Comment Procedures: Comments may be submitted to Charles S. Jones, Assistant Director, Division of Coastal Mangement, 151-B, HWY 24, Hestron Paza II, Morehead City, NC 28557. 252-808-2808.

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CHAPTER 19 – HEALTH: EPIDEMIOLOGY

CHAPTER 21 – HEALTH: PERSONAL HEALTH

Notice of Rule-making Proceedings is hereby given by Commission for Health Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 19A; 15A NCAC 19C; 15A NCAC 21A; 15A NCAC 21D; 15A NCAC 21H - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 130A-133; 130A-134; 130A-135; 130A-139; 130A-141; 130A-144; 130A-145; 130A-148; 130A-152; 130A-155.1

Statement of the Subject Matter: Reporting diseases and conditions reportable by physicians and laboratories; communicable disease control measures and testing; establishment of bioregistry; funding of public health services; and technical changes reflecting organizational changes.

Reason for Proposed Action: Update communicable diseases, grants and contracts, technical changes and repeal obsolete requirements.

Comment Procedures: Written comments concerning these rule-making actions may be submitted to Chris Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.

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CHAPTER 19 – HEALTH: EPIDEMIOLOGY

Notice of Rule-making Proceedings is hereby given by Department of Health and Human Services in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 19G - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 130A-190

**RULE-MAKING PROCEEDINGS**

**Statement of the Subject Matter:** *Establishment of voluntary fees for rabies tags.*

**Reason for Proposed Action:** *Establish voluntary fees for rabies tags.*

**Comment Procedures:** *Written comments concerning this rule-making action may be submitted to Chris Hoke, Rule-Making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001.*

**Authority for the Rule-making:** *G.S. 90-171(4); 90-171.20(7); 90-171.23; 90-171.23(b); 90-171.42(b)*

**Statement of the Subject Matter:**  
*21 NCAC 36 .0120 – Definitions which will define the terms used in various sections of the Administrative Code for nursing.*  
*21 NCAC 36 .0228 – To clarify the scope of clinical nurse specialist practice and the qualifications which must be met by the registered nurse who performs these advanced practice skills.*

**Reason for Proposed Action:**  
*21 NCAC 36 .0120 – This Rule will help clarify terms used throughout the Administrative Code for the Board on Nursing.*  
*21 NCAC 36 .0228 – National certifying bodies for the clinical nurse specialist require 500 hours of experience prior to sitting for the certification examination. North Carolina Board of Nursing needs to change Board standards related to practice experience to be consistent with national requirements for certification.*

**Comment Procedures:** *Written comments concerning this rule-making action must be submitted to Jean H. Stanley, APA Coordinator, North Carolina Board of Nursing, PO Box 2129, Raleigh, North Carolina 27602-2129.*

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**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 36 – BOARD OF NURSING**

**Notice of Rule-making Proceedings** *is hereby given by NC Board of Nursing in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.*

**Citation to Existing Rule Affected by this Rule-making:** *21 NCAC 36 .0120, .0228. Other rules may be proposed in the course of the rule-making process.*

*This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.*

**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend the rules cited as 11 NCAC 12 .0815, .0820, .0835, .0842. Notice of Rule-making Proceedings was published in the Register on January 2, 2002.*

**Proposed Effective Date:** April 1, 2003

**Public Hearing:**

**Date:** April 4, 2002

**Time:** 10:00 a.m.

**Location:** Dobbs Building, 3<sup>rd</sup> Floor Hearing Room, Raleigh, NC

**Reason for Proposed Action:** *The 106<sup>th</sup> Congress enacted two laws, P.L. 106-170, the Balanced Budget Refinement Act (BBRA) and P.L. 106-113, the Ticket to Work and Work Incentives Improvement Act (TWWIIA). These acts amended Section 1882 of the Social Security Act which governs Medicare supplement insurance. Since these laws were enacted, Medicare supplement insurance companies have been, and continue to be, responsible for adhering to the heightened standards created by these laws. The BBRA amends the guaranteed issue provisions and the TWWIIA amends the suspension of benefits and premiums under the Medicare supplement insurance policy provisions of the Social Security Act. These amendments incorporate the Medicare supplement insurance provisions from the BBRA and TWWIIA into the NC Administrative Code.*

**Comment Procedures:** *Written comments may be sent to Theresa Shackelford, Life & Health Division, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611.*

**Fiscal Impact**

- State
- Local
- Substantive (≥\$5,000,000)
- None

**CHAPTER 12 – LIFE AND HEALTH DIVISION**

**SECTION .0800 – MEDICARE SUPPLEMENT INSURANCE**

**11 NCAC 12 .0815 PURPOSE AND DEFINITIONS**

(a) The purpose of this Section is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or

with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

(b) For the purposes of this Section:

- (1) "Buyer's Guide" means the Guide to Health Insurance for People with Medicare developed jointly by the NAIC and the federal government.
- ~~(2)~~(2) "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.
- ~~(2)~~(3) "Issuer" includes an insurance company, fraternal benefit society, hospital or medical service ~~plan, corporation,~~ health maintenance organization, or any other entity delivering or issuing for delivery in this State Medicare supplement policies or certificates.
- ~~(3)~~(4) "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

**11 NCAC 12 .0820 MINIMUM BENEFIT STANDARDS BEFORE JANUARY 1, 1992**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State before January 1, 1992. No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

- (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.
  - (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because the loss involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
  - (b) A Medicare supplement policy or certificate shall not indemnify against

- losses resulting from sickness on a different basis than losses resulting from accidents.
- (c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.
  - (d) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:
    - (i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or
    - (ii) be canceled or nonrenewed by the issuer solely on the grounds of deterioration of health.
  - (e) Except as authorized by law or rule, an issuer shall neither cancel nor fail to renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.
  - (f) If a group Medicare supplement policy is terminated by the group policyholder and not replaced as provided in Subparagraph (1)(h) of this Rule, the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:
    - (i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy;
    - (ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in 11 NCAC 12 .0835(2).
  - (g) If membership in a group is terminated, the issuer shall:
    - (i) offer the certificateholder such conversion opportunities as are described in Subparagraph (1)(f) of this Rule; or
    - (ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
  - (h) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.
    - (i) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.
- (2) Minimum Benefit Standards.
- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
  - (b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;
  - (c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;
  - (d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;
  - (e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with

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| <p>(f) federal regulations or already paid for under Part B;<br/>Coverage for the coinsurance amount, <u>or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount</u>, Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [one hundred dollars (\$100.00)]. Effective January 1, 1990, coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount is included within this provision;</p> <p>(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.</p> | <p>(c)</p> <p>(d)</p> <p>(e)</p> | <p>losses resulting from sickness on a different basis than losses resulting from accidents.</p> <p>A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes, but new premiums must be filed and approved by the Commissioner before use.</p> <p>No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than nonpayment of premium.</p> <p>Each Medicare supplement policy shall be guaranteed renewable and:</p> <p>(i) The issuer shall not cancel or fail to renew the policy solely on the ground of health status of the individual.</p> <p>(ii) The issuer shall not cancel or fail to renew the policy for any reason other than nonpayment of premium or material misrepresentation.</p> <p>(iii) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subparagraph (1)(e)(v) of this Rule, the issuer shall offer each certificateholder an individual Medicare supplement policy that, at the option of the certificate holder:</p> <p>(A) Provides for continuation of the benefits contained in the group policy, or</p> <p>(B) Provides for such benefits as otherwise meet the requirements of this Rule.</p> <p>(iv) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates</p> |
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*Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50.*

**11 NCAC 12 .0835 MINIMUM BENEFIT STANDARDS ON OR AFTER JANUARY 1, 1992**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State on or after January 1, 1992. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

- (1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this Section.
- (a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because it involved a pre-existing condition. The policy or certificate may not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.
- (b) A Medicare supplement policy or certificate shall not indemnify against

- membership in the group, the issuer shall either:
- (A) Offer the certificateholder the conversion opportunity described in Subparagraph (1)(e)(iii) of this Rule; or
  - (B) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.
- (v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons who were covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for pre-existing conditions that would have been covered under the group policy being replaced.
- (f) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss that commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.
- (g) Suspension During Medicaid Eligibility.
- (i) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period, not to exceed 24 months, in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within 90 days after the date the individual becomes entitled to such assistance.
  - (ii) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstated (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.
  - (iii) Reinstitution of such coverages as described in Subitems (i) and (ii) of this Subparagraph:
    - (A) Shall not provide for any waiting period with respect to treatment of pre-existing conditions;
    - (B) Shall provide for coverage that is substantially equivalent to coverage in effect before the date of such suspension; and
    - (C) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or

- certificateholder  
had the coverage  
not been suspended.
- (2) Standards for Basic ("Core") Benefits Common to All Benefit Plans: Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Benefit Plans in addition to the basic "core" package, but not in lieu thereof.
- (a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;
  - (b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;
  - (c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;
  - (d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;
  - (e) Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible.
- (3) Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by 11 NCAC 12 .0836.
- (a) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.
  - (b) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in
- (c) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.
  - (d) Eighty percent of the Medicare Part B Excess Charges: Coverage for 80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.
  - (e) One Hundred Percent of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge.
  - (f) Basic Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible, to a maximum of one thousand two hundred fifty dollars (\$1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.
  - (g) Extended Outpatient Prescription Drug Benefit: Coverage for 50 percent of outpatient prescription drug charges, after a two hundred fifty dollar (\$250.00) calendar year deductible to a maximum of three thousand dollars (\$3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.
  - (h) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for 80 percent of the billed charges for Medicare eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first 60 consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars (\$250.00) and a lifetime maximum benefit of fifty thousand dollars (\$50,000). For

purposes of this benefit, "emergency care" means care needed immediately because of an injury or an illness of sudden and unexpected onset.

- (i) Preventive Medical Care Benefit: Coverage for the following preventive health services:
  - (i) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (3)(i)(ii) of this Rule and patient education to address preventive health care measures.
  - (ii) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:
    - ~~(A)~~ ~~Fecal occult blood test or digital rectal examination;~~
    - ~~(B)~~ ~~Mammogram;~~
    - ~~(C)~~(A) Dipstick urinalysis for hematuria, bacteriuria and proteinuria;
    - ~~(D)~~(B) Pure tone (air only) hearing screening test, administered or ordered by a physician;
    - ~~(E)~~(C) Serum cholesterol screening (every five years);
    - ~~(F)~~(D) Thyroid function test;
    - ~~(G)~~(E) Diabetes screening.
  - (iii) ~~Influenza vaccine administered at any appropriate time during the year and~~ Tetanus and Diphtheria booster (every 10 years).
  - (iv) Any other tests or preventive measures determined appropriate by the attending physician. Reimbursement shall be for the actual charges up to 100 percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology

(AMA CPT) codes, to a maximum of one hundred twenty dollars (\$120.00) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

- (j) At-Home Recovery Benefit: Coverage for services to provide short term at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.
  - (i) For purposes of this benefit, the following definitions shall apply:
    - (A) "Activities of daily living" include but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.
    - (B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.
    - (C) "Home" means any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.



**PROPOSED RULES**

- (D) "At-home recovery visit" means the period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four hours in a 24-hour period of services provided by a care provider is one visit.
- (ii) Coverage Requirements and Limitations.
- (A) At-home recovery services provided must be primarily services that assist in activities of daily living.
- (B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.
- (C) Coverage is limited to:
- (I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare-approved home health care visits under a Medicare-approved home care plan of treatment.
- (II) The actual charges for each visit up to a maximum reimbursement of forty dollars (\$40.00) per visit.
- (III) One thousand six hundred dollars (\$1,600) per calendar year.
- (IV) Seven visits in any one week.
- (V) Care furnished on a visiting basis in the insured's home.
- (VI) Services provided by a care provider, as defined in this Rule.
- (VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.
- (VIII) At-home recovery visits

received during the period the insured is receiving Medicare-approved home care services or no more than eight weeks after the service date of the last Medicare-approved home health care visit.

- (iii) Coverage is excluded for:
  - (A) Home care visits paid for by Medicare or other government programs; and
  - (B) Care provided by family members, unpaid volunteers or providers who are not care providers.

**(k)** New or Innovative Benefits: An issuer may, with the prior approval of the Commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner that is consistent with the goal of simplification of Medicare supplement policies.

(l) Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension

occurs and if the policyholder or certificate holder loses coverage under the group health plan, the policy shall be automatically reinstated (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within 90 days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan.

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-50.

**11 NCAC 12 .0842 GUARANTEED ISSUE FOR ELIGIBLE PERSONS**

(a) As used in this Rule:

- (1) "Bankruptcy" means when a Medicare+Choice organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.
- (2) "Employee welfare benefit plan" means a plan, fund or program of employee benefits as defined in 29 U.S.C. 1002 (Employee Retirement Income Security Act).
- (3) "Insolvency" means when an issuer, licensed to transact the business of insurance in this State, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile.
- (4) "Medicare+Choice plan" means a plan of coverage for health benefits under Medicare Part C as defined in Section 1859, Title IV, Subtitle A, Chapter 1 of P.L. 105-33, and includes:
  - (A) Coordinated care plans which provide health care services, including but not limited to health maintenance organization plans (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans;
  - (B) Medicare medical savings account plans coupled with a contribution into a Medicare+Choice medical savings account; and
  - (C) Medicare+Choice private fee-for-service plans.

(b) Eligible persons are those individuals described in Paragraph (c) of this Rule whose seek to enroll under the policy during the period specified in Paragraph (d), and who submit evidence of the date of termination or disenrollment with the application for a Medicare supplement policy. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Paragraph (d) of this Rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in

the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(c) An eligible person is an individual described in any of the following Subparagraphs:

- (1) The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan;
- (2) The individual is enrolled with a Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, and any of the following circumstances ~~apply:~~ apply, or the individual is 65 years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described in this Subparagraph that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare+Choice plan:
  - (A) ~~The organization's or plan's certification [under this part] has been terminated or the organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; The certification of the organization or plan under this part has been terminated; or~~
  - (B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;
  - ~~(B)(C)~~ (C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of the United States Department of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the

plan is terminated for all individuals within a residence area; or

~~(C)(D)~~ (D) The individual demonstrates, in accordance with guidelines established by the Secretary of the United States Department of Health and Human Services, that:

- (i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or
- (ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

~~(D)(E)~~ (E) The individual meets such other exceptional conditions as the Secretary of the United States Department of Health and Human Services may provide.

(3) The individual is enrolled with:

- (A) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); or
- (B) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; or

~~(C)~~ (C) Any PACE program under Section 1894 of the Social Security Act; or

~~(C)(D)~~ (D) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

~~(D)(E)~~ (E) An organization under a Medicare Select policy; and

~~(E)(F)~~ (F) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Subparagraph (2) of this Paragraph.

(4) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

- (A) Of the insolvency of the issuer or bankruptcy of the nonissuer organization or of other involuntary

- termination of coverage or enrollment under the policy;
- (B) The issuer of the policy substantially violated a material provision of the policy; or
- (C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual;
- (5) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare+Choice organization under a Medicare+Choice plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and the subsequent enrollment is terminated by the enrollee during any period within the first 12 months after the subsequent enrollment (during which the enrollee is permitted to terminate the subsequent enrollment under Section 1851(e) of the federal Social Security Act);
- (6) The individual, upon first becoming enrolled in Medicare part A or part B for benefits at age 65 or older, enrolls in a Medicare+Choice plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan by not later than 12 months after the effective date of enrollment; or
- (7) The individual is enrolled in a Medicare risk plan under part C of Medicare and the plan is later converted to a Medicare+Choice plan, and first disenrolls from the converted plan by not later than 12 months after the effective date of the conversion.

**(d) Guaranteed Issue Time Periods:**

- (1) In the case of an individual described in Subparagraph (c)(1) of this Rule, the guaranteed issued period begins on the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of such a termination or cessation) and ends 63 days after the date of the applicable notice;
- (2) In the case of an individual described in Subparagraphs (c)(2), (c)(3), (c)(5) or (c)(6) of this Rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and 63 days after the date the applicable coverage is terminated;

- (3) In the case of an individual described in Part (c)(4)(A) of this Rule, the guaranteed issue period begins on the earlier of:
- (A) the date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any, and
- (B) the date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated;
- (4) In case of an individual described in Subparagraph (c)(2), Parts (c)(4)(B), (c)(4)(C), and Subparagraphs (c)(5) or (c)(6) of this Rule who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date; and
- (5) In the case of an individual described in Subparagraph (c) of this Rule but not described in the preceding provisions of this Section, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

**(e) Extended Medigap access for interrupted trial periods:**

- (1) In the case of an individual described in Subparagraph (c)(5) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with an organization or provider described in Subparagraph (c)(5) of this Rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be an initial enrollment described in Subparagraph (c)(5) of this Rule;
- (2) In the case of an individual described in Subparagraph (c)(6) of this Rule (or deemed to be so described, pursuant to this Paragraph) whose enrollment with a plan or in a program described in Subparagraph (c)(6) of this Rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Subparagraph (c)(6) of this Rule;
- (3) For the purposes of Subparagraphs (c)(5) and (c)(6) of this Rule, no enrollment of an individual with an organization or provider described in Subparagraph (c)(5) of this Rule, or with a plan or program described in Subparagraph (c)(6) of this Rule, may be deemed to be an initial enrollment under this Paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

**PROPOSED RULES**

~~(d)~~(f) The Medicare supplement policy to which eligible persons are entitled under:

- (1) Subparagraphs (c)(1), (2), (3) and (4) of this Rule is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F offered by any issuer.
- (2) Subparagraph (c)(5) is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Subparagraph (1) of this Paragraph.
- (3) Subparagraph (c)(6) shall include any Medicare supplement policy offered by any issuer.

~~(e)~~(g) Notification provisions:

- (1) At the time of an event described in Paragraph (c) of this Rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated contemporaneously with the notification of termination.
- (2) At the time of an event described in Paragraph (c) of this Rule because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Paragraph (b) of this Rule. Such notice shall be communicated within 10 working days of the issuer receiving notification of disenrollment.

Authority G.S. 58-2-40; 58-54-10; 58-54-15; 58-54-25; 58-54-50.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment Management Commission intends to adopt the rules cited as 15A NCAC 02H .1301-.1305. Notice of Rule-making Proceedings was published in the Register on June 15, 2001 and November 1, 2001.*

**Proposed Effective Date:** April 1, 2003

**Public Hearing:**

**Date:** April 2, 2002

**Time:** 7:00 p.m.

**Location:** Dare County Courthouse, 300 Queen Elizabeth St., Manteo, NC

**Public Hearing:**

**Date:** April 4, 2002

**Time:** 7:00 p.m.

**Location:** Citizens Resource Center, Conference Room A, 1303 Dallas-Cherryville Highway, Dallas, NC

**Public Hearing:**

**Date:** April 9, 2002

**Time:** 7:00 p.m.

**Location:** UNCW Campus, Morton Auditorium, 601 S. College Rd., Wilmington, NC

**Public Hearing:**

**Date:** April 10, 2002

**Time:** 7:00 p.m.

**Location:** Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury St., Raleigh, NC

**Reason for Proposed Action:** *The proposed rules continue a permitting system that was established as temporary rules to allow impacts to isolated wetlands and isolated surface waters. The temporary rules became effective October 22, 2001. The rules were developed due to the January 2001 US Supreme Court decision in the "SWANCC" case (Solid Waste Agency of Northern Cook County versus US Army Corps of Engineers; 121 S.Ct. 675,148 L.Ed. 2nd 576, Jan. 2001) which determined that isolated surface waters (and thereby isolated wetlands) are not subject to permitting by Section 404 of the Clean Water Act. This decision removed federal regulatory protection of these waters and significantly changed the character of the wetland permitting system in North Carolina. This decision also encouraged states to enact programs to manage the impact to these isolated waters if the states so choose. In May 2001, the North Carolina Environmental Management Commission unanimously confirmed that the existing wetland standards (15A NCAC 02B .0231) were intended to protect isolated wetlands. Therefore, without effective rules under which the State may permit prudent utilizations of these resources after a review process, property owners proposing development activities in isolated wetlands are prohibited from conducting such activities. The Environmental Management Commission adopted these rules as temporary rules in October 2001 so that the Division of Water Quality could review applications for development activities including proposed projects for private residential, commercial and mixed-use purposes. The Commission found that it would be contrary to the public interest for all such activities to be halted until the the notice and hearing requirements of Part 2 of G.S. 150B were met and adopted the rules as temporary rules. The Commission views the adverse and sudden change in law as a serious and unforeseen threat to public welfare, specifically the prudent utilization of the State's water resources which the General Assembly deemed "essential to the general welfare" in G.S. 143-211(a). The proposed temporary rules reestablished (now as a State permit) the general review process for impacts to such waters that was in*

place in North Carolina before the "SWANCC" decision which, in itself, had been determined to be a "court order" by an advisory opinion from the North Carolina Department of Justice. The adoption of a State permitting program is required in order for the Department of Environment and Natural Resources and the Commission to meet their duty both to preserve and to permit prudent use of the State's water resources, including wetlands.

**Comment Procedures:** The Environmental Management Commission encourages written comments. Written as well as oral comments may be submitted at any of the public hearings, and written comments may also be submitted to the following address by April 15, 2002. Mr. John Dorney, DWQ Wetlands/401 Unit, Parkview Building, 2321 Crabtree Blvd., Raleigh, NC 27604. The Environmental Management Commission is especially interested in receiving comment on delineations, mitigation, and other issues, as follows:

**Delineations**

1. Delineations – Should the US Environmental Protection Agency be added as an agency that may delineate isolated wetlands and waters (in addition to the Corps of Engineers, Natural Resources and Conservation Service and DWQ). The EPA has requested this in writing in their review of the temporary rules.

2. Delineation – Should isolated wetlands and waters on applications be required to have been surveyed or GPSed on the application? The temporary rules do not require this.

**Mitigation**

3. Mitigation thresholds – The temporary rules state that wetland fill of less than one acre does not require compensatory mitigation. Some commentators have suggested that this threshold should be one-third of an acre since isolated wetlands tend to be small. Another possibility is that the threshold should be one acre east of I-95 and one-third acre west of I-95 to reflect the relative size of wetlands in those areas. This would also reflect the different application thresholds using this dividing line.

4. Mitigation – Some commentators suggest that wetland preservation be more strongly encouraged in the final rules.

5. Mitigation ratios – It is unclear which ratios are to be used if both isolated and non-isolated wetlands are to be impacted. This should probably be clarified in the permanent rules to avoid confusion.

6. Reference wetland – Should this be defined in the rules? This term is mentioned in the mitigation part of the rules.

**Other issues**

7. Wetland value – The temporary rules do not take wetland value into account in terms of application or mitigation thresholds. Instead application and mitigation thresholds are based on area. Some commentators suggest that wetlands with lower values should have higher mitigation thresholds or lower mitigation ratios (for instance, a 1:1 ratio rather than 2:1). If this approach is taken, then a wetland evaluation method (or at least a reference to such a method) will be needed.

8. General Permits – Should the specific types of General Permits be listed (for instance, for utility lines, maintenance, road crossings, minor residential development, etc.). One drawback of this approach is that if a new category of General

Permit is developed, it may take a rule change to develop a General Permit for the category.

9. Delegation – Should we establish a process whereby we can delegate these rules to local governments? For instance, the City of Charlotte is interested in "assuming" the 404/401 Permit as well as this program.

10. Isolated streams – Should the term "within natural drainageway" be added to the definition of isolated streams?

11. Isolated waters – Should the permanent rules define isolated farm ponds (which are exempt from the rules) as those not in "natural drainageways"?

12. Stream length – Some commentators have suggested that the 150 foot threshold for application is too high and suggest a lower number such as 100 feet.

13. Aquatic life – Should the permanent rules make it explicit that isolated wetlands often have aquatic life very different from streams? For instance, amphibians are common in isolated wetlands while fish are rare.

14. Farm or stock ponds – Filling of isolated farm or stock ponds is exempt from these rules. Does this exemption apply only to isolated ponds currently used for agriculture or for those constructed for agricultural uses even if they are no longer used for agriculture?

**Fiscal Impact**

- State
- Local
- Substantive (>\$5,000,000)
- None

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02H – PROCEDURES FOR PERMITS: APPROVALS**

**SECTION .1300 - DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS**

**15A NCAC 02H .1301 SCOPE AND PURPOSE**

(a) The provisions of this Rule shall apply to Division of Water Quality (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after the effective date of this Rule and which require a Division determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Rule, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.

(b) These Rules outline the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters. If the US Army Corps of Engineers or Natural Resources Conservation Service determine that a particular water is isolated and not regulated under Section 404 of the Clean Water Act, then discharges to that water shall be covered by these Rules (15A NCAC 02H .1301 to .1305). For the purpose of this Rule during field determinations made by the Division, isolated wetlands are those waters which are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and under normal

circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and under normal circumstances have no visible surface water connection to downstream waters of the state. Visible surface water connection may include but is not limited to a connection to other surface water via 1) continuous wetlands, 2) intermittent or perennial streams, and 3) ditches with intermittent or perennial flow. Isolated classified surface waters are those which have been listed in 15A NCAC 02B .0300.

(c) Activities which result in a discharge may be authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General Permit.

(1) Individual Permits are issued on a case-by-case basis and the procedures outlined in the following rules are required for each Individual Permit. These Individual Permits do not require approval by the U.S. Environmental Protection Agency.

(2) Certificates of Coverage for General Permits may be issued for specific types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These General Permits do not require approval by the U.S. Environmental Protection Agency.

(3) Individual Permits and Certificates of Coverage for General Permits shall be issued for no more than five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).

(d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to these procedures shall not be considered to remove existing uses of the isolated wetland or isolated surface waters or an extension is granted as described in 15A NCAC 02H .1304(e).

(e) The following are exempt from this Rule:

(1) Activities that are described in 15A NCAC 02B .0230;

(2) Discharges to isolated farm or stock ponds or isolated irrigation ditches constructed in hydric soil as long as the original surface elevation is re-established for those isolated ponds and ditches;

(3) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits;

(4) Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67); and

(5) A discharge resulting from an activity if:

(A) The discharge resulting from an activity requires a 401 Certification and 404 Permit and these were issued prior to the effective date of this Rule;

(B) The project requires a state permit, such as landfills, NPDES discharges

of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that has begun construction or are under contract to begin construction and have received all required state permits prior to the effective date of this Rule;

(C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to the effective date of this Rule; or,

(D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina zoning law prior to the effective date of this Rule.

Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143-215.1(a)(6).

**15A NCAC 02H .1302 APPLICATION PROCESS**

(a) Application for a Permit. Any person, as defined in G.S. 143, Article 21 desiring issuance of a state Individual Permit or Certificate of Coverage under a General Permit for discharges resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director of the North Carolina Division of Water Quality (Director), an original and six copies of an application for a Permit. The application shall specify:

(1) the date of application;

(2) the name, address, and phone number of the property owner;

(3) if the applicant is a corporation, the state in which it is domesticated, the name of its principal officers, the name and address of the North Carolina process agency, and the name of the individual who shall be primarily responsible for the conduct of the discharge resulting from an activity for which a Permit is sought;

(4) the nature of the discharge including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;

(5) whether the discharge has occurred or is proposed;

(6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage basin; the name of the nearest named surface waters, and the location of the point of discharge with regard to the nearest named surface waters;

(7) description of the type of waste treatment facilities if applicable;

(8) an application fee as required by Section 143-215.3D(e) with a check or money order to be

made payable to the North Carolina Division of Water Quality. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; and

(9) the information requested in Subparagraphs (1) through (8) of this Rule must be provided on or attached to the most current version of the North Carolina Division of Water Quality Isolated Wetlands Notification application form.

(b) Maps. There shall be attached to the application form a map(s) with scales and north arrows and of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out the discharge; the location, dimensions and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters including wetlands within the boundaries of said lands.

(c) Request For Additional Information. The Director may request, in writing within 60 days of receipt of an application and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. Incomplete applications will be returned to the applicant.

(d) Omissions From Applications. If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding omissions of information shall be made by the Division of Water Quality.

(e) Investigations. The staff of the Department of Environment and Natural Resources (Department) shall conduct such investigation as the Director deems necessary; and applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.

(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the Division of Water Quality.

(h) Other applications for permitting or certification by a Division of the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all of the information specified in Paragraphs (a) and (b) of this Rule and it is clearly specified to the Division by the applicant that authorization is sought under this Rule. This application must be submitted to the Division of Water Quality for review under this Permit.

**15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING**

(a) Notice by Publication:

(1) Individual Permit. Notice of the Director's intent to issue or deny a complete application for an Individual Permit shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. Publication shall be made at least 30 days prior to proposed final action by the Director on the application. The applicant shall pay to the Department the costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid. A copy of this notice shall be sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.

(2) General Permit. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall be made at least 30 days prior to proposed final action by the Director.

(b) Contents of Notice. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director on the application. The notice shall also state where additional information is on file with the Department and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the Department. Any person who desires a public hearing on an Individual or General Permit application shall so request in writing to the Director within 30 days following the publication of the notice of intent.

(c) Notice of Hearing. If the Director determines that there is significant public interest in holding a hearing, the Director shall publish notice of the hearing one time in a newspaper having general circulation in the county in which the discharge will occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the county. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.

(d) Wetland Permit Mailing List. Any person may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to a Wetland Permit Mailing List and shall mail copies of notices to all persons on the list.

*Authority G.S. 143-214.1; 143-215.3(a)(1); 143-215.1(a)(6).*



(e) If other Public Hearings are being held by Divisions of the Department of Environment and Natural Resources, then any Public Hearing held for this Rule may be coordinated with those Hearings.

*Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143-215.1(a)(6).*

**15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE**

(a) Not later than 60 days following the publication of the notice of intent or within 90 days following a public hearing, the Director shall issue, issue with modifications, or deny the complete Permit application or complete application for Certificate of Coverage.

(b) Conditions of Permit. Any Permit or Certificate of Coverage issued pursuant to this Rule may contain such conditions as the Director shall deem necessary to insure compliance with this Rule including written post-discharge notification to the Division.

(c) Modification or Revocation of Permit or Certificate of Coverage:

(1) Any Permit or Certificate of Coverage issued pursuant to this Rule may be subject to revocation or modification for violation of conditions of the Permit or Certificate of Coverage; and

(2) Any Permit or Certificate of Coverage issued pursuant to this Rule may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge is having or may have an adverse effect on water quality.

(d) Notification of Unapproved Application. In the event that the Director denies the application for a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to be approved.

(e) Permit or Certificate of Coverage renewals shall require a new application and payment of a fee to the Division of Water Quality unless the applicant requests an extension in writing which may be granted for a time period not to exceed one additional year provided that the construction has commenced or is under contract to commence.

(f) Contested Case Hearing for Applicant. An applicant whose Permit or Certificate of Coverage is denied or granted subject to unacceptable conditions, shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 143-215.1(e) by filing a petition under G.S. 150B-23 within 30 days after the Director notifies the applicant or permittee of its decision in writing.

*Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143-215.1(a)(6); 143-215.1(b).*

**15A NCAC 02H .1305 REVIEW OF APPLICATIONS**

(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director

shall determine if the proposed discharge resulting from an activity has the potential to remove or degrade those significant existing uses in 15A NCAC 02B .0231(a), (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraph (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(c); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a), (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.

(b) Discharges from activities Deemed to be Permitted: Discharges resulting from activities in isolated wetlands or waters that are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule, are deemed to be permitted as long as they fully comply with conditions listed in this Paragraph and may proceed without review procedures outlined in Paragraph (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. The Director however may determine on a case-by-case basis that a discharge resulting from an activity should not be deemed permitted in accordance with this Rule and would then be required to obtain an Individual Permit or Certificate of Coverage under a General Permit. This determination will be made based on existing or projected environmental impacts. Conditions which must be met for projects deemed to be permitted:

(1) Appropriate erosion and sediment control practices that equal or exceed those required by the N.C. Division of Land Resources or their local delegated program for the Sedimentation Pollution Control Act shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;

(2) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Land Resources or local delegated program determines that the land disturbance project is completed and the file is closed out;

(3) Live or fresh concrete shall not come into contact with surface water until the concrete has hardened; and,

(4) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.

(c) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that

existing uses are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an activity which:

- (1) has no practical alternative under the criteria outlined in Paragraph (e) of this Rule;
- (2) will minimize adverse impacts to the isolated classified surface waters under criteria outlined in Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface waters or less than or equal to 150 linear feet of isolated streams for the entire project;
- (3) does not result in the violation of groundwater standards, or water quality standards in the remaining surface waters;
- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future discharges to that water, that cause or will cause a violation of downstream water quality standards;
- (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and
- (6) provides for replacement of existing uses through mitigation with the following provisions:
  - (A) Impacts to all surface waters on the site which total less than one acre of surface waters or less than 150 linear feet of streams do not require compensatory mitigation;
  - (B) Mitigation shall be at a 2:1 ratio of acreage of waters or length of isolated stream of mitigation to the acreage of waters or length of isolated stream;
  - (C) Mitigation for impacts to waters Rule shall be conducted within the same river basin and physiographic province when practical; and,
  - (D) In-kind mitigation is preferred unless other forms of mitigation provide greater water quality or aquatic life benefit.

(d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that sufficient existing uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an activity which:

- (1) has no practical alternative as described in Paragraph (e) of this Rule;
- (2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;
- (3) does not result in the violation of groundwater standards, or wetland standards in the remaining wetlands;

- (4) does not result in cumulative impacts, based upon past or reasonably anticipated future discharges to that water, that cause or will cause a violation of downstream water quality standards;
- (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and,
- (6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (g)(1) through (g)(9) of this Rule.

(e) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs that the basic project purpose cannot be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands.

(f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required due to:

- (1) The spatial and dimensional requirements of the project; or
- (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or
- (3) The purpose of the project and how the purpose relates to placement, configuration or density.

(g) Replacement or mitigation of unavoidable losses of existing uses in isolated wetlands shall be reviewed in accordance with the following guidelines:

- (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project.
- (2) Mitigation shall not be required for discharges resulting from activities that impact a total of less than one acre of isolated and other wetlands.
- (3) Participation in wetland restoration programs coordinated by the Department of Environment and Natural Resources or approved mitigation banks shall be preferred to individual project mitigation whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical.
- (4) Acceptable methods of wetlands mitigation are listed in this Subparagraph in the order of preference:
  - (A) Restoration: Re-establishment of hydrology to the natural or reference condition in an area that contains hydric soils. Vegetation must also be re-established if it differs from the natural or reference condition.

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- (B) Creation: Construction of wetlands in an area where wetlands did not exist in the recent past.
- (C) Enhancement: Increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology.
- (D) Preservation: Protection of wetlands through purchase, donation or conveyance of a conservation easement to an appropriate government or non-profit agency for management.
- (5) Restoration is the preferred method of wetland mitigation. The other methods may be utilized if the applicant can demonstrate that restoration is not practical or that the proposed alternative is the most ecologically viable method of replacing the lost functions and values.
- (6) For all discharges resulting from activities which impact, in total, more than one acre of isolated and other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the acreage impacted. This mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation shall be determined by multiplying the above ratio by 1.5 for creation, 2 for enhancement, and 5 for preservation. The above ratios do not apply to approved mitigation sites where the state and federal review agencies have approved credit/debit ratios.
- (7) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that the public good would be better served by other types of mitigation.
- (8) Mitigation for impacts to isolated wetlands designated in Paragraph (b) of this Rule shall be conducted within the same river basin and physiographic province when practical.
- (9) In-kind mitigation is preferred unless other forms of mitigation provide greater water quality or aquatic life benefit.

NCAC 36 .0211, .0218. Notice of Rule-making Proceedings was published in the Register on January 2, 2002.

**Proposed Effective Date:** April 1, 2003

**Public Hearing:**

**Date:** May 16, 2002

**Time:** 1:00 p.m.

**Location:** NC Board of Nursing, 3724 National Drive, Suite 201, Raleigh, NC 27612

**Reason for Proposed Action:**

**21 NCAC 36 .0211** - Clarifies eligibility requirements for licensure by examination including criminal history record checks.

**21 NCAC 36 .0218** - Clarifies eligibility requirements for licensure by endorsement including criminal history record checks.

**Comment Procedures:** Written comments should be sent to Jean H. Stanley, APA Coordinator, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602 by May 16, 2002.

**Fiscal Impact**

- State
- Local
- Substantive ( $\geq$ \$5,000,000)
- None

**SECTION .0200 - LICENSURE**

**21 NCAC 36 .0211 LICENSE BY EXAMINATION**

(a) An applicant shall meet the educational qualifications to take the examination for licensure to practice as a registered nurse by:

- (1) graduating from a ~~board~~ Board approved nursing program (21 NCAC 36 .0300) designed to prepare a person for registered nurse licensure;
- (2) graduating from a nursing program outside the United States ~~or Canada~~ that is designed to provide graduates with comparable preparation for licensure as a registered nurse, and submitting ~~the~~ a certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or evidence of education as required by the Board for an applicant educated in Canada as evidence of the required educational qualifications.

(b) An applicant shall meet the educational qualifications to take the examination for licensure to practice as a licensed practical nurse by:

- (1) graduating from a Board approved nursing program (21 NCAC 36 .0300) designed to prepare a person for practical nurse licensure;
- (2) graduating from a nursing program outside the United States ~~or Canada~~ that is designed to provide graduates with comparable preparation for licensure as a licensed practical nurse, and submitting evidence from an evaluation agency of the required educational qualifications and evidence of English

Authority G.S. 143-215.3(a)(1); 143-215.3(c); 143-215.1(a)(6).

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 36 – BOARD OF NURSING**

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Nursing intends to amend the rules cited as 21

proficiency. The evaluation agency(s) for educational qualifications shall be selected from a list of evaluation agencies published by the National Council of State Boards of Nursing, Inc., which is hereby incorporated by Reference, including subsequent amendments of the referenced materials. The list of such agencies is available, at no cost, from the North Carolina Board of Nursing. The evidence of English proficiency shall be passing the Test of English as a Foreign Language with a score of at least ~~550~~; 213 or an equivalent test as approved by the Board;

- (3) graduating from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass the examination for registered nurse licensure; or
- (4) graduating from a nursing program outside the United States and Canada that is designed to prepare graduates with comparable preparation for licensure as a registered nurse licensure; nurse, and submitting evidence of English proficiency, by passing Test of English as a Foreign Language with a score of at least 550 or passing the English portion of the examination administered the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications, ~~Schools~~; and failing to pass the examination for registered nurse licensure in any jurisdiction.

(c) An application shall be submitted to the Board of Nursing and a registration form to the testing service. The applicant shall meet all requirements of the National Council of State Boards of Nursing, Inc.

(d) The initial application shall be held active until the applicant passes the examination or one year, whichever occurs first. The time begins on the date the applicant is determined to be eligible for the licensure examination. The Authorization to Test document issued by the testing service shall be valid until the applicant takes the examination or 180 days, whichever occurs first. The applicant shall submit a fee to re-establish eligibility for an expired Authorization to Test document.

(e) The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.

- (1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.
- (2) The examinations for licensure shall be administered at least twice a year.
- (3) Results for the examination shall be ~~reported, by mail only,~~ reported to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.

(4) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination was 350. For the examination offered in July 1982 and through July 1988, the passing score was 1600. Beginning February 1989, the results for registered nurse licensure is reported as "PASS" or "FAIL".

(5) The passing score for the examination for practical nurse licensure, up to and including the April 1988 was 350. Beginning October 1988, the results for practical nurse licensure is reported as "PASS" or "FAIL".

(f) Beginning January 1, 2002, all applicants shall consent to a criminal history records check as part of the application process.

(g)(f) Applicants who meet the qualifications for licensure by examination shall be issued a certificate of registration and a license to practice nursing for the remainder of the biennial period. The qualifications include:

- (1) a "PASS" result on the licensure examination;
- (2) evidence of unencumbered license in all jurisdictions in which a license is or has ever been held; ~~and~~
- (3) evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s); convictions; and

(4) a written explanation and all related documents if the nurse has ever been listed as a Nurse Aide and if there have ever been any substantiated findings. The Board may take these findings into consideration when determining if a license should be issued. In the event findings are pending, the Board may withhold taking any action until the investigation is completed.

(h)(g) Applicants for a North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in any member jurisdiction of the Council.

Authority G.S. 90-171.23(15); 90-171.29; 90-171.30; 90-171.37(1); 90-171.48).

**21 NCAC 36 .0218 LICENSURE WITHOUT EXAMINATION (BY ENDORSEMENT)**

(a) The Board shall provide an application form which the applicant who wishes to apply for licensure without examination (by endorsement) shall complete in its entirety.

- (1) The applicant for licensure by endorsement as a registered nurse shall show evidence of:
  - (A) completion of a program of nursing education for registered nurse licensure which was approved by the jurisdiction of original licensure;
  - (B) attainment of ~~a~~ the standard score equal to or exceeding 350 on each test in the State Board Test Pool Examination administered prior to July 1982; or a standard score of 1600 on the licensing on the

examination developed by the National Council of State Boards of Nursing, Inc. beginning in July 1982 and up to and including the July 1988 examination; or beginning in February 1989, a result of "PASS". An exception to this requirement is made for the applicant who was registered in the original state prior to April 1964. Such applicant shall have attained the score, on each test in the series, which was required by the state jurisdiction issuing the original certificate of registration;

(C) mental and physical health necessary to competently practice nursing;

(D) unencumbered license in all jurisdictions in which a license is or has ever been held. Exception may be granted if encumbrance in jurisdiction of occurrence has been resolved; held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and

(E) current license in a jurisdiction; if the license has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36;

(F) completion of all court conditions resulting from any misdemeanor or felony conviction(s); convictions; and

(G) a written explanation and all related documents if the nurse has been listed as a Nurse Aide and there has been a substantiated finding(s). The Board may take the finding(s) into consideration when determining if a license should be issued. In the event a finding(s) is pending, the Board may withhold taking any action until the investigation is completed.

(2) The applicant for licensure by endorsement as a licensed practical nurse shall show evidence of:

- (A) completion of:
- (i) a program in practical nursing approved by the jurisdiction of original licensure; or
  - (ii) course(s) of study within an approved program(s) which shall be comparable to that required of practical nurse graduates in North Carolina; or

(iii) approved course of study for military hospital corpsman which shall be comparable to that required of practical nurse graduates in North Carolina.

The applicant who was graduated prior to July 1956 shall be considered on an individual basis in light of licensure requirements in North Carolina at the time of original licensure;

(B) achievement of a passing score on the State Board Test Pool Examination or the licensing examination developed by the National Council of State Boards of Nursing, Inc. If originally licensed on or after September 1, 1957, and up to and including the April 1988 examination, an applicant for a North Carolina license as a practical nurse on the basis of examination in another state shall have attained a attainment of the standard score equal to or exceeding 350 on the licensure examination. Beginning in October 1988, an applicant shall have received a result of "PASS" on the licensure examination. The applicant who was licensed prior to September 1, 1957 shall have attained the score examination which was required by the jurisdiction issuing the original certificate of registration;

(C) mental and physical health necessary to competently practice nursing;

(D) unencumbered license in all jurisdictions in which a license is or has ever been held. Exception may be granted if encumbrance in jurisdiction of occurrence has been resolved; held; if the license in the other jurisdiction has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36; and

(E) current license in a jurisdiction; if the license has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36;

(F) completion of all court conditions resulting from any misdemeanor or felony conviction(s); convictions; and

(G) a written explanation and all related documents if the nurse has been listed as a Nurse Aide and there has been a

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substantiated finding(s). The Board may take the finding(s) into consideration when determining if a license should be issued. In the event a finding(s) is pending, the Board may withhold taking any action until the investigation is completed.

(b) A nurse educated and licensed in a foreign country (including Canada) shall be eligible for North Carolina licensure by endorsement if the nurse has:

- (1) proof of education as required by the jurisdiction issuing the original certificate; in a Canadian School of Nursing;
- (2) prior to January 1, 2004 proof of passing either the Canadian Nurses Association Test Service Examination (CNATS) written in the English language. An exception to this requirement is made for the applicant who was registered by Canadian province examination written in the English language prior to CNATS or SBTPE, and has worked in nursing within the past five years or has completed a Board approved refresher course;
  - (A) Canadian Nurses Association Test Service Examination (CNATS) in the English language; or
  - (B) Canadian Registered Nurse Examination (CRNE) in the English language; or
  - (C) the licensing examination developed by the National Council of State Board of Nursing (NCLEX);
- (3) beginning January 1, 2004, the applicant educated in Canada shall show evidence of Subparagraph (b)(1) and Part (2)(C) of this Rule; Parts (b)(2)(A) and (B) will no longer apply;
- (4) mental and physical health necessary to competently practice nursing;
- (5) unencumbered license in all jurisdictions which a license is or has ever been held; and held. Exception may be granted if encumbrance in jurisdiction of occurrence has been resolved;
- (6) current license in another jurisdiction or foreign country. If the license has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and 90-171.36;
- (7) completed all court conditions resulting from any misdemeanor or felony conviction(s); and

(8) a written explanation and all related documents if the nurse has been listed as a Nurse Aide and if there has been a substantiated finding(s). The Board may take the finding(s) into consideration when determining if a license should be issued. In the event a finding(s) is pending, the Board may withhold taking any action until the investigation is completed.

(c) A nurse educated and licensed outside the United States and who does not qualify under Applicants who do not meet all education and examination requirements as set forth in Paragraph (b) Paragraphs (a) and (b) of this Rule shall Rule, may be eligible for North Carolina licensure by considered for endorsement if the nurse has: they meet the following criteria:

- (1) licensed to practice for five years or greater immediately prior to application;
- (2) practiced in a nursing position at the same level of licensure within the five years immediately preceding application;
- (3) positive work history references; and
- (4) compliance with Parts (a)(1)(C) – (a)(1)(G) or (a)(2)(C) – (a)(2)(G) or Subparagraphs (b)(3) – (b)(7) of this Rule.
- (5) completed all court conditions resulting from any misdemeanor or felony conviction(s).

(d) When an applicant is eligible for licensure consistent with Part (b)(2)(A) or (b)(2)(B) or Paragraph (c) of this Rule the completed application, evidence of current license in another jurisdiction, and fee are received in the Board office, a temporary license may be issued by the Board will not permit the individual to practice in other states party to the Nurse Licensure Compact. Employer references may be requested to validate competent behavior to practice nursing.

(e) Beginning January 1, 2002, all applicants shall consent to a criminal history records check as part of the application process.

(f)(e) Facts provided by the applicant and the Board of Nursing of original licensure shall be compared to confirm the identity and validity of the applicant's credentials. Status in other states of current licensure shall may be verified. When eligibility is determined, a certificate of registration and a current license for the remainder of the biennial period shall be issued.

Authority G.S. 90-171.23(b); 90-171.32; 90-171.33; 90-171.37; 90-171.48.

*This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.*

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

**Rule-making Agency:** *North Carolina Board of Agriculture*

**Rule Citation:** *02 NCAC 52B .0212*

**Effective Date:** *February 18, 2002*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 106-317; 106-400*

**Reason for Proposed Action:** *The State Veterinarian received notice that outbreaks of Chronic Wasting Disease (CWD) were occurring in other states, and that exposed or infected animals could be shipped into North Carolina.*

**Comment Procedures:** *Written comments may be submitted to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.*

**CHAPTER 52 - VETERINARY DIVISION**

**SUBCHAPTER 52B - ANIMAL DISEASE**

**SECTION .0200 – ANIMAL DISEASE**

**02 NCAC 52B .0212 IMPORTATION**

**REQUIREMENTS: WILD ANIMALS**

(a) A person shall obtain a permit from the State Veterinarian before importing any of the following animals into this State:

- (1) Skunk;
- (2) Fox;
- (3) Raccoon;
- (4) Ringtail;
- (5) Bobcat (includes Lynx and other North and South American felines as cougars, jaguars, etc.);
- (6) Coyote;
- (7) Marten;
- (8) Brushtail Possum (*Trichosurus vulpecula*).

(b) Permits for the importation into this State of any of the animals listed in (a) of this Rule shall be issued only if the animal(s) will be used in a research institute, or for exhibition by a USDA licensed exhibitor, or organized entertainment as in zoos or circuses.

(c) Camelids, all cervidae, bison, and other bovidae other than domestic cattle may be imported into the State if accompanied by an official health certificate issued by an accredited veterinarian which states that:

- (1) all animals six months of age or older have tested negative for brucellosis within 30 days prior to importation; and
- (2) all animals six months of age or older have

tested negative for tuberculosis within 60 days prior to importation; and

- (3) all cervidae meet the requirements of the Uniform Methods and Rules: Tuberculosis in Cervidae; and
- (4) the herd of origin has had no brucellosis or tuberculosis diagnosed within the past 12 months.

(d) Any species or hybrid of a mammal not otherwise covered in the Administrative Code that is found to exist in the wild or naturally occurs in the wild must be accompanied by a valid certificate of veterinary inspection.

(e) In order to prevent the introduction of Chronic Wasting Disease (CWD), the following additional requirements apply to the importation of cervidae:

- (1) No cervidae may be imported into North Carolina from a herd located in a county in which CWD has been diagnosed, or from a herd located in a county which is contiguous to a county in which CWD has been diagnosed;
- (2) All cervidae entering North Carolina must also be accompanied by an importation permit issued by the North Carolina State Veterinarian. The request for an importation permit must be made by a licensed, accredited veterinarian and must be accompanied by a copy of the official health certificate and a copy of the captivity permit issued by the North Carolina Wildlife Resources Commission; and
- (3) The official health certificate must include the following statement: "All cervidae on this certificate originate from a Chronic Wasting Disease (CWD) monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, signs, or epidemiological evidence of CWD in this herd or in any herd contributing cervidae to this herd for the previous five years."

*History Note: Authority G.S. 106-317; 106-400;*

*Eff. April 1, 1984;*

*Amended Eff. July 1, 1998; February 1, 1996; May 1, 1992;*

*Temporary Amendment Eff. February 18, 2002.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

**Rule-making Agency:** *DENR – Environmental Management Commission*

**Rule Citation:** *15A NCAC 02D .1201-.1202, .1205*

**Effective Date:** *March 1, 2002*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 143-213; 143B-215.3(a)(1); 143-215.107(a)(3),(4),(5)*

**Reason for Proposed Action:** *The purpose of this rulemaking is to satisfy the requirements of S.L. 2001, c. 440, s. 3.4 (Bill 312 Section 3.4), which requires the Environmental Management Commission adopt temporary rules to incorporate the requirements of 40 CFR Part 60, Subpart BBBB for Small Municipal Waste Combustors, effective March 1, 2002.*

**Comment Procedures:** *Notice for a public hearing on these rules was published in the North Carolina Register on December 17, 2001. The public hearing was held on January 7, 2002.*

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS**

**SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS**

**15A NCAC 02D .1201 PURPOSE AND SCOPE**

(a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.

(b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 02D .0101(20), including incinerators with heat recovery and industrial incinerators.

(c) The rules in this Section do not apply to:

- (1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;
- (2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;
- (3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or
- (4) incinerators used to dispose of dead animals or poultry that meet the following requirements:
  - (A) the incinerator is located on a farm and is owned and operated by the farm owner or by the farm operator;
  - (B) the incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;
  - (C) the incinerator is not charged at a rate that exceeds its design capacity; and
  - (D) the incinerator complies with Rule .0521 (visible emissions) and ~~.0522~~ .1806 (odorous emissions) of this Subchapter.

(d) If an incinerator can be defined as being more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply:

- (1) hazardous waste incinerators;
- (2) sewage sludge incinerators;
- (3) sludge incinerators;
- (4) municipal waste combustors;
- (5) hospital, medical, or infectious waste incinerators (HMIWIs);
- (6) conical incinerators;
- (7) crematory incinerators; and
- (8) other incinerators.

(e) In addition to any permit that may be required under 15A NCAC 02Q, Air Quality Permits Procedures, a permit may be required by the Division of Solid Waste Management.

~~(e)(f)~~ Referenced document SW-846 "Test Methods for Evaluating Solid Waste," Third Edition, cited by Rules in this Section is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of Environment and Natural Resources Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars (\$319.00).

*History Note: Authority G.S. 143-215.3(a)(1);*

*143-215.107(a)(1), (3), (4), (5);*

*Eff. October 1, 1991;*

*Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995; December 1, 1993;*

*Temporary Amendment Eff. March 1, 2002.*

**15A NCAC 02D .1202 DEFINITIONS**

(a) For the purposes of this Section, the definitions at G.S. 143-212 and G.S. 143-213 and 15A NCAC 02D .0101 shall apply, and in addition the following definitions shall ~~apply~~ apply. If a term in this Rule is also defined at 15A NCAC 02D .0101, then the definition in this Rule controls.

(1) "Air curtain burner" or "air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floors. (Conventional combustion devices with enclosed fireboxes and controlled air technology such as mass burn, modular, and fluidized bed combustors are not air curtain burners.)

(2) "Class I municipal waste combustor" means a small municipal waste combustor located at a municipal waste combustion plant with an aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste.

~~(4)(3)~~ "Co-fired combustor (as defined in 40 CFR Part 60, Subpart Ec)" means a unit combusting



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hospital, medical, or infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital, medical, or infectious waste as measured on a calendar quarter basis. For the purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital, medical, or infectious waste combusted.

(2)(4) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.

(3)(5) "Construction and demolition waste" means wood, paper, and other combustible waste resulting from construction and demolition projects except for hazardous waste and asphaltic material.

(4)(6) "Dioxin and Furan" means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

(5)(7) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0101 through .0119, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.

(6)(8) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste, waste in which construction was commenced on or before June 20, 1996.

(7)(9) "Large HMIWI" means:

(A) Except as provided in Part (B) of this Subparagraph:

- (i) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;
(ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
(iii) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.

(B) The following are not large HMIWIs:

- (i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or
(ii) a batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

(8)(10) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.

(9)(11) "Large municipal waste combustor" means each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste, waste for which construction was commenced on or before September 20, 1994.

(10)(12) "Medical and Infectious Waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in Subparts (A)(i) through (vii) of this Item.

(A) The definition of medical and infectious waste includes:

(i) cultures and stocks of infectious agents and associated biologicals, including:

- (I) cultures from medical and pathological laboratories;
(II) cultures and stocks of infectious agents from research and industrial laboratories;
(III) wastes from the production of biologicals;
(IV) discarded live and attenuated vaccines; and
(V) culture dishes and devices used to transfer, inoculate, and mix cultures;

(ii) human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;
(iii) human blood and blood products including:

- (I) liquid waste human blood;
(II) products of blood;
(III) items saturated or dripping with human blood; or

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- (IV) items that were saturated or dripping with human blood that are now caked with dried human blood including serum, plasma, and other blood components, and their containers, which were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category;
  - (iv) sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;
  - (v) animal waste including contaminated animal carcasses, body parts, and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;
  - (vi) isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates, or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases; and
  - (vii) unused sharps including the following unused or discarded sharps:
    - (a) hypodermic needles;
    - (b) suture needles;
    - (c) syringes; and
    - (d) scalpel blades.
  - (B) The definition of medical and infectious waste does not include:
    - (i) hazardous waste identified or listed under 40 CFR Part 261;
    - (ii) household waste, as defined in 40 CFR 261.4(b)(1);
    - (iii) ash from incineration of medical and infectious waste, once the incineration process has been completed;
    - (iv) human corpses, remains, and anatomical parts that are intended for interment or cremation; and
    - (v) domestic sewage materials identified in 40 CFR 261.4(a)(1).
- ~~(13)~~ (13) "Medium HMIWI" means:
- (A) Except as provided in Part (b) of this Subparagraph:
    - (i) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;
    - (ii) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or
    - (iii) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.
  - (B) The following are not medium HMIWIs:
    - (i) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or
    - (ii) a batch HMIWI whose maximum charge rate is more than or equal to 4,000 pounds per day or less than

- or equal to 1,600 pounds per day.
- (12)(14) "Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.
- (13)(15) "Municipal waste combustor plant" means one or more designated units at the same location.
- (14)(16) "Municipal waste combustor unit capacity" means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under 40 CFR 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.
- (15)(17) "Municipal-type solid waste (MSW) or Municipal Solid Waste" means municipal-type solid waste defined in 40 CFR 60.51b.
- (16)(18) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.
- (17)(19) "Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).
- (18)(20) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.
- (19)(21) "Sludge incinerator" means any incinerator regulated under Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.
- (20)(22) "Small HMIWI" means:
- (A) Except as provided in Part (B) of this Subparagraph:
- (i) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;
- (ii) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or
- (iii) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.
- (B) The following are not small HMIWIs:
- (i) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour; or
- (ii) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.
- (21)(23) "Small municipal waste combustor" means each municipal waste combustor unit with a combustion capacity that is greater than ~~38.8~~ 11 tons per day but not more than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994.
- (22)(24) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.
- (23)(25) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in Office of Management and Budget (OMB) Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993. The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626-0580 at a cost of ten cents (\$0.10) per page or may be obtained through the internet at <http://www.census.gov/population/estimates/metro-city/93mfips.txt>.
- (b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.
- History Note: Authority G.S. 143-213; 143-215.3(a)(1); Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993; Temporary Amendment Eff. March 1, 2002.*

**15A NCAC 02D .1205 MUNICIPAL WASTE COMBUSTORS**

- (a) Applicability. This Rule applies to:
- (1) ~~Small-Class I~~ municipal waste combustors, as defined in Rule .1202 of this Section; and
- (2) Large municipal waste combustors, as defined in Rule .1202 of this Section.
- (b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51b and 40 CFR 60.1940 (except administration means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.
- (c) Emission Standards.

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- (1) The emission standards in this Rule apply to ~~all incinerators~~ any municipal waste combustor subject to the requirements of this Rule except where Rule .0524, .1110, or .1111 of this Subchapter applies. However, in any event, Subparagraphs (13) or (14) of this Paragraph shall control. whichever is less stringent, by August 1, 2002. Compliance with this emission limit is based on a 24-hour daily geometric mean.
- (2) Particulate Matter.
  - (A) ~~Emissions of particulate matter from each small municipal waste combustor shall not exceed 70 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~
  - (B) Emissions of particulate matter from each ~~large~~ municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) Visible Emissions.
  - (A) The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent ~~(30 6-minute average averages)~~.
  - (B) Air curtain burners shall comply with Rule .1904 of this Subchapter.
- (4) Sulfur Dioxide.
  - (A) Emissions of sulfur dioxide from each ~~class I small~~ municipal waste combustor shall be reduced by at least ~~50 75~~ percent by weight or volume of potential sulfur dioxide emissions or to ~~no~~ more than ~~80 31~~ parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily ~~block~~ geometric ~~mean~~ concentration percent reduction.
  - (B) Emissions of sulfur dioxide from each large municipal waste combustor shall be:
    - (i) reduced by at least 75 percent by weight or volume, or to ~~no~~ more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit is based on a 24-hour daily geometric mean; and
    - (ii) reduced by at least 75 percent by weight or volume, or to ~~no~~ more than 29 parts per million by volume corrected to seven percent oxygen (dry basis),
- (5) Nitrogen Oxide.
  - (A) Emissions of nitrogen oxide from each class I municipal waste combustor shall not exceed the emission limits in Table 3 40 CFR 60, Subpart BBBB.
  - (A)(B) Emissions of nitrogen oxide from each large municipal waste combustor shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b. Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v). ~~Nitrogen oxide emissions control is not required for small municipal waste combustors.~~
  - (B)(C) In addition to the requirements of Part (B) of this Subparagraph, emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 180 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002. If nitrogen oxide emissions averaging is used as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(V), emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 165 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002.
- (6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule ~~.0522~~ .1806 of this Subchapter for the control of odorous emissions.
- (7) Hydrogen Chloride.
  - (A) Emissions of hydrogen chloride from each ~~class I small~~ municipal waste combustor shall be reduced by at least ~~50 95~~ percent by weight or volume of potential hydrogen chloride emissions or to no more than ~~250 31~~ parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this Part shall be determined by averaging emissions over a one-hour period.
  - (B) Emissions of hydrogen chloride from each large municipal waste combustor shall be:
    - (i) reduced by at least 95 percent by weight or

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- volume, or to no more than 31 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period; and
- (ii) reduced by at least 95 percent by weight or volume, or to no more than 29 parts per million by volume, corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit shall be determined by averaging emissions over a one-hour period.
- (8) Mercury Emissions. Emissions of mercury from each municipal waste combustor shall be reduced by at least 85 percent by weight of potential mercury emissions or shall not exceed 0.08 milligrams per dry standard cubic meter, corrected to seven percent oxygen, whichever is less stringent. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
- (9) Lead Emissions.
- (A) Emissions of lead from each class I small municipal waste combustor shall not exceed ~~4.6~~ 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (B) Emissions of lead from each large municipal waste combustor shall not exceed 0.49 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2000 and shall not exceed 0.44 milligrams per dry standard cubic meter, corrected to seven percent oxygen, by August 1, 2002.
- (10) Cadmium Emissions.
- (A) ~~Emissions of cadmium from each small municipal waste combustor shall not exceed 0.10 milligrams per dry standard cubic meter, corrected to seven percent oxygen.~~
- ~~(B)~~ Emissions of cadmium from each municipal waste combustor shall not exceed 0.040 milligrams per dry standard cubic meter, corrected to seven percent oxygen.
- (11) Dioxins and Furans.
- ~~(A)~~ ~~Emissions of dioxins and furans from each small municipal waste combustor shall not exceed 125 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen.~~
- ~~(B)~~ Emissions of dioxins and furans from each large municipal waste combustor shall not exceed:
- (A) 60 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that employ an electrostatic precipitator-based emission control system; or
- (B) 30 nanograms per dry standard cubic meter (total mass) corrected to seven percent oxygen for facilities that do not employ an electrostatic precipitator-based emission control system.
- (12) Fugitive Ash.
- (A) On or after the date on which the initial performance test is completed, no owner or operator of a municipal waste combustor shall cause to be discharged to the atmosphere visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of five percent of the observation period (i.e., nine minutes per block three-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k), except as provided in Parts (B) and (C) of this Subparagraph.
- (B) The emission limit specified in Part (A) of this Subparagraph covers visible emissions discharged to the atmosphere from buildings or enclosures, not the visible emissions discharged inside of the building or enclosures, of ash conveying systems.
- ~~(C)~~ ~~The provisions specified in Part (A) of this Subparagraph do not apply during maintenance and repair of ash conveying systems.~~
- (13) Toxic Emissions. The owner or operator of a municipal waste combustor shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
- (14) Ambient Standards.
- (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77°F (25°C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above

background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

- (i) arsenic and its compounds  $2.3 \times 10^{-7}$
- (ii) beryllium and its compounds  $4.1 \times 10^{-6}$
- (iii) cadmium and its compounds  $5.5 \times 10^{-6}$
- (iv) chromium (VI) and its compounds  $8.3 \times 10^{-8}$

(B) When Subparagraph (1) of this Paragraph and Rule .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule .0524, .1110, or .1111 of this Subchapter to the contrary.

(C) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(D) The emission rates computed or used under Part (C) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators as their allowable emission limits unless Rule .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.

(15) The emission standards of Subparagraphs (1) through (12) of this Paragraph at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction that last no more than three hours.

(d) Operational Standards.

(1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.

(2) Each municipal waste combustor shall meet the following operational standards:

(A) The concentration of carbon monoxide at the municipal waste combustor outlet shall not exceed the concentration in:

- (i) table 3 of 40 CFR 60.34b(a) for large municipal waste combustors. The municipal waste combustor technology

named in this table is defined in 40 CFR 60.51b.

(ii) table 5 of 40 CFR 60 Subpart BBBB. The municipal waste combustor technology named in this table is defined in 40 CFR 60.1940.

(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor unit load (4-hour block average). ~~except as specified in 40 CFR 60.53b(b)(1) and (b)(2). The maximum demonstrated municipal waste combustor unit load is defined in 40 CFR 60.51b and the averaging time is specified under 40 CFR 60.58b(i).~~

(C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63° F above the maximum demonstrated particulate matter control device ~~temperature,~~ temperature (4-hour block average). ~~except as specified in 40 CFR 60.53b(c)(1) and (c)(2). The maximum demonstrated particulate matter control device temperature is defined in 40 CFR 60.51b and the averaging time is specified under 40 CFR 60.58b(i).~~

(D) The owner or operator of a municipal waste combustor with activated carbon control system to control dioxins and furans or mercury emissions shall maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxins and furans or mercury test and shall evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to the municipal waste combustor shall be at or above the required quarterly usage of carbon and shall be calculated as specified in equation four or five in 40 CFR 60.1935(f).

(E) The owner or operator of a municipal waste combustor is exempt from limits on load level, temperature at the inlet of the particular matter control device, and carbon feed rate during:

- (i) the annual tests for dioxins and furans;

- (ii) ~~the annual mercury tests for carbon feed requirements only;~~
- (iii) ~~the two weeks preceding the annual tests for dioxins and furans;~~
- (iv) ~~the two weeks preceding the annual mercury tests for carbon feed rate requirements only; and~~
- (v) ~~any activities to improve the performance of the municipal waste combustor or its emission control including performance evaluations and diagnostic or new technology testing.~~

(3) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis according to Rule .0535(g) of this Subchapter and Subparagraph (4) of this Paragraph. Incinerators subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

~~(4) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than three hours.~~

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- ~~(2) The owner or operator of a municipal waste combustor shall do compliance and performance testing according to 40 CFR 60.58b.~~
- ~~(2) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.~~
- (3) ~~The owner or operator of a municipal waste combustor shall do performance testing according to 40 CFR 60.58b.~~ For large municipal waste combustors that achieve a dioxin and furan emission level less than or

equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). ~~For small municipal waste combustors class I municipal waste combustors that achieve a dioxin and furan emission level less than or equal to 30.0 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen,~~ the performance testing shall be performed according to the testing schedule specified in 40 CFR ~~60.58b(g)(5)(iii), 60.1785 to demonstrate compliance with the applicable emission standards in Paragraph (c) of this Rule.~~

~~(4) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.~~

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- ~~(2) The owner or operator of an incinerator subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber.~~ The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.
- (3) ~~In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the~~ The owner or operator of a municipal waste combustor shall:
  - (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine the following:

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- (i) opacity according to 40 CFR 60.58b(c) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
- (ii) sulfur dioxide according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
- (iii) nitrogen ~~dioxide~~ oxides according to 40 CFR 60.58b(h) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors; ~~(This requirement applies only to large municipal waste combustors).~~
- ~~(iv)~~ oxygen (or carbon dioxide) according to 40 CFR 60.58b(b) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors; and
- ~~(v)~~ temperature level in the primary chamber and, where there is a secondary chamber, in the secondary chamber.
- ~~(B)~~ monitor load level of each class I municipal waste combustor according to 40 CFR 60.1810
- ~~(C)~~ monitor temperature of the gases flue at the inlet of the particular matter air pollution control device according to 40 CFR 60.1815.
- ~~(D)~~ monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820.
- ~~(B)(E)~~ maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for large municipal waste combustors and in 40 CFR 60.1840 through 1855 for class I municipal waste combustors for a period of at least five years.
- ~~(C)(F)~~ following the initial compliance tests as required under Paragraph (e) of this Rule, submit the information specified in 40 CFR 60.59b(f)(1) through (f)(6) for large municipal waste combustors and in 40 CFR 60.1875 for class I municipal waste combustors, in the initial performance test report.
- ~~(D)(G)~~ following the first year of municipal combustor operation, submit an annual report ~~including the information~~ specified in 40 CFR 60.59b(g)(1) through (g)(4) for large municipal waste combustors and in 40 CFR 60.1885 for class I municipal waste combustors, as applicable, no later than February 1 of each year following the calendar year in which the data were collected. Once the unit is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually.
- ~~(E)(H)~~ submit a semiannual report ~~that includes information~~ specified in 40 CFR 60.59b(h)(1) through (h)(5) for large municipal waste combustors and in 40 CFR 60.1900 for class I municipal waste combustors, for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).
- (g) Excess Emissions and Start-up and Shut-down. All ~~incinerators~~ municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.
- (h) Operator Training and Certification.
  - (1) By January 1, 2000, or six months after the date of start-up of a ~~small-class I~~ municipal waste combustor, whichever is later, and by July 1, 1999 or six months after the date of start-up of a large municipal waste combustor, whichever is later:
    - (A) Each facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification from the American Society of Mechanical Engineers (ASME QRO-1-1994).
    - (B) Each facility operator and shift supervisor of a municipal waste combustor shall have completed full certification or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).
    - (C) The owner or operator of a municipal waste combustor plant shall not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility:
      - (i) a fully certified chief facility operator;
      - (ii) a provisionally certified chief facility operator who is



- scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph;
- (iii) a fully certified shift supervisor; or
  - (iv) a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph.
- (D) If one of the persons listed in this Part leave Subparagraph leaves the large municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements of this Part.
- (E) If one of the persons listed in this Part leaves the class I municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements specified in 40 CFR 60.1685.
- (2) The owner or operator of ~~a~~-each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation specified in 40 CFR 60.54b(e)(1) through (e)(11).
  - (3) By July 1, 1999, or six months after the date of start-up of a municipal waste combustor, whichever is later, the owner or operator of the municipal waste combustor plant shall comply with the following requirements:
    - (A) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course.
      - (i) The requirements specified in Part (A) of this Subparagraph shall not apply to chief facility operators, shift supervisors and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.
      - (ii) As provided under 40 CFR 60.39b(c)(4)(iii)(B), the owner or operator may request that the Administrator waive the requirement specified in Part (A) of this Subparagraph for
        - the chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.
    - (B) The owner or operator of ~~a~~-each municipal waste combustor shall establish a training program to review the operating manual, according to the schedule specified in Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane-load handlers.
      - (i) Each person specified in Part (B) of this Subparagraph shall undergo initial training no later than the date specified in Items (I) through (III) of this Subpart, whichever is later.
        - (I) The date six months after the date of start-up of the affected facility;
        - (II) July 1, 1999; or
        - (III) The date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.
      - (ii) Annually, following the initial training required by Subpart (i) of this Part.
    - (C) The operating manual required by Subparagraph (2) of this Paragraph shall be updated continually be kept in a readily accessible location for all persons required to undergo training under Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
    - (D) The operating manual of class I municipal waste combustors shall contain requirements specified in 40 CFR 60.1665 in addition to requirements of part (C).
  - (4) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be

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obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).

(i) Compliance Schedules.

(1) The owner or operator of a large municipal waste combustor shall choose one of the following three compliance schedule options:

(A) comply with all the requirements or close before August 1, 2000;

(B) comply with all the requirements after one year but before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after August 1, 2000, but before August 1, 2002, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:

(i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;

(ii) a date by which on site construction, installation, or modification of emission control equipment shall begin;

(iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;

(iv) a date for initial start-up of emissions control equipment;

(v) a date for initial performance test(s) of emission control equipment; and

(vi) a date by which the ~~facility~~ municipal waste combustor shall be in compliance with this ~~Section~~ Rule, which shall be no later than three years from the issuance of the permit; or

(C) close between August 1, 2000, and August 1, 2002. If this option is chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.

~~(3)~~(2) All large municipal waste combustors for which construction, modification, or

reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2000, whichever is later.

~~(2) The owner or operator of a small municipal waste combustor shall comply with all requirements or close, within three years following the date of issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2002 if a permit modification is not required.~~

(3) The owner or operator of a class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall choose one of the following four compliance schedule options:

(A) comply with all requirements of this Rule beginning March 1, 2002 or stop operating the class I municipal waste combustor until such time as compliance is demonstrated;

(B) comply with all requirements of this Rule by March 1, 2002 whether a permit modification is required or not. If this option is chosen, then the owner or operator shall submit to the Director along with the permit application if a permit application is needed or by September 1, 2002 if a permit application is not needed a compliance schedule that contains the following increments of progress:

(i) a final control plan as specified in 40 CFR 60.1610;

(ii) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;

(iii) a date by which onsite construction, installation, or modernization of emission control system or equipment shall begin;

(iv) a date by which onsite construction, installation, or modernization of emission control system or equipment shall be completed; and

(v) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no

- later no later than March 1, 2003;
- (C) comply with all requirements of this Rule by closing the combustor and then restart it. If this option is chosen the owner or operator shall:
- (i) meet increments of progress specified in 40 CFR 60.1585, if the class I combustor is closed and then reopened prior to the final compliance date; and
- (ii) complete emissions control retrofit and meet the emission limits and good combustion practices on the date that the class I combustor restarts operation if the class I combustor is closed and then reopened after the final compliance date; or
- (D) comply by permanently closing the combustor. If this option is chosen the owner or operator shall:
- (i) submit a closure notification, including the date of closure, to the Director by July 1, 2002 if the class I combustor is to be closed on or before September 1, 2002; or
- (ii) enter into a legally binding closure agreement with the Director by July 1, 2002 if the class I combustor is to be closed after September 1, 2002, and the combustor shall be closed no later than March 1, 2003.
- (4) The owner or operator of a class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule by March 1, 2002.
- (4)(5) The owner or operator of any municipal waste combustor shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

**Editor's Note:** *This publication will serve as Notice of Proposed Temporary Rule-making as required by G.S. 150B-21.1(a).*

**Rule-making Agency:** *Environmental Management Commission*

**Rule Citation:** *15A NCAC 02P .0408*

**Authority for the rulemaking:** *G.S. 143-215.94B(f); 143-215.94D(f); S.L. 2001 c. 442, s. 1, s. 2, s. 6b*

**Reason for Proposed Action:** *In House Bill 1063 (S.L. 2001, c. 442, s. 1 and s. 2), the General Assembly mandated that the Environmental Management Commission shall adopt rules governing the competitive bidding process for performance-based cleanups of leaking petroleum underground storage tank sites that are eligible for reimbursement from the Commercial and Noncommercial Trust Funds. The General Assembly further stipulated that these rules shall establish the qualifications for environmental services firms and for individuals and firms that provide engineering services as part of a contract to satisfactorily complete work associated with the cleanup. In Section 6(b) of House Bill 1063, the General Assembly authorized that the Commission may adopt temporary rules to implement this act until July 1, 2002.*

**Comment Procedures:** *Written comments on the proposed temporary rule shall be accepted for at least 30 days after the notice of intent to adopt the temporary rule is published in the North Carolina Register. Questions and written comments may be submitted to George C. Mathis, Jr., DENR, Division of Waste Management, UST Section, 1637 Mail Service Center, Raleigh, NC 27699-1637.*

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02P - LEAKING PETROLEUM UNDERGROUND STORAGE TANK CLEANUP FUNDS**

**SECTION .0400 - REIMBURSEMENT PROCEDURE**

**15A NCAC 02P .0408 PERFORMANCE-BASED CLEANUPS**

- (a) The Division shall solicit competitive bids and award contracts for performance-based cleanups in accordance with G.S. 143, Article 3 and 01 NCAC 05B.
- (b) To be considered by the Division for performance-based cleanups, an environmental services firm shall provide documentation of proof that the firm and any subcontracted individuals and firms it utilizes can perform the necessary services described in the solicitation documents. Any professional engineering firm selected by an environmental services firm to perform engineering services for a performance-based cleanup must comply with G.S. 89C.

*Authority G.S. 143-215.94B(f); 143-215.94D(f); S.L. 2001, c. 442, s. 6b.*

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515; Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; Temporary Amendment Eff. March 1, 2002.*

**Rule-making Agency:** *Commission for Health Services*

**Rule Citation:** *15A NCAC 19A 0101, .0202-.0203, .0209, .0401*

**Effective Date:** *February 18, 2002*

**Findings Reviewed and Approved by:** *Beecher R. Gray*

**Authority for the rulemaking:** *G.S. 130A-133; 130A-134; 130A-135; 130A-139; 130A-141; 130A-144; 130A-145; 130A-148(h); 130A-152(c); 130A-155.1*

**Reason for Proposed Action:**

**15A NCAC 19A .0101** – *Revisions are proposed to update the list of diseases and conditions reportable by physicians and laboratories.*

**15A NCAC 19A .0202** – *Revisions are proposed to expand the HIV/STD control measures to ensure compliance with national standards.*

**15A NCAC 19A .0203** – *Revisions are proposed to expand and update the hepatitis B control measures to ensure compliance with national standards.*

**15A NCAC 19A .0209** – *Revisions are proposed to add a requirement for serogroup testing for Haemophilus influenzae isolates.*

**15A NCAC 19A .0401** – *The United States has experienced intermittent supply shortages for many vaccines. Vaccine supply shortages impact immunization requirements. The rule change will give the State Health Director the right to suspend temporarily any portion of these requirements due to emergency conditions, such as the unavailability of vaccine. The Department would give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect. Additional written notice would be given to all local health departments and other providers currently receiving vaccine from the Department when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next does would be required to be administered within 90 days of lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices. The local health director can extend accordingly the period of time for a new enrollee into a school or facility to be in compliance with an immunization requirement in case of temporary vaccine shortage and until the suspension is lifted.*

**Comment Procedures:** *Comments, statements, data and other information may be submitted in writing to Chris Hoke, 1915 Mail Service Center, Raleigh, NC 27699-1915. Copies of the proposed rules and information packets may be obtained by contacting the Epidemiology Section at 919-733-1193.*

**CHAPTER 19 - HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL**

**15A NCAC 19A .0101 REPORTABLE DISEASES AND CONDITIONS**

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
- (2) anthrax - 24 hours;
- (3) botulism - 24 hours;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease – 7 days;
- ~~(9)~~(10) cryptosporidiosis - 24 hours;
- ~~(10)~~(11) cyclosporiasis - 24 hours;
- ~~(11)~~(12) dengue - 7 days;
- ~~(12)~~(13) diphtheria - 24 hours;
- ~~(13)~~(14) E. coli 0157:H7 infection – Escherichia coli, shiga toxin-producing - 24 hours;
- ~~(14)~~(15) ehrlichiosis - 7 days;
- ~~(15)~~(16) encephalitis, arboviral - 7 days;
- ~~(16)~~(17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
- ~~(17)~~(18) foodborne disease, including but not limited to Clostridium perfringens, staphylococcal, and Bacillus cereus - 24 hours;
- ~~(18)~~(19) gonorrhea - 24 hours;
- ~~(19)~~(20) granuloma inguinale - 24 hours;
- ~~(20)~~(21) Haemophilus influenzae, invasive disease - 24 hours;
- (22) Hantavirus infection – 7 days;
- ~~(21)~~(23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
- ~~(22)~~(24) hepatitis A - 24 hours;
- ~~(23)~~(25) hepatitis B - 24 hours;
- ~~(24)~~(26) hepatitis B carriage - 7 days;
- ~~(25)~~(27) hepatitis C, acute - 7 days;
- ~~(26)~~(28) human immunodeficiency virus (HIV) infection confirmed - 7 days;
- ~~(27)~~(29) legionellosis - 7 days;
- ~~(28)~~(30) leptospirosis - 7 days;
- (31) listeriosis – 24 hours;
- ~~(29)~~(32) Lyme disease - 7 days;
- ~~(30)~~(33) lymphogranuloma venereum - 7 days;
- ~~(31)~~(34) malaria - 7 days;
- ~~(32)~~(35) measles (rubeola) - 24 hours;
- ~~(33)~~(36) meningitis, pneumococcal - 7 days;
- ~~(34)~~(37) meningococcal disease - 24 hours;
- ~~(35)~~(38) mumps - 7 days;
- ~~(36)~~(39) nongonococcal urethritis - 7 days;
- ~~(37)~~(40) plague - 24 hours;
- ~~(38)~~(41) paralytic poliomyelitis - 24 hours;
- ~~(39)~~(42) psittacosis - 7 days;
- ~~(40)~~(43) Q fever - 7 days;

**TEMPORARY RULES**

- ~~(41)~~(44) rabies, human - 24 hours;
- ~~(42)~~(45) Rocky Mountain spotted fever - 7 days;
- ~~(43)~~(46) rubella - 24 hours;
- ~~(44)~~(47) rubella congenital syndrome - 7 days;
- ~~(45)~~(48) salmonellosis - 24 hours;
- ~~(46)~~(49) shigellosis - 24 hours;
- ~~(47)~~(50) smallpox - 24 hours;
- ~~(48)~~(51) streptococcal infection, Group A, invasive disease - 7 days;
- ~~(49)~~(52) syphilis - 24 hours;
- ~~(50)~~(53) tetanus - 7 days;
- ~~(51)~~(54) toxic shock syndrome - 7 days;
- ~~(52)~~(55) toxoplasmosis, congenital - 7 days;
- ~~(53)~~(56) trichinosis - 7 days;
- ~~(54)~~(57) tuberculosis - 24 hours;
- ~~(55)~~(58) tularemia - 24 hours;
- ~~(56)~~(59) typhoid - 24 hours;
- ~~(57)~~(60) typhoid carriage (*Salmonella typhi*) - 7 days;
- ~~(58)~~(61) typhus, epidemic (louse-borne) - 7 days;
- ~~(59)~~(62) vibrio infection (other than cholera) - 24 hours;
- ~~(60)~~(63) whooping cough - 24 hours;
- ~~(64)~~ yellow fever - 7 days.

(b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of State and Territorial Public Health Laboratory Directors, Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
  - (A) Any hantavirus.
  - ~~(B)~~ Arthropod-borne virus (any type).
  - ~~(B)~~(C) *Bacillus anthracis*, the cause of anthrax.
  - ~~(C)~~(D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
  - ~~(E)~~ *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
  - ~~(D)~~(F) *Brucella spp.*, the causes of brucellosis.
  - ~~(E)~~(G) *Campylobacter spp.*, the causes of campylobacteriosis.
  - ~~(F)~~(H) *Clostridium botulinum*, a cause of botulism.
  - ~~(G)~~(I) *Clostridium tetani*, the cause of tetanus.
  - ~~(H)~~(J) *Corynebacterium diphtheriae*, the cause of diphtheria.

- ~~(K)~~(K) *Coxiella burnetii*, the cause of Q fever.
  - ~~(L)~~(L) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
  - ~~(M)~~(M) *Cyclospora cayentanesis*, the cause of cyclosporiasis.
  - ~~(N)~~(N) *Ehrlichia spp.*, the causes of ehrlichiosis.
  - ~~(M)~~(O) *Escherichia coli* O157:H7, a Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.
  - ~~(N)~~(P) *Francisella tularensis*, the cause of tularemia.
  - ~~(O)~~(Q) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
  - ~~(P)~~(R) Human Immunodeficiency Virus, the virus associated with cause of AIDS.
  - ~~(Q)~~(S) *Legionella spp.*, the causes of legionellosis.
  - ~~(R)~~(T) *Leptospira spp.*, the causes of leptospirosis.
  - ~~(U)~~ *Listeria monocytogenes*, the cause of listeriosis.
  - ~~(V)~~ *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
  - ~~(W)~~ Poliovirus (any), the cause of poliomyelitis.
  - ~~(S)~~(X) Rabies virus.
  - ~~(T)~~(Y) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
  - ~~(Z)~~ Rubella virus.
  - ~~(U)~~(AA) *Salmonella spp.*, the causes of salmonellosis.
  - ~~(V)~~(BB) *Shigella spp.*, the causes of shigellosis.
  - ~~(CC)~~ Smallpox virus, the cause of smallpox.
  - ~~(W)~~(DD) *Trichinella spiralis*, the cause of trichinosis.
  - ~~(X)~~(EE) *Vibrio spp.*, the causes of cholera and other vibrioses.
  - ~~(FF)~~ Yellow fever virus.
  - ~~(Y)~~(GG) *Yersinia pestis*, the cause of plague.
- (2) Isolation or other specific identification of the following organisms from normally sterile human body sites:
    - (A) Group A *Streptococcus pyogenes* (group A streptococci).
    - (B) *Haemophilus influenzae*, serotype b.
    - (C) *Neisseria meningitidis*, the cause of meningococcal disease.
    - (D) Vancomycin-resistant *Enterococcus spp.*
  - (3) Positive serologic test results, as specified, for the following infections:

- (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
  - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
  - (ii) Any hantavirus.
  - (iii) *Chlamydia psittaci*, the cause of psittacosis.
  - (iv) *Coxiella burnetii*, the cause of Q fever.
  - (v) Dengue virus.
  - (vi) *Ehrlichia spp.*, the causes of ehrlichiosis.
  - (vii) Measles (rubeola) virus.
  - (viii) Mumps virus.
  - (ix) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
  - (x) Rubella virus.
  - (xi) Yellow fever virus.
- (B) The presence of IgM serum antibodies to:
  - (i) Chlamydia psittaci
  - ~~(i)~~(ii) Hepatitis A virus.
  - ~~(ii)~~(iii) Hepatitis B virus core antigen.
  - ~~(iii)~~(iv) Rubella virus.
  - ~~(iv)~~(v) Rubeola (measles) virus.
  - (vi) Yellow fever virus.

- semen, ova, tissues, organs, or breast milk;
- (d) have a skin test for tuberculosis;
- (e) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous ~~year, year, and~~
  - (f) comply with all control measures for HIV infection and AIDS specified in Paragraph (a) of 15A NCAC 19A .0201, in those instances where such control measures do not conflict with other requirements of this Rule.

- (2) The attending physician shall:
  - (a) give the control measures in Item (1) of this Rule to infected patients, in accordance with 15A NCAC 19A .0210;
  - (b) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse appropriately, the physician shall list the spouse on a form provided by the Division of Epidemiology-Public Health and shall mail the form to the Division; the Division will undertake to counsel the spouse; the attending physician's responsibility to notify exposed and potentially exposed persons is satisfied by fulfilling the requirements of Sub-Items (2)(a) and (b) of this Rule;
  - (c) advise infected persons concerning proper clean-up of blood and other body fluids;
  - (d) advise infected persons concerning the risk of perinatal transmission and transmission by breastfeeding.
- (3) The attending physician of a child who is infected with HIV and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.
  - (a) If the child is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult

*History Note: Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. October 1, 1994; February 1, 1990; Temporary Amendment Eff. July 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. June 1, 2001; Temporary Amendment Eff. February 15, 2002.*

**SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES**

**15A NCAC 19A .0202 CONTROL MEASURES - HIV**

The following are the control measures for the Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) infection:

- (1) Infected persons shall:
  - (a) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;
  - (b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
  - (c) not donate or sell blood, plasma, platelets, other blood products,

with an interdisciplinary committee, which shall include appropriate school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee.

- (i) If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee.
- (ii) If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.
- (b) If the child is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:
  - (i) notify the parents;
  - (ii) notify the committee;
  - (iii) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
  - (iv) determine if an alternative educational setting is necessary to protect the public health;
  - (v) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by appropriate school personnel; and
  - (vi) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the HIV infection in order to prevent transmission and ensure that these persons are instructed regarding the

necessity for protecting confidentiality.

- (c) If the child is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

- (4) When health care workers or other persons have a needlestick or nonsexual non-intact skin or mucous membrane exposure to blood or body fluids that, if the source were infected with HIV, would pose a significant risk of HIV transmission, the following shall apply:

- (a) When the source person is known:
  - (i) The attending physician or occupational health care provider responsible for the exposed person, if other than the attending physician of the person whose blood or body fluids is the source of the exposure, shall notify the attending physician of the source that an exposure has occurred. The attending physician of the source person shall discuss the exposure with the source and shall test the source for HIV infection unless the source is already known to be infected. The attending physician of the exposed person shall be notified of the infection status of the source.
  - (ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the source person was HIV infected, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.

- (b) When the source person is unknown, the attending physician of the exposed person shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.
- (c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.
- (5) The attending physician shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person, in good faith, has reasonable cause to suspect a person infected with HIV is not following control measures and is thereby causing a significant risk of transmission.
- (6) When the local health director is notified pursuant to Item (5) of this Rule, of a person who is mentally ill or mentally retarded, the local health director shall confer with the attending mental health physician or appropriate mental health authority and the physician, if any, who notified the local health director to develop an appropriate plan to prevent transmission.
- (7) The Director of Health Services of the North Carolina Department of Correction and the prison facility administrator shall be notified when any person confined in a state prison is determined to be infected with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined HIV infected person is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making appropriate recommendations to the unit housing classification committee.
- (8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.
- (9) Local health departments shall provide testing for HIV infection with pre- and post-test counseling at no charge to the patient. Third party payors may only be billed for HIV counseling and testing when such services are provided as a part of family planning and maternal and child health services. By August 1, 1991, the State Health Director shall designate a minimum of 16 local health departments to provide anonymous testing. Beginning September 1, 1991, only cases of confirmed HIV infection identified by anonymous tests conducted at local health departments designated as anonymous testing sites pursuant to this Sub-Item shall be reported in accordance with 15A NCAC 19A .0102(a)(3). All other cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2). Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be reported in accordance with 15A NCAC 19A .0102(a)(1) and (2).
- (10) Appropriate counseling for HIV testing shall include risk assessment, risk reduction guidelines, appropriate referrals for medical and psychosocial services, and, when the person tested is found to be infected with HIV, control measures. Pre-test counseling may be done in a group or individually, as long as each individual is provided the opportunity to ask questions in private. Post-test counseling must be individualized.
- (11) A local health department or the Department may release information regarding an infected person pursuant to G.S. 130A-143(3) only when the local health department or the Department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.
- (12) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual and may include one or more of the following available and appropriate services:
- (a) substance abuse counseling and treatment;
  - (b) mental health counseling and treatment; and
  - (c) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission.
- (13) The Division of ~~Epidemiology~~ Public Health shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. All partner identifying information obtained as a part of the partner notification program shall be destroyed within two years.



- (14) Every pregnant woman shall be given HIV pre-test counseling, as described in 15A NCAC 19A .0202(10), by her attending physician as early in the pregnancy as possible. At the time this counseling is provided, ~~the physician shall encourage the pregnant woman to be tested for HIV infection. If and after~~ informed consent is obtained, the attending physician shall test the pregnant woman for HIV ~~infection as early in the pregnancy as possible~~ infection, unless the pregnant woman refuses the HIV test.

*History Note: Authority G.S. 130A-133; 130A-135; 130A-144; 130A-145; 130A-148(h); Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. May 1, 1991; February 1, 1990; November 1, 1989; June 1, 1989; Temporary Amendment Eff. January 7, 1991 for a period of 180 days to expire on July 6, 1991; Recodified from 15A NCAC 19A .0201 (d) and (e) Eff. June 11, 1991; Amended Eff. August 1, 1995; October 1, 1994; January 4, 1994; October 1, 1992; Temporary Amendment Eff. June 1, 2001; Temporary Amendment Eff. February 18, 2002.*

**15A NCAC 19A .0203 CONTROL MEASURES - HEPATITIS B**

- (a) The following are the control measures for hepatitis B infection. The infected persons shall:
- (1) refrain from sexual intercourse unless condoms are used except when the partner is known to be infected with or immune to hepatitis B;
  - (2) not share needles or syringes;
  - (3) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
  - (4) if the time of initial infection is known, identify to the local health director all sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, identify persons who have been sexual intercourse or needle partners during the previous six months;
  - (5) for the duration of the infection, notify future sexual intercourse partners of the infection and refer them to their attending physician or the local health director for control ~~measures; measures; and for the duration of the infection, notify the local health director of all new sexual intercourse partners;~~
  - (6) ~~identify to the local health director all current household contacts;~~
  - (6)(7) be tested six months after diagnosis to determine if they are chronic carriers, ~~annually for two years thereafter if they remain infected,~~ and when necessary to determine

- appropriate control measures for persons exposed pursuant to Paragraph (b) of this ~~Rule. Rule;~~  
 (8) comply with all control measures for hepatitis B infection specified in Paragraph (a) of 15A NCAC 19A .0201, in those instances where such control measures do not conflict with other requirements of this Rule.

(b) The following are the control measures for persons reasonably suspected of being exposed:

- (1) when a person has had a sexual intercourse exposure to hepatitis B infection, the person shall be tested;
- (4)(2) after testing, when a susceptible person has had sexual intercourse exposure to hepatitis B infection, the person shall be given a dose appropriate for body weight of hepatitis B immune globulin or immune globulin, 0.06 ml/kg, IM and hepatitis B vaccination as soon as possible but possible; hepatitis B immune globulin shall be given no later than two weeks after the last exposure;
- (2)(3) when a person is a household contact, sexual intercourse or needle sharing contact of a person who has remained infected with hepatitis B for six months or longer, the partner or household contact, if susceptible and at risk of continued exposure, shall be vaccinated against hepatitis B;
- (3)(4) when a health care worker or other person has a needlestick, non-intact skin, or mucous membrane exposure to blood or body fluids that, if the source were infected with the hepatitis B virus, would pose a significant risk of hepatitis B transmission, the following shall apply:
  - (A) when the source is known, the source person shall be tested for hepatitis B infection, unless already known to be infected;
  - (B) when the source is infected with hepatitis B and the exposed person is:
    - (i) vaccinated, the exposed person shall be tested for anti-HBs and, if anti-HBs is unknown or below acceptable level, receive hepatitis B vaccination and hepatitis B immune globulin as soon as possible; hepatitis B immune globulin shall be given no later than seven days after exposure; If anti-HBs is less than ten SRU by RIA or negative by EIA, the exposed person shall be given hepatitis B immune globulin, 0.06 ml/kg, IM immediately and a single dose of hepatitis B vaccine within seven days;

- (ii) not vaccinated, the exposed person shall be given a dose appropriate for body weight of hepatitis B immune globulin, 0.06 ml/kg, IM globulin immediately and, if at high risk for future exposure, and begin vaccination with hepatitis B vaccine within seven days;
- (C) when the source is ~~unknown and the exposed person is: unknown, the determination of whether hepatitis B immunization is required shall be made in accordance with current published Control of Communicable Diseases Manual and Centers for Disease Control and Prevention guidelines.~~
- (i) ~~vaccinated, no intervention is necessary;~~
- (ii) ~~not vaccinated, begin vaccination with hepatitis B vaccine within seven days if at high risk for future exposure.~~
- (4)(5) infants born to ~~infected HBsAg-positive~~ mothers shall be given hepatitis B vaccination and hepatitis B immune globulin, 0.5 ml, IM as soon as maternal infection is known and infant is stabilized; vaccinated against hepatitis B beginning as soon as possible; and tested for HBsAg at 12 months of age, globulin within 12 hours of birth or as soon as possible after the infant is stabilized. Additional doses of hepatitis B vaccine shall be given in accordance with current published Control of Communicable Diseases Manual and Centers for Disease Control and Prevention Guidelines. The infant shall be tested for the presence of HBsAg and anti-HBs within 3-9 months after the last dose of the regular series of vaccine; if required because of failure to develop immunity after the regular series, additional doses shall be given in accordance with current published Control of Communicable Diseases Manual and Centers for Disease Control and Prevention guidelines;
- (6) infants born to mothers whose HBsAg status is unknown shall be given hepatitis B vaccine within 12 hours of birth and the mother tested. If the tested mother is found to be HBsAg-positive, the infant shall be given hepatitis B immune globulin as soon as possible and no later than seven days after birth;
- (7) When an acutely infected person is a primary caregiver of a susceptible infant less than 12 months of age, the infant shall receive an appropriate dose of hepatitis B immune globulin and hepatitis vaccinations in accordance with current published Control of
- Communicable Diseases Manual and Centers for Disease Control and Prevention Guidelines.
- (c) The attending physician shall advise all patients known to be at high risk, including injection drug users, men who have sex with men, hemodialysis patients, and patients who receive frequent transfusions of blood products, that they should be vaccinated against hepatitis B if susceptible. The attending physician shall also recommend that hepatitis B chronic carriers receive hepatitis A vaccine (if susceptible).
- (d) The following persons shall be tested for and reported in accordance with 15A NCAC 19A .0101 if positive for hepatitis B infection:
- (1) pregnant women unless known to be infected; and
  - (2) donors of blood, plasma, platelets, other blood products, semen, ova, tissues, or organs.
- (e) The attending physician of a child who is infected with hepatitis B virus and who may pose a significant risk of transmission in the school or day care setting because of open, oozing wounds or because of behavioral abnormalities such as biting shall notify the local health director. The local health director shall consult with the attending physician and investigate the circumstances.
- (f) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines that there may be a significant risk of transmission, the local health director shall consult with an interdisciplinary committee, which shall include school personnel, a medical expert, and the child's parent or guardian to assist in the investigation and determination of risk. The local health director shall notify the superintendent or private school director of the need to appoint such an interdisciplinary committee. If the superintendent or private school director establishes such a committee within three days of notification, the local health director shall consult with this committee. If the superintendent or private school director does not establish such a committee within three days of notification, the local health director shall establish such a committee.
- (g) If the child referred to in Paragraph (e) of this Rule is in school or scheduled for admission and the local health director determines, after consultation with the committee, that a significant risk of transmission exists, the local health director shall:
- (1) notify the parents;
  - (2) notify the committee;
  - (3) assist the committee in determining whether an adjustment can be made to the student's school program to eliminate significant risks of transmission;
  - (4) determine if an alternative educational setting is necessary to protect the public health;
  - (5) instruct the superintendent or private school director concerning appropriate protective measures to be implemented in the alternative educational setting developed by school personnel; and
  - (6) consult with the superintendent or private school director to determine which school personnel directly involved with the child need to be notified of the hepatitis B virus infection

in order to prevent transmission and ensure that these persons are instructed regarding the necessity for protecting confidentiality.

(h) If the child referred to in Paragraph (e) of this Rule is in day care and the local health director determines that there is a significant risk of transmission, the local health director shall notify the parents that the child must be placed in an alternate child care setting that eliminates the significant risk of transmission.

*History Note: Authority G.S. 130A-135; 130A-144; Eff. February 1, 1990; Amended Eff. October 1, 1990; Recodified from 15A NCAC 19A .0201(i) Eff. June 11, 1991; Amended Eff. October 1, 1994, August 1, 1998; Temporary Amendment Eff. February 18, 2002.*

**15A NCAC 19A .0209 LABORATORY TESTING**

All laboratories are required to do the following:

- (1) When ~~Neisseria meningitis meningitidis~~ is ~~isolated, isolated from a normally sterile site,~~ test the organism for specific serogroup or send the isolate to the State Public Health Laboratory for ~~serogrouping; and serogrouping;~~
- (2) When a stool culture is requested on a specimen from a person with bloody diarrhea, culture the stool for ~~shiga-toxin producing E. coli 0157:H7 Escherichia coli~~ or send the specimen to the State Public Health ~~Laboratory. Laboratory; and~~
- (3) ~~When Haemophilus influenzae is isolated, test the organism for specific serogroup or send the isolate to the State Public Health Laboratory for serogrouping.~~

*History Note: Authority G.S. 130A-139; Eff. October 1, 1994; Temporary Amendment Eff. February 18, 2002.*

**SECTION .0400 – IMMUNIZATION**

**15A NCAC 19A .0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION**

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) Diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time. The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987. However:
  - (A) An individual who has attained his or her seventh birthday without having been immunized against whooping

cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen;

- (B) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose;
- (C) Individuals attending school, college or university or who began their tetanus/diphtheria toxoid series on or after the age of seven years shall be required to have three doses of tetanus/diphtheria toxoid.
- (2) Poliomyelitis vaccine--four doses: two doses of trivalent type by age five months; a third dose trivalent type before age 19 months, and a booster dose of trivalent type on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:
  - (A) An individual attending school who has attained his or her 18th birthday shall not be required to receive polio vaccine;
  - (B) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose;
  - (C) The requirements for booster doses of poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.
- (3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 30 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school (K-1) for the first time. However:
  - (A) An individual who has been documented by serological testing to have a protective antibody titer against measles shall not be required to receive measles vaccine;
  - (B) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine;
  - (C) An individual born prior to 1957 shall not be required to receive measles vaccine;
  - (D) The requirement for a second dose of measles vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time before July 1, 1994.

**TEMPORARY RULES**

- (4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
- (A) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine;
  - (B) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine;
  - (C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine.
- (5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months. However:
- (A) An individual born prior to 1957 shall not be required to receive mumps vaccine;
  - (B) The requirements for mumps vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994. An individual who has been documented by serological testing to have a protective antibody titer against mumps shall not be required to receive mumps vaccine.
- (6) Haemophilus influenzae, b, conjugate vaccine--three doses of HbOC or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. Individuals born before October 1, 1988 shall not be required to be vaccinated against Haemophilus influenzae, b. Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC or PRP-OMP. Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 15 months of age shall be required to have only one dose of any of the Haemophilus influenzae conjugate vaccines, including PRP-D. However, no individual who has passed their fifth birthday shall be required to be vaccinated against Haemophilus influenzae, b.
- (7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.
- (8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:
- (A) an individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis shall not be required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:
    - (i) a written statement from a health care provider documented on or attached to the lifetime immunization card or certificate of immunization; or
    - (ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the lifetime immunization card or certificate of immunization.
  - (B) an individual born prior to April 1, 2001 shall not be required to receive varicella vaccine.
- (b) The State Health Director may suspend temporarily any portion of the requirements of these immunization rules due to emergency conditions, such as the unavailability of vaccine. The Department shall give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect and when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next dose shall be required to be administered within 90 days of the lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices. The local health director can extend accordingly the period of time for a new enrollee into a school or facility to be in compliance with an immunization requirement in case of temporary vaccine shortage and until the suspension is lifted.

*History Note: Authority G.S. 130A-152(c); 130A-155.1; Eff. February 1, 1976; Amended Eff. July 1, 1977; Readopted Eff. December 5, 1977; Filed as a Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Amended Eff. October 1, 1995; October 1, 1994; January 1, 1994; January 4, 1993; Filed as a Temporary Amendment Eff. May 21, 1999; Temporary Amendment Eff. February 23, 2000; August 20, 1999; Amended Eff. August 1, 2000;*

**TEMPORARY RULES**

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*Temporary Amendment Eff. August 1, 2001;*

*Temporary Amendment Eff. February 18, 2002;*

*Temporary Amendment Eff. April 1, 2002.*

## RULES REVIEW COMMISSION

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*This Section contains the agenda for the next meeting of the Rules Review Commission on Thursday, March 21, 2002, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners by Friday, March 15, 2002 at 5:00 p.m. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.*

### RULES REVIEW COMMISSION MEMBERS

#### Appointed by Senate

Thomas Hilliard, III  
Robert Saunders  
Laura Devan  
Jim Funderburke  
David Twiddy

#### Appointed by House

Paul Powell - Chairman  
Jennie J. Hayman Vice - Chairman  
Dr. Walter Futch  
Jeffrey P. Gray  
Dr. John Tart

### RULES REVIEW COMMISSION MEETING DATES

March 21, 2002  
April 18, 2002

May 16, 2002  
June 20, 2002

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## RULES REVIEW COMMISSION February 21, 2002 MINUTES

The Rules Review Commission met on Thursday morning, February 21, 2002, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jennie Hayman, Jeffrey Gray, Thomas Hilliard, Jim Funderburk, John Tart, Robert Saunders, and Walter Futch.

Staff members present were: Joseph J. DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Pamela Millward	NC Real Estate Commission
Wayne Mobley	DENR/Coastal Resources Commission
Ellie Sprenkel	Department of Insurance
Nancy O'Dowd	Department of Insurance
Bill Crowell	DENR/DCM
Sheryl Stephens	DENR/DCM
Jessica Gill	DENR/DCM
Steve Underwood	DENR/DCM
Kim Dove	Board of Dietetics & Nutrition
Henry Jones	Board of Dietetics & Nutrition
Dedra Alston	DENR
Iris Payne	Division of Community Assistance
Charlie Thompson	Division of Community Assistance
Liz Wolfe	Division of Community Assistance
Lee Hoffman	DHHS/DFS
Denise Stanford	Pharmacy Board
Tom West	Respiratory Care Board
Debbie Jackson	DHHS/Division of Services for the Blind
Ann Christian	Commission for the Blind

### APPROVAL OF MINUTES

The meeting was called to order at 10:00 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the December 20, 2001, meeting. The minutes were approved as written.

**FOLLOW-UP MATTERS**

4 NCAC 19L .0802; .0901; .0912; .2001: Division of Community Assistance – The Commission approved the rewritten rules.

10 NCAC 14J .0201; .0204; .0205; .0207: DHHS/Commission for MH/DD/SAS – No action was taken.

10 NCAC 14P .0102: DHHS/Commission for MH/DD/SAS – No action was taken.

10 NCAC 14Q .0303: DHHS/Commission for MH/DD/SAS – No action was taken.

10 NCAC 14R .0101; .0105: DHHS/Commission for MH/DD/SAS – No action was taken.

10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002: DHHS/Commission for MH/DD/SAS – No action was taken.

12 NCAC 10B .0304; .0307; .0401; .0406; .0408; .0409; .0505; .0601; .0603; .0606; .0905; .0907; .0908; .0909; .0915; .0917; .1004; .1005; .1204; .1205; .1307; .1404; .1405; .1604; .1605; and .2104 – NC Sheriffs’ Education & Training Standards – The Commission approved these rules.

12 NCAC 10B .0301; .0305: NC Sheriffs’ Education and Training Standards - The Commission objected to rules .0301 and .0305 due to ambiguity. In .0301 (a)(8), and .0305 (d) it is not clear what would constitute “good moral character.” These objections apply to existing language in the rules.

12 NCAC 10B .0705; .0706; .0707; .0708; .0710; .0711 .0712: NC Sheriffs’ Education and Training Standards - The Commission objected to the rules due to lack of statutory authority. There is no authority for the Commission to set occupational requirements for and certify school directors. There is authority to certify schools and teachers, but not directors. In addition, in .0706 (c)(1) and .0711 (c)(1), it is not clear what is meant by “adequately” perform. Each of these objections applies to existing language in the rules.

15A NCAC 6E .0103: DENR/Soil & Water Conservation Commission – No action was taken.

15A NCAC 7B .0701; .0801: DENR Coastal Resources Commission – These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

15A NCAC 18A .0618: DENR/Commission for Health Services –The Commission approved the rewritten rule.

21 NCAC 46 .1814: NC Board of Pharmacy - The Commission objected to the rewritten rule due to lack of authority and ambiguity. It is still unclear what the role or responsibility of the pharmacist-manager is in rewritten (c). It still appears to be directed not at pharmacists, or even the specialized clinical pharmacy over which they have rulemaking authority, but rather towards individuals not under control of the pharmacy board.

21 NCAC 46 .2502: NC Board of Pharmacy – The Commission approved the rule.

21 NCAC 57A .0201; .0203; .0407; .0409: NC Appraisal Board – The Commission approved the rewritten rules with Commissioner Futch opposed.

21 NCAC 57B .0211; .0303; .0306; .0602: NC Appraisal Board – The Commission approved the rewritten rules.

21 NCAC 58 C .0304; .0603: NC Real Estate Commission – The Commission approved the rewritten rules.

**LOG OF FILINGS**

Chairman Powell presided over the review of the log and all rules were approved with the following exceptions:

10 NCAC 3R .2114; .2115: DHHS/Division of Facility Services – These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

10 NCAC 19A .0601: Commission for the Blind - The Commission objected to the rule due to lack of statutory authority and ambiguity. The provision in this rule prohibiting discrimination by the Division on the basis of age is not consistent with other rules being adopted (e.g. 10 NCAC 19A .0102) and probably violates State and federal law governing services provided by the division.

10 NCAC 19A .0602: Commission for the Blind - The Commission objected to the rule due to lack of statutory authority. There is no authority cited for this rule. The only authority for the Commission to adopt rules in the cited statute is those as may required by the

federal government or State or federal agency as a condition for receiving federal funds. There is no citation to any such requirement. The only authority in the statute regarding confidentiality rule making is given to the Department of Health and Human Services, not the Commission.

10 NCAC 19C .0207: Commission for the Blind - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b)(4), it is not clear what "other basic job related skills and competencies" a consumer must demonstrate proficiency in to be eligible for licensure. In (b)(5), it is not clear what is meant by "other operational procedures of the North Carolina Business Enterprises Program." This appears to be setting requirements outside of rule-making. This objection applies to existing language in the rule.

10 NCAC 19C .0209: Commission for the Blind - The Commission objected to the rule due to ambiguity. In (c)(13), it is not clear when Rehabilitation Supervision will order a new analysis. In (d)(2)(B), seniority points are awarded based on years in the program but (d)(2)(C) defines seniority as time in full month increments. It is not clear if 12 months in a number of different years equals one year. In (d)(3), it is not clear how "sales standard," "gross profit percentage standard," "sales optimum" and "gross profit percentage optimum" are determined. In (d) (3)(F)(iii), it is not clear what is meant by a "Level II facility." In (d)(4)(B), it is not clear when a written complaint will result in a letter to the operator from the division. In (d)(5)(E) & (F), it is not clear what standards the members of the Interview Committee are to use in assigning points. In (d)(6)(C), it is not clear what is meant by "Level I training" or Level I license." This objection applies to existing language in the rule.

10 NCAC 19C .0309: Commission for the Blind - The Commission objected to the rule due to ambiguity. In (b)(6), it is not clear what will constitute an "undue financial hardship."

10 NCAC 19C .0311: Commission for the Blind - The Commission objected to the rule due to ambiguity. It is not clear when the Division will "participate in the funding of moving expenses" or what amount this covers. This objection applies to existing language in the rule.

10 NCAC 19C .0410: Commission for the Blind - The Commission objected to the rule due to ambiguity. The use of the word "may" in (d)(3) makes the provision ambiguous. It is not clear when costs of legal counsel will be shared or funded. In (d)(5), add a space between "licensee" and "mutually." In (d)(6), it is not clear what constitutes a "qualified" official. This objection applies to existing language in the rule. The Commission also noted technical changes which needed to be made.

10 NCAC 19C .0504: Commission for the Blind - The Commission objected to the rule due to ambiguity. It is not clear how the Commission can be sure that the Elected Committee of Venders will be representative of all operators on the basis of factors such as facility type and be proportionally representative of operators on federal property since they have no rules establishing procedures to ensure it. This objection applies to existing language in the rule.

10 NCAC 19C .0511: Commission for the Blind - The Commission objected to the rule due to lack of necessity. This rule merely repeats the contents of 34 CFR 395.14(b) and is thus unnecessary. This objection applies to existing language in the rule.

10 NCAC 19C .0607: Commission for the Blind - The Commission objected to the rule due to ambiguity. In (b), it is not clear what is meant by "properly" maintain. This objection applies to existing language in the rule.

10 NCAC 19C .0701: Commission for the Blind - The Commission objected to the rule due to ambiguity. It is not clear what standards the Division will use in agreeing to a fair minimum return. This objection applies to existing language in the rule. The Commission also noted technical changes which needed to be made.

10 NCAC 19C .0702: Commission for the Blind - The Commission objected to the rule due to ambiguity. In (b)(4), it is not clear what would constitute a "fair minimum return". This objection applies to existing language in the rule.

10 NCAC 19C .0704: Commission for the Blind - The Commission objected to the rule due to ambiguity. In (d), it is not clear what would constitute a "fair minimum return" nor when an assessment can be charged. This objection applies to existing language in the rule.

10 NCAC 19E .0701: Commission for the Blind - This rule was approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

10 NCAC 19F .0602: Commission for the Blind - This rule was approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.



## **RULES REVIEW COMMISSION**

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10 NCAC 19G .0101; .0102: Commission for the Blind - These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

10 NCAC 19G .0105: Commission for the Blind - The Commission objected to the rule due to lack of statutory authority. There is no authority for paragraph (d). What are called “guidelines” here are in fact rules. Only the General Assembly can grant rule-making authority to an agency.

10 NCAC 19G .0107: Commission for the Blind - The Commission objected to the rule due to lack of statutory authority. The last sentence in (d) is a waiver or modification provision without specific guidelines prohibited by G.S. 150B-19(6). The Commission also noted technical changes which needed to be made.

10 NCAC 19G .0109; .0113: Commission for the Blind - These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

10 NCAC 19G .0501; .0502: Commission for the Blind - These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

10 NCAC 19G .0805 & .0806: Commission for the Blind - The Commission objected to .0805 and .0806 due to ambiguity and lack of necessity. In .0805 (b)(1), it is not clear what North Carolina agency certifies mediators acceptable for this program or what list is being referred to. Subparagraph (b)(1) of .0805 and paragraph (b) of Rule .0806 overlap and are not completely consistent. Only one is necessary

10 NCAC 19G .0821: Commission for the Blind - These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

10 NCAC 19H .0102; .0103: Commission for the Blind- The Commission objected to the rules due to ambiguity. Subparagraph (a)(2) of .0102 is not consistent with subparagraph (a)(1) of Rule .0103. Rule .0102 makes some Medicaid recipients eligible while .0103 says they must be ineligible. This objection applies to existing language in the rules.

10 NCAC 19H .0203; .0206: Commission for the Blind - These rules were approved conditioned upon receiving technical changes by the end of the day. The technical changes were subsequently received.

The meeting adjourned for a short break at 12:26 p.m.

The meeting reconvened at 12:35

15A NCAC 2H .0802: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. The second sentence, lines 9-11, seems to apply to various water pollution control systems, which are the subject of the cited rules, and not laboratory facilities that “perform and report analysis” for water pollution control systems subject to the rules cited. It is unclear either who this sentence applies to or how the classification system works in this context.

15A NCAC 2H .0803: DENR/Environmental Management Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (2) it is unclear what the standards are for determining whether the applicant’s proficiency is acceptable. If those standards are set outside rulemaking, then there is no authority for the provision. The term “acceptable” recurs in items (3) and (16) and presents the same problems. In item (15) it is unclear who or what constitutes an “accredited” vendor or the standards are set outside rulemaking.

15A NCAC 2H .0805: DENR/Environmental Management Commission - The Commission objected to the rule due to ambiguity. In (b)(1) it is unclear what constitutes “substantial” deficiencies. In (g)(5) it is unclear what constitutes “directly related experience. It is also unclear what constitutes “any Operator’s Certification.”

15A NCAC 2H .0806: DENR/Environmental Management Commission - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

15A NCAC 7L .0510: DENR/Coastal Resources Commission - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

21 NCAC 1 .0301: NC Acupuncture Licensing Board The Commission objected to the rule due to ambiguity. In items (2)(b)(i)(C)(XI) and (XII) (as originally proposed) it is unclear what constitutes an “accredited” college, university, or hospital. If the standards are set outside rulemaking, there is no authority to do that.

**RULES REVIEW COMMISSION**

21 NCAC 19 .0622: NC Board of Electrolysis Examiners - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

Commissioner Hayman recused herself from the NC Respiratory Care Board rules.

21 NCAC 61 .0201: NC Respiratory Care Board - The Commission objected to the rule due to lack of statutory authority and ambiguity. There is no authority cited allowing the Board to deny licensure to any applicant based on the applicant’s moral character. This appears to be the thrust of item (5). Someone “convicted” of a crime involving moral turpitude could be denied licensure. (NCGS 90-659(a)(2)). But this is more restrictive than what the Board may be seeking in (5). The Board may request someone to submit a criminal record check without specifying what use the Board will make of it.

21 NCAC 61 .0202: NC Respiratory Care Board - The Commission objected to the rule due to ambiguity. In item (3) it is unclear what would constitute “adequate” training. It also appears that the beginning of (3) should read “A person who provides only support...” rather than “...who only provides....”

21 NCAC 61 .0304: NC Respiratory Care Board - The Commission objected to the rule due to lack of necessity. The rule is unnecessary since it does little more than repeat G.S. 90-654(b). Commission Gray opposed this objection.

21 NCAC 61 .0305: NC Respiratory Care Board - The Commission objected to the rule due to ambiguity. It is unclear what the intent of this rule is. In (b)(1) it is unclear what would constitute evidence of “(1) regular practice of respiratory care,” such that a person may have his or her license converted from inactive status to active status. This is especially true in light of the rule in (a) and in the statutes prohibiting anyone from practicing respiratory care unless actively licensed.

21 NCAC 61 .0307: NC Respiratory Care Board - The Commission objected to the rule due to ambiguity. In (a)(10) it is unclear what constitutes “acceptable” standards. Commissioner Gray voted against the motion to object to this rule.

21 NCAC 61 .0401: NC Respiratory Card Board - The Commission objected to the rule due to lack of statutory authority. It does not appear that the board has any authority to charge any fee to continuing education providers as set out in (f). Even if they did, the fee must be specified in the rule. Also there are no standards for the review set out or referred to.

21 NCAC 61 .0711: NC Respiratory Card Board - This rule was approved conditioned upon receiving a technical change by the end of the day. The technical change was subsequently received.

**COMMISSION PROCEDURES AND OTHER BUSINESS**

The Commission discussed the budget issue. In light of the budget deficit and requests from the Controller’s Office for an updated statement of the Rules Review Commission’s policy concerning travel reimbursement, the Commission voted to approve overnight stays for the Commissioners at the state rate. It approved this for any commissioner who must travel more than two hours or would have to travel more than two hours on the morning of a meeting (because of heavier traffic, construction, or other factors). The Commission also made this policy retroactive to the beginning of this fiscal year.

The next meeting will be on Thursday, March 21, 2002.

The meeting adjourned at 1:35 p.m.

Respectfully submitted,  
Lisa Johnson

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**Commission Review/Administrative Rules**  
*Log of Filings (Log #185)*  
*January 20, 2002 through February 20, 2002*

**AGRICULTURE, DEPARTMENT OF/BOARD OF AGRICULTURE**

Adoption by Reference	2 NCAC 9G .0101	Amend
Certification	2 NCAC 9L .1101	Repeal
Definitions	2 NCAC 9L .1102	Amend
Certification Options	2 NCAC 9L .1103	Amend
Recertification	2 NCAC 9L .1106	Repeal

**RULES REVIEW COMMISSION**

Term of Certification	2 NCAC 9L .1108	Amend
Continuing Certification	2 NCAC 9L .1109	Repeal
Expiration of Certification	2 NCAC 9L .1110	Amend
<b>AGRICULTURE, DEPARTMENT OF</b>		
Adoption by Reference	2 NCAC 38 .0701	Amend
<b>AGRICULTURE, DEPARTMENT OF</b>		
Adoption by Reference	2 NCAC 39 .0101	Adopt
<b>AGRICULTURE, DEPARTMENT OF</b>		
Labeling of Dispensing Devices	2 NCAC 42 .0401	Amend
<b>AGRICULTURE, DEPARTMENT OF/BOARD OF AGRICULTURE</b>		
Importation Requirements Wild Animals	2 NCAC 52B .0212	Amend
Importation Requirements Cervidae	2 NCAC 52B .0213	Adopt
Intrastate Requirements Wild Animals	2 NCAC 52C .0701	Amend
<b>DEPARTMENT OF CORRECTIONS</b>		
General	5 NCAC 2C .0901	Repeal
Mail Records	5 NCAC 2D .0310	Repeal
General	5 NCAC 2D .0501	Repeal
Authorization	5 NCAC 2D .0503	Repeal
Responsibility	5 NCAC 2D .0802	Repeal
General	5 NCAC 2E .0101	Repeal
Menu	5 NCAC 2E .0102	Repeal
Statutory Responsibility	5 NCAC 2E .0201	Repeal
Hospitalization	5 NCAC 2E .0210	Repeal
Initial Health Care Screening	5 NCAC 2E .0221	Repeal
Dental Services	5 NCAC 2E .0223	Repeal
Health Care Orientation	5 NCAC 2E .0226	Repeal
Sick Call	5 NCAC 2E .0227	Repeal
Inmates in Disciplinary Segregation	5 NCAC 2E .0228	Repeal
Administrative Transfers	5 NCAC 2E .0234	Repeal
Purpose	5 NCAC 2E .0701	Repeal
General	5 NCAC 2E .1301	Repeal
Mandatory Education Program	5 NCAC 2E .1401	Repeal
Criteria for Mandatory Participation	5 NCAC 2E .1402	Repeal
Identification of Inmates with Educational Defic	5 NCAC 2E .1403	Repeal
Assignment of Inmates to ABE/GED Programs	5 NCAC 2E .1404	Repeal
Disciplinary Action	5 NCAC 2E .1406	Repeal
Searches of Inmates	5 NCAC 2F .0103	Repeal
Searches of Employees	5 NCAC 2F .0105	Repeal
Complete Facility Search	5 NCAC 2F .0106	Repeal
Disposition of Contraband	5 NCAC 2F .0107	Repeal
Prohibited Organizations	5 NCAC 2F .0208	Repeal
General	5 NCAC 2F .0401	Repeal
Approving Authority	5 NCAC 2F .0402	Repeal
Emergency Leave	5 NCAC 2F .0403	Repeal
Disposition of Unauthorized Personal Property	5 NCAC 2F .0504	Repeal
Return of Personal Property Upon Release	5 NCAC 2F .0506	Repeal
Purpose	5 NCAC 2F .1503	Repeal
Policy	5 NCAC 2F .1504	Repeal
Procedures	5 NCAC 2F .1505	Repeal
Medical Response	5 NCAC 2F .1506	Repeal
Reporting Procedures	5 NCAC 2F .1507	Repeal
Purpose	5 NCAC 2F .2001	Repeal
Supervision	5 NCAC 2F .2007	Repeal
Inmate Misuse of Plumbing Facilities	5 NCAC 2F .2101	Repeal
Design and Evaluation	5 NCAC 2F .2304	Repeal
Purpose	5 NCAC 2F .2501	Repeal
Enforcement	5 NCAC 2F .2504	Repeal
Purpose	5 NCAC 2F .2601	Repeal
Responsibility	5 NCAC 2F .2602	Repeal
Legal Materials	5 NCAC 2G .0208	Repeal
Submission of Grievances	5 NCAC 2G .0304	Repeal

**RULES REVIEW COMMISSION**

Rejection of Grievances	5 NCAC 2G .0306	Repeal
Emergency Grievances	5 NCAC 2G .0308	Repeal
Confidential Grievances	5 NCAC 2G .0309	Repeal
Transfers During Grievance Process	5 NCAC 2G .0311	Repeal
Record Maintenance and Confidentiality	5 NCAC 2G .0312	Repeal
Purpose	5 NCAC 2G .0401	Repeal
General	5 NCAC 2H .0101	Repeal
Membership	5 NCAC 2H .0102	Repeal
Islamic Diet	5 NCAC 2H .0104	Repeal
Approved Religious Property	5 NCAC 2H .0105	Repeal
<b>DHHS/DIVISION OF VOCATIONAL REHABILITATION SERVICES</b>		
Definitions	10 NCAC 20A .0102	Amend
Vocational and other Training	10 NCAC 20C .0304	Amend
Occupational Licenses, Tools, Equipment, and Supp	10 NCAC 20C .0314	Amend
<b>DHHS/SOCIAL SERVICES COMMISSION</b>		
Vehicle Determination	10 NCAC 30 .0218	Adopt
<b>DHHS</b>		
Day Care Services for Adults	10 NCAC 35E .0303	Amend
<b>DHHS/SOCIAL SERVICES COMMISSION</b>		
Purpose	10 NCAC 41F .0401	Adopt
Method of Mutual Home Assessment	10 NCAC 41F .0402	Amend
Information to be Given and Obtained	10 NCAC 41F .0403	Repeal
Assessment Process	10 NCAC 41F .0404	Amend
Use of References	10 NCAC 41F .0405	Amend
Periodic Reassessment of Home	10 NCAC 41F .0406	Amend
Agency Foster Parent Agreement	10 NCAC 41F .0407	Amend
License Application	10 NCAC 41F .0501	Amend
Foster Parents' Agreement	10 NCAC 41F .0502	Amend
Department of Social Services	10 NCAC 41F .0504	Amend
Definitions	10 NCAC 41F .0601	Amend
Family Foster Home	10 NCAC 41F .0602	Amend
Client Rights and Care of Children	10 NCAC 41F .0701	Amend
Criteria for the Foster Family	10 NCAC 41F .0702	Amend
Location and Surroundings	10 NCAC 41F .0703	Repeal
Physical Facility	10 NCAC 41F .0704	Amend
Licensing Compliance Visits	10 NCAC 41F .0705	Amend
Criminal Histories	10 NCAC 41F .0707	Amend
Responsibility	10 NCAC 41F .0801	Amend
New Licenses	10 NCAC 41F .0802	Amend
Renewal	10 NCAC 41F .0803	Amend
90 Day Grace Period	10 NCAC 41F .0804	Repeal
Change in Factual Information on the License	10 NCAC 41F .0805	Amend
Termination	10 NCAC 41F .0806	Amend
Revocation	10 NCAC 41F .0807	Amend
Licensing Authority	10 NCAC 41F .0808	Amend
Kinds of Licenses	10 NCAC 41F .0809	Amend
Out-of-State Facilities	10 NCAC 41F .0810	Amend
Reports of Abuse and Neglect	10 NCAC 41F .0811	Amend
Criminal History Checks	10 NCAC 41F .0813	Amend
Training Requirements	10 NCAC 41F .0814	Amend
Scope	10 NCAC 41N .0101	Amend
Licensure	10 NCAC 41N .0102	Amend
Responsibilities of the Governing Body	10 NCAC 41N .0203	Amend
Responsibility to Licensing	10 NCAC 41N .0209	Amend
Staff	10 NCAC 41N .0211	Amend
Confidentiality	10 NCAC 41N .0212	Adopt
Client Rights	10 NCAC 41N .0213	Adopt
Grievance Procedures	10 NCAC 41N .0214	Adopt
Searches	10 NCAC 41N .0215	Adopt
Medication Administration	10 NCAC 41N .0216	Adopt
Home Schooling	10 NCAC 41N .0217	Adopt

**RULES REVIEW COMMISSION**

Scope	10 NCAC 41O .0101	Adopt
Organization and Administration	10 NCAC 41O .0102	Amend
Assessment and Treatment/Habilitation or Service	10 NCAC 41O .0206	Adopt
Client Records for Children Receiving Mental Health	10 NCAC 41O .0207	Adopt
Medication Requirements	10 NCAC 41O .0208	Adopt
Behavior Management and Discipline	10 NCAC 41O .0209	Adopt
<b>DHHS</b>		
Governing Body	10 NCAC 42E .0901	Amend
Transportation	10 NCAC 42E .1103	Amend
Definitions	10 NCAC 42Z .0502	Amend
Transportation	10 NCAC 42Z .0804	Amend
<b>DEPARTMENT OF INSURANCE/N C FIRE AND RESCUE COMMISSION</b>		
Certification of Eligibility	11 NCAC 5A .0302	Amend
<b>DEPARTMENT OF INSURANCE/NC CODE OFFICIALS</b>		
<b>QUALIFICATIONS BOARD/HOME INSPECTOR LICENSURE BOARD</b>		
Definitions	11 NCAC 8 .1401	Adopt
CE Courses-General	11 NCAC 8 .1402	Adopt
Sponsor Advance Approval Required	11 NCAC 8 .1403	Adopt
Sponsor Name	11 NCAC 8 .1404	Adopt
Accreditation Standards	11 NCAC 8 .1405	Adopt
CE Course Subject Matter	11 NCAC 8 .1406	Adopt
Scheduling	11 NCAC 8 .1407	Adopt
Notice of Scheduled Courses	11 NCAC 8 .1408	Adopt
Advertising and Providing Course Information	11 NCAC 8 .1409	Adopt
Solicitation of Students	11 NCAC 8 .1410	Adopt
Cancellation and Refund Policies	11 NCAC 8 .1411	Adopt
Denial or Withdrawal of Approval of Course or Course	11 NCAC 8 .1412	Adopt
Renewal of Course and Sponsor Approval	11 NCAC 8 .1413	Adopt
Sponsor Changes during Approval Period	11 NCAC 8 .1414	Adopt
CE Requirements	11 NCAC 8 .1415	Adopt
Continuing Education Coordinator	11 NCAC 8 .1416	Adopt
Monitoring Attendance	11 NCAC 8 .1417	Adopt
Instructor Requirements	11 NCAC 8 .1418	Adopt
Student Participation Standards	11 NCAC 8 .1419	Adopt
Student Fee for CE Courses	11 NCAC 8 .1420	Adopt
Minimum Class Size	11 NCAC 8 .1421	Adopt
Classes Open to All Licensees	11 NCAC 8 .1422	Adopt
Classroom Facilities	11 NCAC 8 .1423	Adopt
Student Check-In	11 NCAC 8 .1424	Adopt
Accommodations for Persons with Disabilities	11 NCAC 8 .1425	Adopt
Course Completion Reporting	11 NCAC 8 .1426	Adopt
Retention of Course Records	11 NCAC 8 .1427	Adopt
Request for Video of an Elective Course	11 NCAC 8 .1428	Adopt
Change in Sponsor Ownership	11 NCAC 8 .1429	Adopt
Course Monitors	11 NCAC 8 .1430	Adopt
Non-Resident Licensees and CE Credits	11 NCAC 8 .1431	Adopt
Non-Compliance	11 NCAC 8 .1432	Adopt
<b>DEPARTMENT OF INSURANCE</b>		
Filing Approval Life Accident and Health Forms	11 NCAC 12 .0307	Amend
Definitions	11 NCAC 12 .1002	Amend
Policy Practices and Provisions	11 NCAC 12 .1004	Amend
Required Disclosure Provisions	11 NCAC 12 .1006	Amend
Reserve Standards	11 NCAC 12 .1012	Amend
Loss Ratio	11 NCAC 12 .1013	Amend
Filing Requirement	11 NCAC 12 .1014	Amend
Standard Format Outline of Coverage	11 NCAC 12 .1015	Amend
Requirements for Advertising	11 NCAC 12 .1017	Amend
Standards for Marketing	11 NCAC 12 .1018	Amend
Non Forfeiture Benefit Requirements	11 NCAC 12 .1026	Amend
Required Disclosure of Rating Practices to Consumers	11 NCAC 12 .1027	Adopt
Premium Rate Schedule Increases	11 NCAC 12 .1028	Adopt

**RULES REVIEW COMMISSION**

Scope and Application	11 NCAC 12 .1029	Adopt
<b>JUSTICE/CRIMINAL JUSTICE EDUCATION &amp; TRAINING STANDARDS COMMISSION</b>		
Purpose	12 NCAC 9D .0101	Amend
General Provisions	12 NCAC 9D .0102	Amend
Basic Law Enforcement Certificate	12 NCAC 9D .0103	Repeal
Intermediate Law Enforcement Certificate	12 NCAC 9D .0104	Amend
Advanced Law Enforcement Certificate	12 NCAC 9D .0105	Amend
Method of Application	12 NCAC 9D .0106	Amend
<b>DENR/ENVIRONMENTAL MANAGEMENT COMMISSION</b>		
Hiwassee River Basin	15 NCAC 2B .0302	Amend
French Broad River Basin	15 NCAC 2B .0304	Amend
Particulates from Wood Burning Indirect Heat	15 NCAC 2D .0504	Amend
Control of Ethylene Oxide Emissions	15 NCAC 2D .0538	Amend
Control of Particulate Emissions from Cotton Ginn	15 NCAC 2D .0542	Adopt
Bulk Gasoline Terminals	15 NCAC 2D .0927	Amend
Gasoline Truck Tanks and Vapor Collection	15 NCAC 2D .0932	Amend
Purpose and Scope	15 NCAC 2D .1201	Amend
Definitions	15 NCAC 2D .1202	Amend
Hazardous Waste Incinerators	15 NCAC 2D .1203	Amend
Sewage Sludge and Sludge Incinerators	15 NCAC 2D .1204	Amend
Municipal Waste Combustors	15 NCAC 2D .1205	Amend
Hospital, Medical, and Infectious Waste	15 NCAC 2D .1206	Amend
Other Incinerators	15 NCAC 2D .1208	Amend
Commercial and Industrial Solid Waste	15 NCAC 2D .1210	Adopt
Where to Obtain and File Permit Applications	15 NCAC 2Q .0104	Amend
Definitions	15 NCAC 2Q .0202	Amend
Exemptions	15 NCAC 2Q .0702	Amend
Definitions	15 NCAC 2S .0102	Amend
Calculation of Full Time Equivalent Employment	15 NCAC 2S .0103	Adopt
Applicability	15 NCAC 2S .0201	Amend
Required Minimum Management Practices	15 NCAC 2S .0202	Amend
Filing	15 NCAC 2S .0301	Adopt
Other Potentially Responsible Parties	15 NCAC 2S .0302	Adopt
Prioritization Assessment	15 NCAC 2S .0401	Adopt
<b>DENR/COASTAL RESOURCES COMMISSION</b>		
Coastal Shorelines	15 NCAC 7H .0209	Amend
Vegetation Line Establishment	15 NCAC 7H .0305	Amend
Permit Fee	15 NCAC 7H .1703	Amend
Private Bulkheads Riprap and Piers Exempted	15 NCAC 7K .0203	Repeal
<b>DENR/DIVISION OF FOREST RESOURCES</b>		
Referrals and Limitations	15 NCAC 9C .0401	Amend
Technical Services	15 NCAC 9C .0402	Amend
Tree Seedlings Prices	15 NCAC 9C .0503	Amend
Custom Sale of Tree Seedlings	15 NCAC 9C .0507	Amend
Application for Tree Seedlings or Seed	15 NCAC 9C .0508	Amend
Payment for Tree Seedlings	15 NCAC 9C .0510	Amend
Forfeiture of Payment for Late Cancellation	15 NCAC 9C .0511	Amend
Disposition and Processing of Tree Seedlings	15 NCAC 9C .0512	Amend
Exchanged and Distribution of Clonal Material	15 NCAC 9C .0515	Amend
Storage Fees	15 NCAC 9C .0516	Amend
Hunting	15 NCAC 9C .0517	Adopt
Definition of Terms	15 NCAC 9C .0602	Amend
Fees for Services	15 NCAC 9C .0604	Amend
Contracts for Services	15 NCAC 9C .0605	Amend
Authority to Sub-Contract Custome Services	15 NCAC 9C .0606	Amend
Practices	15 NCAC 9C .0607	Amend
Administration of Program	15 NCAC 9C .0902	Amend
Approved Practices	15 NCAC 9C .0903	Amend
<b>DENR/RADIATION PROTECTION COMMISSION</b>		
Definitions	15 NCAC 11 .0104	Amend
Communications	15 NCAC 11 .0111	Amend

**RULES REVIEW COMMISSION**

Incorporation by Reference	15 NCAC 11 .0117	Amend
Human Use by Individual Physicians	15 NCAC 11 .0320	Amend
Specific Licenses Groups of Diagnostic Uses	15 NCAC 11 .0321	Amend
Fee Amounts	15 NCAC 11 .1105	Amend
Definitions	15 NCAC 11 .1403	Amend
Application for Registration of Tanning Facilities	15 NCAC 11 .1405	Amend
Renewal of Certificate of Registration	15 NCAC 11 .1408	Amend
Report of Changes	15 NCAC 11 .1409	Amend
Denial Revocation Termination of Registration	15 NCAC 11 .1412	Amend
Warning Signs Required	15 NCAC 11 .1414	Amend
Equipment and Construction Requirements	15 NCAC 11 .1415	Amend
Protective Eyewear Required	15 NCAC 11 .1417	Amend
Records Reports and Operating Requirements	15 NCAC 11 .1418	Amend
Communications with the Agency Agency Address	15 NCAC 11 .1419	Amend
Reports and Installation	15 NCAC 11 .1422	Amend
Fees and Payments	15 NCAC 11 .1423	Amend
Planned Special Exposures	15 NCAC 11 .1608	Amend
Dose Equivalent to an Embryo/Fetus	15 NCAC 11 .1610	Amend
Surveys	15 NCAC 11 .1613	Amend
Monitoring of External and Internal Occupational	15 NCAC 11 .1614	Amend
Exceptions to Posting Requirements	15 NCAC 11 .1625	Amend
Procedures for Receiving and Opening Packages	15 NCAC 11 .1627	Amend
General Provisions for Records	15 NCAC 11 .1635	Amend
Records of Individual Monitoring Results	15 NCAC 11 .1640	Amend
<b>EDUCATION, STATE BOARD OF</b>		
Definitions	16 NCAC 6D .0101	Amend
End-of-Course Tests	16 NCAC 6D .0305	Amend
Annual Performance Standards Grades K-12	16 NCAC 6G .0305	Amend
<b>SECRETARY OF STATE</b>		
Location and Hours	18 NCAC 5A .0101	Repeal
Administration and Function	18 NCAC 5A .0102	Repeal
Place of Filing	18 NCAC 5A .0201	Repeal
Contents of Documents Submitted for Filing	18 NCAC 5A .0202	Repeal
Forms	18 NCAC 5A .0203	Repeal
Fees	18 NCAC 5A .0204	Repeal
Continuations	18 NCAC 5A .0205	Repeal
Termination	18 NCAC 5A .0206	Repeal
Filing by Mail	18 NCAC 5A .0207	Repeal
Over the Counter Filings	18 NCAC 5A .0208	Repeal
Refunds	18 NCAC 5A .0209	Repeal
Request for Information by Mail	18 NCAC 5A .0301	Repeal
Preparation of the UCC-11 Form	18 NCAC 5A .0302	Repeal
Contents of Certified UCC-11 Form	18 NCAC 5A .0303	Repeal
Fees for Information from the Filing Officer	18 NCAC 5A .0305	Repeal
Telephone Searches	18 NCAC 5A .0306	Repeal
Filing of Federal Tax Liens	18 NCAC 5A .0401	Repeal
Information from the Filing Officer Regarding Tax	18 NCAC 5A .0402	Repeal
Fees for Information Regarding Tax Liens	18 NCAC 5A .0403	Repeal
Scope	18 NCAC 5B .0101	Adopt
Definitions	18 NCAC 5B .0102	Adopt
Place of Filing Time of Filing and Methods of Deli	18 NCAC 5B .0103	Adopt
Contents of Records Submitted for Filing	18 NCAC 5B .0104	Adopt
Approved Forms	18 NCAC 5B .0105	Adopt
Processing Fees and Methods of Payments	18 NCAC 5B .0106	Adopt
Public Records Services	18 NCAC 5B .0107	Adopt
Fees for Public Records Services	18 NCAC 5B .0108	Adopt
Role of Filing Officer	18 NCAC 5B .0201	Adopt
Grounds for Refusal of UCC Document	18 NCAC 5B .0202	Adopt
Procedure for Refusal	18 NCAC 5B .0203	Adopt
Notification of Defects	18 NCAC 5B .0204	Adopt
Refusal Errors	18 NCAC 5B .0205	Adopt

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Filing Officer Errors	18 NCAC 5B .0206	Adopt
Notice of Bankruptcy	18 NCAC 5B .0207	Adopt
Policy Statement	18 NCAC 5B .0301	Adopt
Primary Data Elements	18 NCAC 5B .0302	Adopt
Initial Financing Statement	18 NCAC 5B .0303	Adopt
Amendment	18 NCAC 5B .0304	Adopt
Assignment of Powers of Secured Party of Record	18 NCAC 5B .0305	Adopt
Continuation	18 NCAC 5B .0306	Adopt
Termination	18 NCAC 5B .0307	Adopt
Correction Statement	18 NCAC 5B .0308	Adopt
Procedure Upon Lapse	18 NCAC 5B .0309	Adopt
IACA Standards Adopted	18 NCAC 5B .0310	Adopt
Implementation Guide	18 NCAC 5B .0311	Adopt
Direct on-Line Data Entry Procedures	18 NCAC 5B .0312	Adopt
Policy Statement	18 NCAC 5B .0401	Adopt
Minimum Standards for Indexing and Filing UCC Recor	18 NCAC 5B .0402	Adopt
Document Filing Review and Acknowledgment	18 NCAC 5B .0403	Adopt
Entry of Individual and Organizational Names	18 NCAC 5B .0404	Adopt
Filing Dates and Lapse Calculations	18 NCAC 5B .0405	Adopt
Filing Errors	18 NCAC 5B .0406	Adopt
Designated Name Fields	18 NCAC 5B .0407	Adopt
Verification of Data Entry	18 NCAC 5B .0408	Adopt
Creation of New Records	18 NCAC 5B .0409	Adopt
Archival Documents	18 NCAC 5B .0410	Adopt
General Requirements	18 NCAC 5B .0501	Adopt
Search Requests and Reports	18 NCAC 5B .0502	Adopt
Rules Applied to Search Request	18 NCAC 5B .0503	Adopt
Optional Information	18 NCAC 5B .0504	Adopt
Search Responses	18 NCAC 5B .0505	Adopt
Policy Statement	18 NCAC 5B .0601	Adopt
Filing	18 NCAC 5B .0602	Adopt
Requests for Information	18 NCAC 5B .0603	Adopt
<b>OCCUPATIONAL LICENSING BOARDS/N C LICENSING BOARD FOR GENERAL CONTRACTORS</b>		
Eligibility	21 NCAC 12 .0204	Amend
Single-Prime Public Contracts	21 NCAC 12 .0210	Adopt
<b>OCCUPATIONAL LICENSING BOARDS/DENTAL EXAMINERS, BOARD OF</b>		
Time for Filing	21 NCAC 16B .0305	Amend
Reexamination	21 NCAC 16B .0315	Amend
Time for Filing	21 NCAC 16C .0305	Amend
Reexamination	21 NCAC 16C .0310	Amend
Restrictions on Practice	21 NCAC 16D .0102	Amend
Examination	21 NCAC 16D .0105	Amend
Examination	21 NCAC 16E .0104	Amend
Corporate or Limited Liability Company Name	21 NCAC 16F .0103	Amend
Reporting Continuing Education	21 NCAC 16I .0104	Amend
License Void Upon Failure to Renew	21 NCAC 16I .0107	Amend
Equipment	21 NCAC 16Q .0202	Amend
Temporary Approval Prior to Site Evaluation	21 NCAC 16Q .0203	Amend
Procedure for Evaluation or Inspection	21 NCAC 16Q .0204	Amend
Results of Site Evaluation and Reevaluation	21 NCAC 16Q .0205	Amend
Equipment	21 NCAC 16Q .0302	Amend
Temporary Approval Prior to Site Evaluation	21 NCAC 16Q .0303	Adopt
Annual Renewal Required	21 NCAC 16Q .0401	Amend
Reporting of Continuing Education	21 NCAC 16R .0103	Amend
Eligibility Requirements	21 NCAC 16Y .0101	Adopt
Application	21 NCAC 16Y .0102	Adopt
Employment	21 NCAC 16Y .0103	Adopt
Direction and Supervision	21 NCAC 16Y .0104	Adopt
Compliance	21 NCAC 16Y .0105	Adopt
<b>OCCUPATIONAL LICENSING BOARDS/N C BOARD OF NURSING</b>		
License Required	21 NCAC 36 .0221	Amend



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Approval and Practice Parameters for Nurse Pract	21 NCAC 36 .0227	Amend
Approval Body	21 NCAC 36 .0301	Amend
Establishment of a Nursing Program	21 NCAC 36 .0302	Amend
Agency Approval Process - Initial Survey	21 NCAC 36 .0310	Repeal
Full Approval/Approval with Stipulations	21 NCAC 36 .0315	Repeal
Curriculum	21 NCAC 36 .0321	Amend
Facilities	21 NCAC 36 .0322	Amend
Removal of Approval	21 NCAC 36 .0325	Repeal

**OCCUPATIONAL LICENSING BOARDS/STATE BOARD OF EXAMINERS  
OF PLUMBING, HEATING, AND FIRE SPRINKLER CONTRACTORS**

Executive Director Other Personnel	21 NCAC 50 .0104	Amend
Location of Office	21 NCAC 50 .0106	Amend
Qualifications Determined by Examination	21 NCAC 50 .0301	Amend
Special Examinations	21 NCAC 50 .0304	Repeal
Applications Issuance of License	21 NCAC 50 .0306	Amend
Refund of Deposit	21 NCAC 50 .0307	Amend
Review of Examination	21 NCAC 50 .0308	Amend
Expanding Scope of License	21 NCAC 50 .0309	Amend
Active Employment	21 NCAC 50 .0404	Amend
Reinstatement of Expired License	21 NCAC 50 .0409	Amend
Publications	21 NCAC 50 .0411	Amend
Air Conditioning Further Defined	21 NCAC 50 .0501	Amend
Heating License Required	21 NCAC 50 .0508	Amend
Fuel Piping	21 NCAC 50 .0511	Amend
Examination Fees	21 NCAC 50 .1101	Amend
License Fees	21 NCAC 50 .1102	Amend
Expanding Scope of License	21 NCAC 50 .1103	Repeal
Fees for Copies of Records and Returned Checks	21 NCAC 50 .1104	Amend

**OCCUPATIONAL LICENSING BOARDS/REAL ESTATE COMMISSION, BOARD OF**

Elective Course Component	21 NCAC 58E .0302	Amend
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**OCCUPATIONAL LICENSING BOARDS/N C SUBSTANCE ABUSE PROFESSIONAL CERTIFICATION BOARD**

Definitions	21 NCAC 68 .0101	Amend
Application for Registration	21 NCAC 68 .0201	Amend
Registration Process for Board Certification	21 NCAC 68 .0202	Amend
Designation as Substance Abuse Counselor Intern	21 NCAC 68 .0203	Amend
Supervised Practical Training for Substance Abuse	21 NCAC 68 .0204	Amend
Certified Substance Abuse Counselor Certification	21 NCAC 68 .0205	Amend
Process for Prevention Consultant Certification	21 NCAC 68 .0206	Amend
Continuing Education Required for Counselor and	21 NCAC 68 .0208	Amend
Process for Clinical Supervisor Certification	21 NCAC 68 .0211	Amend
Process for Residential Facility Director Certific	21 NCAC 68 .0212	Amend
Continuing Education School Curricula Approval	21 NCAC 68 .0214	Amend
Verification	21 NCAC 68 .0215	Amend
Definitions	21 NCAC 68 .0302	Repeal
Certification Requirements for Individual Applicant	21 NCAC 68 .0305	Amend
Renewal of Individual Certification as Clinical	21 NCAC 68 .0306	Amend
Proof of Rehabilitation	21 NCAC 68 .0611	Adopt
Publication of Ethics Sanctions	21 NCAC 68 .0620	Adopt

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**AGENDA**  
**RULES REVIEW COMMISSION**  
**March 21, 2002**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
  - A. DHHS/Commission for MH/DD/SAS – 10 NCAC 14J .0201; .0204; .0205; .0207 Continued on request of agency (DeLuca)
  - B. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14P .0102 Continued on request of agency (DeLuca)
  - C. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14Q .0303 Continued on request of agency (DeLuca)

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- D. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14R .0101; .0105 Continued on request of agency (DeLuca)
- E. DHHS/ Commission for MH/DD/SAS – 10 NCAC 14V .0208; .0304; .0801; .0802; .0803; .6002 Continued on request of agency (DeLuca)
- F. Commission for the Blind - 10 NCAC 19A .0601; .0602 Objection 2/21/02 (Bryan)
- G. Commission for the Blind – 10 NCAC 19C .0207; .0209 .0309; .0311 .0410; .0504 .0511 .0607; .0701; .0702; .0704 Objection 2/21/02 (Bryan)
- H. Commission for the Blind – 10 NCAC 19G .0105; .0107; .0805; .0806 Objection 2/21/02 (Bryan)
- I. Commission for the Blind – 10 NCAC 19H .0102; .0103 Objection 2/21/02 (Bryan)
- J. NC Sheriffs’ Education & Training Standards – 12 NCAC 10B 12 NCAC 10B .0301; .0305; .0705; .0706; .0707; .0708; .0710; .0711; .0712 Objection 2/21/02 (Bryan)
- K. DENR/Environmental Management Commission – 15A NCAC 2H .0802; .0803 .0805 Objection 2/21/02 (DeLuca)
- L. DENR/Soil and Water Conservation Commission – 15A NCAC 6E .0103 Objection on 12/20/01 (Bryan)
- M. NC Acupuncture Licensing Board – 21 NCAC 1 .0301 Objection 2/21/02 (DeLuca)
- N. NC Board of Pharmacy – 21 NCAC 46 .1814 Objection 2/21/02 (DeLuca)
- O. NC Respiratory Care Board – 21 NCAC 61 .0201; .0202; .0304; .0305; .0307; .0401 Objection 2/21/02 DeLuca
- IV. Review of rules (Log Report #185)
- V. Commission Business
- VI. Next meeting: Thursday, April 18, 2002

## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.*

### OFFICE OF ADMINISTRATIVE HEARINGS

#### Chief Administrative Law Judge

JULIAN MANN, III

#### Senior Administrative Law Judge

FRED G. MORRISON JR.

### ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
C's Mini-Mart, Camille Stephens v. NC ABC Commission and City of Charlotte	00 ABC 1264	Lassiter	06/08/01	
NC ABC Commission v. Benjamin Franklin Black, B and M Convenience	01 ABC 0663	Morrison	07/23/01	
Deleon Christopher Izi v. NC Alcoholic Beverage Control Commission	01 ABC 0709	Gray	10/11/01	
NC Alcoholic Beverage Control Commission v. Henry Rudolph Brake T/A Horsin Around Country Club	01 ABC 0811	Lassiter	08/13/01	
NC ABC Commission v. James Okwudili Nwizu, T/A Sahara Mini Mart	01 ABC 1209	Elkins	02/01/02	
<b><u>BOARD OF MORTUARY SCIENCE</u></b>				
NC Board of Mortuary Science v. Beasley's Funeral Home, Inc., Odell Beasley, Crystal Beasley-Walker	00 BMS 0469	Mann	07/17/01	
Board of Mortuary Science v. Hunter Funeral Home & Julius Hunter	00 BMS 0505	Reilly	11/01/00	
NC Board of Mortuary Science v. Robert Breece, Jr., and Osborne Owens and Rogers and Breece Funeral Home	00 BMS 1763	Morrison	08/22/01	
NC Board of Mortuary Science v. Kyle Garret Peacock, Philip Smoak and Peggy Peacock	01 BMS 0298	Lassiter	09/20/01	
<b><u>BOARD OF GEOLOGISTS</u></b>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<b><u>CRIME CONTROL AND PUBLIC SAFETY</u></b>				
Georgina Joyner v. NC Crime Victims Compensation Commission	95 CPS 0359	Gray	10/23/01	
Jerry W. Taylor v. NC Victims Compensation Commission	00 CPS 1052	Gray	05/23/01	
Clarence Forney v. NC Crime Victims Compensation Commission	00 CPS 1994	Elkins	10/11/01	
Sheree D Sirotnak v. NC Crime Victims Compensation Commission	00 CPS 2209	Wade	06/14/01	
Eddie N McLaughlin v. NC Crime Victims Compensation Commission	01 CPS 0086	Elkins	06/05/01	
Ricardo Darnell Jones v. NC Crime Victims Compensation Commission	01 CPS 0242	Elkins	02/01/02	
Marie King Cutler v. NC Crime Victims Compensation Commission	01 CPS 0926	Gray	01/28/02	
Bobby Holmes, Jr. v. NC Crime Victims Compensation Commission	01 CPS 1095	Gray	10/09/01	
John R. Ackerman v. NC State Highway Patrol	01 CPS 1327	Morrison	09/24/01	
David Nixon v. NC Crime Victims Compensation Commission	01 CPS 1330	Elkins	02/01/02	16:18 NCR 2055
Edna Hunt v. NC Crime Victims Compensation Commission	01 CPS 1434	Chess	01/10/02	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
Gregory Keith Millican v. NC DHHS, Div of Social Svcs, CSE Section	99 CRA 1008	Gray	10/12/01	
David P. Lemieux v. Department of Health & Human Services	01 CRA 0428	Gray	06/05/01	
Clayton E Reeves v. Department of Health & Human Services	01 CRA 0773 <sup>2</sup>	Elkins	08/16/01	
Gerald Pelletier III v. Department of Health & Human Services	01 CRA 0882	Morrison	07/19/01	
Anthony B Smaling v. Department of Health & Human Services	01 CRA 0993	Conner	08/07/01	
Angelo Terry, Jr. v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1294	Wade	10/25/01	
Ronald A. Kaye v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1380	Lassiter	01/15/02	
Christopher Beauchamp v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1688	Wade	02/04/02	
Daryle M McLaughlin v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1726	Elkins	01/08/02	
James A Altizer v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 1884	Morrison	01/08/02	
Mathis Raye Sessoms v. NC DHHS, Div. of Social Svcs., CSE Section	01 CRA 2023	Chess	02/06/02	

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**Child Support Enforcement Section**

Sandra Ferrell Miller v. Department of Health & Human Services	99 CSE 1390	Gray	10/24/01
Asuncion I. Crawford v. Department of Health & Human Services	99 CSE 1398	Mann	11/16/01
Rafael Leon Garcia v. Department of Health & Human Services	99 CSE 1460	Mann	10/31/01
Ozeal E Hinton v. Department of Health & Human Services	99 CSE 1712	Mann	02/13/02
John F McCollum v. Department of Health & Human Services	00 CSE 0252	Gray	07/18/01
James J. Murphy v. Department of Health & Human Services	00 CSE 0320	Morrison	09/28/01
Winston Shell v. Department of Health & Human Services	00 CSE 0340	Gray	12/21/01
Willie Montgomery v. Department of Health & Human Services	00 CSE 0379	Gray	10/11/01
Deidra Dawn Andrews v. Department of Health & Human Services	00 CSE 0382	Morrison	09/13/01
Steven D Hamrick v. Department of Health & Human Services	00 CSE 0383	Lassiter	09/17/01
Gregory Kent Cranford v. Department of Health & Human Services	00 CSE 0392	Chess	11/30/01
Theillie Paul Casper v. Department of Health & Human Services	00 CSE 0587	Mann	10/12/01
Melvin Lewis Smith v. Department of Health & Human Services	00 CSE 0597	Chess	02/06/02
Darrell J Kiser v. Department of Health & Human Services	00 CSE 0610	Lassiter	02/14/02
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Bryant Harold Silance v. Department of Health & Human Services	00 CSE 0740	Gray	02/01/02
Wade R Locklear v. Department of Health & Human Services	00 CSE 0872	Lassiter	01/08/02
Robert D Goodman v. Department of Health & Human Services	00 CSE 1083	Conner	11/26/01
Bickett Fort v. Department of Health & Human Services	00 CSE 1169	Mann	08/10/01
Gary E Ligon v. Department of Health & Human Services	00 CSE 1344	Morrison	09/20/01
Ronnie Chapman v. Department of Health & Human Services	00 CSE 1367	Conner	11/20/01
Gerald L. Coker v. Department of Health & Human Services	00 CSE 1396	Morrison	08/29/01
Sharon Tucker v. Department of Health & Human Services	00 CSE 1530	Morrison	11/27/01
William E Kurn v. Department of Health & Human Services	00 CSE 1544	Morrison	11/16/01
Marvin Gay Adams v. Department of Health & Human Services	00 CSE 1550	Wade	09/18/01
Marvin R Thorpe Sr v. Department of Health & Human Services	00 CSE 1570	Morrison	12/04/01
Dean E McCall v. Department of Health & Human Services	00 CSE 1575	Conner	10/04/01
Robert Boening v. Department of Health & Human Services	00 CSE 1583	Morrison	10/31/01
Edward Cozart v. Department of Health & Human Services	00 CSE 1594	Gray	09/14/01
Rita Caperoon v. Department of Health & Human Services	00 CSE 1597	Lassiter	08/27/01
Walter Chambers v. Department of Health & Human Services	00 CSE 1610	Conner	01/09/02
Trina Player v. Department of Health & Human Services	00 CSE 1611	Wade	10/22/01
Robert B McKay v. Department of Health & Human Services	00 CSE 1620	Gray	09/14/01
Thomas L Larison v. Department of Health & Human Services	00 CSE 1649	Mann	10/29/01
Christopher E Tann v. Department of Health & Human Services	00 CSE 1652	Wade	02/21/02
Gary E Barker v. Department of Health & Human Services	00 CSE 1659	Mann	09/26/01
Mettie Hansley v. Department of Health & Human Services	00 CSE 1673	Morrison	08/24/01
David K. Rose v. Department of Health & Human Services	00 CSE 1681	Gray	06/05/01
Bruce E Carpenter v. Department of Health & Human Services	00 CSE 1683	Morrison	10/31/01
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Jarvis Williams v. Department of Health & Human Services	00 CSE 1712	Wade	10/22/01
Jerry McLean v. Department of Health & Human Services	00 CSE 1725	Mann	09/13/01
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Michael Worthy v. Department of Health & Human Services	00 CSE 1756	Wade	09/18/01
Eduardo R Miranda v. Department of Health & Human Services	00 CSE 1768	Wade	09/18/01
Jacqueline Land v. Department of Health & Human Services	00 CSE 1773	Morrison	11/05/01
William Baxter v. Department of Health & Human Services	00 CSE 1776	Wade	05/30/01
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Jason Cline v. Department of Health & Human Services	00 CSE 1804	Gray	11/14/01
Larry J Thompson v. Department of Health & Human Services	00 CSE 1824	Morrison	12/18/01
John N. Pullium v. Department of Health & Human Services	00 CSE 1829	Chess	11/21/01
Walter Columbus Simmons v. Department of Health & Human Services	00 CSE 1831	Gray	10/10/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1835 <sup>1</sup>	Wade	05/30/01
Manargo Victor Boykin v. Department of Health & Human Services	00 CSE 1837 <sup>1</sup>	Wade	05/30/01
Larry W Kiser v. Department of Health & Human Services	00 CSE 1840	Gray	06/08/01
Rodney K Green Sr. v. Department of Health & Human Services	00 CSE 1851	Gray	02/13/02
Jason Parker v. Department of Health & Human Services	00 CSE 1853	Morrison	08/02/01
Michael A Gresham Sr. v. Department of Health & Human Services	00 CSE 1862	Gray	06/28/01
Allen K. Galloway v. Department of Health & Human Services	00 CSE 1883	Morrison	12/06/01
Jeffery W Sisk v. Department of Health & Human Services	00 CSE 1884	Lassiter	11/28/01
Barbara J Stacy v. Department of Health & Human Services	00 CSE 1903	Lassiter	09/17/01
Michael N Brack v. Department of Health & Human Services	00 CSE 1904	Lassiter	07/02/01
Robert E Scott v. Department of Health & Human Services	00 CSE 1907	Chess	02/06/02
Gregory C McCauley v. Department of Health & Human Services	00 CSE 1915	Wade	08/03/01
Raymond N Strother v. Department of Health & Human Services	00 CSE 1910	Gray	07/18/01
Tamara J Mills-Cooper v. Department of Health & Human Services	00 CSE 1918	Gray	09/14/01
Donald E Scott v. Department of Health & Human Services	00 CSE 1919	Chess	08/08/01
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Paul Clayton Shepard v. Department of Health & Human Services	00 CSE 1945	Lassiter	09/20/01
Tammie Sawyer v. Department of Health & Human Services	00 CSE 1946	Gray	09/26/01
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Marcus Dontez Chavis v. Department of Health & Human Services	00 CSE 1955	Gray	10/15/01

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Robert Steven Preston v. Department of Health & Human Services	00 CSE 1958	Lassiter	06/05/01
John R Pyron v. Department of Health & Human Services	00 CSE 1960	Wade	08/10/01
Richard Stevens Jr. v. Department of Health & Human Services	00 CSE 1965	Morrison	08/07/01
Angela Wells v. Department of Health & Human Services	00 CSE 1967	Morrison	08/21/01
Bobby R. Mayo v. Department of Health & Human Services	00 CSE 1969	Conner	07/09/01
Steven Gregory Hotz v. Department of Health & Human Services	00 CSE 1978	Chess	07/24/01
Scott S Jacobs v. Department of Health & Human Services	00 CSE 1977	Conner	01/08/02
Sylvia J Walter v. Department of Health & Human Services	00 CSE 1983	Wade	10/22/01
Eugene Little v. Department of Health & Human Services	00 CSE 1995	Gray	10/11/01
Howard Jacobs v. Department of Health & Human Services	00 CSE 1996	Morrison	11/05/01
April Cheeseman v. Department of Health & Human Services	00 CSE 2000	Wade	10/11/01
Terry Jacobs v. Department of Health & Human Services	00 CSE 2004	Lassiter	10/11/01
Robert Scot Pope v. Department of Health & Human Services	00 CSE 2014	Gray	11/14/01
William Kay v. Department of Health & Human Services	00 CSE 2060	Conner	07/20/01
Patrick L Merrick v. Department of Health & Human Services	00 CSE 2061	Chess	07/12/01
Luther I Gore v. Department of Health & Human Services	00 CSE 2062	Gray	08/15/01
Jeffrey D Lain v. Department of Health & Human Services	00 CSE 2075	Lassiter	01/08/02
Darlene S Roush v. Department of Health & Human Services	00 CSE 2102	Gray	10/11/01
David Diaz v. Department of Health & Human Services	00 CSE 2149	Gray	09/21/01
Jerome Maddox v. Department of Health & Human Services	00 CSE 2153	Wade	08/07/01
Mario C Crank v. Department of Health & Human Services	00 CSE 2172	Conner	11/26/01
Dennis Cunningham v. Department of Health & Human Services	00 CSE 2183	Conner	11/26/01
Toney Cooper v. Department of Health & Human Services	00 CSE 2214	Gray	09/06/01
Winston H Powell v. Department of Health & Human Services	00 CSE 2274	Wade	05/30/01
Kendall L Taylor v. Department of Health & Human Services	00 CSE 0032	Conner	06/08/01
Toni M Rash v. Department of Health & Human Services	01 CSE 0040	Wade	10/02/01
Sue Diane Lambert v. Department of Health & Human Services	01 CSE 0069	Wade	07/13/01
Harlie J Turner v. Department of Health & Human Services	01 CSE 0095	Morrison	09/26/01
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Michael Jarvis v. Department of Health & Human Services	01 CSE 0173	Wade	08/06/01
Samuel E Taylor v. Department of Health & Human Services	01 CSE 0181	Conner	06/08/01
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Randall Blevins v. Department of Health & Human Services	01 CSE 0258	Gray	06/05/01
Jason O Smith v. Department of Health & Human Services	01 CSE 0266	Mann	07/19/01
Richard Brooks v. Department of Health & Human Services	01 CSE 0269	Wade	06/25/01
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Ronnie William Foster v. Department of Health & Human Services	01 CSE 0280	Chess	07/09/01
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Cantabile Jones v. Department of Health & Human Services	01 CSE 0357	Chess	07/06/01
Arlene Locklear v. Department of Health & Human Services	01 CSE 0358	Conner	07/20/01
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Dennis E Chardavoyne v. Department of Health & Human Services	01 CSE 0432	Elkins	06/05/01
Luther W Covington v. Department of Health & Human Services	01 CSE 0438	Conner	07/20/01
Carl Franklin Slep v. Department of Health & Human Services	01 CSE 0449	Morrison	07/12/01
Tennis Lee Perry v. Department of Health & Human Services	01 CSE 0450	Chess	07/06/01
Richard E Roberts Jr. v. Department of Health & Human Services	01 CSE 0461	Wade	07/12/01
David Wilson v. Department of Health & Human Services	01 CSE 0463	Conner	07/20/01
Henry L Elliotte v. Department of Health & Human Services	01 CSE 0491	Lassiter	06/05/01
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Steven Rodger Malysz v. Department of Health & Human Services	01 CSE 0649	Gray	06/05/01
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Christopher R Miller v. Department of Health & Human Services	01 CSE 0678	Lassiter	07/19/01
Larry O Anthony v. Department of Health & Human Services	01 CSE 0681	Lassiter	07/30/01
Dennis Green v. Department of Health & Human Services	01 CSE 0682	Gray	08/02/01
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Nehemiah Patrick Holliday, Jr. v. Department of Health & Human Services	01 CSE 0764	Morrison	08/16/01
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Daren L Keyes v. Department of Health & Human Services	01 CSE 1017	Elkins	09/27/01
Michael V Hudson v. Department of Health & Human Services	01 CSE 1020	Wade	12/03/01
James W Quick v. Department of Health & Human Services	01 CSE 1044	Conner	08/07/01
Elijah Saunders v. Department of Health & Human Services	01 CSE 1052	Gray	08/02/01
Leonard Campbell v. Department of Health & Human Services	01 CSE 1062	Morrison	10/10/01
Franklyn A Barrera v. Department of Health & Human Services	01 CSE 1070	Lassiter	10/09/01
Michael W Campbell v. Department of Health & Human Services	01 CSE 1077	Mann	10/09/01
Richard W Spencer v. Department of Health & Human Services	01 CSE 1085	Elkins	10/05/01
Bobby D Cooper v. Department of Health & Human Services	01 CSE 1087	Wade	08/10/01
Christopher T Middleton v. Department of Health & Human Services	01 CSE 1131	Gray	09/06/01
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Calvin D Alston v. Department of Health & Human Services	01 CSE 1143	Lassiter	10/09/01
Petre Capraru v. Department of Health & Human Services	01 CSE 1145	Morrison	08/28/01
David Diaz v. Department of Health & Human Services	01 CSE 1150	Elkins	09/13/01
Michael K Seaman v. Department of Health & Human Services	01 CSE 1157	Wade	08/29/01
Eugene J McIntosh v. Department of Health & Human Services	01 CSE 1173	Gray	11/26/01
Glenn R Lail v. Department of Health & Human Services	01 CSE 1183	Morrison	11/02/01
Ernest L Shine v. Department of Health & Human Services	01 CSE 1191	Lassiter	10/31/01
Darnell Walker v. Department of Health & Human Services	01 CSE 1201	Elkins	10/31/01
Timothy Williams v. Department of Health & Human Services	01 CSE 1218	Conner	02/19/02
James Ray Wyatt v. Department of Health & Human Services	01 CSE 1262	Morrison	11/05/01
Thomas M Birdwell, III v. Department of Health & Human Services	01 CSE 1367	Chess	10/09/01

<sup>3</sup> Combined Cases  
<sup>2</sup> Combined Cases  
<sup>4</sup> Combined Cases

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Alvin E Jenkins v. Department of Health & Human Services	01 CSE 1371	Gray	12/21/01
Vincent Earl Sharpe v. Department of Health & Human Services	01 CSE 1375	Morrison	11/16/01
Corey Jones v. Department of Health & Human Services	01 CSE 1384	Elkins	11/02/01
Jennings Butler v. Department of Health & Human Services	01 CSE 1421	Wade	10/22/01
Christopher A Barrow v. Department of Health & Human Services	01 CSE 1494	Chess	10/22/01
Timothy C Autry v. Department of Health & Human Services	01 CSE 1532	Gray	10/31/01
Mary Lanz v. Department of Health & Human Services	01 CSE 1549	Morrison	11/28/01
Joseph Armstrong Jr. v. Department of Health & Human Services	01 CSE 1582	Lassiter	01/29/02
Joseph Patrick Santana v. Department of Health & Human Services	01 CSE 1583	Morrison	01/29/02
Thomas Bernard Boykin v. Department of Health & Human Services	01 CSE 1613	Conner	01/08/02
Jerry O'Daniel Rogers v. Department of Health & Human Services	01 CSE 1614	Morrison	01/08/02
Robert Purvis v. Department of Health & Human Services	01 CSE 1618	Lassiter	01/15/02
Randy E Jackson v. Department of Health & Human Services	01 CSE 1619	Elkins	01/08/02
Timothy R Moss v. Department of Health & Human Services	01 CSE 1620	Wade	01/11/02
Samuel E Massenbergr Jr. v. Department of Health & Human Services	01 CSE 1626	Gray	01/30/02
Craig W Armstrong v. Department of Health & Human Services	01 CSE 1627	Gray	01/23/02
Byron K Williams v. Department of Health & Human Services	01 CSE 1630	Morrison	01/29/02
Hollis Nelson Leak v. Department of Health & Human Services	01 CSE 1631	Lassiter	01/29/02
Stacey A Lucas v. Department of Health & Human Services	01 CSE 1632	Wade	01/17/02
Allen Johnson v. Department of Health & Human Services	01 CSE 1633	Elkins	01/24/02
Ralph Head v. Department of Health & Human Services	01 CSE 1634	Wade	02/13/02
James M Summers v. Department of Health & Human Services	01 CSE 1635	Conner	01/29/02
Adolphus Cates v. Department of Health & Human Services	01 CSE 1636	Chess	01/14/02
Frank M Thompson v. Department of Health & Human Services	01 CSE 1637	Gray	01/30/02
David Patterson v. Department of Health & Human Services	01 CSE 1643	Chess	01/14/02
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James Toney Lee v. Department of Health & Human Services	01 CSE 1657	Morrison	01/31/02
Maurice Nixon v. Department of Health & Human Services	01 CSE 1658	Elkins	02/20/02
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Demetrik Joyce v. Department of Health & Human Services	01 CSE 1667	Conner	01/16/02
Ronnie Smith v. Department of Health & Human Services	01 CSE 1683	Gray	02/13/02
Terry Melvin v. Department of Health & Human Services	01 CSE 1685	Lassiter	02/22/02
Jerry L McMasters v. Department of Health & Human Services	01 CSE 1689	Conner	01/29/02
Kenneth A Robinson v. Department of Health & Human Services	01 CSE 1697	Mann	01/23/02
Alphonzo Gee v. Department of Health & Human Services	01 CSE 1698	Morrison	02/15/02
Daniel L Eastman v. Department of Health & Human Services	01 CSE 1704	Elkins	02/13/02
Ryan D Carlyon v. Department of Health & Human Services	01 CSE 1705	Wade	02/15/02
Thomas A Resper v. Department of Health & Human Services	01 CSE 1708	Gray	02/13/02
Shannon Gayle Glass v. Department of Health & Human Services	01 CSE 1710	Morrison	02/12/02
Tommie Lee Rozier v. Department of Health & Human Services	01 CSE 1715	Lassiter	01/08/02
Jody Hineline v. Department of Health & Human Services	01 CSE 1716	Morrison	02/12/02
Richard C Hummel v. Department of Health & Human Services	01 CSE 1717	Elkins	01/08/02
Jerry Wayne Hord v. Department of Health & Human Services	01 CSE 1719	Conner	02/19/02
Jesse J Case v. Department of Health & Human Services	01 CSE 1724	Lassiter	01/29/02
Richard P Thomas v. Department of Health & Human Services	01 CSE 1728	Wade	02/13/02
Alton Jackie Mathis v. Department of Health & Human Services	01 CSE 1729	Conner	02/19/02
Joseph Bilello v. Department of Health & Human Services	01 CSE 1733	Gray	01/30/02
Kevin Todd Sigmon v. Department of Health & Human Services	01 CSE 1735	Morrison	01/14/02
Stephen M Robson v. Department of Health & Human Services	01 CSE 1736	Lassiter	01/23/02
Kenneth W Tucker Jr v. Department of Health & Human Services	01 CSE 1745	Conner	02/19/02
Benjamin O Smith Jr v. Department of Health & Human Services	01 CSE 1751	Wade	02/13/02
Jackie Maurice Chambers v. Department of Health & Human Services	01 CSE 1756	Gray	01/30/02
Nathaniel D Mowbray v. Department of Health & Human Services	01 CSE 1757	Conner	01/22/02
Calvin B Icard v. Department of Health & Human Services	01 CSE 1760	Morrison	12/17/01
Ivey L Chavis v. Department of Health & Human Services	01 CSE 1766	Conner	01/29/02
Ambrose Covington II v. Department of Health & Human Services	01 CSE 1767	Morrison	01/29/02
Eric T Littlejohn v. Department of Health & Human Services	01 CSE 1768	Lassiter	02/18/02
Russell Grant Fenton v. Department of Health & Human Services	01 CSE 1769	Lassiter	01/23/02
Clarence David White v. Department of Health & Human Services	01 CSE 1773	Wade	02/14/02
Donnell T Garrett v. Department of Health & Human Services	01 CSE 1777	Gray	02/15/02
Kristina Hilton v. Department of Health & Human Services	01 CSE 1786	Gray	02/15/02
Kirk S Oakley v. Department of Health & Human Services	01 CSE 1789	Morrison	01/23/02
Theresa D Walker v. Department of Health & Human Services	01 CSE 1792	Elkins	02/19/02
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Christopher L Mason v. Department of Health & Human Services	01 CSE 1835	Conner	02/20/02
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Thomas L Pittman v. Department of Health & Human Services	01 CSE 1839	Gray	01/11/02
Samuel L Watts v. Department of Health & Human Services	01 CSE 1841	Morrison	02/15/02
Jeffery Dion Stone v. Department of Health & Human Services	01 CSE 1842	Lassiter	02/15/02
Mark T Shaw v. Department of Health & Human Services	01 CSE 1843	Lassiter	01/23/02
William Boghosian v. Department of Health & Human Services	01 CSE 1844	Elkins	02/19/02
Donald Bolding v. Department of Health & Human Services	01 CSE 1845	Wade	02/21/02
Kenneth Barrow v. Department of Health & Human Services	01 CSE 1846	Conner	02/20/02
Melinda Davis Bell v. Department of Health & Human Services	01 CSE 1850	Morrison	01/29/02

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Curtis Byrd v. Department of Health & Human Services	01 CSE 1865	Lassiter	02/20/02
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Kirk R Hanson v. Department of Health & Human Services	01 CSE 1876	Morrison	02/19/02
Norman L Conyers v. Department of Health & Human Services	01 CSE 1882	Gray	02/19/02
William A Bounds v. Department of Health & Human Services	01 CSE 1886	Lassiter	02/20/02
Christopher L Winstead v. Department of Health & Human Services	01 CSE 1887	Lassiter	02/20/02
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James A Caldwell v. Department of Health & Human Services	01 CSE 1895	Wade	02/21/02
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Alan W Wells v. Department of Health & Human Services	01 CSE 1914	Gray	02/19/02
David R McDonald v. Department of Health & Human Services	01 CSE 1916	Wade	02/14/02
Jerrold T Washington v. Department of Health & Human Services	01 CSE 1918	Lassiter	02/20/02
Anthony Reed v. Department of Health & Human Services	01 CSE 1922	Conner	01/24/02
Steven Manseau v. Department of Health & Human Services	01 CSE 1937	Elkins	01/24/02
Peter D LaDolcetta v. Department of Health & Human Services	01 CSE 1938	Elkins	02/20/02
James Joseph Murphy v. Department of Health & Human Services	01 CSE 1940	Conner	02/19/02
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Shawn M Aiken v. Department of Health & Human Services	01 CSE 1965	Gray	02/19/02
William H Bailey v. Department of Health & Human Services	01 CSE 1967	Wade	02/21/02
Jack D Mitchell v. Department of Health & Human Services	01 CSE 1970	Gray	02/19/02
Robert Christopher Williams v. Department of Health & Human Services	01 CSE 1971	Wade	02/21/02
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Anthony D Matsey v. Department of Health & Human Services	01 CSE 1977	Gray	01/23/02
Allen R Hand v. Department of Health & Human Services	01 CSE 1987	Elkins	02/20/02
Richard M Tyler Jr v. Department of Health & Human Services	01 CSE 1993	Gray	02/19/02
Robert C Kleszynski v. Department of Health & Human Services	01 CSE 1995	Morrison	02/19/02
Bobby Ray Walker v. Department of Health & Human Services	01 CSE 1996	Lassiter	02/20/02
John David Bradey v. Department of Health & Human Services	01 CSE 1997	Conner	02/20/02
Robert Lee Bowden v. Department of Health & Human Services	01 CSE 1998	Elkins	02/20/02
Stuart Worsman v. Department of Health & Human Services	01 CSE 1999	Wade	02/21/02
Richard D Bogan v. Department of Health & Human Services	01 CSE 2015	Morrison	01/23/02
Sharon Rose Haper v. Department of Health & Human Services	01 CSE 2024	Gray	02/19/02
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Lou A Gibbs v. Department of Health & Human Services	01 CSE 2055	Morrison	02/12/02
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Eugene Emanuel v. Department of Health & Human Services	01 CSE 2066	Morrison	02/19/02
Fredrick Murray v. Department of Health & Human Services	01 CSE 2073	Chess	02/06/02
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Anthony Piskura v. Department of Health & Human Services	01 CSE 2138	Lassiter	02/14/02
Darryl Lawrence v. Department of Health & Human Services	01 CSE 2227	Morrison	02/12/02
Lee Mathis v. Department of Health & Human Services	01 CSE 2263	Elkins	02/13/02
Luis D Paulino v. Department of Health & Human Services	01 CSE 2337	Chess	02/06/02
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James Purnell Jr. v. Department of Health & Human Services	00 DCS 0360	Lassiter	10/16/01
Carolyn Wade v. Department of Health & Human Services	00 DCS 0361	Mann	02/04/02
Bettie R. Lloyd v. Department of Health & Human Services	00 DCS 0550	Conner	11/26/01
Pandora M. Humphries v. Department of Health & Human Services	00 DCS 0987	Conner	01/08/02
Martha Hamilton v. Department of Health & Human Services	00 DCS 1034	Conner	01/08/02
Flossie S McCoy v. Department of Health & Human Services	00 DCS 2152	Lassiter	12/13/01
Connie C Rodriguez v. Department of Health & Human Services	01 DCS 0031	Wade	01/14/02
Cassandra Parrish v. Department of Health & Human Services	01 DCS 0701	Chess	10/03/01
Constance Drye v. Department of Health & Human Services	01 DCS 0707	Wade	06/25/01
Linda Warren v. Department of Health & Human Services	01 DCS 0803	Conner	08/17/01
LaVonya Ann Goods v. Department of Health & Human Services	01 DCS 0819	Lassiter	07/12/01
Kechia Bonita Howell v. Department of Health & Human Services	01 DCS 0848	Elkins	09/13/01
Faye D Brown v. Department of Health & Human Services	01 DCS 0923	Lassiter	07/19/01
Sheree R Jenkins v. Department of Health & Human Services	01 DCS 1051	Chess	07/24/01
Sharon McLean v. Department of Health & Human Services	01 DCS 1288	Lassiter	11/05/01
Stanley Ray Cash v. Department of Health & Human Services	01 DCS 1584	Elkins	12/14/01
Kelly M Troxel v. Department of Health & Human Services	01 DCS 1910	Elkins	01/09/02
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Stacie Thompson v. Department of Health & Human Services	01 DCS 2166	Wade	02/04/02

### CULTURAL RESOURCES

Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01
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### HEALTH AND HUMAN SERVICES

Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1077 <sup>3</sup>	Wade	08/16/01
Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1324 <sup>3</sup>	Wade	08/16/01
Salinda Smith v. NC Department of Health & Human Services	00 DHR 1779	Mann	09/20/01
Kenneth E. Frost v. DHHS, Julian F. Keith, ADATC	00 DHR 2278	Conner	07/30/01



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Ruby L Laughter v. Dept. of Health & Human Services	01 DHR 0108	Gray	06/29/01
Donna Ray Snow v. NC Dept. of Health & Human Services	01 DHR 0122	Gray	11/27/01
Merle Marie Kemp v. DHHR, Div. of Child Development	01 DHR 0207	Reilly	11/01/01
Renita Lewis-Walters v. (ADATC), Dept. of Health & Human Services	01 DHR 0286	Morrison	06/08/01
Thomas M Poole v. Dept. of Health & Human Services	01 DHR 0335	Lassiter	07/26/01
Terry Westmoreland v. John Umstead Hospital	01 DHR 0392	Elkins	08/15/01
Duane E McCoyle v. DHHS, Broughton Hospital	01 DHR 0398	Wade	06/19/01
Lara Beth Henrick v. DHHS, Dorothea Dix Hospital	01 DHR 0409	Mann	07/19/01
Terry W Hartsoe v. NC Dept. of Health & Human Services	01 DHR 0420	Chess	07/06/01
Richard L Foster, Reansia M Foster v. DHHS, Broughton Hospital	01 DHR 0454	Wade	06/25/01
Yvonne D Cole v. Cherry Hospital, Brenda Wells	01 DHR 0502	Morrison	07/23/01
Cheryl Holloway v. DHHS, Health Care Register	01 DHR 0513	Morrison	07/27/01
Gary Keys v. NC DHHS, Jones Co. Dept. of Social Services	01 DHR 0524	Conner	11/07/01
Adam Query Fisher, Jr. v. DHHS, Julian F Keith, ADATC	01 DHR 0559	Wade	06/19/01
Dennis E Partridge v. DHHS, Julian F Keith, ADATC	01 DHR 0560	Wade	06/19/01
Eunice L Walden v. NC DHHS	01 DHR 0589	Gray	09/11/01
Robert W Dietz & wife, Iris Dietz v. NC Dept. of Health & Human Svcs.	01 DHR 0603	Wade	10/11/01
Eric L Belton v. Dept. of Health & Human Services, ADATC	01 DHR 0610	Lassiter	06/04/01
Tawn Milteer-Elleber v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01
Charles Anthony Tart v. DHHS, Walter B Jones, ADATC	01 DHR 0665	Lassiter	06/22/01
Mable Barnes, CNA v. DHHS	01 DHR 0714	Conner	09/14/01
Calvin Lucas v. Butner Alcohol & Drug Abuse Treatment Center	01 DHR 0738	Morrison	07/02/01
Mollie Williams v. Dept. of Health & Human Services	01 DHR 0753	Conner	07/10/01
Elveter Johnson v. Office of Administrative Hearings	01 DHR 0779	Gray	08/16/01
Fannie Brown v. Caswell Center Healthcare Personnel Registry	01 DHR 0780	Gray	07/02/01
Helen Yoo, Happy Hill Garden v. NC Dept. of Public Health & Human Svcs.	01 DHR 0781	Conner	09/18/01
Mrs. Felicia Lash Moore v. NC DHHS	01 DHR 0784	Elkins	11/13/01
Margaret Rinkel Sanderlin v. NC Dept. of Health & Human Services	01 DHR 0831	Conner	09/12/01
Donovan Rogers v. Dept. of Health & Human Services	01 DHR 0840	Conner	09/19/01
Monique S. Wearren v. NC Dept. of Health & Human Services	01 DHR 0841	Conner	09/04/01
Donna Faye Smith v. Department of Human Resources	01 DHR 0887	Mann	11/02/01
Robert & Shirley Harmon on behalf of Gary Harmon v. NC DMH/DD/SAS	01 DHR 0955	Chess	06/25/01
Edward D Connor v. Dept. of Health & Human Services	01 DHR 0978	Chess	07/05/01
Subrenia Fillyow v. NC Dept. of Human Resources	01 DHR 0996	Lassiter	08/16/01
Portia A Davis v. Dept. of Health & Human Services	01 DHR 1055	Mann	08/06/01
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Shirley A Johnson v. Social Services, State Taxes	01 DHR 1126	Wade	09/19/01
Janet Elizabeth King v. Dept. of Health & Human Services	01 DHR 1185	Morrison	09/11/01
Denise Reed v. NC Dept. of Health and Human Services	01 DHR 1252	Gray	11/26/01
Amanda L. Hulin v. NC Nurse Aide Registry, Centerclair Nursing Facility	01 DHR 1253	Chess	11/30/01
David C Spence v. Walter B Jones, ADATC & NC DHHS	01 DHR 1261	Elkins	10/24/01
Arnetta Thomas v. NC Department of Health & Human Services	01 DHR 1264	Wade	10/26/01
Sadina Hall v. Carolina House & NC Nurse Aide Registry	01 DHR 1274	Conner	01/10/02
Terrie & Randy Williams v. Martin Co. DSS – Williamston, NC; Nikki Danleis/Vickey Manning	01 DHR 1278	Lassiter	12/20/01
Sallye A. Hardy, Rocker Room Child Care v. Yvetter Pollock, Dare Co. DSS	01 DHR 1335	Chess	12/11/01
Juanita D Blevins v. NC DHHS	01 DHR 1341	Conner	02/13/02
Lisa Dupree v. The State Board of Nurse Aid, Debbie Hockaday	01 DHR 1343	Mann	10/12/01
USA Grocery Store, Yousif Alezi v. NC DHHS	01 DHR 1350	Chess	12/13/01
Annette Camilla Adams v. Department of Health & Human Services	01 DHR 1353	Chess	01/09/02
Michael R Tilley, Tina W Tilley v. NC DHHS	01 DHR 1387	Lassiter	02/15/02
Constance Lindsey v. The Nurse Aid I Registry	01 DHR 1425	Gray	10/26/01
Adrienne McSween v. DHR, R Marcus Lodge, Gen. Counsel	01 DHR 1443	Morrison	10/10/01
Great Am. Foods, Inc. Anan About v. DHHS, WIC Program	01 DHR 1468	Wade	10/11/01
Kevin Andrew Coleman v. Dept Social Svce, Lexington, NC	01 DHR 1479	Mann	12/13/01
Daniel Repert v. The Guilford Center (The State DMH/DD/SAS	01 DHR 1562	Mann	12/10/01
Sadio-Tene Lloyd (for client TiNesha Booker) v. The Guilford Center/Child Authorization Team/The State DMH/DD/SAS	01 DHR 1577	Mann	11/15/01
Anissa Burchette v. NC DHHS, Health Care Personnel Registry	01 DHR 2148	Mann	01/16/02
Woodbridge Alternative, Inc., Maxine Dunn v. Woodbridge Alternative DSS, Elizabeth Brantley	01 DHR 2396	Lassiter	02/21/02

**Division of Child Development**

Linda Thurman v. NC DHHS, Div. of Child Development	99 DHR 1695	Wade	02/04/02
Vickie L. Anderson, Camelot Academy v. DHHS, Division of Child Development	00 DHR 1270	Wade	05/22/01
Esther M Huntley, Treasurer, Rainbow Nursery Parents Club, Inc. v. DHHS, Division of Child Development	00 DHR 1419	Gray	09/24/01
Judy Woods Days Care v. DHHS, Div. of Child Development	01 DHR 0084	Wade	10/05/01
Shirley Campbell, Shirley's Development Center v. State of NC Dept. of Human Resources, Div. of Child Development	01 DHR 0125	Chess	11/08/01
Anna Daley v. DHHS, Div. of Child Development	01 DHR 0386	Morrison	11/07/01
Tiffany D. Lott v. Div. of Child Dev., NC DHHS	01 DHR 0538	Chess	12/10/01
Sarah L Thomas, Sarah's Child Care v. Division of Child Dev.	01 DHR 0818 <sup>1</sup>	Gray	12/28/01
Sarah's Child Care Center, Inc. v. NC DHHS, Div. of Child Dev.	01 DHR 0830 <sup>1</sup>	Gray	12/28/01
Blackwell and Assoc. & Alamance Child Learning Center v. NC DHHS Div. of Child Development	01 DHR 1281	Chess	02/06/02

**Division of Medical Assistance**

<sup>1</sup> Combined Cases

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Littleton Pharmacy, Inc. James A King v. DHHS, Division of Medical Assistance, Mary J Coward	01 DHR 0835	Conner	07/12/01	
Dr. Mitchell James Lequire, PharmD Realo Drug v. DHHS, Division of Medical Assistance	01 DHR 0989	Chess	07/12/01	
<b>Division of Facility Services</b>				
Donna Kay Pittman v. DHHS, Division of Facility Services	00 DHR 0086	Overby	06/29/01	
Wendy Denise Callender v. DHHS, Division of Facility Services	00 DHR 0608	Conner	08/17/01	
Linda Gail Funke v. DHHS, Division of Facility Services	00 DHR 0625	Wade	06/04/01	
Audrey E Alston v. DHHS, Division of Facility Services	00 DHR 1017	Gray	06/14/01	
David Mull v. DHHS, Division of Facility Services	00 DHR 1495	Lassiter	06/12/01	
Ethlyne Phipps v. DHHS, Division of Facility Services	00 DHR 1505	Conner	07/26/01	
Yelton's Healthcare, Inc. v. DHHS, Division of Facility Services	00 DHR 1540	Chess	06/21/01	
Jacqueline A Alexander v. DHHS, Division of Facility Services	00 DHR 1586	Gray	06/28/01	
Debra Brown v. DHHS, Division of Facility Services	00 DHR 2009	Gray	06/28/01	
Kama Kasiah v. DHHS, Division of Facility Services	00 DHR 2203	Lassiter	09/07/01	
Dana McQueen v. DHHS, Division of Facility Services	00 DHR 2261	Elkins	06/27/01	
Peter Lynn Mosher v. DHHS, Division of Facility Services	01 DHR 0178	Mann	05/30/01	
Samuel McKinley Tugman v. DHHS, Division of Facility Services	01 DHR 0512	Gray	07/25/01	
Keysha Lynn Ragas v. DHHS, Division of Facility Services	01 DHR 0214	Wade	06/28/01	
Tabitha Perry v. DHHS, Division of Facility Services	01 DHR 0330	Mann	10/01/01	16:09 NCR 858
Tonitia Langley v. DHHS, Division of Facility Services	01 DHR 0359	Lassiter	10/16/01	
Davina Brook Grant v. DHHS, Division of Facility Services	01 DHR 0363	Conner	06/08/01	
Inez M Stephens v. DHHS, Division of Facility Services	01 DHR 0418	Morrison	09/13/01	
Tara Livingston v. DHHS, Division of Facility Services	01 DHR 0667	Conner	06/26/01	
Dogwood Forest, Nicole Faiger Blackwell v. DHHS, Div. of Fac. Services	01 DHR 0737	Conner	09/19/01	
Arlene E Jackson v. DHHS, Division of Facility Services	01 DHR 0740	Morrison	07/11/01	
Genevieve McLean v. DHHS, Division of Facility Services	01 DHR 0808	Lassiter	07/03/01	
Daphne Michelle Pressley v. DHHS, Division of Facility Services	01 DHR 0863	Morrison	07/27/01	
Stephanie M. Propst v. DHHS, Div. of Facility Services, Health Care Personnel Section	01 DHR 0899	Wade	11/20/01	
Candice J Smith v. DHHS, Division of Facility Services	01 DHR 0911	Lassiter	07/27/01	
Madge B Murray v. NC DHHS, Div. of Facility Services, Health Care Personnel Registry	01 DHR 0953	Conner	09/12/01	
Margaret Rose Hiebler v. DHHS, Division of Facility Services	01 DHR 1002	Mann	10/02/01	
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Cleo James v. DHHS, Division of Facility Services	01 DHR 1054	Conner	08/16/01	
Nora Michell Trafton v. DHHS, Division of Facility Services	01 DHR 1057	Gray	09/04/01	
Brenda Garner v. DHHS, Division of Facility Services	01 DHR 1106 <sup>9</sup>	Conner	01/24/02	
Cape Medical Transport, Inc., v. NC DHHS, Division of Facility Services	01 DHR 1160	Morrison	12/31/01	16:16 NCR 1860
Rossie Nicole Horne v. DHHS, Division of Facility Services	01 DHR 1198	Gray	10/11/01	
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Henry Monroe v. NC DHHS, Division of Facility Services	01 DHR 1306	Wade	11/16/01	
Antonio Ray v. NC DHHS, Division of Facility Services	01 DHR 1344	Gray	09/24/01	
Michelle Peebles v. NC DHHS, Division of Facility Services	01 DHR 1345	Lassiter	10/19/01	
Gloria Elaine Evans v. NC DHHS, Division of Facility Services	01 DHR 1403	Wade	02/04/02	
Katie V Parker, RN v. NC DHHS, Div. of Fac. Svcs., Adult Care Lic. Sec.	01 DHR 1423	Wade	10/17/01	
Annette Hill v. DHHS, Division of Facility Services	01 DHR 1514	Conner	01/24/02	
Alice G. Stevenson v. NC DHHS, Division of Facility Services	01 DHR 1567	Mann	12/13/01	
Anne Marie Lunsford v. NC DHHS, Division of Facility Services	01 DHR 1590	Gray	02/19/02	
Lasonya Jean Clark v. NC DHHS, Division of Facility Services, Health Care Personnel Registry Section	01 DHR 1593	Gray	02/18/02	
Caroline Peck Whitaker v. NC DHHS, Division of Facility Services	01 DHR 1595	Gray	12/28/01	
Joseph C. Turay v. DHHS, Division of Facility Services	01 DHR 1617	Elkins	01/29/02	
Desiree Scales v. DHHS, Division of Facility Services	01 DHR 1621	Conner	11/26/01	
Courtrina Dawson v. NC DHHS Division of Facility Services	01 DHR 1623	Wade	11/14/01	
Archie Kelly McNeilly v. NC DHHS, Division of Facility Services	01 DHR 1772	Gray	02/08/02	
Brenda Garner v. DHHS, Division of Facility Services	01 DHR 1809 <sup>2</sup>	Conner	01/24/02	
Vieta Ann Jamison v. DHHS, Division of Facility Services	01 DHR 1907	Chess	01/30/02	
April Michelle McGuire v. NC DHHS, Division of Facility Services	01 DHR 1935	Elkins	12/13/01	
Elizabeth Winter v. DHHS, Division of Facility Services	01 DHR 1954	Chess	01/17/02	
Angela Roberson v. DHHS, Division of Facility Services	01 DHR 2215	Lassiter	01/07/02	
Lisa Marie Burleson v. DHHS, Division of Facility Services	01 DHR 2345	Morrison	02/05/02	
<b>Division of Social Services</b>				
Delie L. Anthony v. Edgecombe Co. Dept. of Social Services Child Abuse and Neglect Dept. Tarsha McCray	01 DHR 0324	Wade	06/18/01	
Angel McDowell v. Office of Administrative Hearings	01 DHR 0370	Conner	06/05/01	
Kristie N Crabtree v. Greene County Social Services	01 DHR 0401	Lassiter	06/05/01	
Claire Diggs v. DHHS, Moore Co. Dept. of Social Services	01 DHR 0551	Elkins	08/02/01	
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John H Anderson v. Bladen County Dept. of Social Services	01 DHR 0605	Morrison	06/22/01	
Kishja Marlin v. NC DHHS, Social Svcs. Program Integrity Section	01 DHR 0634	Elkins	07/11/01	
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**ADMINISTRATION**

Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston 01 DOA 1001 Gray 08/24/01

**JUSTICE**

Deona Renna Hooper v. Co. Police Program, Co. Police Administrator 00 DOJ 2177 Wade 06/22/01

**Alarm Systems Licensing Board**

Edward James Summers v. Alarm Systems Licensing Board 01 DOJ 0352 Morrison 06/13/01  
 Joseph Brian Moses v. Alarm Systems Licensing Board 01 DOJ 0582 Wade 06/01/01  
 Arthur Eugene Corpening v. Alarm Systems Licensing Board 01 DOJ 0789 Morrison 06/13/01  
 Donny Lamor Phillips v. Alarm Systems Licensing Board 01 DOJ 0997 Lassiter 07/24/01  
 Stephen Wayne Farmer v. Alarm Systems Licensing Board 01 DOJ 0998 Lassiter 07/24/01  
 Lisa Nichols Caviness v. Alarm Systems Licensing Board 01 DOJ 1258 Conner 10/08/01  
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 Michael Bullard v. Alarm Systems Licensing Board 01 DOJ 1310 Gray 10/30/01  
 James Kevin Hightower v. Alarm System Licensing Board 01 DOJ 1351 Gray 10/12/01 16:10 NCR 947  
 Telzy T. Porter v. Alarm System Licensing Board 01 DOJ 1496 Elkins 11/19/01  
 Francis Hoi Chan v. Alarm System Licensing Board 01 DOJ 1497 Chess 01/02/02  
 Julio Eduardo Riofrio v. Alarm System Licensing Board 01 DOJ 1814 Morrison 12/06/01  
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Linda Morton Kiziah v. Private Protective Services Board 01 DOJ 0353 Wade 06/01/01  
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 Donald Walter Thompson, Jr. v. Private Protective Services Board 01 DOJ 1495 Elkins 11/14/01  
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 Ricky (Richard struck) Derrick Johnson v. Private Protective Services Bd. 01 DOJ 1550 Elkins 11/15/01  
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 Lonnie Mack Maines, Jr. v. Private Protective Services Board 01 DOJ 1985 Morrison 12/11/01  
 Timothy Ray Robinson v. Private Protective Services Board 01 DOJ 2216 Wade 12/27/01

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 Joshua Craig Brothers v. NC Sheriffs' Educ. & Trng. Stds. Comm. 00 DOJ 1558 Elkins 06/12/01  
 Wardell R.K. Scott v. NC Sheriffs' Educ. & Trng. Stds. Comm. 00 DOJ 1577 Gray 08/27/01  
 Darrick Harris v. NC Sherrifs' Educ. & Training Standards Comm. 00 DOJ 2267 Wade 10/17/01  
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 Mark J Smith v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 0470 Gray 10/11/01  
 Gregory Rayvon Wood v. NC Criminal Justice Ed. & Trng. Stds. Comm. 01 DOJ 0478 Morrison 11/08/01  
 Marcus O Clark v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 0500 Gray 10/12/01  
 Horace H. Lane v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 0557 Conner 11/07/01  
 James D. Panther v. NC Sheriffs' Educ. & Trng. Stds. Comm. 01 DOJ 0616 Wade 08/29/01  
 Christina Hilliard Davis v. NC Criminal Justice & Trng. Stds. Comm. 01 DOJ 0650 Gray 09/28/01  
 Donna Ingold Hatley v. NC Sheriffs' Educ. & Training Stds. Comm. 01 DOJ 1142 Chess 01/30/02  
 Gary C Daugherty v. NC Sheriffs' Educ. & Trng. Stds. Comm. 01 DOJ 1267 Chess 10/04/01  
 Kevin Hoover v. NC Sheriffs' Educ. & Trng. Stds. Comm. 01 DOJ 1601 Elkins 12/04/01

**DEPARTMENT OF STATE TREASURER**

Gwen A Lindsey v. Timothy S Bryan, State of NC, Dept. of State Treasurer, Retirement Systems 00 DST 0727 Mann 08/06/01  
 Bruce E. Colvin v. Board of Trustees of the Local Governmental Employees' Retirement System 00 DST 0776 Gray 07/06/01 16:04 NCR 384

**STATE BOARD OF EDUCATION**

Phase Academy of Jacksonville, Inc., dba Phase Academy Public Charter School v. Public Schools of North Carolina, State Board of Education 00 EDC 2119 Elkins 11/07/01 16:12 NCR 1252  
 Carolyn H. Lancaster v. NC Department of Public Instruction 01 EDC 0054 Morrison 11/08/01  
 Bobby E Hart v. Superintendent Cumberland Co. Sch., Rockfish Elem. 02 EDC 0106 Mann 02/18/02

**ENVIRONMENT AND NATURAL RESOURCES**

James W and Winnifred King v. Div. of Coastal Management 97 EHR 0791 Gray 11/29/01 16:14 NCR 1618  
 Leahman Coday, Jr. v. NC DENR 99 EHR 1651 Wade 06/21/01  
 Hawley Farms, Inc. v. NC DENR, Div. of Water Quality 99 EHR 1740 Conner 10/25/01  
 Holly Ridge Associates, LLC, v. NC DENR and its Div. of Land Resources, William P. Holman, Sec. of the DENR, in his official Capacity and Charles H. Gardner, Director of the Div. of Land Resources, in his official capacity 00 EHR 0423 Conner 12/20/01 16:16 NCR 1825  
 Roger M Oxindine Jr. v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc. 00 EHR 0438 Conner 08/17/01  
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South Water Systems, Inc.						
Joe Fairlamb, Brenda Fairlamb v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0440	Conner	08/17/01			
Thomas M Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0441	Conner	08/17/01			
Paul Blythe, Lori Blythe v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0448	Conner	08/17/01			
Rusty Eller v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0449	Conner	08/17/01			
Lisa Oxidine v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0450	Conner	08/17/01			
Linda M Hickle v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0501	Conner	08/17/01			
Shannon M Scharm, Alex F Schram v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0508	Conner	08/17/01			
Jacqueline Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0509	Conner	08/17/01			
Gary Smith v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0510	Conner	08/17/01			
Wyatt A Gordon v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0554	Conner	08/17/01			
Chris Conder v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0555	Conner	08/17/01			
Angela & Larry Freeman v. Brunswick Co. Health Department	00 EHR 0635	Conner	11/29/01			
E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0698	Conner	08/17/01			
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 <sup>2</sup>	Gray	08/07/01	16:05 NCR	463	
Anson County Citizens Against Chemical Toxins in Underground Storage, Blue Ridge Environmental Defense League, Inc., Mary Gaddy, Bobby Smith and Emma Smith v. DENR	00 EHR 0938	Conner	06/05/01	16:01 NCR	40	
Larry Dale McKeel and Robert Morrison Getchell v. NC DENR, Division of Water Quality and NC Dept. of Transportation	00 EHR 1225	Conner	10/19/01	16:11 NCR	1043	
Acreage Brokers, Inc., Doug Golightly, Officer, James T. Gulley Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
Albert Galluzzo, James T. Gulley, Jr. (Agent) v. NC DENR	00 EHR 1245 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson, Lot 69 +1/2 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
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David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255 <sup>1</sup>	Gray	08/07/01	16:05 NCR	463	
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Sammie Williams and Williams Seafood, Inc. v. NC DENR, Division of Coastal Management	00 EHR 1288	Gray	08/02/01	16:05 NCR	484	
S. Adrian Becton v. NC DENR	00 EHR 1358	Chess	01/15/02			
Floyd Robertson d/b/a Parson's Well Drilling v. NC DENR, Division of Water Quality	00 EHR 1656	Conner	09/19/01			
Thomas Tilley, Trustee v. NC DENR	00 EHR 1668	Elkins	11/28/01			
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1876 <sup>2</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 <sup>2</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 <sup>2</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 <sup>2</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 <sup>2</sup>	Gray	08/07/01	16:05 NCR	463	
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 <sup>2</sup>	Gray	08/07/01	16:05 NCR	463	
Martin Properties, Mr. David Martin v. Town of Cary, Development Services Dept. Erosion Control Office	01 EHR 0088	Morrison	09/06/01			
Barbara Barham, Angels at Play v. Alamance Co. Health Dept.	01 EHR 0142	Morrison	08/16/01			
Paul J Williams v. NC Dept. of Env. Man. Comm. and Keith Overcash, PE Deputy Director	01 EHR 0212	Lassiter	07/12/01			
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Robin R Moore v. NC DENR	01 EHR 0441	Conner	09/17/01			
David R Wells v. NC DENR, Division of Air Quality	01 EHR 0555	Morrison	10/05/01			
Terry Peterson Residential Twenty, LLC v. County of Durham	01 EHR 0558	Conner	12/17/01	16:14 NCR	1624	
M/I Homes, Donald Fraley v. Durham County	01 EHR 0687	Conner	07/10/01			
Country Lake Estates, by & through David T. Hawks, Manager v. Wm G Ross, Sec. NC Dept of Env. & Natural Resources	01 EHR 0697	Conner	08/17/01			
Earnest F.D. Collier v. Wilson Co. Dept. of Public Health	01 EHR 0699	Mann	10/05/01			
Marc P Walch v. Haywood Co. Health Dept. c/o Daniel F McLawhorn	01 EHR 0730	Morrison	06/26/01			

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Billy James Miller, Jr., Peggy Matthews Miller v. NC Dept. of Health/ Environmental Health Inspections, John Stucky (Inspector)	01 EHR 0934	Elkins	08/02/01
Mercer Glass v. NC DENR	01 EHR 0935	Conner	09/11/01
Nancy D. Tuchscherer v. CAMA-Coastal Area Mgmt. Assoc.	01 EHR 0992	Gray	11/28/01
James A Brown v. NC DENR	01 EHR 1197	Elkins	09/17/01
Vickie Jacobs Little v. Brunswick County Health Department	01 EHR 1298	Mann	11/30/01
Southside Mobile Home Park, Southside Trust v. NC DENR	01 EHR 1313	Chess	10/22/01
John (Jack) W. Henry v. DENR, Env. Health Services Section	01 EHR 1322	Conner	12/14/01
Albert Eric Pickett v. NC DENR	01 EHR 1332	Elkins	11/30/01
Elfleda G. Shepard v. NC DENR, Division of Coastal Management	01 EHR 1390	Conner	11/28/01
Town of Murfreesboro v. NC DENR, Div. of Waste Management	01 EHR 1424	Wade	01/10/02
Peter Pallas v. New Hanover County Board of Health	01 EHR 1441	Conner	01/09/02
NC Real Estate Services Corp., v. NC DENR, Div. of Air Quality	01 EHR 1503	Elkins	11/20/01

**ENGINEERS AND LAND SURVEYORS**

NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01
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**OFFICE OF INFORMATION TECHNOLOGY**

Spli-Con, LLC v. NC Office of Information Technology	01 GOV 1799	Chess	11/26/01
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**HUMAN RELATIONS COMMISSION**

NC Human Relations Commission on behalf of Jeanette Guffey and Harvey Myers	99 HRC 1383	Wade	08/06/01
NC Human Relations Commission on behalf of Janie Teele v. Wedco Enterprises, Inc., Quality Construction, Inc., The Apartment Group, Erin Banks, and Terry Taylor	00 HRC 1449	Gray	12/21/01
Sara E. Parker v. NC Human Relations Commission	01 HRC 1284	Chess	10/04/01

**DEPARTMENT OF INSURANCE**

Wellpath Select, Inc. v. NC Teachers' & State Employees' Comp.	01 INS 0388	Morrison	07/03/01
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**LICENSING BOARD FOR GENERAL CONTRACTORS**

NC Licensing Bd. for Gen. Con. v. Alderman Brothers Construction, Inc. License No. 34455	01 LBC 1146	Elkins	10/10/01
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**MISCELLANEOUS**

Tony L. Arnett v. Administrative Office of the Courts	00 MIS 0424	Wade	06/26/01
Donald Jason Biles v. W-S/Forsyth Zoning Dept et.al., Forsyth Cty District Atty., et.al.	01 MIS 0905	Chess	10/04/01
Sara E. Parker v. Medical Review of North Carolina	01 MIS 1607	Lassiter	12/03/01
Sara E. Parker v. Administrative Office of the Courts	01 MIS 1608	Lassiter	12/03/01
Sara Parker v. NC State Bar, Calvin E. Murphy	01 MIS 1714	Lassiter	11/06/01

**OFFICE OF ADMINISTRATIVE HEARINGS**

James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01
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**OFFICE OF STATE PERSONNEL**

Debbie Whitley v. Wake County Department of Health	96 OSP 1997	Chess	05/22/01
Larry R Lane v. NC DOT, G.F. Neal, Cty. Maintenance Engineer	99 OSP 0105	Lassiter	07/16/01
Timothy Ramey v. NC Department of Correction	99 OSP 1085	Chess	06/27/01
Richard W. Lee v. NC Department of Transportation	99 OSP 1145	Wade	08/29/01
Miriam Dukes v. Albemarle Mental Health Center Bd. of Directors	00 OSP 0234	Wade	05/22/01
Angela Ellen Jones v. Mr. Weldon Freeman, Personnel Director, NC Dept. of Crime Control & Public Safety	00 OSP 0345	Lassiter	07/03/01
Dennis Joyner v. Off. of Juvenile Justice, 7 <sup>th</sup> Judicial District	00 OSP 0424 <sup>10</sup>	Reilly	02/05/02
Ricky E Yates v. NC Department of Correction	00 OSP 0453	Gray	01/31/02
Victor Garnett v. Dept. of Correction, Craven Correctional Inst.	00 OSP 0722	Elkins	01/11/02
Tina C. Lowery v. NC DOC/Craven Correctional Institution	00 OSP 0767	Conner	11/28/01
Ivan Williams v. DOC, Division of Prisons	00 OSP 0877	Wade	09/17/01
Ricky N Faircloth v. NC Department of Transportation	00 OSP 0994	Wade	11/14/01
Andreas K. Dietrich v. NC Highway Patrol; NC Department of Crime Control & Public Safety	00 OSP 1039	Gray	08/13/01
Warren E. Pigott v. NC Department of Correction	00 OSP 1096	Gray	11/26/01
Andora Taylor Hailey v. NC Department of Correction	00 OSP 1247 <sup>5</sup>	Conner	11/26/01
A. Mark Esposito v. Dept. of Transportation	00 OSP 1333	Gray	06/13/01
Stephen E Dunn v. NC Department of Correction	00 OSP 1693	Morgan	01/23/02
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 1702 <sup>8</sup>	Gray	12/31/01
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01
Natalynn P. Tollison v. NCSU <i>et al</i>	00 OSP 1909	Wade	06/01/01
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 2117 <sup>1</sup>	Gray	12/31/01
Andora Taylor Hailey v. NC Department of Correction	00 OSP 2180 <sup>5</sup>	Conner	11/26/01
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01
Deanna Kay Sadler v. NC Department of Transportation	01 OSP 0097	Gray	01/28/02
Kit Locklear v. NC Department of Correction	01 OSP 0106	Elkins	07/17/01

<sup>5</sup> Combined Cases

<sup>8</sup> Combined Cases

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Andrew E Chambers v. NC Department of Corrections	01 OSP 0172	Morrison	07/12/01	
Roy Kevin Tripp v. NC Department of Correction	01 OSP 0231	Morrison	10/04/01	16:09 NCR 864
Lonnie Sessions v. Columbus Correction Inst.	01 OSP 0240	Gray	05/23/01	
Lee Woodburn v. NC State University	01 OSP 0275	Lassiter	06/21/01	
Marsha A Early v. County of Durham, Dept. of Social Services	01 OSP 0279	Lassiter	10/26/01	
Valerie Thompson Enoch v. Alamance Co. Dept. of Social Services	01 OSP 0316	Lassiter	11/29/01	
Jamel O. Frazier v. NC Department of Transportation	01 OSP 0334	Anderson	07/06/01	
Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01	
Alecia M York v. Fayetteville State University	01 OSP 0598	Mann	10/04/01	
James H. Montayner v. NC Department of Correction	01 OSP 0637	Gray	08/16/01	
Leon Lewis, Jr. v. NC School of Science & Math	01 OSP 0639	Conner	08/17/01	
Dennis Joyner v. Off. of Juvenile Justice, 7 <sup>th</sup> Judicial District	01 OSP 0643 <sup>1</sup>	Reilly	02/05/02	
Lisa Scopee Lewis v. Carteret Correctional Facility	01 OSP 0801	Gray	07/17/01	
Antonio J Ballard Sr. v. Morrison Youth Institution (DOC)	01 OSP 0807	Elkins	10/05/01	
Margaret V Carroll v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0851	Conner	08/14/01	
Wanda Lou Mitchell v. Walter B Jones, Alcohol & Drug Treatment Center, Greenville, NC	01 OSP 0852	Conner	08/14/01	
William David Fox v. NC Department of Transportation	01 OSP 0853	Morrison	07/02/01	
Rita D Wilkins v. WNC Reg. Economic Dev. Commission	01 OSP 0857	Morrison	09/21/01	
Nadine H Ward v. North Carolina State University	01 OSP 0862	Gray	01/31/02	
Lisa M Franklin v. D.A.R.T. Program in DOC	01 OSP 0909	Gray	09/12/01	
Nancy T. Rimmer v. UNC School of Medicine	01 OSP 0952	Gray	08/24/01	
Jeffrey Scott Zaccari v. NC Department of Transportation	01 OSP 0970	Conner	08/17/01	
John A Smith v. Department of Corrections, State of NC	01 OSP 0984	Chess	07/25/01	
Faith J Jackson v. NC Department of Correction	01 OSP 0986	Lassiter	07/12/01	
Sharon Locklear Dean v. Dept. of Juvenile Justice & Delinquency Prevention	01 OSP 1063	Mann	09/17/01	
Steven Swearingen v. NC Department of Correction	01 OSP 1066	Wade	10/17/01	
Lisa C. Wells v. Hyde County	01 OSP 1113	Gray	09/04/01	
Earla Kate Simmons v. WIC Nutrition Program, Brunswick County Health Department, Bolivia, NC	01 OSP 1114	Lassiter	10/30/01	
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	11/02/01	
William S T Young v. NC DOC, Pamlico Correctional Institution	01 OSP 1169	Lassiter	12/19/01	
Calvia Lynn Hill v. Lumberton Correctional Inst., DOC	01 OSP 1205	Conner	08/07/01	
Craig B Hilliard v. NC Department of Correction	01 OSP 1214	Morrison	12/18/01	
Rose Beam v. Cabarrus County Board of Education	01 OSP 1233	Elkins	09/27/01	
Darryl Burr v. NC Department of Correction	01 OSP 1282	Morrison	11/13/01	16:12 NCR 1263
Dennis Damon Foster v. NC Department of Correction	01 OSP 1283	Chess	12/07/01	
Thomas H Glendinning v. Chatham County	01 OSP 1287	Chess	09/07/01	
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01	
Berton Hamm v. Eastern Adolescent Treatment Center	01 OSP 1397	Chess	01/14/02	
Dorothy L. Stinson v. Gaston-Lincoln Area Mental Health "Pathways"	01 OSP 1400	Chess	12/12/01	
Gloria E. Morrow v. NC Division of Social Services	01 OSP 1439	Elkins	12/18/01	
Walter Daniel Giese v. George O' Daniel & the Onslow Co. Health Dept.	01 OSP 1445	Conner	12/17/01	
Annie Karampatsos v. UNC at Charlotte	01 OSP 1456	Mann	11/20/01	
Ronnie McCoy v. Michael Munns, Polk Youth Inst.	01 OSP 1469	Morrison	11/14/01	
Michael T. Bingham v. Harold Seegars, Skilled Trade, NCA&T St. Univ.	01 OSP 1476	Mann	11/20/01	
Larry S Height v. NC Utilities Comm. of the NC Dept. of Commerce	01 OSP 1487	Morrison	12/28/01	
Alvin Earl Williams v. NC DHHS, Division of Facility Services	01 OSP 1491	Mann	12/17/01	
Larry T. Strickland v. Jennifer Heath and the Dept. of Corrections	01 OSP 1537	Mann	11/30/01	
Gregory S. Harmon v. NC Department of Revenue	01 OSP 1575	Mann	01/18/02	
Carl L Cobb v. Walter W Stelle PhD, Dorothea Dix Hosp. - DHHS	01 OSP 1699	Lassiter	02/15/02	
Tammy M. Snipes v. DHHS, (Broughton Hospital)	01 OSP 1873	Chess	01/16/02	
Lillie Joyce Blount v. Caswell Center, Human Resources Employee, Clifton Jones, Supervisor	01 OSP 1898	Lassiter	12/04/01	
Sheila Nickerson v. UNC-CH	01 OSP 2016	Lassiter	01/02/02	
Mark Thomas v. John Umstead Hospital	01 OSP 2180	Mann	02/05/02	
Mary Hood Fletcher v. The University of North Carolina at Charlotte	01 OSP 2210	Lassiter	01/15/02	
Elizabeth Hall Austin v. University of North Carolina at Charlotte	01 OSP 2338	Mann	02/07/02	
Jesse C Whitaker v. University Towers (Student Dining Svc.) Glendora	02 OSP 0108	Gray	02/22/02	
<b><u>DEPARTMENT OF REVENUE</u></b>				
George T. Brower, Phillip J. Taylor v. NC Dept. of Revenue	01 REV 1779	Gray	01/10/02	
<b><u>SECRETARY OF STATE</u></b>				
Moab Tiara Cherokee Kituwah Nation Anewa Tiari-El, Empress v. Secretary of State, Elaine Marshall	01 SOS 1798	Morrison	12/11/01	
<b><u>UNIVERSITY OF NORTH CAROLINA</u></b>				
Tammie Davis v. UNC Hospitals & UNC Physicians	01 UNC 0506	Mann	07/13/01	
Jerelle L Perry v. UNC Hospital	01 UNC 0800	Conner	09/18/01	
Lonnie D Watson v. UNC Hospitals	01 UNC 0837	Conner	09/18/01	
Susan Coan v. Secretary of Revenue	01 UNC 0977	Conner	11/08/01	
Phyllis Green v. The UNC Hospitals at Chapel Hill	01 UNC 1354	Gray	11/26/01	
<b><u>WELL CONTRACTORS</u></b>				
Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01	



3. On August 13, 2001, Petitioner filed a Petition for a Contested Case Hearing alleging that Respondent acted erroneously, arbitrarily or capriciously, failed to use proper procedure, failed to act as required by law, and otherwise substantially prejudiced his rights regarding his claim precipitated by a serious injury sustained on September 15, 2000.
4. On September 14, 2000, Petitioner, driving his own vehicle, picked up two friends, Tracy Hayes and Louis Shipp. He picked up Louis Shipp (also called "Pee Wee") on Pine Street in Lincolnton, NC. The three men proceeded to a Gastonia topless bar to celebrate Mr. Hayes birthday. They stayed at the bar until it closed which was after two o'clock in the morning. They left the bar to return to Lincolnton so Petitioner could drop off Hayes and Shipp. Petitioner drove as Hayes and Shipp had been drinking and he had not been.
5. Petitioner and his two friends arrived in Lincolnton and were riding around to see who was out on their way to the Pine Street area. As they approached Pine Street, Hayes told Petitioner he wanted to be dropped off in the Oaklawn area where Ms. Foster lives. Hayes has a child by Ms. Foster and he wanted to get together with her and stay there for the evening. Oaklawn is not far from the Pine Street area and the Pine Street area is a reasonable route to take to Oaklawn.
6. On Pine Street Petitioner and his two friends saw Todd Anderson, an individual they knew, and stopped the car to talk with him. Anderson asked Shipp, Hayes and Petitioner to keep a lookout for his car. Anderson told the three men that he let Nathaniel Heath borrow the car in exchange for some crack cocaine.
7. Petitioner proceeded to Oaklawn to drop Hayes off. On entering the Oaklawn area, Shipp told Petitioner he wanted to buy some drugs but had no money and wanted Petitioner to buy drugs for him. Petitioner emphatically refused to give him money for drugs or to participate in him buying drugs and told Shipp he (Petitioner) was dropping him (Shipp) off in Oaklawn along with Hayes. Petitioner was aware the Oaklawn area was known for drug sales and other illegal activities. He stated he has family that lives in the Oaklawn area and not everyone who lives in Oaklawn area sells or uses drugs. Petitioner also knew that Pee Wee Shipp was a drug user but everyone knew that was just the way he was and they had been friends since childhood.
8. Once in the Oaklawn area, Petitioner stated he saw a car that looked like Todd Anderson's car and that he flashed his lights in an attempt to stop the vehicle. After taking a right turn on one of the streets in Oaklawn leading to Ms. Foster's apartment where Petitioner was dropping Hayes and Shipp off, gunshots rang out from an unknown person, which struck Petitioner in both legs. Petitioner stated a green Nissan was in front of him and believes maybe that was the vehicle the gunman meant to shoot at but he did not know. Petitioner was shot at approximately three o'clock in the morning of September 15, 2000. After he was shot, Petitioner drove himself to a local hospital.
9. At approximately 3:00 am on the 15<sup>th</sup> of September 2000, Officer Dwayne McAllister of the Lincolnton Police Department observed Petitioner run a red light and followed him, catching up with him at the Emergency Room and observing Petitioner laying on the ground and Hayes and Shipp trying to get him up. The ER doctors informed Officer McAllister that Petitioner's injuries were not life threatening but thought he would probably lose his left leg. Petitioner was airlifted to Carolinas Medical Center in Charlotte where he underwent approximately 6 hours of surgery and was placed in the Intensive Care Unit of the Medical Center. Petitioner experienced a shattered bone and a severed artery.
10. Detective Brian Greene of the Lincolnton Police Department interviewed Petitioner in the Intensive Care Unit (ICU) at approximately 10:16 am on September 16, 2000, less than 24 hours after his extensive surgery. Before talking with Petitioner, Detective Greene asked the attending physicians if he could question Petitioner and the doctors gave their approval. Due to the Petitioner's condition and the medication he was on, Petitioner has no memory of speaking to anyone including Detective Greene while in the ICU. During the interview and pursuant to his criminal investigation, Detective Greene instructed Petitioner to be candid with him about being truthful concerning all of the facts. Greene testified that he told Petitioner that he would not be charged if he was doing something wrong and that it was important to tell everything about the incident.
11. Detective Greene testified that when he interviewed Petitioner in the ICU he asked what he was doing in Oaklawn to which the Petitioner replied we were looking to buy dope. Green asked were you looking to buy crack cocaine and the Petitioner replied yes. Petitioner has no memory of the questions or answers asked by Green or given by him and states he always tries to truthfully answer questions and if he did say something about drugs, it was probably to try and truthfully relay information about Shipp wanting to buy drugs not him. Petitioner emphatically states he was not in Oaklawn to buy drugs or to assist Shipp in buying drugs.
12. No drugs were found in Mr. Nixon's car. Likewise no drugs were found on the persons of Mr. Nixon, Mr. Shipp or Mr. Hayes.
13. Petitioner, David Nixon Jr. is and was at the time of September 15<sup>th</sup> incident a Fire Inspector with the City of Gastonia Fire Department. He has been in fire prevention service for 13 years and presently holds the position of Fire Inspector in the Life Safety Division. Since Petitioner works in emergency services he is and has been subject to random drug testing. Petitioner states he would never jeopardize his career by using drugs or being involved in the buying or selling of drugs. Petitioner's testimony is credible.



14. Statements by Petitioner to law enforcement agents in an ICU made less than 24 hours after major surgery for severe injuries sustained by a shooting were not the products of rational intellect and free will and lacked opportunity for understanding the questioning or explaining fully the answers to the questioning. Further and of lesser importance in this case, "false friend" interviews have been, in numerous cases (albeit mostly criminal in nature), condemned by the United States Supreme Court as lacking production of free and rational choices and statements.

**BASED UPON** the foregoing Findings of Fact and upon the preponderance or greater weight of the evidence in the whole record, the undersigned makes the following:

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to the North Carolina General Statutes.

2. All parties have been correctly designated and there is no question as to misjoinder or nonjoinder.

3. Petitioner's claim for compensation was disallowed by Respondent upon a finding of contributory misconduct by the claimant. Specifically the Respondent concluded that the Petitioner contributed to the circumstances, which resulted in the injury from which his claim for compensation arose.

4. The Undersigned finds the Petitioner did not unlawfully contribute to the circumstances, which resulted in his injury and did not engage in criminally injurious conduct. After a birthday celebration, Petitioner was returning two friends back to Lincolnton, NC to basically end the evening. Passenger Hayes indicated his desire to be let off in the Oaklawn area of Lincolnton to spend the night with a female friend with whom he has a child. The decision to ride around a little bit to see who was out before proceeding on to Oaklawn is reasonable given the cultural background of the Petitioner and his friends. Upon entering the Oaklawn area, passenger Shipp indicated he wanted to buy some drugs but had no money and wanted Petitioner to buy drugs for him. Petitioner emphatically refused to give him money for drugs or to participate in him buying drugs and told Shipp he (Petitioner) was dropping him (Shipp) off in Oaklawn along with Hayes. This action by Petitioner not only refutes his intent to contribute to drug activity but also shows his disagreement with it.

5. While lawfully and properly in the Oaklawn area to let out passengers, Petitioner was shot through no fault of his own. Though Oaklawn is known to be a place of drug activity, it is nonetheless a reasonable fact that individuals who do not engage in drug use may live there as their own circumstances dictate.

6. Statements made by Petitioner to a police officer while he was in the hospital, within 24 hours after major surgery, under the influence of medications for pain, while evidently confused and unable to think clearly about the events in question, and while he was lying in bed in the intensive care unit encumbered by tubes, needles and apparatus used in the ICU, were not products of rational intellect and serious doubts cover their ultimate truthfulness. It is also not insignificant that Petitioner has no memory of any visitor or statements while in the ICU and even perhaps an effect by the medications being given to Petitioner. Though case law centers around admissions and confessions in a criminal context (though not all law is so found), for purposes of this case, *due process* requires that statements obtained from Petitioner in the hospital under these circumstances not be used in any way against him, where it is apparent from the record that they were not products of his free and rational choice and certainly so effected a rational intellect as to lack reliability. *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408 (1978), *Greenwald v. Wisconsin*, 390 U.S. 519, 88 S.Ct. 1152, *Stroble v. California*, 343 U.S. 181, 72 S.Ct. 599, *Townsend v. Sain*, 372 U.S. 293, 83 S.Ct. 745 (1963)

7. The Undersigned concludes that the statements by Petitioner to Detective Green under the circumstances given are unreliable and given without the opportunity to fully understand the questioning or expand or explain answers.

8. Given Petitioner's 13-year career in emergency services where he is and has been subject to random drug testing, it is illogical that he would engage in, contribute to, or in any way be a part of drug possession or a drug sale or exchange.

**BASED UPON** the foregoing Findings of Fact and Conclusions of Law the undersigned makes the following:

**DECISION**

The following decision is fact specific to this case and to this Petitioner.

It is the decision of the Undersigned that Petitioner was not engaged in criminally injurious conduct nor was Petitioner engaged in contributory misconduct at the time of his injury. Based on all the evidence, including testimony and exhibits provided at

**CONTESTED CASE DECISIONS**

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the above-captioned case and the case law, the Undersigned hereby finds that Petitioner's claim for crime victim's compensation be **ALLOWED**.

**NOTICE**

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the Undersigned, and to present written arguments to those in the agency who will make the final decision. N. C. Gen. Stat. § 150B-36(a).

In accordance with N.C. Gen. Stat. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Crime Victims Compensation Commission.

**ORDER**

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, North Carolina 27699-6714, in accordance with N.C. Gen. Stat. § 150B-36.

**IT IS SO ORDERED.**

This the 1<sup>st</sup> day of February, 2002.

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Augustus B. Elkins II  
Administrative Law Judge