

NORTH CAROLINA

IN THIS ISSUE



REGISTER

Volume 16, Issue 22
Pages 2423 - 2508

May 15, 2002

This issue contains documents officially filed through April 24, 2002.

Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Linda Dupree, Editorial Assistant
Dana Sholes, Editorial Assistant
Rhonda Wright, Editorial Assistant

I. EXECUTIVE ORDER	
Executive Order No. 21	2423 - 2424
II. IN ADDITION	
ENR - NPDES	2429 - 2430
Revenue – Tax Review Board	2425 - 2428
III. RULE-MAKING PROCEEDINGS	
Environment and Natural Resources	
Environmental Management	2432 - 2448
Health Services, Commission for	2448 - 2449
Health and Human Services	
Social Services Commission	2431
Insurance	
Code Officials Qualification Board	2431 - 2432
NC State Building Codes	2431
Justice	
Private Protective Services Board	2432
Licensing Boards	
Physical Therapy Examiners, Board of	2449
IV. PROPOSED RULES	
Health and Human Services	
Health Services, Commission for	2451 - 2463
Insurance	
Property and Casualty Division	2450 - 2451
Licensing Boards	
Auctioneers, Commission for	2478 - 2480
Nursing, Board of	2480 - 2482
Secretary of State	
Securities Division	2463 - 2477
V. TEMPORARY RULES	
Administration	
State Construction	2483 - 2484
Agriculture	
Tobacco Trust Fund Commission	2484 - 2490
Environment and Natural Resources	
Environmental Management Commission	2490 - 2492
Health Services, Commission for	2492 - 2494
VI. RULES REVIEW COMMISSION.....	2495 - 2496
VII. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	2497 - 2505
Text of Selected Decisions	
01 INS 1561	2506 - 2508
VIII. CUMULATIVE INDEX.....	1 - 113

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

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
15A	Environment and Natural Resources	Foresters	20
16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
19A	Transportation	Landscape Contractors	28
20	Treasurer	Massage & Bodywork Therapy	30
*21	Occupational Licensing Boards	Marital and Family Therapy	31
22	Administrative Procedures (Repealed)	Medical Examiners	32
23	Community Colleges	Midwifery Joint Committee	33
24	Independent Agencies	Mortuary Science	34
25	State Personnel	Nursing	36
26	Administrative Hearings	Nursing Home Administrators	37
27	NC State Bar	Occupational Therapists	38
28	Juvenile Justice and Delinquency	Opticians	40
	Prevention	Optometry	42
		Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
		Pharmacy	46
		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Psychology Board	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Respiratory Care Board	61
		Sanitarian Examiners	62
		Social Work Certification	63
		Soil Scientists	69
		Speech & Language Pathologists & Audiologists	64
		Substance Abuse Professionals	68
		Therapeutic Recreation Certification	65
		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

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 th 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
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
16:22	05/15/02	04/24/02	07/15/02	05/30/02	06/14/02	06/20/02	01/29/03	07/15/02	07/22/02	01/29/03	02/09/03
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
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
17:07	10/01/02	09/10/02	12/02/02	10/16/02	10/31/02	11/20/02	01/29/03	12/02/02	12/20/02	05/00/04	06/28/03
17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
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 NO. 21
NORTH CAROLINA HUMAN
SERVICE TRANSPORTATION COUNCIL**

WHEREAS, the North Carolina Human Service Transportation Council was created in 1991 to address problems, concerns, and opportunities regarding the provision of human service transportation and to make policy recommendations to the North Carolina Department of Transportation; and

WHEREAS, the North Carolina Human Service Transportation Council has maintained a leadership role to increase cooperation among member agencies and increased coordination of local human service transportation; and

WHEREAS, the North Carolina Human Service Transportation Council has undertaken studies to facilitate the further coordination of human service transportation; and

WHEREAS, the North Carolina Department of Transportation (DOT), Department of Health and Human Services (DHHS) and Department of Commerce (DOC) administer State and federal funding programs which may be used by local human service agencies to provide necessary client transportation services; and

WHEREAS, there is the need for a continued statement of policy on coordination and maximization of transportation resources and these state departments and agencies are in a position to facilitate the more efficient use of these resources; and

WHEREAS, human service transportation funds are to be expended in a manner consistent with the local Community Transportation Improvement Plan; and

WHEREAS, transportation is essential to the delivery of customer services; and

WHEREAS, there is the increased need for advocacy, capacity building and systemic change that results in greater access to and use of transportation resources; and

WHEREAS, the mission of the Human Service Transportation Council ("Council") is "to provide leadership in improving the coordination of human service transportation and to ensure that funds are maximized to serve as many elderly, disabled and financially disadvantaged individuals in the State of North Carolina as possible, in a safe, efficient and effective manner."

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

Section 1. Establishment.

The North Carolina Human Service Transportation Council ("Council") is hereby established.

Section 2. Policy.

Wherever practical, existing transportation resources, public and private, shall be maximized before any new resources shall be made available through public funds.

The locally prepared and adopted Community Transportation Improvement Plan shall continue to be the means to determine the most cost effective and efficient use of transportation resources.

To the extent that funds are available and equipment is used consistent with the local Community Transportation Improvement Plan, DOT will provide financial support for capital equipment and the administrative assistance associated with the provision of local human service transportation, while the transportation funds from other State departments will be used primarily for operating assistance.

The State departments should cooperate in establishing, following and supporting the policies, procedures and decisions of the Human Service Transportation Council as described herein. Council representatives shall encourage local human service agencies and community transportation systems to participate in community transportation improvement planning efforts and in subsequent plan implementation, and to purchase or provide transportation services in a manner consistent with the local plan.

The State departments shall promote transportation policies that are customer-centered and support high quality multi-modal transportation systems focused on service, choice and flexibility.

Section 3. Membership.

A. The Council shall be composed of representatives from the DHHS, DOC, Employment Security Commission, Department of Administration, Department of Public Instruction and DOT. Representation shall include any division which administers State or federal funds used to provide human service transportation. The secretaries/chairpersons of these departments may designate divisions within the departments to serve on the Council. Division directors may designate alternates to represent them on the Council. The Council shall be composed of no more than 25 members.

B. Departments, agencies or programs which are outside the jurisdiction of the Executive Order are encouraged to join the Council and to adopt the findings and recommendations of the Council.

C. The Council shall establish subcommittees including individuals representing organizations and consumers outside the departments that comprise the Council as needed to address emerging issues.

D. A representative from either the DHHS or DOT Public Transportation Division shall chair the Council on an annual rotating basis.

EXECUTIVE ORDER

Section 4. Duties of Council.

The Council shall have the following duties:

A. To undertake studies and demonstration projects that will enhance the coordination and delivery of human service transportation services in the safest, most cost-effective, efficient and customer-focused means possible.

B. To advise and make recommendations to the DHHS, DOT and other state agencies concerning human service transportation policy.

C. To identify opportunities and barriers and recommend solutions to improve community transportation services.

D. To develop and present an Annual Executive Summary of the Status of Human Service Transportation in North Carolina.

Section 5. Administration and Oversight

The DHHS and DOT shall provide administrative support for the Council. Members serve without compensation.

The DHHS and DOT may appoint individuals, not associated with the Council, to a Policy Oversight Committee to address inter-departmental policy issues.

Section 6. Effect on Other Executive Orders.

Executive Order No. 78 is hereby rescinded. The Council created herein shall be the successor to that North Carolina Human Service Transportation Council.

This order shall be effective immediately.

Done in the City of Raleigh this the 22nd day of April 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.

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessment of Gift Tax)
for the Taxable Year 1997 by the Secretary)
of Revenue of North Carolina)

ADMINISTRATIVE DECISION

Number: 379

vs.

Bryon M. Pope, Taxpayer)

This matter was heard before the Regular Tax Review Board in the office of the State Treasurer in the City of Raleigh, Wake County, North Carolina, on Thursday, November 29, 2001, upon the Petition of Bryon M. Pope, (hereinafter "Taxpayer"), for administrative review of the Final Decision of the Secretary of Revenue entered on May 15, 2001, sustaining the proposed assessment of gift tax, penalties, and interest for the taxable year 1997.

Heath Carroll, Attorney at Law, represented the Taxpayer at hearing. Alexandra M. Hightower, Assistant Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

Jo Anne Sanford, ex officio member, and Chair of the Utilities Commission presided over the hearing with duly appointed member, Noel L. Allen, Attorney at Law participating. State Treasurer Richard H. Moore did not participate in the hearing and deliberation of this matter.

Pursuant to G.S. 105-241.1, a Notice of Tax Assessment proposing an assessment of gift tax, penalties and accrued interest was mailed to the Taxpayer on October 4, 2000. Taxpayer objected to the assessment and timely requested a hearing before the Secretary of Revenue. By decision entered on May 15, 2001, the Acting Assistant Secretary of Revenue ruled that the proposed gift tax assessment was lawful and proper and sustained the assessment in every respect. Pursuant to G.S. 105-241.2, the Taxpayer timely filed a notice of intent and petition for administrative review with the Tax Review Board. The Taxpayer is petitioning for administrative review of the Final Decision of the Acting Assistant Secretary of Revenue that sustained the proposed assessment of gift tax, penalty and interest for the taxable year of 1997.

ISSUE

The issue to be considered by the Board on review of this matter is as follows:

- 1. Is the assessment of gift tax, penalties and interest proposed against the Taxpayer for year 1997 lawful and proper?

EVIDENCE

The evidence presented at hearing before the Secretary of Revenue and included in the record for the Board's review is stated as follows:

- 1. Memorandum from E. Norris Tolson, Secretary of Revenue to Marilyn R. Mudge, Acting Assistant Secretary of Administrative Hearings, dated March 13, 2001, designated as Exhibit PT-1.
2. Notice of Tax Assessment for taxable year 1997 (identified as the tax year 1998 in error) dated October 4, 2000, a copy designated as Exhibit PT-2.
3. North Carolina General Warranty Deed #9508592 recorded by the Harnett County Registry of Deeds on July 21, 1995, a copy designated as Exhibit PT-3.

IN ADDITION

4. North Carolina General Warranty Deed #9717729 recorded by the Harnett County Registry of Deeds on December 15, 1997, a copy designated Exhibit PT-4.
5. Harnett County Property Tax Record for property at issue for the tax years 1992 through 1999, a copy designated as Exhibit PT-5.
6. Property Tax Value Record for the property at issue, a copy designated as Exhibit PT-6.
7. Letter from D. A. Hall, Tax Auditor in the Office Examination Division, to Taxpayer dated August 24, 2000, a copy designated as Exhibit PT-7.
8. File Notes of a telephone conversation between D. A. Hall and Brother, a copy designated as Exhibit PT-8.
9. Letter from Witness to D. A. Hall dated August 29, 2000, a copy designated as Exhibit PT-9.
10. Letter from Amy P. McLamb, Certified Public Accountant, to D. A. Hall dated August 30, 2000, a copy designated as Exhibit PT-10.
11. Letter from D. A. Hall to Amy P. McLamb dated September 1, 2000, a copy designated Exhibit PT-11.
12. Letter from Representative to the Department of Revenue dated October 30, 2000, with related attachments, copies of which are collectively designated as Exhibit PT-12.
13. Letter from Michael A. Hannah, former Assistant Secretary of Revenue to the Taxpayer dated December 4, 2000, a copy designated as Exhibit PT-13.
14. Letter from Michael A. Hannah to Taxpayer dated December 27, 2000, a copy designated as Exhibit PT-14.

At the hearing, the following evidence was entered into the record:

1. Power of Attorney appointing the Taxpayer as Attorney-in-Fact over Brother's property and estate dated April 7, 1995, a copy designated as Exhibit TP-1.
2. Agreement between Bother and Taxpayer dated July 21, 1995, regarding the deeding of the property at issue, a copy designated as Exhibit TP-2.
3. Series of cancelled checks written on the account of Rick's Music and Pawn, Inc. to insurance companies and mortgage holders in 1995, 1996, and 1997, copies of which are collectively designated as Exhibit TP-3.
4. Brother's 1995, 1996, and 1997 United States individual income tax returns, copies of which are collectively designated as Exhibit TP-4.

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Acting Assistant Secretary's decision in this matter:

1. Taxpayer is and at all times was a natural person, sui juris, and a citizen and resident of North Carolina.
2. Brother was incarcerated in 1995 and gave Taxpayer Power of Attorney to manage his affairs.
3. Taxpayer was notified by an insurance company that the company would no longer insure Brother's property.
4. Brother deeded the resident to Taxpayer on July 21, 1995. The deed shows that no excise stamp tax was paid. Brother and Taxpayer signed an agreement that provided that Taxpayer would hold the property in trust for Brother while Brother was incarcerated.
5. Taxpayer was still unable to secure insurance on the residence from the current carrier; therefore, insurance was obtained from another carrier. Taxpayer was named as the insured on the policy.
6. Taxpayer was notified by an insurance company that the company would no longer insure Brother's business property. Brother deeded the business property to Taxpayer in November of 1995 and Taxpayer obtained insurance on that property from another carrier.

7. Taxpayer did not live in the residence or rent the residence after the residence was deeded to him. The insurance and mortgage on the residence were paid with funds from Brother's business bank account. Taxpayer deposited all rental income from the business property in Brother's bank account. The insurance and mortgage on the business property were also paid with funds from Brother's business bank account.
8. Taxpayer signed a Last Will and Testament on August 16, 1996. Article II of the Will reads "I will, devise and bequeath to my brother ... all of the property he has heretofore deeded to me. This being his property anyway that I have only held in trust while he has been incarcerated."
9. Brother was released from prison in late 1997. On December 11, 1997, Taxpayer deeded the residence and business property to Brother. The deed did not reflect the payment of any excise stamp tax.
10. Property tax records between July 21, 1995 and December 11, 1997, reflect Taxpayer as the owner of the residence.
11. According to property tax valuation records, the tax value of the property deeded by Taxpayer to Brother on December 11, 1997, was \$268,730.00
12. Taxpayer did not file a North Carolina Gift Tax Return for the tax year 1997 to report the gift of property to Brother.
13. The Department of Revenue determined that Taxpayer made a gift to Brother of \$268,730.00, equal to the county tax value of the property. The Department determined the taxable value of the gift to be \$258,730.00, equal to the county tax value of the property less the \$10,000.00 annual exclusion.
14. A Notice of Tax Assessment was mailed to Taxpayer on October 4, 2000, proposing an assessment of gift tax; a twenty-five percent late filing penalty; a ten percent late payment penalty; and accrued interest totaling \$35,919.00. The assessment reflected the tax year as 1998; however, the correct tax year is 1997.
15. Taxpayer objected to the proposed assessment and timely requested an administrative tax hearing before the Secretary of Revenue.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Acting Assistant Secretary in her decision regarding this matter:

1. North Carolina gift tax is imposed on the transfer by gift of real property located in North Carolina or personal property that has acquired a taxing situs in North Carolina. The gift tax applies whether the gift is in trust or otherwise and whether the gift is direct or indirect.
2. The gift tax does not apply to the passing of the property in trust where the donor is vested with the power to re-vest title to the property.
3. Where the property is transferred for less than adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration shall be deemed a gift.
4. If the gift is made in property, the fair market value of the property at the date of the gift is considered the amount of the gift.
5. Gifts, other than gifts of future interest, are subject to an exclusion of \$10,000.00.
6. The gift tax rates are based on the relationship between the donor and the donee. Where the donee is the brother or sister of the donor, the proper gift tax rate is the Class B donees.
7. Gift tax is due on April 15 of the calendar year following the calendar year in which the gift was made. The gift tax return is due on or before the date the tax is due.
8. A late filing penalty of five percent of the tax for each month, or fraction of a month, the return is late (minimum \$5.00, maximum twenty-five percent) is imposed if the gift tax return is not filed. A late payment penalty is imposed for failure to pay tax when due. The penalty is equal to ten percent of the tax (minimum \$5.00). Interest accrues on tax from the date the tax was due until the tax is paid.

IN ADDITION

9. North Carolina's gift tax laws are not tied to the federal gift tax laws as is the case for individual income tax; however, the State gift tax laws are similar to the federal laws in many respects, including the determination of what is a gift. The federal courts have held that to be a gift, a transfer must include the basic property law gift elements, which are: (i) a donor competent to make the gift; (ii) clear and unmistakable intention by the donor to make it; (iii) a conveyance, assignment, or transfer sufficient to vest legal title in the donee without power of revocation at the donor's will; (iv) relinquishment of "dominion and control" over the gift property by delivery; and acceptance by the donee.
10. Although donative intent is one of the basic property law gift elements, donative intent is not an essential element in the application of the gift tax to a transfer. The application of the tax is based on the objective facts of the transfer and the circumstances under which it is made, rather than on the subjective motives of the donor. However, there are certain types of transfers to which the tax is not applicable. It is applicable only to a transfer of a beneficial interest in property. It is not applicable to a transfer of bare legal title to a trustee.
11. In North Carolina a party may submit evidence of a parol trust to counter the apparent granting of property by deed (1) where the trust is sought to be established in favor of a third party, not the grantor or grantee; or (2) in favor of the grantor, but only where it is alleged that the grantor gave up his right to the property as a result of mistake, fraud, or undue influence. Where a grantor executes a deed reciting that he transferred the property for value received he is not allowed to challenge it later.
12. A resulting trust can arise where a person makes or causes a disposition of property under circumstances which raise an inference that he does not intend for the grantee to have a beneficial interest in the property; e.g., one person pays money for the property but title goes into the name of another. But the resulting trust is created by operation of law and arises from the character of the transaction and not necessarily from a declaration of intention.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Assessments of tax are presumed to be correct and the taxpayer has the burden to show that the assessment is not proper. The Board having conducted a hearing in this matter and having considered the petition, the brief on behalf of the Secretary, the record and the final decision of the Acting Assistant Secretary, concludes that the findings of fact made by the Acting Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Acting Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Acting Assistant Secretary should be confirmed.

IT IS THEREFORE ORDERED, that the Acting Assistant Secretary's final decision be and is hereby **confirmed** in every respect.

Made and entered into the 26th day of February 2002.

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

TITLE 15A – ENVIRONMENT AND NATURAL RESOURCES

STATE OF NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
1617 MAIL SERVICE CENTER
RALEIGH, NORTH CAROLINA 27699-1617

**PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL
NPDES PERMITS**

Public notice of intent to reissue expiring State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater for the following types of discharges:

NPDES General Permit No. NCG030000 for discharges associated with activities classified as establishments primarily engaged in the Rolling, Drawing, and Extruding of Nonferrous Metals [standard industrial classification (SIC) 335], Fabricating of Metal Products (SIC 34), Manufacturing of Industrial and Commercial Machinery (SIC 35), Manufacturing of Electronic Equipment (SIC 36), Manufacturing of Transportation Equipment (SIC 37), and the Manufacturing of Measuring and Analyzing Instruments (SIC 38). Excluded are Ship and Boat Building and Repairing (SIC 373).

NPDES General Permit No. NCG060000 for discharges associated with activities classified as establishments primarily engaged in activities classified as Food and Kindred Products (SIC 20), Tobacco Products (SIC 21), Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics and Other Toilet Preparations (SIC 284), Drugs (SIC 283), and Public Warehousing and Storage (SIC 4221-4225).

NPDES General Permit No. NCG080000 for discharges associated with activities that have Vehicle Maintenance Areas (including vehicle rehabilitation, mechanical repairs, painting, fueling, lubrication and equipment cleaning operation areas) associated with activities classified as Rail Transportation (SIC 40), Local and Suburban Transit and Interurban Highway Passenger Transportation and Warehousing (SIC 42) except Public Warehousing and Storage (SIC 4221-4225), Postal Service (SIC 43), Petroleum Bulk Stations and Terminals (SIC 5171), with total petroleum storage capacity of less than 1 million gallons. Other activities, not categorically required to be permitted, such as point source stormwater discharges from oil water separators, secondary containments structures at petroleum storage facilities with total petroleum storage capacity of less than 1 million gallons, and /or vehicle maintenance areas at any facilities other than those listed above, which may be designated on a case-by-case basis as being required to be permitted. Excluded from coverage are vehicle maintenance areas at activities classified as Water Transportation (SIC 44), and Transportation by Air (SIC 45) and wash water from steam cleaning operations or other equipment cleaning operations.

NPDES General Permit No. NCG090000 for discharges associated with activities classified as establishments primarily engaged in Manufacture of Paints, Varnishes, Lacquers, Enamels, and Allied Products (SIC 285).

NPDES General Permit No. NCG100000 for discharges associated with activities classified as establishments primarily engaged in activities classified as Used Motor Vehicle Parts (SIC 5015) and Automobile Wrecking for Scrap (a portion of SIC5093). Specifically excluded from coverage under this general permit are establishments primarily engaged in the wholesale trade of metal waste and scrap, iron and steel scrap, and nonferrous metal scrap.

NPDES General Permit No. NCG120000 for discharges associated with activities classified as Landfills that are permitted by the North Carolina Division of Solid Waste Management under the provisions and requirements of North Carolina General Statute 130A-294. Excluded from coverage under this general permit are stormwater discharges from open dumps, hazardous waste disposal sites, and discharges of wastes (including leachate) to waters of the state.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue State NPDES General Permits for the discharges as described above.

INFORMATION: Copies of the draft NPDES General Permits and Fact Sheets concerning the draft Permits are available by writing or calling Aisha Lau, Water Quality Section, N.C. Division of Water Quality, 1617 Mail Service Center, Raleigh, North Carolina 27699-1617, Telephone (919) 733-5083 ext. 578.

Persons wishing to comment upon or object to the proposed determinations are invited to submit their comments in writing to the above address no later than June 15, 2002. All comments received prior to that date will be considered in the final determination regarding permit

IN ADDITION

issuance. A public meeting may be held where the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance.

The draft Permits, Fact Sheets and other information are on file at the Division of Water Quality, 512 N. Salisbury Street, Room 925, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information of file are available upon request and payment of the costs of reproduction. All such comments and requests regarding these matters should make reference to the draft Permit Numbers, NCG030000, NCG060000, NCG080000, NCG090000, NCG100000 or NCG120000.

Date; 04/24/02

Bradley Bennett
For Gregory J. Thorpe, Ph. D., Acting Director
Division of Water Quality

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 41 – CHILDREN'S SERVICES

Notice of Rule-making Proceedings is hereby given by the 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 41H; 41I; 41J; 41K - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 131D-10.5; 143B-153

Statement of the Subject Matter: The Social Services Commission intends to amend rules in 10 NCAC 41H; 41I; 41J; and 41K. These Rules govern adoption of children, foster care services for children, interstate services for juveniles, and child protective services, respectively. The changes will update existing rules and delete others that are obsolete. Amendment of current rules and adoption of proposed rules will ensure that the latest child welfare practice standards are being implemented in child welfare cases so that children will continue to be properly protected.

Reason for Proposed Action: Because child welfare services is a dynamic field, changes to rules governing its practice need updating. As a result, the Social Services Commission will adopt, amend and repeal rules in 10 NCAC 41. A variety of changes are proposed. As the field has progressed, new practice standards are implemented. North Carolina recently participated in a Child and Family Review by the Federal Agency for Children, Youth and Families. This review found that our State needs to make better efforts in the areas of safety, permanence and well-being for children. Toward this end, amendments will be proposed to several rules in 10 NCAC 41, deleting those procedures that are obsolete and adding clarification where needed so that North Carolina will achieve the levels required by the federal review.

Comment Procedures: Anyone wishing to comment should contact Kris Horton, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone 919-733-3055.

Notice of Rule-making Proceedings is hereby given by the NC Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-making: NC State Building Code

Authority for the Rule-making: G.S. 143-136; 143-138

Statement of the Subject Matter: NC Building Code; Administration & Enforcement Requirements Code; Accessibility Code; Plumbing Code; Mechanical Code; Electrical Code; Fire Prevention Code; Fuel Gas Code; Energy Code; and Existing Buildings Code.

Reason for Proposed Action: Reflects changes made by the International Code and input from affected North Carolina parties.

Public Hearing will be held for the:
North Carolina Building Code Council Meeting
June 11, 2002
9:00 a.m.,
Wake County Commons
4011 Cary Drive
Raleigh, NC.

Comment Procedures: Written comments may be sent to Wanda Edwards, Secretary, State Building Code, c/o NC Department of Insurance, 410 N. Boylan Avenue, Raleigh, NC 27603.

CHAPTER 08 - ENGINEERING AND BUILDING CODES

Notice of Rule-making Proceedings is hereby given by the Code Officials Qualification Board/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 08 .0706. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-151.12(1); 143-151.13;

Statement of the Subject Matter: Required qualifications of code enforcement officials.

TITLE 11 – DEPARTMENT OF INSURANCE

NC STATE BUILDING CODE

Reason for Proposed Action: *These amendments reflect the changes made in occupancy classifications in the State Building Code.*

Comment Procedures: *Written comments may be sent to Mike Page, c/o Code Officials Qualification Board, NC Department of Insurance, 410 N. Boylan Avenue, Raleigh, 27603.*

TITLE 12 – DEPARTMENT OF JUSTICE

CHAPTER 07 – PRIVATE PROTECTIVE SERVICES

Notice of Rule-making Proceedings is hereby given by NC Private Protective Services Board 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: 12 NCAC 07D .1200. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: 74C-5

Statement of the Subject Matter: *The Board proposes to adopt new rules or amend existing rules to set forth more specific review standards for private protective services training schools and courses that are reviewed and approved by the Board.*

Reason for Proposed Action: *The Board currently has few standards of review for training schools and courses and believes more specific requirements should be set forth.*

Comment Procedures: *Written comments should be submitted to Director Wayne Woodard, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.*

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by the Environmental Management 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 02D .0521, .0538, .1104, .1109, .1203-.1204, .1206, .1208, .1210, .1400; 02Q .0102, .0203 .0526, .0700, .0702, .0711, .0806, .0808-.0809 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-215.3(a)(1); 143-215.3(a)(1),(1a),(1b),(1d); 143-215.107(a)(4); 143-215.107(a)(5); 143-215.107(a)(4),(5); 143-215.107(a)(3),(4),(5); 143-215.107(a)(5),(10); 143-215.107(a)(5),(7),(10); 143-215.107(a)(10); 143-215.108; 143B-242; 143B-282; 150B-21.6

Statement of the Subject Matter:

15A NCAC 02D .0521 – *To exempt incinerators with specific standards for visible emissions from this Rule. To correct deficiency that EPA has identified in this Rule.*

15A NCAC 02D .0538; 02Q .0702 – *To add an option to these Rules to comply with the air toxic rules in place of complying with the emission control standards in these Rules.*

15A NCAC 02D .1104; 02Q .0711 – *To revise the acceptable ambient level (AAL) for hydrogen sulfide in 15A NCAC 02D .1104 and its concomitant permit exemption emission rate in 15A NCAC 02Q .0711. To revise the acceptable ambient level (AAL) for carbon tetrachloride in 15A NCAC 02D .1104 and its concomitant permit exemption emission rate in 15A NCAC 02Q .0711.*

15A NCAC 02D .1109; 02Q .0526 – *To incorporate revisions of 40 C.F.R. Part 63, Subpart B, into these Rules.*

15A NCAC 02D .1203-.1204, .1206, .1208, .1210 – *To clarify requirements (and reduce the wordiness) in several incinerators rules for installing and operation of oxygen or carbon monoxide monitors.*

15A NCAC 02D .1400 – *To correct errors in this Section.*

15A NCAC 02Q .0102 – *To change the exemption for certain sources of volatile organic compounds (VOC) in this Rule from using a facility-wide cap to a source cap. To add an exemption to this Rule for space heating units. To clarify which sources in Mecklenburg County are ineligible for permitting exemption and to correct a spelling error in this Rule.*

15A NCAC 02Q .0203 – *To correct the column titles in the permit application fee table in this Rule.*

15A NCAC 02Q .0700 – *To replace SIC with NAICS in this Section.*

15A NCAC 02Q .0702 – *To clarify the exemption for perchloroethylene dry cleaners in this Rule.*

15A NCAC 02Q .0806 – *To remove Paragraph (a) of this Rule.*

15A NCAC 02Q .0808 – *To revise the energy production that qualifies peak shaving generators to be treated as a small facility by rule for permitting purposes.*

15A NCAC 02Q .0809 – *To adopt a new rule to define concrete batch plants as small for permitting purpose based on production rate.*

Reason for Proposed Action:

15A NCAC 02D .0521 – *Several incinerators rules have specific standards for visible emissions. They are 15A NCAC .1205-.1206, and .1210. The rule change would clarify that incinerators subject to a specific standard would not also have to meet the more general standard in this Rule. This change would treat incinerator rules with specific visible emission standards like other rules with specific visible emission standards. Sources covered under other rules with specific visible emission standards do not have to comply with the standard in this Rule. The EMC amended this Rule effective April 1, 2001 to change the methodology for determining compliance with the visible emission standard when continuous*

emission monitors are used. EPA has informed the Division of Air Quality that this revision is not approvable for inclusion into the federally approved State Implementation Plan (SIP).

15A NCAC 02D .0538; 02Q .0702 – 15A NCAC 02D .0538 was originally adopted as a way for medical device manufacturing sterilization processes that use ethylene oxide to avoid having to comply with the air toxic rules. (This Rule applies to manufacturing and packaging processes; it does not apply to hospitals or medical facilities.) Several facilities are having problems with or concerns about complying with this Rule because emissions are below testing detection limits or because of safety issues. As an option to complying with the emission control standard, the facility could demonstrate compliance with the air toxic rules for ethylene oxide emissions from the facility as a whole including the production, packaging and storage processes. Also, the exemption for ethylene oxide sterilization processes in 15A NCAC 02Q .0702 would have to be revised.

15A NCAC 02D .1104; 02Q .0711 – The Scientific Advisory Board on Toxic Air Pollutants (SAB) has reevaluated the acceptable ambient level for hydrogen sulfide (H₂S). Possible corresponding AAL could be 0.12 mg/m³, based on sub-chronic nasal toxicity in rats; 0.056 mg/m³, based on triggering of asthma symptoms; and 0.33 mg/m³, based in eye pain and visual disturbance. Following its guidelines, the Division of Air Quality has assigned the 0.056 mg/m³ value a one-hour averaging time and has assigned the other two values a 24 hour averaging time. Only one of these three recommendations would be adopted by the Environmental Management Commission. If adopted, the new AAL and its concomitant permit exemption rate would replace the current AAL of 2.1 mg/m³, one hour average, and exemption rate. The Scientific Advisory Board on Toxic Air Pollutants (SAB) has reevaluated the acceptable ambient level for carbon tetrachloride (CCl₄) and has recommended an AAL of 0.19 mg/m³. Because this recommendation is based on the prevention of organ toxicity following long-term exposure, the Division of Air Quality, following its guidelines, has assigned this value a 24 hour averaging time. If adopted, the new AAL and its concomitant permit exemption rate would replace the current AAL and exemption rate.

15A NCAC 02D .1109; 02Q .0526 – The EPA is amending those portions of 40 C.F.R. Part 63, Subpart B that implement Section 112(j) of the federal Clean Air Act. This section requires states to require sources in a category that EPA has identified that it intends to cover under a MACT (maximum achievable control technology) standard to comply with MACT if EPA fails to promulgate within 18 months of the date listed in the Clean Air Act for promulgation. The State rules would be amended to bring them into line with the changes adopted by EPA in 40 C.F.R. Part 63, Subpart B. Most of the changes are in definitions. Some are in timelines and schedules.

15A NCAC 02D .1203-.1204, .1206, .1208, .1210 – These Rules contain a provision that states that 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. Stating that the Director shall require is superfluous and can be removed. This requirement could be stated simply that the owner or operator of these incinerators shall install oxygen or carbon monoxide monitors.

15A NCAC 02D .1404 – A clarification is needed in Paragraph (j). The word "using" in Subparagraphs (1) and (2) should be replaced by "required to use" to eliminate the possible impression that sources required to use monitors that meet the requirements of Part 75 may use other methods to measure heat input. These sources must use the Part 75 procedures. The phrase "except for a source covered under Rule .1419 of this Section" needs to be added to clarify that sources covered under Part 75 monitoring requirements cannot use the alternative monitoring procedures allowed under 15A NCAC 02D .0612.

15A NCAC 02D .1409 – The phrase "by reducing emissions from another source" should be changed to read "by reducing emissions from stationary internal combustion engines." This change clarifies that trading of emissions can only occur between stationary internal combustion engines at the same facility.

15A NCAC 02D .1416-.1417 – Language should be added clarifying that the source has until November 30 to acquire allocations through the trading program to offset its excess emissions.

15A NCAC 02D .1417 – The allocation for Butler Warner Generating, Combustion Turbine 4 in Subparagraph (b)(2) needs to be corrected for the 2005 ozone season. The current allocation is 23 tons. The correct allocation is 43 tons. Also a boiler identification correction needs to be made for one of the boilers at Blue Ridge Paper Products. The "Big Ben" boiler needs to be changed to the "Big Bill" boiler.

15A NCAC 02D .1418 – This Rule should be revised to make several clarifications.

15A NCAC 02D .1419 – In Paragraphs (b) and (c) the word "may" should be "shall." Also "dates and schedules" should be clarified. In Paragraph (d), "sources" should be replaced by "boilers, turbines, and combined cycle systems;" other clarifications may also be needed.

15A NCAC 02D .1422 – Clarifications may be needed in Paragraphs (b), (c), (d), (e), and (i).

15A NCAC 02Q .0102 – Currently under this Rule, graphic arts operations, painting and coating operations, and solvent cleaning are exempted from permitting if the actual emissions of volatile organic compounds for the entire facility are less than five tons per year. The rule change would allow these sources to be exempted from permitting if the source's actual emissions of volatile organic compounds are less than five tons per year. Thus, the emissions of each individual source would determine whether that source were exempted or permitted. The repeal of 15A NCAC 02D .0518, which was a facility-wide emission standard, has made basing the permit exemption on facility-wide emissions less meaningful. The change would treat sources of volatile organic compounds the same way source of other pollutants are treated. This Rule currently has several exemptions for different types and sizes of combustion sources. Space heating units would be another combustion source exemption. For Title V permitting purposes, heating units used for human comfort that do not provide heat for any manufacturing or other industrial process is treated as insignificant activities. This Rule change would extend to space heating units at non-Title V facilities similar treatment as the same type of unit at Title V facilities receive. The exemption may or may not include a size limit. This exemption would exempt from permitting some wood-fired units that are now permitted. Under this Rule sources of volatile organic

compounds subject of the requirements of 15A NCAC 02D .0900 located in Mecklenburg County according to 15A NCAC 02D .0902 are ineligible for exemption from permitting. Referring the whole rule (15A NCAC 02D .0902) instead of the specific Paragraph in that rule pertaining to sources in Mecklenburg County has caused confusion about the extent of coverage of this exclusion from permitting exemption. This exclusion applies only to those sources in Mecklenburg County that were required to comply with Rules .0917 through .0938 or .0943 through .0946 before July 5, 1995. To clarify the intent of this exclusion, it is proposed to be rewritten to reference the specific paragraph in 15A NCAC 02D .0902 that identifies the sources required to comply with 15A NCAC 02D .0900. Thus, in 15A NCAC 02Q .0102(b)(5), the reference to 15A NCAC 02D .0902 would be replaced with 15A NCAC 02D .0902(c). In Subpart (c)(2)(E)(i) of this Rule, "lessor" needs to be changed to "lesser."

15A NCAC 02Q .0203 – Two of the titles in the permit application fee table in this Rule are reversed. "New and Significant Modification," which is the current title of the second column, should be the title of the third column, "New or Modification," which is the current title of the third column, should be the title of the second column. The rule change would correct this error.

15A NCAC 02Q .0700 – The air toxic permitting rules use SIC (Standard Industrial Classification) code to activate certain air toxic permitting requirements. The North American Industry Classification System (NAICS) is replacing the SIC system. To bring the air toxic permitting rules in line with the new classification, SIC needs to be replaced with NAICS. This change involves amending rules in this Section.

15A NCAC 02Q .0702 – This Rule exempts perchloroethylene dry cleaners from air toxic permitting if the consumption of perchloroethylene remains below specified levels. Currently, the exemption applies if the 12 month rolling average remains below the specified level. This wording can be confusing. To limit possible confusion, the exemption would be changed to apply if the 12 month rolling total remained below the specified level.

15A NCAC 02Q .0806 – Paragraph (a) of this Rule states that the rule applies to cotton gins that only gin cotton between September and January. However, the ginning season often extends beyond January because of adverse weather. So, the Rule allows the Director to extend the ginning season if the Commissioner of Agriculture certifies that the cotton ginning season has been delayed because of adverse weather. The rule change would eliminate this paragraph. Elimination of this paragraph reduces the administrative burden of the Division of Air Quality and the Department of Agriculture and has no adverse effects on the cotton ginning industry.

15A NCAC 02Q .0808 – Currently this Rule defines any facility whose total energy production from one or more peak shaving generators is less than or equal to 6,500,000 kw-hrs per year as a small facility for permitting purposes. Recent calculations using current emission factors suggests the 6,500,000 level is too high. This level needs to be reevaluated, and if it is too high, it needs to be revised downward.

15A NCAC 02Q .0809 – A new rule would be adopted to define concrete batch plants below a certain size as a small facility for permitting purposes. This Rule would keep the facility from having to have conditions put in its permit to avoid the Title V permitting procedures. Concrete batch plants should qualify for an exclusionary rule because they operate intermittently and are

not capable of operating at a maximum capacity continuously for 8760 hours per year.

Comment Procedures: Comments will be accepted by Thomas Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919)733-1489, fax (919)715-7476, e-mail thom.allen@ncmail.net.

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by DENR – Environmental Management 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 02H .0126. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-215.1; 143-215.3

Statement of the Subject Matter: Proposed Action: At the April 11, 2002 meeting of the Environmental Management Commission (EMC), the Commission members voted to send draft rule language, for implementing the NPDES Phase II program in North Carolina, to public notice and public hearing. In addition, the Commission voted to publish a list of outstanding issues (see Appendix 1) related to the rule language and NPDES Phase II implementation. The Commission is seeking public comments specifically on the listed issues and ways to resolve those issues. The Commission is also seeking comments on the draft rule language in general, but would like specific comments on Item 10 of the rule language. Item 10 was developed to address a unique situation that exists, with respect to the NPDES Phase II program implementation, in the state of North Carolina. North Carolina is one of the few states in which roads and associated drainage ways are owned and operated by the state's Department of Transportation in the unincorporated areas of counties. The federal NPDES Phase II rules were written with the expectation and intent that counties would implement the NPDES Phase II program in their jurisdictional areas. The expectation was based on the statutory authorities for land use decisions residing with counties. The underlying assumption being that the ownership of roads and drainage systems was directly linked to these land use authorities. Furthermore, the federal regulation requires permits for owner/operators of the storm sewer systems. In North Carolina, the counties do not own the roads or the associated drainage ways. The end result is a gap in NPDES Phase II program coverage in the densely populated unincorporated areas of the state. To address this issue, the EMC requested the language in Item 10 be developed. It is presented here for discussion purposes, to request comment, and to note to the public that the EMC intends to address this issue.

Public Hearing: Public hearings will be held across the state in the month of June. EMC members will serve as hearing officers. Anyone wishing to speak at the hearings is requested to provide

a written copy of their oral comments at the time of the hearing. The hearing are scheduled to be held in the following cities:

- Asheville
- Kernersville
- Smithfield
- Washington
- Wilmington

The time and location of each meeting has not been finalized at this time. This information will be posted on the Division of Water Quality Stormwater and General Permits Unit web site (<http://h2o.enr.state.nc.us/su/stormwater.html>) once the times and locations have been confirmed. This information will also be available by calling 919-733-5083, Ext. 223.

Reason for Proposed Action: NC DENR is the delegated authority to implement a Federal program. The federal rules changed in December 1999. Agency needs to make rule changes to implement the new program requirements. These rules may be adopted as temporary rules.

Comment Procedures: Send comments to Darren England, Division of Water Quality, Stormwater & General Permits Unit, 1617 Mail Service Center, Raleigh NC 27699-1617. Comments may also be submitted electronically to stormwater@ncmail.net.

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

**SECTION .0100 - POINT SOURCE DISCHARGES TO
THE SURFACE WATERS**

15A NCAC 02H .0126 is amended as a draft proposed rule as follows:

15A NCAC 02H .0126 STORMWATER DISCHARGES

Permits for stormwater discharges to surface waters shall be issued in accordance with these Rules and United States Environmental Protection Agency regulations 40 CFR ~~122.24 and 122.26~~ 122.21, 122.26, and 122.28 through 122.37 which are hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc. 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of ~~thirty six sixty-nine~~ thirty six dollars ~~(\$36.00)~~ (\$69.00) each plus ~~four six~~ four dollars ~~(\$4.00)~~ (\$6.00) shipping and handling. Copies are also available at the Division of ~~Environmental Management,~~ Water Quality, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604. These federal regulations can also be accessed on the world wide web at <http://www.gpo.gov/nara/cfr/index.html>.

- (1) For the purpose of this Rule, these terms shall be defined as follows:
 - (a) Department means the North Carolina Department of Environment and Natural Resources.
 - (b) Municipal separate storm sewer system (MS4) pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs,

gutters, ditches, manmade channels, or storm drains):

- (i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the United States;
- (ii) Designed or used for collecting or conveying stormwater;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.
- (c) Permitted by Rule means an entity is considered permitted pursuant to G.S. 143-215.1 and subject to judicial review pursuant G.S. 143-215.5. It shall not be necessary for the Department to issue separate permits, provided such entities comply with Sub-Item 6(b)(ii) of this Rule. Such entities shall be subject to enforcement remedies pursuant to G.S. 143-215.6A, 143-215.6B and 143-215.6C.
- (d) Population Density means the population of an area divided by the area's geographical measure in square miles, equal to persons per square mile. For the purposes of this definition, the population shall equal the sum of the permanent and seasonal populations, or be calculated from a measure of housing unit density.
- (e) Pre-development discharge rate means the actual or calculated stormwater runoff discharge rate from the one year 24 hour design storm for a project area prior to initiating any

- land disturbing activities for the new development.
- (f) Public body means the United States, the State of North Carolina, city, village, township, county, school district, public college or university, single purpose governmental agency or any other governing body which is created by federal or state statute or law, and owns or operates a MS4 or that discharges to waters of the State or to an interconnected MS4.
- (g) Redevelopment means any rebuilding activity other than a rebuilding activity that:
- (i) results in no net increase in built-upon area; and
- (ii) provides equal or greater stormwater control than the previous development.
- (h) Significant contributor of pollutants means an MS4 or a discharge that:
- (i) contributes to a pollutant loading(s) which may reasonably be expected to exert detrimental effects on the quality and uses of that water body;
- (ii) or destabilizes the physical structure of a water body such that the discharge may reasonably be expected to exert detrimental effects on the quality and uses of that water body.
- Uses of the waters shall be determined pursuant to 15A NCAC 02B .0211 - .0222 and 15A NCAC 02B, Section .0300.
- (i) Small municipal separate storm sewer system "small MS4" pursuant to 40 CFR 122.26(b)(16) means all separate storm sewers that are:
- (i) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved
- management agency under Section 208 of the CWA that discharges to waters of the United States.
- (ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to 40 CFR 122.26(b), or designated under Sub-Item (2)(b) of this Rule.
- This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.
- (j) Total maximum daily load (TMDL) means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant.
- (2) Designation: Designation consists of an automatic federal designation of public entities as described by Sub-Item (2)(a) of this Rule and a two step state designation process as described by Sub-Item (2)(b) of this Rule. All bodies that are designated shall comply with the permit application schedule set forth in Item (5) of this Rule.
- (a) Federal designation. In accordance with 40 CFR 122.32, all small MS4s located in whole or in part within an urbanized area as determined by the most recent Decennial Census by the Bureau of the Census must seek coverage under a NPDES permit for stormwater management.
- (b) State designation process. The department shall identify additional public bodies that have the potential to discharge stormwater resulting in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including adverse habitat and biological impacts. As a first step, the public bodies shall be identified based on the categories listed at Sub-Item (2)(b)(i) of this Item. Once a public body has been identified, the designation of that body, step two, as subject to the requirement to apply for permit coverage will be made based on the criteria at Sub-Item (2)(b)(ii) of this Item.

(i) Step One: Identification of Public Bodies potentially subject to regulation.

(A) Municipality. A municipality, outside of an urbanized area as determined by the most recent Decennial Census by the Bureau of the Census, will be identified as a potential regulated MS4 if:

- (I) the population is greater than 10,000;
- (II) the population density is at least 1,000 people per square mile.

(B) County. A County, outside of an urbanized area as determined by the most recent Decennial Census by the Bureau of the Census, will be identified as a potential regulated public body if the county is classified by the North Carolina Department of Commerce as Tier 4 or Tier 5 pursuant to G.S. 105-129.3.

(C) Other MS4s. A MS4's may be designated as an "Other MS4" if:

- (I) They are a municipality located within a federal or state designated county, and have not been

designated under any other category;

or
(II) They are a municipality and have not been

designated under any other category;

or
(III) They are a MS4 such as, but not limited to, state and federal facilities, universities, community colleges, local sewer districts, hospitals, military bases, and prisons.

(D) Total Maximum Daily Load (TMDL) MS4s include public bodies discharging pollutants that are contributing to the impairment of a water body's use, as determined in accordance with 33 U.S.C 1313(d). TMDL MS4s shall be designated if the MS4 is specifically listed by name for urban stormwater Total Maximum Daily Load development.

(E) Designated by petition. Entities subject to a petition may be designated by the department based on the process and

procedures identified in Item (4) of this Rule.

(ii) Step Two: Criteria for Designation of public bodies. In making designations, the department will evaluate the public bodies identified as per Sub-Item (2)(b)(i) of this Rule for designation using the following criteria:

(A) Whether the public body discharges or has the potential to discharge stormwater to sensitive waters, including:

(I) waters classified as high quality, outstanding resource, shellfish, trout or nutrient sensitive waters in accordance with 15A NCAC 02B .0101(d) and (e);

(II) waters which have been identified as providing habitat for federally-listed aquatic animal species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries

Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544; or

(III) waters for which the designated use, as set forth in the classification system at 15A NCAC 02B .0101(c), (d) and (e) have been determined to be impaired in accordance with the requirements of 33 U.S.C. 1313(d); and

(B) Has exhibited high growth or growth potential, where

(I) high growth shall be defined as a 10 year rate of growth exceeding 1.3 times the state population growth rate for that same period or a 10 year rate of growth which exceeds fifteen percent (15%); or

- (II) an area having growth potential shall be defined as a jurisdictional area adjoining an area determined to have high growth in accordance with Sub-Item (2)(b)(ii)(B)(I) of this Rule or an area having a projected growth rate exceeding 1.3 times the state growth rate for the previous 10 years;
- (C) Whether the public body discharges are, or have the potential to be, a significant contributor of pollutants to waters of the United States.
- (3) State Designation Administration: Review and finalization of public body designation shall be handled under the following guidelines:
 - (a) The department will implement the designation process in accordance with the department schedule for Basinwide Plans starting January 01, 2004;
 - (b) The department shall publish a list of public bodies identified in accordance with Sub-Item (2)(b)(i) of this Rule. Lists shall be developed for a river basin area in accordance with North Carolina's Basinwide Planning Schedule. Publication of this list may be coordinated with public notices issued through basinwide planning efforts;
- (c) All public bodies identified shall be notified in writing by the department prior to publication of the list in Sub-Item (3)(b) of this Rule;
- (d) The department shall accept public comment on the application of the evaluation criteria in Sub-Item (2)(b)(ii) of this Rule for each of the identified public bodies. A public comment period of not less than 30 days will be provided;
- (e) After review of the evaluation criteria in Sub-Item (2)(b)(ii) of this Rule and review of public comments received, the department will review the effectiveness of any existing water quality protection programs. The effectiveness will be determined based upon the water quality of the receiving waters, and whether the waters have been determined to be supporting the uses as set forth in the classifications pursuant to 15A NCAC 02B .0101(c), (d) and (e) and the specific classification of the waters pursuant to 15A NCAC 02B, Section .0300. The Department shall then make a final determination on designation for each of the listed public bodies; and
- (f) The department shall notify a public body of its designation for NPDES stormwater coverage in writing. This notification shall include the category under which the public body was designated, the basis(es) of the designation and the date on which the application for coverage shall be submitted to the Department.
- (4) Petitions
 - (a) In accordance with 40 CFR 122.26(f):
 - (i) Any operator of a MS4 may petition the department to require a separate NPDES stormwater permit for any discharge into the MS4; and
 - (ii) Any person may petition the department to require a NPDES stormwater permit for a discharge composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.
 - (b) Petition Submittal. Petitions to designate a small MS4 or discharge for NPDES stormwater permit coverage must meet the following requirements:

- | | |
|--|---|
| <p>(i) <u>Petitions must be submitted on department approved forms;</u></p> <p>(ii) <u>A separate petition must be filed for each petitioned entity;</u></p> <p>(iii) <u>The petition must be complete prior to consideration by the department;</u></p> <p>(iv) <u>Petitions must demonstrate the need for NPDES stormwater permit coverage for the petitioned entity based on the following standards:</u></p> <p style="padding-left: 20px;">(A) <u>For stormwater discharges to impaired waters, monitoring data must be submitted to demonstrate that the petitioned entity is the source of or a contributing source to the impairment;</u></p> <p style="padding-left: 20px;">(B) <u>For stormwater discharges to non-impaired waters, monitoring data must be submitted to demonstrate that the petitioned entity is degrading the receiving waters;</u></p> <p style="padding-left: 20px;">(C) <u>Monitoring data must include, at a minimum, representative sampling of the stormwater discharges subject to the petition; and</u></p> <p style="padding-left: 20px;">(D) <u>The petitioner must present information documenting how the sampling may be considered representative of the stormwater discharges. The petitioner may present technical scientific literature to support the sampling methods;</u></p> <p>(v) <u>The petitioner must certify that a copy of the petition and any subsequent additional information submitted by the petitioner</u></p> | <p><u>has been provided to the chief administrative officer of the petitioned entity within 48 hours of submitting said petition and additional information to the department;</u></p> <p>(vi) <u>Petitions must include the following to be eligible for consideration:</u></p> <p style="padding-left: 20px;">(A) <u>Completed set of petition form(s);</u></p> <p style="padding-left: 20px;">(B) <u>In accordance with Sub-Item (4)(b)(iv) of this Rule, a demonstration of the need for NPDES stormwater permit coverage. These data may be supplemented with technical study information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses;</u></p> <p style="padding-left: 20px;">(C) <u>Documentation of receiving waters impairment or degradation;</u></p> <p style="padding-left: 20px;">(D) <u>A map delineating the drainage area of the petitioned entity, the location of sampling stations, the location of the stormwater outfalls in the adjacent area of the sampling locations and general features such as, surface waters, major roads and political boundaries to appropriately locate the area of concern for the reviewers; and</u></p> <p style="padding-left: 20px;">(E) <u>Certification of petitioned entity notification.</u></p> <p>(vii) <u>On a case by case basis the department may request additional information necessary to evaluate the petition.</u></p> |
|--|---|

- (c) Petition Administration. All petitions received by the department will be processed under the following guidelines:
- (i) The department will make a determination on the completeness of the petition and acknowledge receipt of the petition within 90 days of receipt. The petition is considered complete if the department does not notify the petitioner of receipt within 90 days;
 - (ii) Substantially incomplete petitions will be returned to the petitioner with guidance on what is needed to complete the petition package;
 - (iii) Pursuant to 40 CFR 122.26(f)(5), the department must make a final determination on any petition within 180 days of receipt. The 180-day period begins upon receipt of a complete petition application. The department will draft the designation decision pursuant to the applicable designation criteria from Sub-Item (2)(b)(ii) of this Rule;
 - (iv) The petition will be sent to public notice, which includes a public comment period of at least 30 days.
 - (v) The department may hold a public hearing on any petition and shall hold a public hearing if the department receives a written request for a public hearing on the petition within 15 days after the notice of the petition is published and the department determines that there is a significant public interest in holding such hearing. The hearing date will be no less than 15 days from the receipt of the request for public hearing;
 - (vi) Information on the petitioned entity will be accepted until the end of the public comment period and will be considered in making the final determination on
- the petition. New petitions for the same entity received during this time will become a party to the original petition;
- (vii) New petitions for the same entity received after the public comment period ends and before the final determination is made will be considered incomplete and placed on administrative hold pending a final determination on the original petition.
 - (A) If the department designates the petitioned entity, any new petitions placed on administrative hold will be considered in the development of the NPDES permit.
 - (B) If the department makes the final determination that the petitioned entity should not be designated, new petitions for the previously petitioned entity must present new information or demonstrate that conditions have changed substantially in order to be considered. If new information is not provided, the petition shall be returned as substantially incomplete.
 - (viii) If the final determination is that the petitioned entity shall be designated, then the department will notify the petitioned entity of its designation and will require a NPDES stormwater permit application. The application shall be required to be submitted no later than 18 months from the date of notification.

- (5) Application schedule. Designated public bodies must submit applications on department approved forms and shall provide program descriptions for the minimum measures identified in Item (6) of this Rule.
- (a) The application deadline will not be less than 18 months from the date of designation notification, except for:
- (i) 1990 Decennial Census federally designated small MS4s, which must apply by March 10, 2003;
- (ii) 1990 Decennial Census federally designated counties, which must apply by March 10, 2003; and
- (iii) Municipally operated industrial activities, which must apply by March 10, 2003.
- (b) Small MS4's and counties that are federally designated based upon the 2000 Decennial Census, or a future decennial census, must apply for permit coverage within 18 months of the designation publication.
- (6) Stormwater Management Requirements
- (a) All designated public bodies subject to this Rule shall develop, implement and enforce a stormwater management plan approved by the department in accordance with Sub-Items (6)(b)-(6)(g) of this Rule. The plan shall be designed to reduce discharge of pollutants from MS4s to the maximum extent practicable and, except as otherwise provided, shall include but not be limited to the following minimum measures:
- (i) A public education and outreach program on the impacts of stormwater discharges on water bodies to inform citizens of how to reduce pollutants in stormwater runoff. The public body may satisfy this requirement by developing a local education and outreach program; by participating in a statewide education and outreach program coordinated by the department, or a combination of those approaches;
- (ii) A public involvement and participation program consistent with all applicable state and local requirements;
- (iii) A program to detect and eliminate illicit discharges within the MS4. The program shall include a storm sewer system mapping component which at a minimum identifies stormwater outfalls and the names and location of all waters within the jurisdiction of the public body;
- (iv) A program to reduce pollutants in any stormwater runoff to the MS4 from construction activities resulting in a land disturbance of greater than or equal to one acre. Implementation and enforcement of the Sedimentation Pollution Control Act, G.S. 113A-50 et seq., by either the Department or through a local program developed pursuant to G.S. 113A-54(b), in conjunction with the states NPDES permit for construction activities, may be used to meet this minimum measure either in whole or in part;
- (v) A program to address post-construction stormwater runoff from new development and redevelopment projects that cumulatively disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the MS4 or into an interconnected MS4, pursuant to Item (9) of this Rule; and
- (vi) A pollution prevention/good housekeeping program for municipal operations that addresses operation and maintenance, including a training component, to prevent or reduce pollutant runoff from those operations.
- (b) Counties designated pursuant to 40 CFR 122.32 and counties designated pursuant to this Rule, shall:
- (i) Apply for a permit to implement the six minimum

- measures throughout the county's unincorporated jurisdictional area; or
- (ii) Submit an application, indicating they will:
- (A) adopt ordinance(s) and implement programs addressing post-construction stormwater runoff throughout the entire county's unincorporated jurisdictional areas, pursuant to Item (9) of this Rule, to be permitted by rule; and
- (B) institute the pollution prevention/good housekeeping measure, pursuant to Sub-Item (6)(a)(vi) of this Rule, in accordance with a separate NPDES permit for municipal operations. If the county selects this option, the State will implement the remaining four minimum measure requirements throughout the entire county's unincorporated jurisdictional area through existing programs and NPDES stormwater permits to the extent allowed under those programs and permits; or
- (iii) Apply for permit coverage only for their small MS4's. If a county selects this option, the county shall implement the six minimum measures within the scope of the county's small MS4(s). If the county selects this option, the State will implement the six minimum measures throughout the county's unincorporated jurisdictional area through existing programs and NPDES stormwater permits as set forth in Item 10 of this Rule.
- (c) Municipalities designated pursuant to 40 CFR 122.32 or designated pursuant to the criteria set out in Sub-Item (2)(b) of this Rule shall apply for a permit to implement the six minimum measures throughout the municipality's jurisdictional area.
- (d) MS4's designated as "Other MS4's" pursuant to the criteria set out in Sub-Item (2)(b) of this Rule shall apply for a permit to, at a minimum, implement the pollution prevention/good housekeeping measure throughout the MS4's jurisdictional area. Other minimum measures may be assigned on a case by case basis.
- (e) All public bodies designated by petition shall meet the requirements set out in Sub-Items (6)(b), (6)(c), or (6)(d) of this Rule as applicable.
- (f) All public bodies designated by TMDL pursuant to the criteria set out in Sub-Item (2)(b) of this Rule shall meet the requirements as set out in Sub-Items (6)(b), (6)(c), or (6)(d) of this Rule as applicable including, but not limited to additional requirements associated with the TMDL.
- (g) The Department may allow designated public bodies to use existing state and local programs to meet the required permit minimum measures either in whole or in part.
- (7) Waiver. The department may waive the requirements set out in Item (6) of this Rule pursuant to 40 CFR 122.32(d) or 40 CFR 122.32(e).
- (8) Implementation Schedule.
- (a) Designated public bodies, other than counties, pursuant to Item (2) of this Rule, shall have permit conditions that establish schedules for implementation of each component of the stormwater management program based on the submitted application, and shall fully implement a program meeting the requirements set out in Item (6) of this Rule within five years from permit issuance.
- (b) Counties designated pursuant to 40 CFR 122.32 and counties designated pursuant to Sub-Item (2)(b) of this Rule, shall have the following implementation options:

- (i) Counties electing to implement the six minimum measures throughout the county's unincorporated jurisdictional area, shall have permit conditions that establish schedules for implementation of each component of the stormwater management program based on the submitted application, and shall fully implement a program meeting the applicable requirements set out in Sub-Item (6)(a) of this Rule within five years from permit issuance; or
 - (ii) Counties electing to be permitted by rule shall adopt ordinances and implement required measures within two years of notification of approval of application for permitted by rule status and thereafter report annually on the implementation of the ordinance(s); or
 - (iii) Counties electing to seek permit coverage only for small MS4's owned or operated by the county shall have two years from the date of permit issuance to fully implement a program for the small MS4's which meets the applicable requirements set out in Sub-Item (6)(a) of this Rule.
- (9) Post-construction stormwater management
- (a) All designated public bodies, required to implement the post construction stormwater management minimum measure, must develop, implement and adopt by ordinance a post-construction stormwater management program for new development and redevelopment as part of their plan to meet the minimum requirements pursuant to Sub-Item (6)(a)(v) of this Rule. These ordinances, and subsequent modifications, will be reviewed and approved by the Department prior to implementation. The approval process will establish subsequent timeframes when the Department will review performance under the ordinance(s). The reviews will occur, at a minimum, every five years. Designated public bodies without ordinance making powers, shall demonstrate similar actions taken in their post construction stormwater management program to meet the minimum measure requirements
 - (b) The post-construction program shall apply to new development projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale. The post-construction program shall apply to redevelopment projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale.
 - (c) The department shall submit a model ordinance including best management practices to control and manage stormwater runoff from development and redevelopment sites subject to this Rule to the Commission for approval. The department shall work in cooperation with local governments to develop this model ordinance. The model ordinance shall include both structural and non-structural best management practices adequate to meet the minimum requirements of this Rule.
 - (d) A post construction stormwater management program shall be developed and implemented that meets the following requirements:
 - (i) All subject development and redevelopment projects, as defined at Item (b) of this Rule, must control and treat the runoff from the one year 24 hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours;
 - (ii) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have an 85% average annual removal for Total Suspended Solids;
 - (iii) The program shall include an operation and maintenance component that ensures the adequate long-term operation of the BMPs required by the program; and
 - (iv) A program shall be developed to control, to the maximum extent practicable, the sources of fecal coliform.

At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater.

(e) For programs with development/redevelopment draining to SA waters, the following additional requirements must be incorporated into their program:

(i) A local ordinance shall be developed, adopted and implemented to ensure that the best practice for reducing fecal coliform loading is selected. The best practice shall be the practice that results in the highest degree of fecal die off and controls to the maximum extent practicable sources of fecal coliform while still meeting the requirements of Sub-Item (9)(d) of this Rule. The local ordinance(s) shall incorporate a program to control the sources of fecal coliform to the maximum extent practical, including:

(A) Implementation of a pet waste management program; and

(B) Implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater; and

(ii) New direct points of stormwater discharge to SA waters or expansion of existing points of discharge to any stormwater conveyance system, or system of conveyances that discharge to SA waters, shall not be allowed. Overland sheetflow of stormwater or stormwater discharge to a wetland, vegetated buffer or other natural area capable of providing treatment or

absorption will not be considered a direct point of stormwater discharge for the purposes of this Rule.

(f) For programs with development/redevelopment draining to trout (Tr) waters, the following additional requirements must be incorporated into their program: A local ordinance shall be developed, adopted and implemented to ensure that the best management practices selected do not result in a sustained increase in the receiving water temperature, while still meeting the requirements of Sub-Item (9)(d) of this Rule.

(g) For programs with development/redevelopment draining to Nutrient Sensitive waters, the following additional requirements must be incorporated into their program.

(i) A local ordinance shall be developed, adopted and implemented to ensure that the best management practice for reducing nutrient loading is selected while still meeting the requirements of Sub-Item (9)(d) of this Rule. Where a Department approved NSW Urban Stormwater Management Program is in place, the provisions of that program fulfill this requirement; and

(ii) A nutrient application (both inorganic fertilizer and organic nutrients) management program shall be developed and included in the stormwater management program.

(h) Public bodies may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of Item (9) of this Rule.

(i) The department may require more stringent stormwater management measures on a case-by-case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters.

(j) The Department may develop guidance on the scientific and engineering standards for best management practices that shall be used to meet the post construction

RULE-MAKING PROCEEDINGS

elements of this Rule. Alternative design criteria may be approved by the Department where a demonstration is made that the alternative design will provide:

- (i) Equal or better management of the stormwater;
- (ii) Equal or better protection of the waters of the state; and
- (iii) No increased potential for nuisance conditions.

Item 10 was developed to address the coverage gaps created by North Carolina's unique governmental structure with respect to state roads. Please note that there are four instances in the Item 10 language where precise values for dwelling units per acre, percent built-upon area for all residential and non-residential development, and minimum vegetated setback have not been specified. The Commission is interested in what values the public feels are appropriate. The state has several programs in place with stormwater components similar to the one outlined in Item 10. Appendix 2 summarizes the values that appear in those rules with respect to the aforementioned items.

(10) State Program Implementation. For those designated counties that select the option outlined in Sub-Item (6)(b)(iii) of this Rule, the state shall implement post construction stormwater control requirements in accordance with this Item.

(a) Areas subject to the post construction stormwater controls shall be those census blocks, which have a population density of greater than 500 persons per square mile, located in the unincorporated portions of the designated county.

(b) The post construction stormwater control requirements shall apply to all new development and redevelopment projects that cumulatively disturb one acre or more, and to projects less than one acre that are part of a larger common plan of development or sale.

(c) Projects subject to this Item shall apply for permit coverage under the following stormwater management options.

(i) Low Density Projects. Projects shall be permitted as low density if the project has:

(A) No more than XXX dwelling units per acre or YYY percent built-upon area for all residential and non-residential development;

(B) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the

maximum extent practicable;

(C) A minimum vegetated setback of ZZZ feet shall be required from all perennial and intermittent surface waters; and

(D) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project; and

(ii) High Density Projects. Projects exceeding the low density threshold established in Sub-Item (10)(c)(i) of this Rule shall implement stormwater control measures that:

(A) Control and treat stormwater runoff from the one year 24 hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours;

(B) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have an

- 85% average annual removal for Total Suspended Solids;
- (C) The size of the system shall take into account the runoff at the ultimate built-out potential from all surfaces draining to the system, including any off-site drainage. The storage volume of the system shall be calculated to provide for the most conservative protection using runoff calculation methods described on pages A.1 and A.2 in "Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs" which is hereby incorporated by reference not including amendments. This document is available through the Metropolitan Washington, D.C. Council of Governments at a cost of forty dollars (\$40.00). Other engineering methods may be approved if these methods are shown to provide equivalent protection;
- (D) All side slopes being stabilized with vegetative cover shall be no steeper than 3:1 (horizontal to vertical);
- (E) A minimum vegetated setback of **ZZZ** shall be required from perennial and
- intermittent surface waters;
- (F) For projects that drain to SA waters, the requirements of Sub-Item (9)(e)(ii) of this Rule apply. Control measures implemented for projects draining to SA waters shall ensure that the best management practice for reducing fecal coliform loading is selected;
- (G) For projects draining to trout (Tr) waters best management practices selected must not result in sustained increases in receiving water temperature while still meeting the requirements of this Item;
- (H) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project; and
- (I) Stormwater control measures shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access agreements to the nearest public right-of-way. These easements shall be granted in favor of the party responsible for operating and maintaining the stormwater management structures.

RULE-MAKING PROCEEDINGS

APPENDIX 1

List of issues on which the Environmental Management Commission is seeking public comment. Please note that for some issues, references (in parentheses) have been given to direct the reader to specific Items of the Rule language and other reference material.

Designation policy – checklist of criteria versus case by case evaluation. (See Item 2)

Clarification of authority to regulate counties. (See discussion in introduction)

Fairness – municipalities versus counties. (See discussion in introduction and EMC proposal to address coverage gaps. See also options outlined for counties in Item 6)

APPENDIX 2

Summary of existing program limits

		<u>XXX</u>	<u>YYY</u>	<u>ZZZ</u>
<u>Classifications</u>	<u>Coverage*</u>	<u>Dwelling Units/Acre</u>	<u>Density**</u>	<u>Vegetated Setback</u>
<u>HQW / ORW</u>	<u>1 mile</u>	<u>1 DU / AC</u>	<u>12% BUA</u>	<u>30 ft</u>
<u>WS-II</u>	<u>½ mile</u>	<u>1 DU / 2AC</u>	<u>6% BUA</u>	<u>30ft / 100 ft</u>
	<u>watershed</u>	<u>1 DU / AC</u>	<u>12% BUA</u>	<u>30ft / 100 ft</u>
<u>WS-III</u>	<u>½ mile</u>	<u>1 DU / AC</u>	<u>12% BUA</u>	<u>30ft / 100 ft</u>
	<u>watershed</u>	<u>1 DU / ½ AC</u>	<u>24% BUA</u>	<u>30ft / 100 ft</u>
<u>WS-IV</u>	<u>½ mile</u>	<u>1 DU / ½ AC</u>	<u>24% BUA</u>	<u>30ft / 100 ft</u>
	<u>watershed</u>	<u>1 DU / ½ AC</u>	<u>24% BUA</u>	<u>30ft / 100 ft</u>
<u>Coastal County</u>	<u>All</u>	<u>N/A</u>	<u>30% BUA</u>	<u>30 ft</u>
<u>Coastal County-SA</u>	<u>½ mile</u>	<u>N/A</u>	<u>25% BUA</u>	<u>30 ft</u>

*The limits in column 3, 4, and 5 apply within the coverage area specified in column 2. Where a distance is given, the coverage area is delineated at that distance from the receiving water. Where "watershed" is listed, the coverage area is the entire watershed. For coastal counties, "All" means the coverage area is the entire county.

**Density (BUA) – Built upon area

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

CHAPTER 13 – SOLID WASTE MANGAGEMENT

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.

Petitioning – liberalizing requirements and effects of that liberalization. (See Item 4)

Fiscal note and the cost/benefit of the various components of the Rule. (North Carolina specific fiscal note has yet to be developed pending finalization of Rule language. Federal fiscal note is available from the US EPA, document number EPA 833-R-99-002, October 1999)

Consistency with federal EPA deadlines. (See Item 5)

Post-Construction – designed based vs. performance based rules. (See Item 9)

Protection of sensitive waters from pollutants of concern. (See Item 9)

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 13B .0300. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 130A-294

Statement of the Subject Matter: The department is considering amending treatment and processing rules in Section .0300 to define and establish criteria for facilities that receive wastes and treat or process those wastes for utilization by recycling, reclaiming or for final disposal.

Reason for Proposed Action: There is an increasing amount and variety of solid waste types that are being proposed for some type of treatment or processing. In order to clarify and improve the procedures for obtaining permits for facilities that receive solid wastes and treat or process the waste for recycling, reclaiming or final disposal, the rules are being revised.

Comment Procedures: All persons wishing to provide comments regarding the rules are encouraged to submit written

RULE-MAKING PROCEEDINGS

comments to Ted Lyon, Compost and Land Application Branch, Division of Waste Management, Solid Waste Section, 1646 Mail Service Center, Raleigh, NC 27699-1646.

Citation to Existing Rule Affected by this Rule-making: 21 NCAC 48C .0101. *Other rules may be proposed in the course of the rule-making process.*

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 48 - BOARD OF PHYSICAL THERAPY EXAMINERS

Authority for the Rule-making: G.S. 90-270.24; 90-270.26

Statement of the Subject Matter: *Scope of physical therapy practice.*

Reason for Proposed Action: *The purpose of this rule change will be to clarify the scope of physical therapy practice.*

Comment Procedures: *Written comments may be submitted to Mr. Ben Massey, Director, NC Board of Physical Therapy Examiners, 18 West Colony, Suite 140, Durham, NC 27705.*

Notice of Rule-making Proceedings is hereby given by NC Board of Physical Therapy Examiners 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.*

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 rule cited as 11 NCAC 10 .1106. Notice of Rule-making Proceedings was published in the Register on February 22, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: May 30, 2002

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building

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, and will be accepted through June 14, 2002.

Fiscal Impact

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

CHAPTER 10 – PROPERTY AND CASUALTY DIVISION

SECTION .1100 – RATE FILINGS

11 NCAC 10 .1106 DEVIATIONS FROM RATES OF THE NORTH CAROLINA RATE BUREAU

(a) Definitions:

- (1) Rate deviation refers to the entire collection of differences from the Rate Bureau rates and rating plan that a company has implemented or proposes to implement. Deviation and aggregate deviation are used synonymously. A company shall have only one rate deviation from each Rate Bureau filing and rating plan.
- (2) Deviation component refers to any individual part of the aggregate deviation. A deviation component may involve a coverage difference, a different territorial relativity, a different class relativity, a different rate for a particular type of insured, etc. Proposed differences in territorial and class relativities (and other similarly related sets of rating factors) should be treated as one deviation component and only one supplementary exhibit described in Paragraph (h) of this Rule should be completed.

- (3) Introduction of a deviation means that a company has no current rate deviation on file for the particular line but is proposing to implement one.
- (4) Modification of a deviation means that a company has a current rate deviation on file for the particular line and that the company proposes to add, change, or eliminate one of the components of the deviation.
- (5) Withdrawal of a deviation means that a company has a rate deviation on file that it proposes to withdraw in its entirety.

(b) Filing Guidelines:

- (1) All rate deviation filings must be made in triplicate.
 - (A) The original and one copy shall be sent to the Department.
 - (B) The second copy shall be sent to the North Carolina Rate Bureau.
- (2) A rate deviation shall be introduced, modified, or withdrawn on an individual company basis even if the company is part of a group.
- (3) All proposed rate deviations shall be expressed in terms of North Carolina Rate Bureau rates, either as percentages or as dollar amounts.
- (4) Filing requirements differ by type of deviation action:
 - (A) To introduce a deviation, see Paragraph (d) of this Rule.
 - (B) To modify a deviation, see Paragraph (e) of this Rule.
 - (C) To withdraw a deviation, see Paragraph (f) of this Rule.

(c) Application of Deviations:

- (1) On approval of the introduction, modification, or withdrawal of one or more rate deviations, the department shall transmit to the company a letter of approval listing all the components in effect for that line and company.
- (2) All deviation components listed shall be applied to all eligible insureds and deviation components not listed shall not be applied to any insured.
- (3) Rate deviations remain in effect until modified or withdrawn.
- (4) Modifications of existing rate deviations are permitted at any time.
- (5) An unmodified rate deviation may be withdrawn only if both of the following conditions have been met:
 - (A) The deviation has been in effect for at least six months.

PROPOSED RULES

- (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.
- (6) A modified rate deviation may be withdrawn only if both of the following conditions have been met:
 - (A) The deviation has been in effect for at least six months since the date of the last modification.
 - (B) Application for withdrawal is submitted to the department 15 days before the proposed withdrawal date.
- (d) Filings to introduce rate deviations shall contain only the following information:
 - (1) A cover letter containing the following:
 - (A) Company name;
 - (B) Company's Federal Employer's Number;
 - (C) Line of business involved.
 - (2) A completed deviation questionnaire obtained from the Property and Casualty Division.
 - (3) Completed supplementary exhibits obtained from the Property and Casualty Division for each deviation component.
- (e) Filings to modify rate deviations shall contain only the following information:
 - (1) A cover letter containing the following:
 - (A) Company name;
 - (B) Company's Federal Employer's Number;
 - (C) Line of business involved;
 - (D) Department file number.
 - (2) A completed deviation questionnaire obtained from the Property and Casualty Division.
 - (3) Completed supplementary exhibits obtained from the Property and Casualty Division for each deviation component that is added, changed, or eliminated.
- (f) Filing letters for withdrawals of rate deviations. Filing letters for withdrawal shall contain only the following information:
 - (1) A cover letter including the following information:
 - (A) Company name;
 - (B) Company's Federal Employer's Number;
 - (C) Line of business involved;
 - (D) Department file number.
 - (2) A statement that the deviation has been in effect for at least six months.
- (g) Deviation questionnaires shall contain the following information (if applicable):
 - (1) Company Name;
 - (2) Company's Federal Employer's Number;
 - (3) Company's file number;
 - (4) Line of insurance;
 - (5) Subline/Program title;
 - (6) Previous Department file number, if applicable;
 - (7) Proposed effective date and rules of implementation;

- (8) Company's N.C. volume of business;
- (9) Company's N.C. market share;
- (10) Company's countrywide volume of business;
- ~~(11) N.C. share of the company's volume for the line;~~
- ~~(12)(11) Number of N.C. insureds affected;~~
- ~~(13)(12) Percentage of N.C. insureds affected;~~
- ~~(14) Dollar effect of the deviation;~~
- (13) Total dollar amount of premiums that will not be collected on an annual basis as a result of this deviation;
- ~~(15) Average deviation;~~
- (14) Average dollar difference per exposure from manual rates;
- ~~(16) Whether deviations components are cumulative;~~
- ~~(17)(15) Maximum deviation;~~
- ~~(18) Whether any insured can be charged greater than the manual rate;~~
- (16) If the deviation produces a premium greater than manual for an individual insured, explain;
- ~~(19)(17) List of individual deviation components and the proposed action;~~
- ~~(20)(18) Certification by a company officer or filings department head; and~~
- ~~(21) Such other information that the commissioner may require.~~
- (19) Actuarial certification.
- (h) Supplementary exhibits on deviation components shall contain the following ~~information: information, and each component shall be listed on a separate exception page:~~
 - (1) Type of component;
 - (2) Type of action;
 - (3) Description of the component;
 - ~~(4) Description of the eligibility and restrictions for the component;~~
 - ~~(5) Action by other states;~~
 - ~~(6)(4) Other companies filing a similar component; and~~
 - ~~(7) Estimated number of North Carolina exposures for the last three years (and their premium) that have been or would have been affected;~~
 - ~~(8) Range of the component;~~
 - ~~(9)(5) Explanation for proposed action.~~

Authority G.S. 58-2-190; 58-36-30(a) and (c).

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 19A .0101-.0103, .0201, .0203, .0205, .0207, .0209, .0801; and repeal the rules cited as 15A NCAC 19A .0802-.0803. Notice of Rule-making Proceedings was published in the Register on March 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: June 6, 2002

Time: 1:00 p.m.

Location: Room G-1A, 1330 St. Mary's St., Raleigh, NC

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 .0102 – Revisions are proposed to clarify the manner of reporting diseases and conditions reportable by physicians and laboratories.

15A NCAC 19A .0103 – Revisions are proposed to update the name of the HIV/STD Prevention and Care Branch.

15A NCAC 19A .0201 – Revisions are proposed to ensure compliance with current national standards and to update administrative information.

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 .0205 – Revisions are proposed to update the TB Control Program name and mailing address.

15A NCAC 19A .0207 – Revisions are proposed to update the General Communicable Disease Control Branch name and mailing address.

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

15A NCAC 19A .0801 – Revisions are proposed to remove obsolete portions of this Rule pertaining to tuberculosis control and to update the names of two branches.

15A NCAC 19A .0802-.0803 – It is proposed that these Rules be repealed in their entirety in order to remove obsolete requirements.

Comment Procedures: Written comments concerning this rule-making action may be submitted within 30 days after the date of publication in this issue of the North Carolina Register. Comments must be submitted to Chris G. Hoke, Rule-making Coordinator, Division of Public Health, 2001 Mail Service Center, Raleigh, NC 27699-2001. Comments will be accepted through June 15, 2002.

Fiscal Impact

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

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

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 O157: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;
- ~~(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;

PROPOSED RULES

- ~~(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.
 - (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - ~~(F)~~(I) *Clostridium botulinum*, a cause of botulism.
 - ~~(G)~~(J) *Clostridium tetani*, the cause of tetanus.
 - ~~(H)~~(K) *Corynebacterium diphtheriae*, the cause of diphtheria.
 - ~~(I)~~(L) *Coxiella burnetii*, the cause of Q fever.

- ~~(M)~~(M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
 - ~~(N)~~(N) *Cyclospora cayentanesis*, the cause of cyclosporiasis.
 - ~~(O)~~(O) *Ehrlichia spp.*, the causes of ehrlichiosis.
 - ~~(P)~~(P) ~~*Escherichia coli* O157:H7, a Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.~~
 - ~~(Q)~~(Q) *Francisella tularensis*, the cause of tularemia.
 - ~~(R)~~(R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
 - ~~(S)~~(S) Human Immunodeficiency Virus, the ~~virus associated with cause of AIDS.~~
 - ~~(T)~~(T) *Legionella spp.*, the causes of legionellosis.
 - ~~(U)~~(U) *Leptospira spp.*, the causes of leptospirosis.
 - (V) *Listeria monocytogenes*, the cause of listeriosis.
 - (W) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
 - (X) Poliovirus (any), the cause of poliomyelitis.
 - ~~(Y)~~(Y) Rabies virus.
 - ~~(Z)~~(Z) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
 - (AA) Rubella virus.
 - ~~(BB)~~(BB) *Salmonella spp.*, the causes of salmonellosis.
 - ~~(CC)~~(CC) *Shigella spp.*, the causes of shigellosis.
 - (DD) Smallpox virus, the cause of smallpox.
 - ~~(EE)~~(EE) *Trichinella spiralis*, the cause of trichinosis.
 - ~~(FF)~~(FF) *Vibrio spp.*, the causes of cholera and other vibrioses.
 - (GG) Yellow fever virus.
 - ~~(HH)~~(HH) *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
 - ~~(ii)~~ Hepatitis A virus.
 - ~~(iii)~~ Hepatitis B virus core antigen.
 - ~~(iv)~~ Rubella virus.
 - ~~(v)~~ Rubeola (measles) virus.
 - (vi) Yellow fever virus.

- (4) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, forms or electronic formats provided by the Division of ~~Epidemiology~~ Public Health for collection of information necessary for disease control and documentation of clinical and epidemiologic information about the cases shall be completed and submitted for the reportable diseases and conditions identified in 15A NCAC 19A .0101(a), namely, ~~(1), (4), (13), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (31), (32), (33), (34), (35), (38), (39), (42), (43), (44), (49), (50), (52), (53), (54), (55), (56),~~ acquired immune deficiency syndrome (AIDS); brucellosis; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; ehrlichiosis; Haemophilus influenzae, invasive disease; Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura; hepatitis A; hepatitis B; hepatitis B carriage; hepatitis C; human immunodeficiency virus (HIV) confirmed; legionellosis; leptospirosis; Lyme disease; malaria; measles (rubeola); meningitis, pneumococcal; meningococcal disease; mumps; paralytic poliomyelitis; psittacosis; Rocky Mountain spotted fever; rubella; rubella congenital syndrome; tetanus; toxic shock syndrome; trichinosis; tuberculosis; tularemia; typhoid; typhoid carriage (Salmonella typhi); vibrio infection (other than cholera); and (59) whooping cough.
- (5) Communicable disease report cards, surveillance forms, and electronic formats are available from the General Communicable Disease Control Branch Surveillance Unit, N.C. Division of Epidemiology, P.O. Box 29601, 1902 Mail Service Center, Raleigh, NC 27626-0601, 27699-1902, (919) 733-3419, and from local health departments.
- (b) Notwithstanding the time frames established in 15A NCAC 19A .0101 a restaurant or other food or drink establishment shall report all outbreaks or suspected outbreaks of foodborne illness in its customers or employees and all suspected cases of foodborne disease or foodborne condition in food-handlers at the establishment by telephone to the local health department within 24 hours in accordance with Subparagraph (a)(1) of this Rule. However, the establishment is not required to submit a report card or surveillance form pursuant to Subparagraphs (a)(2) and (a)(4) of this Rule.
- (c) For the purposes of reporting by restaurants and other food or drink establishments pursuant to G.S.130A-138, the diseases and conditions to be reported shall be those listed in 15A NCAC 19A .0101(a), ~~(3), (5), (8), (9), (12), (16), (21), (44), (45), (51), (54), (55),~~ namely, anthrax; botulism; brucellosis; campylobacter infection; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; hepatitis A; salmonellosis; shigellosis; streptococcal infection, Group A, invasive disease; trichinosis;

Authority G.S. 130A-134; 130A-135; 130A-139; 130A-141.

15A NCAC 19A .0102 METHOD OF REPORTING

(a) When a report of a disease or condition is required to be made pursuant to G.S. 130A-135 through 139 and 15A NCAC 19A .0101, with the exception of laboratories, which shall proceed as in Paragraph (d) of this Rule, the report shall be made to the local health director as follows:

- (1) For diseases and conditions required to be reported within 24 hours, the initial report shall be made by telephone, and the report required by Subparagraph (2) of this Paragraph shall be made within seven days.
- (2) In addition to the requirements of Subparagraph (1) of this Paragraph, the report shall be made on the communicable disease report card or in an electronic format provided by the Division of ~~Epidemiology~~ Public Health and shall include the name and address of the patient, the name and address of any minor's parent or guardian, and all other pertinent epidemiologic information.
- (3) Until September 1, 1994, reports of cases of confirmed HIV infection identified by anonymous tests that are conducted at HIV testing sites designated by the State Health Director pursuant to 15A NCAC 19A .0202(10) shall be made on forms provided by the Department for that purpose. No communicable disease report card shall be required. Effective September 1, 1994, anonymous testing shall be discontinued and all cases of confirmed HIV infection shall be

tularemia; typhoid; typhoid carriage (Salmonella typhi); and (57) vibrio infection (other than cholera).

(d) Laboratories required to report test results pursuant to G.S. 130A-139 and 15A NCAC 19A .0101(c) shall report as follows:

- (1) The results of the specified tests for ~~syphilis~~ syphilis, chlamydia and gonorrhea shall be reported to the local health department by the first and fifteenth of each month. Reports of the results of the specified tests for ~~gonorrhea~~ gonorrhea, chlamydia and syphilis shall include the specimen collection date, the patient's age, race, and sex, and the submitting physician's name, address, and telephone numbers.
- (2) Positive darkfield examinations for ~~syphilis~~ syphilis, all reactive prenatal and delivery STS titers, all reactive STS titers on infants less than one year old and STS titers of ~~1:4-16~~ 1:8 and above shall be reported within 24 hours by telephone to the HIV/STD ~~Control-Prevention and Care Branch~~ Control-Prevention and Care Branch at (919) 733-7301, or the HIV/STD ~~Control-Prevention and Care Branch~~ Control-Prevention and Care Branch Regional Office where the laboratory is located.
- (3) With the exception of positive laboratory tests for human immunodeficiency virus, positive laboratory tests as defined in G.S. 130A-139(1) and 15A NCAC 19A .0101(c) shall be reported to the General Communicable Disease ~~Section-Branch~~ Control-Prevention and Care Branch electronically, by mail, by secure telefax or by telephone within the time periods specified for each reportable disease or condition in 15A NCAC 19A .0101(a). Confirmed positive laboratory tests for human immunodeficiency virus as defined in 15A NCAC 19A .0101(b) shall be reported to the HIV/STD ~~Control-Section~~ Prevention and Care Branch within seven days of obtaining reportable test results. Reports shall include as much of the following information as the laboratory possesses: the specific name of the test performed; the source of the specimen; the collection date(s); the patient's name, age, race, ~~and sex, address, and~~ county; and the submitting physician's name, address, and telephone number.

Authority G.S. 130A-134; 130A-135; 130A-138; 130A-139; 130A-141.

15A NCAC 19A .0103 DUTIES OF LOCAL HEALTH DIRECTOR: REPORT COMMUNICABLE DISEASES

(a) Upon receipt of a report of a communicable disease or condition pursuant to 15A NCAC 19A .0101, the local health director shall:

- (1) immediately investigate the circumstances surrounding the occurrence of the disease or condition to determine the authenticity of the report and the identity of all persons for whom control measures are required. This investigation shall include the collection and

submission for laboratory examination of specimens necessary to assist in the diagnosis and indicate the duration of control measures; determine what control measures have been given and ensure that proper control measures as provided in 15A NCAC 19A .0201 have been given and are being complied with;

- (2) forward the report as follows:
 - (A) The local health director shall forward all authenticated reports made pursuant to G.S. 130A-135 to 137 of syphilis, chancroid, granuloma inguinale, and lymphogranuloma venereum within seven days to the regional office of the HIV/STD ~~Control-Prevention and Care Branch~~ Control-Prevention and Care Branch. In addition, the local health director shall telephone reports of all cases of primary, secondary, and early latent (under one year's duration) syphilis to the regional office of the HIV/STD ~~Control-Prevention and Care Branch~~ Control-Prevention and Care Branch within 24 hours of diagnosis at the health department or report by a physician.
 - (B) The local health director shall telephone all laboratory reports of reactive syphilis serologies to the regional office of the HIV/STD ~~Control-Prevention and Care Branch~~ Control-Prevention and Care Branch within 24 hours of receipt if the person tested is pregnant. This shall also be done for all other persons tested unless the dilution is less than 1:8 and the person is known to be over 25 years of age or has been previously treated. In addition, the written reports shall be sent to the regional office of the HIV/STD ~~Control-Prevention and Care Branch~~ Control-Prevention and Care Branch within seven days.
 - (C) Except as provided in (a)(3)(A) and (B) of this Rule, a local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person residing in that jurisdiction shall forward the authenticated report to the Division of ~~Epidemiology-Public Health~~ Epidemiology-Public Health within seven days.
 - (D) Except as provided in (a)(3)(A) and (B) of this Rule, a local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person who resides in another jurisdiction in North Carolina shall forward the report to the local health director of that jurisdiction within 24 hours. A duplicate report card marked "copy" shall be

- (E) forwarded to the Division of Epidemiology within seven days.
- (E) A local health director who receives a report pursuant to 15A NCAC 19A .0102 regarding a person who resided outside of North Carolina at the time of onset of the illness shall forward the report to the Division of ~~Epidemiology~~ Public Health within 24 hours.

(b) Whenever a cluster of cases of a reportable disease or condition occurs, the local health director shall investigate the cluster to determine if an outbreak exists. If an outbreak exists, the local health director shall submit to the Division of ~~Epidemiology~~ Public Health within 30 days a written report of the investigation, its findings, and the actions taken to control the outbreak and prevent a recurrence.

(c) Whenever a cluster of cases of a disease or condition occurs which is not required to be reported by 15A NCAC 19A .0101 but which represents a significant threat to the public health, the local health director shall investigate the cluster to determine if an outbreak exists. If an outbreak exists, the local health director shall give appropriate control measures consistent with 15A NCAC 19A .0200, and inform the Division of ~~Epidemiology~~ Public Health of the circumstances of the outbreak within seven days.

Authority G.S. 130A-141; 130A-144.

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

15A NCAC 19A .0201 CONTROL MEASURES – GENERAL

(a) Except as provided in Rules .0202 - .0209 of this Section, the recommendations and guidelines for testing, diagnosis, treatment, follow-up, and prevention of transmission for each disease and condition specified by the American Public Health Association in its publication, Control of Communicable Diseases Manual shall be the required control measures. Control of Communicable Diseases Manual is hereby incorporated by reference including subsequent amendments and editions. Guidelines and recommended actions published by the Centers for Disease Control and Prevention shall supercede those contained in the Control of Communicable Disease Manual and are likewise incorporated by reference. Copies of this publication may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 ~~for a cost of twenty two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling.~~ A copy is available for inspection in the General Communicable Disease Control Section, Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

(b) In interpreting and implementing the specific control measures adopted in Paragraph (a) of this Rule, and in devising control measures for outbreaks designated by the State Health Director and for communicable diseases and conditions for which a specific control measure is not provided by this Rule, the following principles shall be used:

- (1) control measures shall be those which can reasonably be expected to decrease the risk of

- (2) transmission and which are consistent with recent scientific and public health information;
- (2) for diseases or conditions transmitted by the airborne route, the control measures shall require physical isolation for the duration of infectivity;
- (3) for diseases or conditions transmitted by the fecal-oral route, the control measures shall require exclusions from situations in which transmission can be reasonably expected to occur, such as work as a paid or voluntary food handler or attendance or work in a day care center for the duration of infectivity;
- (4) for diseases or conditions transmitted by sexual or the blood-borne route, control measures shall require prohibition of donation of blood, tissue, organs, or semen, needle-sharing, and sexual contact in a manner likely to result in transmission for the duration of infectivity.

(c) Persons with congenital rubella syndrome, tuberculosis, and carriers of Salmonella typhi and hepatitis B who change residence to a different local health department jurisdiction shall notify the local health director in both jurisdictions.

(d) Isolation and quarantine orders for communicable diseases and communicable conditions for which control measures have been established shall require compliance with applicable control measures and shall state penalties for failure to comply. These isolation and quarantine orders may be no more restrictive than the applicable control measures.

(e) An individual enrolled in an epidemiologic or clinical study shall not be required to meet the provisions of 15A NCAC 19A .0201 - .0209 which conflict with the study protocol if:

- (1) the protocol is approved for this purpose by the State Health Director because of the scientific and public health value of the study, and
- (2) the individual fully participates in and completes the study.

Authority G.S. 130A-135; 130A-144.

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; 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; and
- (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;
- ~~(1)~~(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; and
- (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.

Authority G.S. 130A-135; 130A-144.

15A NCAC 19A .0205 CONTROL MEASURES – TUBERCULOSIS

(a) The local health director shall promptly investigate all cases of tuberculosis disease and their contacts in accordance with the provisions of Control of Communicable Diseases Manual. Control of Communicable Diseases Manual is hereby incorporated by reference including subsequent amendments and editions. Copies of this publication may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling. A copy is available for inspection in the General Communicable Disease Control Section Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

(b) The following persons shall be skin tested for tuberculosis and given appropriate clinical, microbiologic and x-ray examination in accordance with the "Diagnostic Standards and Classification of Tuberculosis," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for evaluation, testing, and diagnosis for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions:

- (1) Household and other close contacts of active cases of pulmonary and laryngeal tuberculosis. If the initial skin test is negative (0-4mm), and the case is confirmed by culture, a repeat skin test shall be performed three months after the exposure has ended;
- (2) Persons reasonably suspected of having tuberculosis disease;
- (3) Inmates in the custody of, and staff with direct inmate contact in, the Department of

- Corrections upon incarceration or employment, and annually thereafter;
- (4) Patients and staff in long term care facilities upon admission or employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months;
- (5) Staff in adult day care centers providing care for persons with HIV infection or AIDS upon employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months;
- (6) Persons with HIV infection or AIDS.

A copy of "Diagnostic Standards and Classification of Tuberculosis" is ~~available, at no charge, available~~ by contacting the Department of ~~Environment, Health, and Natural Resources~~ Health and Human Services, Tuberculosis Control Branch Program, Post Office Box 29601, 1902 Mail Service Center, Raleigh, North Carolina 27626-0601, 27699-1902.

(c) Treatment and follow-up for tuberculosis infection or disease shall be in accordance with "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for testing, treatment, and follow-up for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions. Copies of this publication are ~~available, at no charge, available~~ by contacting the Department of ~~Environment and Natural Resources, Health and Human Services, Tuberculosis Control Branch, Program, Post Office Box 29601, 1902 Mail Service Center, Raleigh, North Carolina 27626-0601, 27699-1902.~~

(d) The attending physician or designee shall instruct all patients treated for tuberculosis regarding the potential side effects of the medications prescribed and to promptly notify the physician or designee if side effects occur.

(e) Persons with active tuberculosis disease shall complete a standard drug regimen from "Treatment of Tuberculosis and Tuberculosis Infections in Adults and Children."

(f) Persons with suspected or known active pulmonary or laryngeal tuberculosis are considered infectious and shall be managed using airborne precautions, including respiratory isolation, or quarantined in their home, with no new persons exposed, if:

- (1) They have sputum smears which are positive for acid fast bacilli; and
- (2) They have not received tuberculosis drug therapy or have just started therapy; and
- (3) They have no evidence of clinical response or have poor clinical response to therapy.

(g) Persons with suspected or known active pulmonary or laryngeal tuberculosis are considered noninfectious and use of airborne precautions, including respiratory isolation, or quarantine in their home may be discontinued when:

- (1) They have three consecutive daily sputum smears which are negative; or
- (2) They have been compliant on tuberculosis medications to which the organism is judged

to be susceptible, there is evidence of clinical improvement on the therapy, and the environment to which they are being released is such that transmission of tuberculosis organisms is unlikely.

Authority G.S. 130A-135; 130A-144.

15A NCAC 19A .0207 HIV AND HEPATITIS B INFECTED HEALTH CARE WORKERS

(a) The following definitions shall apply throughout this Rule:

- (1) "Surgical or obstetrical procedures" means vaginal deliveries or surgical entry into tissues, cavities, or organs. The term does not include phlebotomy; administration of intramuscular, intradermal, or subcutaneous injections; needle biopsies; needle aspirations; lumbar punctures; angiographic procedures; endoscopic and bronchoscopic procedures; or placing or maintaining peripheral or central intravascular lines.
- (2) "Dental procedure" means any dental procedure involving manipulation, cutting, or removal of oral or perioral tissues, including tooth structure during which bleeding occurs or the potential for bleeding exists. The term does not include the brushing of teeth.

(b) All health care workers who perform surgical or obstetrical procedures or dental procedures and who know themselves to be infected with HIV or hepatitis B shall notify the State Health Director. Health care workers who assist in these procedures in a manner that may result in exposure of patients to their blood and who know themselves to be infected with HIV or hepatitis B shall also notify the State Health Director. The notification shall be made in writing to the ~~Chief, Head, General Communicable Disease Control Section, Branch, P.O. Box 27687, 1902 Mail Service Center, Raleigh, N.C. 27611-7687, 27699-1902.~~

(c) The State Health Director shall investigate the practice of any infected health care worker and the risk of transmission to patients. The investigation may include review of pertinent medical and work records and consultation with health care professionals who may have information necessary to evaluate the clinical condition or practice of the infected health care worker. The attending physician of the infected health care worker shall be consulted. The State Health Director shall protect the confidentiality of the infected health care worker and may disclose the worker's infection status only when essential to the conduct of the investigation or periodic reviews pursuant to Paragraph (h) of this Rule. When the health care worker's infection status is disclosed, the State Health Director shall give instructions regarding the requirement for protecting confidentiality.

(d) If the State Health Director determines that there may be a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel to evaluate the risk of transmission to patients, and review the practice, skills, and clinical condition of the infected health care worker, as well as the nature of the surgical or obstetrical procedures or dental procedures performed and operative and infection control techniques used. Each expert panel shall include an infectious disease specialist, an infection control

expert, a person who practices the same occupational specialty as the infected health care worker and, if the health care worker is a licensed professional, a representative of the appropriate licensure board. The panel may include other experts. The State Health Director shall consider for appointment recommendations from health care organizations and local societies of health care professionals.

(e) The expert panel shall review information collected by the State Health Director and may request that the State Health Director obtain additional information as needed. The State Health Director shall not reveal to the panel the identity of the infected health care worker. The infected health care worker and the health care worker's attending physician shall be given an opportunity to present information to the panel. The panel shall make recommendations to the State Health Director that address the following:

- (1) Restrictions that are necessary to prevent transmission from the infected health care worker to patients;
- (2) Identification of patients that have been exposed to a significant risk of transmission of HIV or hepatitis B; and
- (3) Periodic review of the clinical condition and practice of the infected health care worker.

(f) If, prior to receipt of the recommendations of the expert panel, the State Health Director determines that immediate practice restrictions are necessary to prevent an imminent threat to the public health, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require cessation or modification of some or all surgical or obstetrical procedures or dental procedures to the extent necessary to prevent an imminent threat to the public health. This isolation order shall remain in effect until an isolation order is issued pursuant to Paragraph (g) of this Rule or until the State Health Director determines the imminent threat to the public health no longer exists.

(g) After consideration of the recommendations of the expert panel, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require any health care worker who is allowed to continue performing surgical or obstetrical procedures or dental procedures to, within a time period specified by the State Health Director, successfully complete a course in infection control procedures approved by the Department of ~~Environment, Health, and Natural Resources, Health and Human Services, General Communicable Disease Control Section, Branch~~, in accordance with 15A NCAC 19A .0206(e). The isolation order shall require practice restrictions, such as cessation or modification of some or all surgical or obstetrical procedures or dental procedures, to the extent necessary to prevent a significant risk of transmission of HIV or hepatitis B to patients. The isolation order shall prohibit the performance of procedures that cannot be modified to avoid a significant risk of transmission. If the State Health Director determines that there has been a significant risk of transmission of HIV or hepatitis B to a patient, the State Health Director shall notify the patient or assist the health care worker to notify the patient.

(h) The State Health Director shall request the assistance of one or more health care professionals to obtain information needed to periodically review the clinical condition and practice of the

infected health care worker who performs or assists in surgical or obstetrical procedures or dental procedures.

(i) An infected health care worker who has been evaluated by the State Health Director shall notify the State Health Director prior to a change in practice involving surgical or obstetrical procedures or dental procedures. The infected health care worker shall not make the proposed change without approval from the State Health Director. If the State Health Director makes a determination in accordance with Paragraph (c) of this Rule that there is a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel in accordance with Paragraph (d) of this Rule. Otherwise, the State Health Director shall notify the health care worker that he or she may make the proposed change in practice.

(j) If practice restrictions are imposed on a licensed health care worker, a copy of the isolation order shall be provided to the appropriate licensure board. The State Health Director shall report violations of the isolation order to the appropriate licensure board. The licensure board shall report to the State Health Director any information about the infected health care worker that may be relevant to the risk of transmission of HIV or hepatitis B to patients.

Authority G.S. 130A-144; 130A-145.

10 NCAC 19A .0209 LABORATORY TESTING

All laboratories are required to do the following:

- (1) When ~~Neisseria 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.~~

Authority G.S. 130A-139.

SECTION .0800 - COMMUNICABLE DISEASE GRANTS AND CONTRACTS

15A NCAC 19A .0801 COMMUNICABLE DISEASE FINANCIAL GRANTS AND CONTRACTS

(a) The General Communicable Disease Control Section Branch may enter into financial arrangements with local health departments, community hospitals, nursing homes, or other convalescent facilities, and with physicians for the purpose of providing specific health care services for communicable diseases and the implementation of ~~the control measures prescribed in this Rule.~~ measures.

(b) The HIV/STD ~~Control Prevention and Care Branch~~ may authorize a local health department to obtain required diagnostic and treatment services for persons with syphilis, gonorrhea,

chancroid, lymphogranuloma venereum, and granuloma inguinale from physicians:

- (1) The amount to be charged for these services shall be negotiated between the local health department and the physician and approved by the HIV/STD Control-Prevention and Care Branch at the lowest agreeable rate, not to exceed approved Medicaid reimbursement rates. Drugs used in treatment may be provided to such physicians by the local health department.
- (2) The physician shall bill the local health department for services provided. The local health department shall submit requests for payment to the HIV/STD Control-Prevention and Care Branch on forms provided by the Division of Epidemiology-Public Health.

(e) The Tuberculosis Control Branch may:

- (1) Contract with hospitals to provide inpatient diagnostic and hospitalization services for eligible tuberculosis patients if:
 - (A) Private rooms with negative air pressure with respect to the hallways and other rooms are available;
 - (B) A qualified physician is willing to accept inpatient referrals from surrounding counties;
 - (C) There is a laboratory that performs mycobacterial studies at the hospital;
 - (D) There is a radiological department at the hospital, including a radiologist;
 - (E) There is an infection control program at the hospital to monitor the staff and patients to minimize the occurrence of nosocomial tuberculosis infection;
 - (F) There is a program at the hospital to ensure that the risk for employees developing or transmitting tuberculosis is low; and
 - (G) Funds are available.
- (2) Contract with licensed nursing homes or other convalescent facilities to provide inpatient treatment and convalescent care to eligible tuberculosis patients if:
 - (A) Private rooms with negative air pressure with respect to the hallways and other rooms are available;
 - (B) A qualified physician is willing to accept inpatient referrals;
 - (C) There is an infection control program to monitor the staff and patients to minimize the occurrence of nosocomial tuberculosis infection;
 - (D) There is a program to ensure that the risk for employees developing or transmitting tuberculosis is low;
 - (E) Necessary laboratory tests, radiological and transportation services are available at the facility, through contracts, or by some other arrangement; and

(F) Funds are available.

Authority G. S. 130A-5; 130A-135; 130A-144.

15A NCAC 19A .0802 ELIGIBILITY FOR TUBERCULOSIS HOSPITALIZATION SERVICES

(a) A patient shall be medically eligible for payment for up to seven days inpatient hospitalization for diagnosis of tuberculosis at a hospital designated by the Tuberculosis Control Branch pursuant to Rule .0801 of this Section and the patient is suspected of having Mycobacterium tuberculosis disease based upon the finding of one or more of the following:

- (1) Evidence of acid fast bacilli found by direct microscopy or by culture techniques;
- (2) Histopathologic evidence of tuberculosis in an active form;
- (3) Positive tuberculin skin test reaction using intermediate strength purified protein derivative (PPD), five tuberculin units and suggestive symptoms;
- (4) X ray or clinical evidence suggestive of the presence of tuberculosis in an active form; or
- (5) Epidemiologic information supportive of a diagnosis of tuberculosis in an active form.

(b) If a patient is diagnosed as having Mycobacterium tuberculosis by a physician licensed to practice medicine in this State, then the patient shall be medically eligible for up to 21 days of hospitalization per year beginning the first day of financial eligibility for the treatment of the disease and for the cost of ambulance services from the contracting hospital to a program designated medical facility.

(c) If the head of the Tuberculosis Control Branch determines that additional treatment is medically necessary because of the tuberculosis condition, the head of the Branch may extend the period of medical eligibility beyond the periods specified in Paragraph (a) and (b) of this Rule.

(d) The medical care payments described in this Rule are available only for services provided at a hospital which has contracted with the Tuberculosis Program for these services.

(e) Financial eligibility and payment procedures shall be determined in accordance with requirements for medical care payments found in 15A NCAC 24A.

Authority G. S. 130A-5; 130A-135; 130A-144.

15A NCAC 19A .0803 ELIGIBILITY FOR TUBERCULOSIS NURSING HOME SERVICES

(a) A patient shall be medically eligible for reimbursement for up to 60 days per year for treatment and convalescent services at a nursing home designated by the Tuberculosis Control Branch pursuant to Rule .0801 of this Section provided the following criteria are met:

- (1) The applicant has active pulmonary or disseminated tuberculosis associated with incapacitation or significant debilitation which requires a SNF or ICF level of care. To aid in making this determination, the referring physician shall provide a treatment plan and project a length of stay for the patient at the nursing home.

PROPOSED RULES

- (2) The applicant has positive bacteriology for tuberculosis. The positive bacteriology (AFB) must have been obtained within the preceding 14 days.
(3) The applicant does not need an acute level of hospital care for any condition.
(4) The applicant is 16 years of age or over.
(5) The applicant is referred by a licensed physician who has first hand knowledge of the applicant's mental and physical condition. The referring physician shall furnish a summary of the applicant's physical and mental condition and known infirmities, and specific details of treatment and medication the applicant is taking with orders for dosage, frequency and duration. This summary shall include all known allergies and previous reactions to anti tuberculosis and all other medications. In addition, dietary needs, pertinent x rays, and copies of laboratory reports shall be forwarded with the patient or in advance.
(6) The head of the Tuberculosis Control Branch may make exceptions to the criteria contained in Subparagraphs (1) through (5) of this Paragraph if the patient would be best treated for tuberculosis at a licensed nursing home.
(b) If the head of the Tuberculosis Control Branch determines that additional treatment or convalescent care at a licensed nursing home is medically necessary because of tuberculosis, the head of the Branch may extend medical eligibility for more than 60 days per year.
(c) Financial eligibility and payment procedures shall be determined in accordance with 15A NCAC 24A.

1915 Mail Service Center, Raleigh, NC 27699-1915. Comments will be accepted through June 15, 2002.

Fiscal Impact

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

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19C - OCCUPATIONAL HEALTH

SECTION .0800 - LEAD-BASED PAINT HAZARD MANAGEMENT PROGRAM

151 NCAC 19C .0801 GENERAL

(a) In addition to the definitions found in 40 CFR Part 745 Subpart D and Subpart L, the following definitions shall apply throughout this Section:

- (1) "Accredited training course" means a lead training course accredited by the Program.
(2) "Accredited training provider" means a training provider who is accredited by the Program, and who provides accredited training courses.
(3) "Design" means a written or graphic plan prepared by a certified project designer specifying how an abatement project will be performed, and includes, but is not limited to, scope of work and technical specifications. The certified project designer's signature and certification number shall be on all such abatement designs.
(4) "Emergency Lead-Based Paint Abatement" means abatement conducted to remediate a lead-based paint hazard which has been determined by a certified risk assessor and the Program to be an imminent lead-based paint hazard to building occupants in a child occupied facility.
(5) "Immediate family" means an individual's family members limited to spouse, parents, siblings, grandparents, children, and grandchildren.
(6) "Occupant Protection Plan" means a written plan which describes the measures and management procedures that will be taken during abatement to protect building occupants from exposure to lead-based paint hazards. The plan shall be unique to each residential dwelling or child-occupied facility. For projects less than five units, the plan shall be prepared by a certified supervisor or project designer. For projects with five or more units, the plan shall be prepared by a certified project designer. The plan shall include the preparer's signature and certification number.
(7) "Program" means the Lead-Based Paint Hazard Management Program within the NC Department of Health and Human Services.

Authority G. S. 130A-5; 130A-135; 130A-144.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 19C .0801. Notice of Rule-making Proceedings was published in the Register on March 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: June 11, 2002

Time: 10:00 a.m.

Location: Parker Lincoln Building, Room 1H120, 2728 Capital Blvd., Raleigh, NC

Reason for Proposed Action: G.S. 130A.453 mandates establishment of state-administered lead-based paint hazard management program in lieu of u having a federally administered program apply in this State. This action will allow the State administered Program to retain authority from the United States Environmental Protection Agency for administering the federal program.

Comment Procedures: All interested parties may submit written comments to Chris Hoke, Division of Public Health,

PROPOSED RULES

- (8) "Start date" means the date on which activities begin on a permitted lead abatement project requiring the use of certified individuals, including the abatement area isolation and preparation or any other activity which may disturb lead-based paint.
- (9) "Working day" means Monday through Friday. Holidays falling on any of these days are working days.
- (10) "Certified Industrial Hygienist" means a person who has met the education, experience, and examination requirements established by the American Board of Industrial Hygiene for certified industrial hygienists and whose certification has not been revoked by that organization.

(b) Lead-Based Paint Activities, 40 CFR Part 745 Subpart D and Subpart L, is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Health and Human Services, Health Hazards Control Branch, 2728 Capitol Blvd., Raleigh, NC 27604. A copy of ~~40 CFR Part 745 Subpart L~~ this document may be obtained in writing from the US Government Bookstore, 999 Peachtree Street, Suite 120, Atlanta, GA, ~~at a cost of thirty eight dollars (\$38.00).~~ GA.

Authority G.S. 130A-453.01; 130A-453.11; 150B-21.1(a)(3).

TITLE 18 – SECRETARY OF STATE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of the Secretary of State intends to adopt the rules cited as 18 NCAC 06 .1417, .1715-.1717, amend the rules cited as 18 NCAC 06 .1501, .1702-.1703, .1706-.1707, .1710-.1711, .1713, and repeal the rules cited as 18 NCAC 06 .1712, .1714. Notice of Rule-making Proceedings was published in the Register on February 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: June 3, 2002

Time: 10:00 a.m.

Location: Legislative Office Building, 300 N. Salisbury Street, Suite 100, Raleigh, NC

Reason for Proposed Action:

18 NCAC 06 .1417 – S.L. 2001, c. 225 created a new G.S. 78A-36.1, which contained an abbreviated procedure for registration available for Canadian broker dealers and securities salesmen servicing clients who had moved into North Carolina.

18 NCAC 06 .1501 – S.L. 2001, c. 183 amended G.S. 78A-56 to require that persons electing to make rescission offers pursuant to the provisions of Section 78A-56 file a written copy of the rescission offer with the Securities Division at least 10 days prior to sending the offer to investors.

18 NCAC 06 .1702-.1703, .1706-.1707, .1710-.1716 – S.L. 2001, c. 273 amended G.S. 78C-20 to provide that "[a]ll applications for initial and renewal registrations or notice filings required under G.S. 78C-17 shall be filed with the Investment Adviser

Registration Depository (IARD) operated by the National Association of Securities Dealers. These Rules implement the procedure by which IA's and IAR's will seek registration in North Carolina.

18 NCAC 06 .1717 – S.L. 2001, c. 273, s. 3 created a new G.S. 78C-16(b2), authorizing multiple registration of investment adviser representatives who act as solicitors for investment adviser firms. That subsection conditioned this multiple registration upon the adoption of a system of disclosure similar to the system required by the U.S. Securities and Exchange Commission.

Comment Procedures: Comments will be accepted through June 14, 2002 at NC Department of the Secretary of State, Securities Division. Attn: David S. Massey, 300 N. Salisbury Street, suite 100, Raleigh, NC 27603-5909.

Fiscal Impact

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

CHAPTER 06 – SECURITIES DIVISION

SECTION .1400 - REGISTRATION OF DEALERS AND SALESMEN

18 NCAC 06.1417 APPLICATION FOR LIMITED REGISTRATION OF CANADIAN SECURITIES DEALERS AND SALESMEN

(a) An applicant for limited registration as a dealer pursuant to G.S. 78A-36.1 (the "Dealer") shall file the following with the Administrator:

- (1) a representation that the Dealer does not have an office or physical presence in this state;
- (2) a representation that the Dealer is a resident of Canada;
- (3) a representation that the Dealer will engage only in the activities described in G.S. 78A-36.1(j) in this state;
- (4) a completed application for registration as a securities dealer in the form required by the jurisdiction in Canada in which the Dealer has its head office;
- (5) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Dealer names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Dealer;
- (6) a certification by the securities regulatory agency of each jurisdiction in Canada from which the Dealer will be effecting transactions into this state stating that the Dealer is both registered and in good standing as a securities dealer in that jurisdiction;
- (7) evidence that the Dealer is a member of a Canadian self-regulatory organization ("SRO"), the Bureau des services financiers, or a Canadian stock exchange; and

- (8) a filing fee in the amount of two hundred dollars (\$200.00).
- (b) An applicant for limited registration as a salesman (the "Salesman") intending to effect securities transactions in this state on behalf of a Canadian dealer registered under this section shall file the following with the Administrator:
- (1) a completed application for registration as a securities salesman in the form required by the jurisdiction in which the dealer has its head office;
 - (2) an originally executed copy of a Form U-2 or similar consent to service of process whereby the Salesman names the North Carolina Secretary of State as an agent duly authorized to accept service of process on behalf of the Salesman;
 - (3) a certification by the securities regulatory agency of the jurisdiction in Canada from which the Salesman will be effecting transactions into this state stating that the Salesman is both registered and in good standing as a securities salesman in that jurisdiction; and
 - (4) a filing fee in the amount of fifty-five dollars (\$55.00).

(c) If any information contained in any document filed with the Administrator by any dealer or salesman who has registered pursuant to G.S. 78A-36.1 is or becomes inaccurate or incomplete in any material respect, the dealer or salesman shall file a correcting amendment as soon as practicable, but in no event later than 30 days following the date on which such information becomes inaccurate or incomplete.

Authority G.S. 78A-36.1; 78A-49.

SECTION .1500 - MISCELLANEOUS PROVISIONS

18 NCAC 06 .1501 RESCISSION OFFERS

(a) All rescission offers under G.S. 78A-56(g) shall be typed or printed and shall be captioned in bold print or type "Rescission Offer." Offers must set forth in bold type the name of the security with respect to which the offer is made and the date of the transaction involved. Offers must be signed by the offeror or its authorized officer.

(b) Every rescission offer to a purchaser under G.S. 78A-56(g)(1) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the purchaser of his potential rights under G.S. 78A-56 if a violation of that section were found and state the effect on those rights of the purchaser's failure to accept the offer within 30 days from its receipt. The offer shall include a form for the purchaser's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms not less than 30 days after its receipt by the purchaser and must provide, by its terms, that acceptance is effective if the purchaser either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offer shall not require that the purchaser return the

security with his acceptance; the offer may, however, require that the purchaser deliver any security he still holds and a verified statement of the transactions in which he disposed of any security to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive payment thereunder. The offer may provide that any offeree who delivers a timely written acceptance but fails to delivery any security held by him and the statement of the transactions in which he disposed of any security within the time specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(1).

(c) Every rescission offer to a seller pursuant to G.S. 78A-56(g)(2) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the seller of his rights under G.S. 78A-56 if a violation of that section is found and state the effect on those rights of the seller's failure to accept the offer within 30 days from the receipt. The offer shall include a form for the seller's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms not less than 30 days after its receipt by the seller and may provide, by its terms, that acceptance is effective if the seller either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offeror is not required to return the security with the offer; the offer may require that the seller deliver the sum necessary to rescind to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive the security. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver the sum necessary to rescind the transaction specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(2).

~~(d) Two copies of each rescission offer made under this Rule shall be filed with the administrator.~~ The person making the rescission offer shall file a copy of the rescission offer with the Administrator at least 10 days before delivering the offer to the offeree. The copy filed with the Administrator shall be addressed to: Rescission Offers, North Carolina Securities Division, 300 N. Salisbury Street, Suite 100, Raleigh, N.C. 27603-5909.

Authority G.S. 78A-56(g)(3)

SECTION .1700 - REGISTRATION OF INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

18 NCAC 06.1702 APPLICATION FOR INVESTMENT ADVISER REGISTRATION/NOTICE FILING FOR INVESTMENT ADVISER COVERED UNDER FEDERAL LAW

(a) The application for initial registration as an investment adviser pursuant to Section 78C-17(a) of the Act shall be ~~filed upon made by completing~~ Form ADV (Uniform Application for Investment Adviser Registration) (17 C.F.R. 279.1) with the administrator in accordance with the form instructions and by

PROPOSED RULES

filing the form with IARD (the Investment Adviser Registration Depository). The initial application shall include the consent to service of process required by Section 78C-46(b) of the Act, and shall also include the following:

- (1) ~~A statement or certificate showing Proof of compliance by the investment adviser with the examination requirements of Rule .1709;~~
- (2) ~~Such financial statements as set forth in Rule .1708, including at the time of application, a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than 45 days from the date of filing of the application, an unaudited balance sheet prepared as set forth in Rule .1708 as of a date within 45 days of the date of filing;~~
- (3) ~~Evidence of compliance with the minimum financial requirements of Rule .1704;~~
- (4) ~~A copy of the surety bond required by Section 78C-17(e), if applicable upon request of the Administrator;~~
- (5) ~~The fee required by Section 78C-17(b) of the Act; and~~
- (6) ~~Any other information the administrator may from time to time require which is relevant to the applicant's qualifications to engage in the business of acting as an investment adviser.~~

(b) ~~The application for annual renewal of registration as an investment adviser shall be filed on an amended Form ADV and shall contain with IARD and shall include the following:~~

- (1) ~~A copy of the surety bond required by Rule .1705, if applicable upon request of the Administrator; and~~
- (2) ~~The fee required by Section 78C-17(b) of the Act.~~

(c) ~~The investment adviser shall file with the administrator, as soon as practicable but in no event later than 30 days following the filing of charges, notice of any civil, criminal or administrative charges filed against the investment adviser which relate directly or indirectly to its activities in the securities or financial services business. This notice shall include notification of any investigation by any securities, commodities, or other financial services regulatory agency and any disciplinary, injunctive, restraining, or limiting action taken by such agencies, by any court of competent jurisdiction, or by any state administrator with respect to the investment adviser's activities in the securities or financial services business. Any amendment required by Section 78C-18(d) of the Act for an investment adviser shall be made on Form ADV in the manner prescribed by that form. Any amendment to Form ADV shall be filed with the administrator within the time period specified in the instructions to that form relating to filings made with the Securities and Exchange Commission. Updates and amendments to the ADV shall be subject to the following requirements:~~

- (1) ~~An investment adviser must file with IARD, in accordance with the instructions in the Form ADV, any amendments to the investment adviser's form ADV;~~
- (2) ~~An amendment will be considered to be filed promptly if the amendment is filed within 30~~

days of the event that requires the filing of the amendment; and

- (3) Within 90 days of the end of the investment adviser's fiscal year, an investment adviser must file with IARD an updated Form ADV.

(d) ~~Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.~~

(e) ~~Every investment adviser shall notify the administrator of any change of address, the opening or closing of any office (including the office of any investment adviser representative operating apart from the investment adviser's premises) or any material change thereto, in writing as soon as practicable. An application for initial or renewal registration is not considered filed for purposes of G.S. 78C-17 until the required fee and all required submissions have been received by the Administrator.~~

(f) ~~The registration of an investment adviser shall expire on December 31 of each year unless timely renewed.~~

(g) ~~The notice filing for an investment adviser covered under federal law pursuant to G.S. 78C-17(a1) shall be filed with the Administrator or with a central registration depository designated by the Administrator by filing a copy of the executed Form ADV [Uniform Form for Investment Adviser Registration (17 C.F.R. 279.1)] most recently filed by the investment adviser with the Securities Exchange Commission, and shall include the fee required under G.S. 78C-17(b1). IARD on an executed Form ADV. A notice filing of an investment adviser covered under federal law shall be deemed filed when the fee required by G.S. 78C-17(c) and the Form ADV are filed with and accepted by IARD on behalf of the State.~~

(h) ~~Notice filings for investment advisers covered under federal law shall expire on December 31 each year unless renewed prior to expiration. The renewal of the notice filing for an investment adviser covered under federal law pursuant to G.S. 78C-17(a1) shall be made by filing with the Administrator a copy of the most recent Schedule I to the Form ADV most recently filed by the investment adviser with the Securities and Exchange Commission, and shall include the fee required under G.S. 78C-17(b1), completing Form ADV in accordance with the form instructions and by filing the form with IARD. The renewal of the notice filing for an investment adviser covered under federal law shall be deemed filed when the fee required by G.S. 78C-17(b)(1) is filed with and accepted by IARD on behalf of the State.~~

(i) ~~Until IARD provides for the filing of Part 2 of Form ADV, the Administrator will deem filed Part 2 of Form ADV if an investment adviser covered under federal law provides, within 5 days of a request, Part 2 of Form ADV to the Administrator. Because the Administrator deems Part 2 of the Form ADV to be filed, an investment adviser covered under federal law is not required to submit Part 2 of Form ADV to the Administrator unless requested.~~

Authority G.S. 78C-16(b); 78C-16(d); 78C-17(a); 78C-17(a1); 78C-17(b); 78C-17(b1); 78C-17(e); 78C-18(d); 78C-19(a); 78c-20; 78C-30(a); 78C-30(b); 78C-30(c); 78C-30(d); 78C-46(b).

18 NCAC 06 .1703 APPLICATION/INVESTMENT ADVISER REPRESENTATIVE REGISTRATION

(a) ~~The application for initial registration as an investment adviser representative pursuant to Section 78C-17(a) of the Act shall be filed upon made by completing Form U-4 (Uniform Application for Securities Industry Registration or Transfer) with the administrator and contain the additional information required by this Rule in accordance with the form instructions and by filing the Form U-4 with IARD. The initial application shall include the consent to service of process required by Section 78C-46(b) of the Act. The application for initial registration shall also provide the following:~~

- (1) ~~A statement or certificate showing Proof of compliance by the investment adviser representative with the examination requirements of Rule .1709; and~~
- (2) ~~The fee required by Section 78C-17(b) of the Act.~~

(b) ~~The application for annual renewal of registration as an investment adviser representative shall be filed with the administrator IARD. No renewal of registration as an investment adviser representative shall be effected until the fee required by Section 78C-17(b) of the Act is remitted to the administrator. The application for annual renewal or registration shall include the fee required by G.S. 78C-17(b).~~

(c) ~~The investment adviser representative, the investment adviser, or the investment adviser covered under federal law for which the investment adviser representative is registered shall file with the administrator, as soon as practicable but in no event later than 30 days following the filing of charges, notice of any civil, criminal, or administrative charges filed against the investment adviser representative which relate directly or indirectly to his activities in the securities or financial services business. This notice shall include notification of any investigation by any securities, commodities, or other financial services regulatory agency and any disciplinary, injunctive, restraining, or limiting action taken by such agencies, by any court of competent jurisdiction, or by any state administrator with respect to the investment adviser representative's activities in the securities or financial services business. Any amendment required by Section 78C-18(d) of the Act for an investment adviser representative shall be made on Form U-4 in the manner prescribed by that form. Such amended Form U-4 shall be filed with the administrator not later than 30 days following the event necessitating such amendment. Updates and amendments to the Form U-4 shall be subject to the following requirements:~~

- (1) ~~The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur;~~
- (2) ~~An investment adviser representative and the investment adviser must file promptly with IARD any amendments to the representative's Form U-4; and~~
- (3) ~~An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.~~

(d) ~~Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless~~

~~proceedings are instituted pursuant to G.S. 78C-19. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment. An application for initial or renewal registration is not considered filed for purposes of G.S. 78C-17 until the required fee and all required submissions have been received by the Administrator.~~

(e) ~~The registration of any investment adviser representative shall expire on December 31 of each year unless renewed in a timely fashion. The application for renewal of registration of investment adviser representatives shall be submitted by the investment adviser or investment adviser covered under federal law, who shall file with the Securities Division a listing of all investment adviser representatives to be renewed along with their current addresses and social security numbers. The investment adviser representative renewal list shall be submitted in alphabetical order as follows: last name, first name, middle name or maiden name; current address; social security number. A fee of forty five dollars (\$45.00) for each investment adviser representative made payable to the North Carolina Secretary of State shall be submitted along with the investment adviser representative renewal list.~~

Authority G.S. 78C-16(b); 78C-17(a); 78C-17(b); 78C-18(d); 78C-19(a); 78C-20; 78C-30(a); 78C-30(b); 78C-46(b).

18 NCAC 06 .1706 RECORD-KEEPING REQUIREMENTS FOR INVESTMENT ADVISERS

(a) Except as otherwise provided in Paragraph (j) of this Rule, every investment adviser registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records:

- (1) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;
- (2) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;
- (3) A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;
- (4) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser;

- (5) All bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such;
- (6) All trial balances, financial statements, and internal audit working papers relating to the business of such investment adviser;
- (7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:
 - (A) Any recommendation made or proposed to be made and any advice given or proposed to be given,
 - (B) Any receipt, disbursement or delivery of funds or securities, or
 - (C) The placing or execution of any order to purchase or sell any security; provided, however,
 - (i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and
 - (ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof;
- (8) A list or other record of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;
- (9) All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;
- (10) All written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;
- (11) A copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which the investment adviser circulates or distributes, directly or indirectly, to ten or more persons (other than clients receiving investment supervisory services or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum of the investment adviser indicating the reasons thereof;
- (12) The following records:
 - (A) A record of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:
 - (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and
 - (ii) Transactions in securities which are direct obligations of the United States
 Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.
 - (B) For purposes of this Subparagraph (a)(12), the term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which

recommendation shall be made; any employee who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person, and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(C) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (a)(12) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded;

(13) Records required of investment advisers primarily engaged in other businesses:

(A) Notwithstanding the provisions of Subparagraph (a)(12) in this Rule, where the investment adviser is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

- (i) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has

any direct or indirect influence or control; and

- (ii) Transactions in securities which are direct obligations of the United States

Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(B) An investment adviser is "primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients" when, for each of its three most recent fiscal years or for the period of time since organization, whichever is lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of:

- (i) its total sales and revenues, and
- (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(C) For purposes of this Subparagraph (13), the term "advisory representative", when used in connection with a company primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, shall mean any partner, officer, director or employee of the investment adviser who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made, or who, in connection with his duties (other than clerical, ministerial or administrative duties), obtains any

information concerning which securities are being recommended prior to the effective dissemination of such recommendations or of the information concerning such recommendations; and any of the following persons who obtain information concerning securities recommendations being made by such investment adviser prior to the effective dissemination of such recommendations or of the information concerning such recommendations:

- (i) any person in a control relationship to the investment adviser,
- (ii) any affiliated person of such controlling person, and
- (iii) any affiliated person of such affiliated person.

"Control" shall have the same meaning as that set forth in Section 2(a)(9) of the Investment Company Act of 1940, as amended.

(D) An investment adviser shall not be deemed to have violated the provisions of this Subparagraph (13) because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded;

~~(14) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule .1707, and a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.~~

(14) A copy of the following:

- (A) A copy of each written statement and each amendment or revision thereof, given or sent to any client or prospective client of such investment adviser in accordance with the provisions of Rule .1707;
- (B) any summary of material changes that is required by Part 2 of Form ADV but is not contained in the written statement; and
- (C) a record of the dates that each written statement, and each amendment or revision thereof, was given, or offered to be given, to any client or

prospective client who subsequently becomes a client.

~~(15) A memorandum describing any legal or disciplinary event listed in Schedule D of Form ADV or in any Form U-4 relating to any of the investment adviser's investment adviser representatives and presumed to be material, if the event involved the investment adviser or any of its investment adviser representatives or supervised persons and is not disclosed in the written statements described in Paragraph (a)(14)(A) of this Section. The memorandum must explain the investment adviser's determination that the presumption of materiality is overcome, and must discuss the factors described in those items.~~

~~(16) For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:~~

- ~~(A) evidence of a written agreement to which the adviser is a party related to the payment of such fee;~~
- ~~(B) a signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and~~
- ~~(C) a copy of the solicitor's written disclosure statement.~~

~~The written agreement, acknowledgment and solicitor disclosure statement will be considered to be in compliance with Rule .1718 of the Act. For purposes of this rule, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.~~

~~(17) Copies, with original signatures of the investment adviser's appropriate signatory and the investment adviser representative, of each initial Form U-4 and each amendment to Disclosure Reporting Pages (DRPs U-4) must be retained by the investment adviser (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.~~

(b) If an investment adviser subject to Paragraph (a) of this Rule has custody or possession of securities or funds of any client, the records required to be made and kept under Paragraph (a) of this Rule shall also include:

- (1) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts;
- (2) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

- (3) Copies of confirmations of all transactions effected by or for the account of any such client; and
- (4) A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the locations of each such security.

(c) Every investment adviser subject to Paragraph (a) of this Rule who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

- (1) Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale; and
- (2) For each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client.

(d) Any books or records required by this Rule may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(e) Duration requirement for maintenance of records:

- (1) All books and records required to be made under the provisions of Paragraphs (a) to (c)(1), inclusive, of this Rule shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser.
- (2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(f) An investment adviser subject to Paragraph (a) of this Rule, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this Rule for the remainder of the period specified in this Rule, and shall notify the administrator in writing of the exact address where such books and records will be maintained during such period.

(g) Preservation and maintenance of records:

- (1) The records required to be maintained and preserved pursuant to this Rule may be immediately produced or reproduced by photograph on film or, as provided in Subparagraph (g)(2) of this Rule, on magnetic

disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

- (A) arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
- (B) be ready at all times to provide, and promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator by its examiners or other representatives may request;
- (C) store separately from the original one other copy of the film or computer storage medium for the time required;
- (D) with respect to records stored on a computer storage medium, maintain procedures for maintenance and preservations of, and access to, records from loss, alteration, or destruction; and
- (E) with respect to records stored on photographic film, at all times have available for the administrator's examination of its records pursuant to Section 78C-18(e) of the Act, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

- (2) Pursuant to Subparagraph (g)(1) of this Rule an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

(h) For purposes of this Rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

(i) Every registered investment adviser shall maintain within this state, in a readily accessible location, all records required by this Rule. A written request for the waiver of the provisions of this Section may be made to the administrator to permit any registered investment adviser to maintain any of the records required by this Rule in some place other than the State of North Carolina. In determining whether or not the provisions of this Rule shall be waived, the administrator may consider, among other things, whether the main office of the investment adviser is in a place outside the State of North Carolina or whether the investment adviser uses all or some of the bookkeeping facilities of some other investment adviser whose main office is outside the State of North Carolina.

(j) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the

requirements of this section, provided the investment adviser is licensed in such state and is in compliance with such state's record keeping requirements, if any.

Authority G.S. 78C-18(a); 78C-18(b); 78C-18(e); 78C-30(a).

18 NCAC 06 .1707 INVESTMENT ADVISER BROCHURE RULE

(a) General Requirements. Unless otherwise provided in this Rule, an investment adviser, registered or required to be registered pursuant to Section 78C-16 of the Act, shall, ~~in accordance with the provisions of this Rule, furnish offer and deliver to each advisory client and prospective advisory client with a written disclosure statement which may be a copy of Part II of its Form ADV or written documents containing at least the information then so required by Part II of Form ADV, or such other information as the administrator may require a firm brochure and one or more supplement(s) as required by this section. The brochure and supplement(s) must contain all information required by Part 2 of Form ADV [CFR279.1], and such other information as the Administrator may require.~~

(b) Deadline for delivery of brochure:

~~(1) An investment adviser, except as provided in Subparagraph (2), shall deliver the statement required by this Rule to an advisory client or prospective advisory client:~~

~~(A) not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client, or~~

~~(B) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.~~

~~(2) Delivery of the statement required by Subparagraph (1) need not be made in connection with entering into:~~

~~(A) an investment company contract, or~~
~~(B) a contract for impersonal advisory services.~~

(b) Offer and Delivery Requirements.

(1) An investment adviser shall deliver:

(A) The current brochure required by this section to a client or prospective client; and

(B) The current brochure supplement(s) for each investment adviser representative who will provide advisory services to the client. For purposes of this Section, an investment adviser representative will provide advisory services to a client if the investment adviser representative will:

(i) Regularly communicate investment advice to that client; or

(ii) Formulate investment advice for assets of that client; or

(iii) Make discretionary investment decisions for assets of that client; or

(iv) Solicit, offer or negotiate for the sale of or sell investment advisory services.

(2) The documents required in Subparagraph (1) of this Paragraph shall be delivered:

(A) Not less than 48 hours prior to entering into any investment advisory contract with such client or prospective client; or

(B) At the time of entering into any such contract, if the client has a right to terminate the contract without penalty within five business days after entering into the contract.

(3) An investment adviser shall, at least once a year, without charge, deliver or offer in writing to deliver to each of its clients the current brochure and any current brochure supplement(s) required by Paragraph (b)(1) of this Section. If a client accepts the written offer, the investment adviser must send to that client the current brochure and supplements within seven days after the investment adviser is notified of the acceptance.

(c) Requirement of delivery or offer to deliver brochure:

~~(1) An investment adviser, except as provided in Subparagraph (2), shall annually, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the statement required by this Rule.~~

~~(2) The delivery or offer required by Subparagraph (1) need not be made to advisory clients receiving advisory services solely pursuant to:~~

~~(A) an investment company contract, or~~
~~(B) a contract for impersonal advisory services requiring the payment of less than two hundred dollars (\$200.00) over the term of such contract.~~

~~(3) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires the payment of two hundred dollars (\$200.00) or more over the term of such contract, an offer of the type specified in Subparagraph (1) shall also be made at the time of entering into an advisory contract.~~

~~(4) Any statement requested in writing by an advisory client pursuant to an offer required by this Paragraph must be mailed or delivered within seven days of the receipt of the request.~~

(c) Delivery to Limited Partners. If the adviser is the general partner of a limited partnership, the manager of a limited liability company, or the trustee of a trust, then for purposes of this section the investment adviser must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners as a client. For purposes of this

Section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(d) If an investment adviser renders substantially different types of investment advisory services to different advisory clients, any information required by Part II of Form ADV may be omitted from the statement furnished to an advisory client or prospective advisory client if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(d) Wrap Fee Program Brochures.

(1) If the investment adviser is a sponsor of a wrap fee program, then the brochure, required to be delivered by Paragraph (b)(1) of this Section to a client or prospective client of the wrap fee program, must be a wrap fee brochure containing all information required by Form ADV. Any additional information in a wrap fee brochure must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(2) The investment adviser does not have to offer or deliver a wrap fee brochure if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program a wrap fee program brochure containing all the information the investment adviser's wrap fee program brochure must contain.

(3) A wrap fee brochure does not take the place of any brochure supplement(s) that the investment adviser is required to deliver under Paragraph (b)(1)(B) of this Section.

(e) Nothing in this Rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder or other federal or state law to disclose any information to its advisory clients not specifically required by this Rule.

(e) Delivery of Updates and Amendments. The investment adviser must amend its brochure and any brochure supplement(s) and deliver the amendments to clients promptly when information contained in the brochure or brochure supplement(s) becomes materially inaccurate. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within 30 days of the event that requires the filing of the amendment.

(f) Multiple Brochures. If an investment adviser renders substantially different types of investment advisory services to different clients, the investment adviser may provide them with different brochures, provided that each client receives all applicable information about services and fees. The brochure delivered to a client may omit any information required by Part 2A of Form ADV if such information is applicable only to a type of investment advisory service or fee that is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

(g) Other Disclosure Obligations. Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules and regulations thereunder

or other federal or state law to disclose any information to its clients or prospective clients not specifically required by this rule.

(h) Conversion Rule. All investment advisers registered or required to be registered under the Act must deliver to each of their clients their current brochure and all required brochure supplements within 30 days from the date of making its initial filing with IARD.

(f) Definitions. For the purposes of this Rule:

(1) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services:

(A) by means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(B) through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(C) by any combination of the foregoing services;

(2) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal; and

(3) "Investment company contract" means a contract with an investment company registered under the Investment Company Act of 1940 which meets the requirements of Section 15(c) of that Act.

(i) Definitions. For the purposes of this Rule:

(1) "Current brochure" and "current brochure supplement" mean the most recent revision of the brochure or brochure supplement, including all subsequent amendments (i.e., stickers).

(2) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

(3) "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.

(4) "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.

Authority G.S. 78C-18(b); 78C-30(a); 78C-30(b).

**18 NCAC 06 .1710 TERMINATION/
WITHDRAWAL/INVESTMENT ADVISER
REGISTRATIONS**

(a) Investment advisers. The application for withdrawal of registration as an investment adviser pursuant to Section 78C-19(e) of the Act shall be ~~filed upon~~ completed by following the instructions on Form ADV-W (Notice of Withdrawal from Registration as Investment Adviser) (17 C.F.R. 279.2) ~~with the administrator and filed upon Form ADV-W with IARD.~~ Such filing shall be accompanied by any outstanding investment adviser's license. Withdrawal shall not be effective until receipt by the administrator of any investment adviser's license that may be outstanding. Investment advisers shall be held accountable for all acts until actual receipt of any outstanding license by the administrator. Withdrawing investment advisers shall comply with Paragraph (b) of this Rule with respect to each of their investment adviser representatives.

(b) Investment adviser representatives. ~~When an investment adviser representative withdraws, cancels, or otherwise terminates registration, the~~ The application for termination or withdrawal of registration as an investment adviser representative pursuant to Section 78C-19(e) of the Act shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) with the administrator by the investment adviser as soon as practicable after termination, but in no event later than ten business days after the investment adviser representative terminates and filed upon Form U-5 with IARD.

Authority G.S. 78C-16(b); 78C-19(e); 78C-20; 78C-30(a); 78C-30(b).

**18 NCAC 06 .1711 TRANSFER/INVESTMENT
ADVISER REPRESENTATIVE'S REGISTRATION**

(a) In order to effect a transfer of registration of an investment adviser representative from one ~~registered~~ investment adviser (the "previous investment adviser") to another ~~registered~~ investment adviser (the "new investment adviser"), the ~~administrator shall be provided the following information~~ following shall be filed with the IARD:

- (1) Uniform Termination Notice for Securities Industry Registration (Form U-5) to be provided by the previous investment adviser pursuant to the requirements of Rule .1710 of this Section;
- (2) Uniform Application for Securities and Commodities Industry Representative (Form U-4) to be provided by the new investment adviser, accompanied by a fee of forty-five dollars (\$45.00) for issuance of the new registration, pursuant to the requirements of Rule .1703.

(b) Every registration of an investment adviser representative expires when the employment of the investment adviser representative terminates until that investment adviser representative's registration with a new investment adviser has been approved.

Authority G.S. 78C-16(a); 78C-16(b); 78C-17(a); 78C-17(b);

78C-20; 78C-30(a); 78C-30(b).

**18 NCAC 06 .1712 CHANGE OF NAME OF
INVESTMENT ADVISER**

Explanation: The subject matter of Rule .1712, Change Of Name Of Investment Adviser, has been subsumed into new Rule .1715, which requires that all changes to Forms ADV be filed with the IARD.

~~Where only a change in the name of the investment adviser applicant or registrant occurs, an amended Form ADV shall be filed with the administrator together with any amendments to the organizational documents, or accompanying letters of explanation, within 30 days of the date of the change. The investment adviser shall return its license and a new license will be issued reflecting the name change. Where a change in the name of an investment adviser covered under federal law occurs, a copy of those documents filed with the Securities and Exchange Commission in connection with the name change shall be filed with the Administrator. There will be no fee for reissuance of the license. Each investment adviser representative shall retain his investment adviser representative's license and this license shall suffice as evidence of licensing under the new investment adviser name until renewal.~~

Authority G.S. 78C-17(c); 78C-18(d); 78C-30(a)(b).

**18 NCAC 06.1713 INVEST ADVISER
MERGER/CONSOLIDATION/ACQUISITION/
SUCCESSION**

(a) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of a registered investment adviser, the ~~acquiring surviving or new successor~~ entity shall file ~~with the administrator, prior to such fundamental change, an initial or amended Form ADV~~ ADV, if the acquiring or successor entity intends to engage in business as an investment adviser in this state, or successor form, with the plan of fundamental change and a letter or any documents of explanation including the date of mass transfer of investment adviser representatives pursuant to Paragraph (c) of this Rule if contemplated. As soon as practicable, but ~~Regardless of whether it intends to engage in business as an investment adviser in this state, the acquiring or successor entity shall file the following with the Administrator~~ not later than 30 days after the fundamental change:

- (1) if the corporate existence of the acquired registered investment adviser is extinguished upon the effective date of the acquisition, a Form ADV-W, filed by the acquiring or successor entity in the name of the acquired entity, for the purpose of terminating the registration of the acquired entity;
- (2) a copy of the corporate or transactional document by which the merger, acquisition, or other fundamental change was effected; and
- (3) if the acquisition was effected by means of a transaction in which the corporate structure of the acquired entity was affected, a copy of a certificate of merger or certificate of dissolution or similar certificate, issued by the

custodian of corporate records of the state pursuant to whose laws the transaction was effected.

In addition, if the corporate structure of the acquired entity was not extinguished in the course of the acquisition, the acquired entity shall file an amended Form ADV not later than 30 days following the effective date of the acquisition, the surviving or new entity shall file with the administrator the current financial statements of the surviving or new entity; the amended or new charter and by laws; and, if applicable, a copy of the certificate of merger, consolidation or other fundamental change.

(b) The registration of the surviving or new entity shall be granted by the administrator on the same date that the fundamental change becomes effective. Where the fundamental change results in a change in the name of the surviving or new entity from the name listed on any outstanding investment adviser's license, the license shall be returned and a new license reflecting the new name will be issued. There will be no fee for reissuance of a license.

(c) Investment advisers shall effect mass transfers of investment adviser representatives by filing with the Securities Division IARD a Form U-4 or successor form for each investment adviser representative to be transferred from the nonsurviving acquired entity to the acquiring surviving or new successor entity and a Form U-5 or successor form for each investment adviser representative not to be transferred. Each transferred investment adviser representative shall retain his investment adviser representative's license which shall suffice as evidence of registration with the surviving or new entity until renewal. The transfer of the investment adviser representative is effective upon receipt of the Form U-4 or successor form by the Securities Division. All Form U-5's or successor forms shall be filed as soon as practicable but no later than 10 business days after the fundamental change. A regular application fee shall be paid by the surviving or new investment adviser for each investment adviser representative in such transfer.

(d) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of an investment adviser covered under federal law, and the acquiring or successor surviving entity will be an investment adviser covered under federal law, the entities involved shall file appropriate notice filings with the IARD Administrator, as and when such forms are filed with the U.S. Securities and Exchange Commission, a copy of any amendments to their Forms ADV and a copy of any other forms filed with the SEC with respect to the transaction. The transfer of investment adviser representatives to the surviving entity shall be governed by the provisions of Paragraph (c) of this Rule.

(e) When there is a merger, consolidation, acquisition, succession, or other similar fundamental change in the ownership of an investment adviser covered under federal law, and the acquiring or successor surviving entity will be an investment adviser that is registered or required to be registered under the Act, such merger, consolidation, acquisition, succession, or other similar fundamental change shall be governed by the provisions of Paragraphs (a)-(b) of this Rule.

Authority G.S. 78C-16(b); 78C-17(a)(c); 78C-18(b)(c)(d); 78C-20; 78C-30(a)(b).

18 NCAC 06 .1714 REGISTRATION OF

PARTNERS/EXECUTIVE OFFICERS/DIRECTORS

Explanation: There is no mechanism in the IARD system by which the automatic registration requirements of Rule .1714 can be implemented. Therefore, the Division will rely instead on the statutory provisions of G.S. 78C-17(a) for the registration mechanism applicable to executive officers and principals of investment adviser firms.

~~(a) Any partner, executive officer, director, or a person occupying a similar status or performing similar functions who represents a registered investment adviser in transacting business in this state as an investment adviser shall be registered as an investment adviser representative pursuant to Paragraph (b) of this Rule.~~

~~(b) Automatic investment adviser representative registration for partners, executive officers or directors of a registered investment adviser or a person occupying a similar status or performing similar functions shall be obtained by filing an original or amended Form ADV and any appropriate schedule thereto, providing the required disclosures regarding the registrant, and a written notice to the Securities Division identifying the registrant and that the registrant will engage in the activities as described in Paragraph (a) of this Rule; provided, however, if such information is currently on file with the administrator then the written notice only is required to be filed. Automatic registration shall lapse where a material change in the information reported on Form ADV or any schedule thereto regarding the registrant has occurred and has not been reported to the Securities Division by filing an original or amended Form ADV or the appropriate schedule therewith current information within ten business days of the material change. The investment adviser shall timely inform the Securities Division in writing when any registrant under this Paragraph ceases to engage in the activities described in Paragraph (a) of this Rule for the purposes of termination of the automatic investment adviser representative registration. Annual renewal is automatic upon renewal of the investment adviser registration.~~

~~(c) Failure to maintain a current automatic registration pursuant to Paragraph (b) of this Rule for those persons described in Paragraph (a) of this Rule may result in violation of G.S. 78C-16.~~

~~(d) Automatic registration may be denied, revoked, suspended, restricted or limited or the registrant censured as provided by G.S. 78C-19. Nothing in this Rule shall limit the administrator's authority to institute administrative proceedings against an investment adviser, or an applicant for investment adviser registration due to the qualifications of or disclosures regarding a person described in Paragraph (a) of this Rule.~~

~~(e) An investment adviser representative shall not be registered with more than one investment adviser regardless of whether registration is accomplished or contemplated under this Rule or Rule .1703 of this Section unless each of the investment advisers which employs or associates the investment adviser representative is under common ownership or control.~~

~~(f) For the purposes of this Rule, "Executive Officer" shall mean the chief executive officer, the president, the principal financial officer, each vice president with responsibility involving policy making functions for a significant aspect of the investment adviser's business, the secretary, the treasurer, or any other~~

~~person performing similar functions with respect to any organization whether incorporated or unincorporated.~~

Authority G.S. 78C-16(a)(b); 78C-17(a); 78C-18(b)(d); 78C-19(a); 78C-30(a)(b).

18 NCAC 06 .1715 INVESTMENT ADVISER REGISTRATION DEPOSITORY

(a) USE OF IARD. Unless otherwise provided, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Administrator pursuant to the rules promulgated under this Act, shall be filed electronically with and transmitted to the Investment Adviser Registration Depository ("IARD") operated by the National Association of Securities Dealers ("NASD"). If in its administration of the IARD, the NASD determines to utilize the Central Registration Depository ("CRD") for applications, amendments, reports, notices, and related filing and fees required of investment adviser representatives, the term "IARD" as used in this section shall encompass such use of the CRD. The following additional conditions relate to such electronic filings:

- (1) Electronic Signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.
- (2) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the Administrator when all fees are received and the filing is accepted by IARD on behalf of the State.

(b) ELECTRONIC FILING. Notwithstanding Paragraph (a) of this Rule, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees. Any documents or fees required to be filed with the Administrator that are not permitted to be filed with or cannot be accepted by IARD shall be filed directly with the Administrator.

(c) HARDSHIP EXEMPTIONS. This Section provides two "hardship exemptions" from the requirements to make electronic filings as required by the rules.

- (1) Temporary Hardship Exemption.
 - (A) Investment advisers registered or required to be registered under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD may request a temporary hardship exemption from the requirements to file electronically.
 - (B) To request a temporary hardship exemption, the investment adviser must:

(i) File Form ADV-H [17- CFR 279.3] in paper format with the Administrator where the investment adviser's principal place of business is located, no later than one business day after the filing (that is the subject of the Form ADV-H) was due; and

(ii) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(C) Effective Date -- Upon Filing. The temporary hardship exemption will be deemed effective upon receipt by the Administrator of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Administrator.

(2) Continuing Hardship Exemption.

(A) Criteria for Exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(B) To apply for a continuing hardship exemption, the investment adviser must:

(i) File Form ADV-H [17- CFR 279.3] in paper format with the Administrator at least twenty business days before a filing is due; and

(ii) If a filing is due to more than one administrator, the Form ADV-H must be filed with the administrator where the investment adviser's principal place of business is located. The administrator who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(C) Effective Date -- Upon Approval. The exemption is effective upon approval by the Administrator. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Administrator approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to IARD in paper format (along with the appropriate

- processing fees) for the period of time for which the exemption is granted.
- (3) Recognition of Exemption. The decision to grant or deny a request for a hardship exemption will be made by the administrator where the investment adviser's principal place of business is located, which decision will be followed by the administrator in the other state(s) where the investment adviser is registered.

Authority G.S. 78C-20.

18 NCAC 06 .1716 TRANSITION SCHEDULE FOR CONVERSION TO IARD

(a) Electronic filing of Form ADV.

- (1) By March 15, 2002, each investment adviser registered or required to be registered under the Act must resubmit its Form ADV electronically (if it has not previously done so) with IARD unless it has been granted a hardship exemption under Section .1715.
- (2) If the amendment to Form ADV is made after March 15, 2002, or at an earlier date if an investment adviser has filed its Form ADV [17 CFR 279.1] (or any amendments to Form ADV) electronically with IARD, the registrant must file amendments to Form ADV required by this section electronically with IARD, unless it has been granted a hardship exemption under Section .1715.

(b) Electronic filing of Form U-4. By June 30, 2002, for each investment adviser representative registered or required to be registered under the Act, Form U-4 must be resubmitted electronically (if it has not previously been done) with IARD, unless the investment adviser (filing on behalf of the investment adviser representative) has been granted a hardship exemption under Rule .1715.

Authority G.S. 78C-20.

18 NCAC 06.1717 CASH PAYMENTS FOR CLIENT SOLICITATIONS

(a) It shall be unlawful for any investment adviser required to be registered pursuant to G.S. 78C-16 to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

- (1) The investment adviser is registered under the North Carolina Investment Advisers Act;
- (2) The solicitor is not a person:
- (A) subject to a Securities and Exchange Commission ("the Commission") order issued under section 203(f) of the Investment Advisers Act of 1940 ("the 1940 Act"), or subject to an order of the Administrator issued under G.S. 78C-19 or G.S. 78A-39; or
- (B) convicted within the previous ten years of any felony or misdemeanor involving conduct described in

section 203(e)(2)(A)-(D) of the 1940 Act or described in G.S. 78C-19(a)(2)c.; or

- (C) who has been found by the Commission to have engaged, or has been convicted of engaging, in any of the conduct specified in Paragraphs (1), (5) or (6) of Section 203(e) of the 1940 Act, or who has been found by the North Carolina Securities Division (the "Division") to have engaged in or acted as accessory after the fact to, or has been convicted of engaging in or acting as accessory after the fact to, a violation of any provision of the North Carolina Investment Advisers Act, the North Carolina Securities Act, or the Commodities Act (Chapters 78A, 78C, and 78D of the North Carolina General Statutes); or
- (D) who is subject to an order, judgment or decree described in Section 203(e)(4) of the 1940 Act or in G.S. 78C-19(a)(2)d.; and

- (3) Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and
- (4) Such cash fee is paid to a solicitor:

- (A) With respect to solicitation activities for the provision of impersonal advisory services only; or
- (B) Who is:

- (i) a partner, officer, director or employee of such investment adviser, or
- (ii) a partner, officer, director or employee of a person which controls, is controlled by, or is under common control with such investment adviser; provided that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and such other person, is disclosed to the client at the time of the solicitation or referral; or

(C) Other than a solicitor specified in Paragraph (a)(2)(A) or (B) of this Rule, if all of the following conditions are met:

- (i) The written agreement required by Paragraph (C) of this Section:
- (I) describes the solicitation activities to be engaged in by the

- solicitor on behalf of the investment adviser and the compensation to be received therefor;
- (II) contains an undertaking by the solicitor to perform his duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of the Act and the rules thereunder;
- (III) requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by Rule .1707 of this Chapter ("Investment Adviser Brochure Rule ") and a separate written disclosure document described in Paragraph (b) of this Rule.
- (ii) The investment adviser receives from the client, prior to, or at the time of, entering into any written investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document. The investment adviser shall retain a copy of each such acknowledgment and solicitor disclosure document as part of the records required to be kept under Rule .1706(a)(15) of this Chapter.
- (iii) The investment adviser makes a bona fide effort to
- ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.
- (b) The separate written disclosure document required to be furnished by the solicitor to the client pursuant to this Section shall contain the following information:
- (1) The name of the solicitor;
 - (2) The name of the investment adviser;
 - (3) The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;
 - (4) A statement that the solicitor will be compensated for his solicitation services by the investment adviser;
 - (5) The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and
 - (6) The amount, if any, for the cost of obtaining his account the client will be charged in addition to the advisory fee, and the differential, if any, among clients with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.
- (c) The investment adviser shall retain a copy of each written agreement required by this Section as part of the records required to be kept under Rule .1706(a)(10) of this Chapter.
- (d) Nothing in this Section shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.
- (e) For purposes of this Section,
- (A) "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.
 - (B) "Client" includes any prospective client.
 - (C) "Impersonal advisory services" means investment advisory services provided solely by means of:
 - (i) written materials or oral statements which do not purport to meet the objectives or needs of the specific client;
 - (ii) statistical information containing no expressions of opinions as to the investment merits of particular securities; or
 - (iii) any combination of the foregoing services.

Authority G.S. 78C-16(b)(2).

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 04 – COMMISSION FOR AUCTIONEERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Auctioneer Licensing intends to adopt the rule cited as 21 NCAC 04B .0804 and amend the rules cited as 21 NCAC 04B .0202, .0603, .0801-.0802. Notice of Rule-making Proceedings was published in the Register on January 4, 2000, November 1, 2001 and November 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: June 15, 2002

Time: 3:45 p.m.

Location: Sheraton Hotel, Research Triangle Park, North Carolina

Reason for Proposed Action: *The Auctioneer Licensing Board proposes this action will address both the Legislation enacted in the last General Assembly session and needed technical changes. Changes that are a direct result of the new Legislation include: inserting fingerprint background check fees and guidelines for approving continuing education instructors.*

Comment Procedures: *Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from June 3, 2002 to July 22, 2002. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Board's office at 1001 Navaho Drive, Suite 105, Raleigh, NC 27609.*

Fiscal Impact

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

SUBCHAPTER 04B - AUCTIONEER LICENSING BOARD

SECTION .0200 - APPLICATION FOR LICENSE

21 NCAC 04B .0202 FILING AND FEES

(a) Properly completed applications must be filed (received, not postmarked) in the Board office at least seven days prior to an established Board meeting date, or in the case of an application for auctioneer examination, at least 10 days prior to a scheduled examination and must be accompanied by all required documents.

(b) License fees are as follows:

- (1) New auctioneer license for an applicant who did not serve an apprenticeship \$250.00
This includes a one hundred fifty dollars (\$150.00) annual license fee; fifty dollars (\$50.00)

- (2) application fee; and fifty dollars (\$50.00) examination fee.
New auctioneer license for an apprentice auctioneer \$200.00
This includes a one hundred fifty dollars (\$150.00) annual license fee; and fifty dollars (\$50.00) examination fee.
- (3) Renewal of auctioneer license \$150.00
- (4) New apprentice auctioneer license \$150.00
This includes a one hundred dollars (\$100.00) license fee and a fifty dollars (\$50.00) application fee.
- (5) Renewal of apprentice auctioneer license \$100.00
- (6) New auction firm license (no examination) \$200.00
This includes a one hundred dollars (\$150.00) annual license fee; and fifty dollars (\$50.00) application fee.
- (7) New auction firm license (examination) \$250.00
This includes a one hundred fifty dollars (\$150.00) annual license fee; fifty dollars (\$50.00) application fee; and fifty dollars (\$50.00) examination fee.
- (8) Renewal of an auction firm license \$150.00
- (9) Application and processing fee for conversion of non-resident reciprocal license to in state license \$ 50.00
- (10) Reinstatement of lapsed license or late fee \$ 50.00
- (11) Resident fingerprint card background check fee \$ 14.00
Applicants who have been continuous residents of North Carolina for the five years preceding the date of application shall only be required to have a State background check.
- (12) Non-resident fingerprint card background check fee \$ 38.00
Applicants who have not been continuous residents of North Carolina for the five years preceding the date of application shall be required to have both a State and Federal background check.

(c) The renewal fee for a non-resident reciprocal licensee under G.S. 85B-5 shall be calculated in the same manner as the initial application fee pursuant to G.S. 85B-6.

(d) Fees may be paid in the form of a cashier's check, certified check or money order made payable to the North Carolina Auctioneer Licensing Board. Checks drawn on escrow or trust accounts shall not be accepted. Personal checks may be accepted for payment of renewal fees.

Authority G.S. 85B-4.1; 85B-6.

SECTION .0600 - GENERAL AUCTIONEERING

21 NCAC 04B .0603 SALE PROCEEDS, ACCOUNTING AND ESCROW ACCOUNTS

(a) Each payment made payable to the auctioneer/firm in which any portion belongs to others, and which are not disbursed to the seller on auction day, must be deposited in an escrow account for the benefit of the owner or seller of such property within three business days after receipt of same.

(b) Any licensee who disburses any funds on auction day shall prepare a receipt or settlement statement in compliance with G.S. 85B-7.1(a) and maintain records in compliance with G.S. 85B-7.1(b).

(c) Every auctioneer/firm that does not disburse all funds to the seller on auction day shall establish and maintain a separate bank account designated as "Custodial Account for Sellers Proceeds" or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(d) Such custodial accounts for sellers proceeds must be established and maintained in banks or savings and loan associations located in the State of North Carolina whose deposits are insured by the Federal Deposit Insurance Corporation, or comparable state recognized insurance agency or program.

(e) The Custodial Account for Sellers shall be drawn on only for payment of:

- (1) the net proceeds to the seller, or to any person that the auctioneer/firm knows is entitled to payment;
- (2) to pay lawful charges against the property which the auctioneer/firm shall in its capacity as agent, be required to pay; and
- (3) to obtain any sums due the auctioneer/firm as compensation for its services.

(f) In the event of a dispute between the seller and buyer of goods or property or between the licensee and any person in whose name trust or escrow funds are held, the licensee shall retain said monies in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

(g) Each auctioneer/firm shall keep such accounts and records as will disclose at all times the handling of funds in such Custodial Accounts for Sellers Proceeds. Accounts and records must at all times disclose the names of buyers and the amount of purchase and payment from each, also, the names of the sellers and the amount due and payable to each from funds in the Custodial Account for Sellers Proceeds. All records and accounts related to an individual seller shall be delivered to the seller within 14 days of settlement—a written request made within 90 days of settlement of a specific auction.

(h) All trust or escrow account records and records of disbursement shall be available for inspection by the Commission or its designated agent, without advance notice, and copies shall be provided to the Commission upon request.

Authority G.S. 85B-3(f); 85B-7.1; 85B-8(a).

SECTION .0800 - CONTINUING EDUCATION

21 NCAC 04B .0801 CONTINUING EDUCATION COURSE

(a) To renew a license on active status, an auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall

complete a Board approved course(s) consisting of the hours of instruction as established as in Paragraph (d) of this Rule and shall provide documentation of completion of the above Board approved course(s) within one year preceding license expiration.

- (1) "Within one year preceding license expiration time period" shall be defined as from May 16 to the following May 15 in the year that the license expires.
- (2) An auctioneer, apprentice auctioneer, or designated person(s) in an auction firm shall provide documentation on required continuing education courses to the Board by the May 15 deadline of the current renewal period.
- (3) If the required documentation is not received by the Board by the established deadline as set forth in Subparagraph (2) of this Rule, the licensee shall automatically be assessed a late fee as set forth in Subparagraph .0202(b)(10) of this Subchapter.
- (4) The renewal shall not be processed until compliance is achieved and the required fees are received as set forth in Subparagraph .0402(b) of this Subchapter.

(b) The Board shall approve courses that shall be conducted by sponsors approved by the Board under this Section. The subject matter of this course shall be determined by the course sponsor subject to Paragraph (h) of this Rule. The course sponsor shall produce or acquire instructor and student materials. The course must be conducted as prescribed by the rules in this Section. At the beginning of the course, sponsors must provide licensees participating in their classes a copy of the student materials developed by the sponsor.

(c) The sponsor may conduct the course at any location as frequently as is desired during the approval period. Approval of a sponsor to conduct a course authorizes the sponsor to conduct the course using an instructor who has been approved by the Board as a course instructor under Rule .0804 of this Section.

(d) The minimum classroom hours of instruction for each year shall be six unless the Board establishes at its April monthly Board meeting fewer hours for the upcoming year pursuant to G.S. 85B-4(e1). In determining whether fewer hours may be established, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that a reduction in hours is justified.

(e) An auctioneer, an apprentice auctioneer, or a designated person(s) in an auction firm shall complete the continuing education requirements for each renewal period that their license was lapsed or suspended.

(f) Credit hours applied to the current renewal of a license shall not be used for future renewals.

(g) Excess continuing education hours may be carried forward as credits for a maximum of one renewal year.

(h) The Board may mandate the topic(s) for all or part of an approved course as a continuing education requirement pursuant to G.S. 85B-4(e1). In determining whether to mandate the topic for all or part of an approved course as a continuing education requirement, the Board shall analyze the disciplinary actions and complaints against its licensees and base its decision on whether the analysis shows that mandating the topic for all or part of a course is justified.

- (i) No part of any preclicensing course curriculum shall count as continuing education credit hours.
- (j) Continuing education shall not be required until the second renewal after initial licensing pursuant to G.S. 85B-4(e).

Authority G.S. 85B-4(e1).

21 NCAC 04B .0802 APPLICATION FOR ORIGINAL APPROVAL

(a) An entity seeking original approval to sponsor a course must make application on a form prescribed by the Board. An applying entity that is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings.

(b) Approval to sponsor a course shall be granted to an applicant upon showing to the satisfaction of the Board that:

- (1) The applicant has submitted all information required by the Board;
- (2) The applicant satisfies all of the requirements of Rule .0805 of this Section relating to qualifications or eligibility of course sponsors; ~~and~~
- (3) The applicant required by Rule .0805(e) must be truthful, honest and of high integrity as referenced in 21 NCAC 04B .0404(a)(15). In this regard, the Board may consider the reputation and character of any owner, officer or director of any corporation, association or organization applying for sponsor ~~approval-approval~~; and
- (4) The applicant has at least one proposed instructor who has been approved by the Board as a course instructor under Rule .0804 of this Section.

Authority G.S. 85B-4(e1).

21 NCAC 04B .0804 APPROVAL OF CONTINUING EDUCATION INSTRUCTORS

(a) Approval of course instructors shall be accomplished at the time of the approval of the course sponsor. Approval of a course instructor authorizes the instructor to teach the course only for the approved course sponsor. An approved course instructor may not independently conduct a course unless the instructor has also obtained approval as a course sponsor.

(b) An entity seeking original approval as a course sponsor must provide the name, address, and qualifications of the instructors for the course on the application form prescribed by the Board. No additional application fee is required. All required information regarding the instructor's qualifications must be submitted.

(c) The instructor(s) must be truthful, honest and of high integrity as referenced in 21 NCAC 04B .0404(a)(15).

(d) The instructor(s) must be qualified under one or more of the following standards:

- (1) Possession of a baccalaureate or higher degree with a major in the field of marketing, finance, or business administration.
- (2) Possession of a current North Carolina auctioneer or auction firm license, three years active full-time experience in auctioneering

within the previous 10 years, and 30 classroom hours of auction education, excluding preclicensing education, within the past three years, such education covering topics which are acceptable under Board rules for continuing education credit.

(3) Possession of a current North Carolina real estate broker license, three years active full-time experience in the real estate business within the previous 10 years, and experience teaching real estate preclicensing and continuing education courses.

(4) Possession of a license to practice law in North Carolina and three years experience in law practice within the previous 10 years.

(5) Possession of qualifications found by the Board to be equivalent to one or more of the standards set forth in this Rule.

(e) The Board may deny or withdraw approval of any course instructor upon finding that:

(1) The course sponsor or the instructor has made any false statements or presented false information in connection with an application for approval;

(2) The instructor has failed to meet the criteria for approval described in Paragraph (d) of this Rule or has refused or failed to comply with any other provisions of this Subchapter;

(3) The instructor has failed to demonstrate, during the teaching of courses, those effective teaching skills described in Rule .0815 of this Section; or

(4) The instructor has provided false or incorrect information in connection with any reports a course sponsor is required to submit to the Board.

(f) If a licensee who is an approved course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 85B-8 and 85B-9.

(g) Upon the written request of the Board, an approved course instructor must submit to the Board a videotape depicting the instructor teaching the course. The videotape must have been made within 12 months of the date of submission, must be in VHS format, must include a label which clearly identifies the instructor and the date of the videotaped presentation.

(h) An approved instructor who is a licensee of the Board shall receive continuing education credit hours for instruction at a rate of one hour for every one-half hour of approved course taught.

Authority G.S. 85B-4(e1).

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 adopt the rule cited as 21 NCAC 36 .0120 and amend the rule cited as 21 NCAC 36 .0228. Notice of Rule-making Proceedings was published in the Register on March 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: September 26, 2002

Time: 1:00 p.m.

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

Reason for Proposed Action:

21 NCAC 36 .0120 – This Rule will help clarify terms used throughout the Administrative Code for the Board of 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, NC Board of Nursing, PO Box 2129, Raleigh, NC 27602-2129 by September 26, 2002.

Fiscal Impact

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

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 36 .0120 DEFINITIONS.

The following definitions shall apply throughout this chapter unless the context indicates otherwise:

- (1) "Accountability/Responsibility" means being answerable for actions or inaction of self, and of others in the context of delegation or assignment.
- (2) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (3) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability for the delegation.
- (4) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- (5) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- (6) "Advanced Practice Registered Nurse (APRN)" means a nurse midwife, registered nurse anesthetist, clinical nurse specialist, or a nurse practitioner who meets the criteria specified in G.S. 90-171.21(d)(4).

(7) "National Credentialing Body" means a credentialing body which is approved by the North Carolina Board of Nursing that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.

(8) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.

Authority G.S. 90-171.23.

SECTION .0200 - LICENSURE

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) The registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse specialist or a clinical nurse specialist applicant and perform nursing activities at an advanced skill level as outlined in Paragraph (c) of this Rule.

(b) In order for the individual to be recognized, the individual shall have an unrestricted license to practice as a registered nurse in North Carolina and meet one of the following qualifications:

- (1) have completed a graduate degree in a clinical nursing specialty and be currently certified in a clinical specialty by a national credentialing body approved by the Board as defined in Paragraph (e) of this Rule; or
- (2) have a graduate degree in a related field and have been initially certified by the American Nurses Credentialing Center as a Specialist prior to June 1992 and have maintained such certification continuously to date; or
- (3) have completed a graduate degree in a clinical nursing specialty and is awaiting initial certification by a national credentialing body approved by the Board, as defined in Paragraph (e) of this Rule, for a period not to exceed 24 months after completion of the graduate program.

(c) Clinical nurse specialist practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level in his/her area of clinical specialization which includes but is not limited to:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
- (2) diagnosing and managing clients' acute and chronic health problems within a nursing framework;
- (3) formulating strategies to promote wellness and prevent illness;

PROPOSED RULES

- (4) prescribing and implementing therapeutic and corrective nursing measures;
 - (5) planning for situations beyond expertise, and consulting with or referring clients to other health care providers as appropriate;
 - (6) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health of individual clients, families and communities;
 - (7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
 - (8) assuming leadership for the application of research findings for the improvement of health care outcomes; and
 - (9) integrating education, consultation, management, leadership and research into the advanced clinical nursing specialist role.
- (d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist or clinical nurse specialist applicant shall:
- (1) complete the appropriate application, which shall include:
 - (A) evidence of the appropriate graduate degree as defined in Subparagraph (b)(1), (2) or (3) of this Rule; and
 - (B) evidence of current certification in a clinical specialty from a national credentialing body approved by the Board as defined in Subparagraphs (b)(1) and (2) of this Rule;
 - (2) submit an administrative fee of twenty-five dollars (\$25.00) for processing the application; and
 - (3) submit evidence of renewal or initial certification at the time such occurs in order to maintain Board recognition consistent with Paragraph (b) of this Rule.
- (e) The Board may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty which have established the following minimum requirements:
- (1) current licensure as a registered nurse;
 - (2) a minimum of ~~one year~~ 500 hours of clinical experience as a registered nurse in the nursing speciality;
 - (3) recertification criteria include evidence of:
 - (A) clinical practice; or
 - (B) continuing education units; or
 - (C) re-examination; or
 - (D) a combination of two or more of Part (e)(3)(A) - (C) of this Rule; and
 - (E) recertification a minimum of every five years after initial certification; and
 - (4) certification limited to registered nurses except when offered to other licensed health professionals who have a baccalaureate or higher degree in their discipline.

Authority G.S. 90-171 (4); 90-171.20(7); 90-171.23(b); 90-171.42(b).

TEMPORARY RULES

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 01 – DEPARTMENT OF ADMINISTRATION

DESIGNER AND CONSULTANT SELECTION POLICY

Editor's Note: This publication will serve as Notice of Temporary Rules and as Notice of Text for permanent rulemaking.

SECTION .0300 - SELECTION OF DESIGNERS OR CONSULTANTS

Rule-making Agency: NC Department of Administration

Rule Citation: 01 NCAC 30D .0302

Effective Date for Temporary Rule: May 15, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: S.L. 2001-442, Sec. 6(c)

Reason for Proposed Action for Temporary Rule: Under S.L. 2001-442, Sec. 6(c), the General Assembly granted authority to the State Building Commission to adopt temporary rules to authorize open-end design agreements for design and construction of wetland, stream, and buffer creation, mitigation, and restoration projects. However, the General Assembly required that the Commission publish a 30-day notice of intent to adopt a temporary rule in the North Carolina Register. That notice was published in the Register on December 17, 2001.

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Public Hearing may be requested in writing by sending the request to T. Brooks Skinner, Jr., General Counsel, NC Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1301. Any request for public hearing must be received by May 30, 2002.

Proposed Effective Date for Permanent Rule: April 1, 2003

Reason for Proposed Action: Under S.L. 2001-442, Sec. 6(c), the General Assembly granted authority to the State Building Commission to adopt temporary rules to authorize open-end design agreements for design and construction of wetland, stream, and buffer creation, mitigation, and restoration projects.

Comment Procedures: Written comments may be submitted until June 15, 2002 to T. Brooks Skinner, Jr., General Counsel, NC Department of Administration, 1301 Mail Service Center, Raleigh, NC 27699-1302.

Fiscal Impact

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

CHAPTER 30 – STATE CONSTRUCTION

SUBCHAPTER 30D - STATE BUILDING COMMISSION

01 NCAC 30D .0302 PRE-SELECTION

A pre-selection committee shall be established for all projects requiring professional service. On minor projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and one representative from the State Construction Office. On major projects the pre-selection committee shall consist of at least the Capital Projects Coordinator, a representative of the using agency and two representatives from the State Construction Office. At least one member of all pre-selection committees shall be a licensed design professional.

- (1) General Procedure for All Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project. This step should normally take place prior to public advertisement in the Purchase Directory, because designers and consultants have a significant need to know in advance the program intent of a project in order to demonstrate their qualifications for the project in their letter of interest. The Capital Projects Coordinator shall receive all letters of interest and other qualification information either directly or from the designated contact person. After a pre-selection priority list is prepared, the list will remain confidential except to the Secretary of the SBC. If fewer than three letters of interest are received on major projects, the project will be readvertised in the Purchase Directory. If fewer than three letters of interest are received following the re-advertisement, the Capital Projects Coordinator may proceed with the selection process using the data received or may advertise again.
(2) Special Procedures for Minor Projects: The Capital Projects Coordinator shall again review with the using agency the requirements of the project and the qualifications of all firms expressing interest in a specific project. The Capital Projects Coordinator and a representative of the using agency shall meet with the representative from the State Construction Office for the evaluation of each firm and development of a list of three firms in priority order to be presented to the SBC. The Capital Projects Coordinator may institute the interview procedures, under major projects, where special circumstances dictate such need. The Capital Projects Coordinator shall submit to the Secretary of the SBC the list of three

- firms in priority order, including pre-selection information and written recommendations, to be presented to the SBC. The Capital Projects Coordinator shall state in the submission to the SBC that the established rules for public announcement and pre-selection have been followed or shall state full particulars if exceptions have been taken.
- (3) Special Procedures for Major Projects: The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The Capital Projects Coordinator shall state in his submission that the established rules for public announcement and pre-selection have been followed or shall state full particulars if exceptions have been taken.
- (4) Special Procedures for Emergency Projects: On occasion, emergency design or consultation services may be required for restoration or correction of a facility condition which by its nature poses a significant hazard to persons or property, or when an emergency exists. Should this situation occur, in all likelihood there will not be sufficient time to follow the normal procedures described herein. The Capital Projects Coordinator on these rare occasions is authorized to declare an emergency, notify the State Construction Office and then obtain the services of a competent designer or consultant for consultation or design of the corrective action. In all cases, such uses of these emergency powers will involve a written description of the condition and rationale for employing this special authority signed by the head of the agency and presented to the SBC at its next normal meeting. Timeliness for obligation of funds or other non-hazardous or non-emergency situations do not constitute sufficient grounds for invoking this special authority.
- (5) Annual Contract: A Funded Agency or a Using Agency may require the services of designer(s) or consultant(s) for small miscellaneous projects on a routine basis. In such cases, designer(s) or consultant(s) for annual contracts will be selected in accordance with the above procedures for minor projects. In addition, no annual contract fee will exceed fifty thousand dollars (\$50,000.00) in total volume and no single fee shall exceed ten thousand dollars (\$10,000.00). Annual contracts may be extended for one additional year. However, if extended for an additional

one-year period, the designer may not be selected for the next annual contract. Total annual fees will not exceed fifty thousand dollars (\$50,000.00) for first year or one hundred thousand dollars (\$100,000.00) for two-year period. If and when these fees are used to limit, the agency must readvertise.

- (6) Special Procedures for Department of Environment and Natural Resources: For Division of Water Quality projects under the Wetlands Restoration Program, the Funded Agency may require the services of multiple designer(s) or consultant(s) for design and construction management of wetland, stream and riparian buffer restoration projects on a routine basis. In such cases, designer(s) or consultant(s) for such open-ended contracts will be selected in accordance with the procedures described for minor projects. This does not preclude the Funded Agency's use of the designer selection procedures specified for major or minor projects if it elects to do so. The total volume of business in terms of negotiated design fee shall not exceed Seven Hundred Thousand Dollars (\$700,000) for the biannual contract term and no single project fee is to exceed Three Hundred Fifty Thousand Dollars (\$350,000). In no case will individual projects exceeding One Million Five Hundred Thousand dollars (\$1,500,000) in total costs be assigned for design under an open-end agreement. Open-end agreements under this procedure shall not be extended beyond a two-year term. The Funded Agency must readvertise on a biannual basis.

History note: Authority G.S. 143-135.25; 143-135.26; S.L. 2001-442, Sec. 6(c); Eff. January 1, 1988; Amended Eff. July 1, 1993; May 1, 1990; Temporary Amendment Eff. May 15, 2002.

TITLE 02 – DEPARTMENT OF AGRICULTURE

Rule-making Agency: *Tobacco Trust Fund Commission*

Rule Citation: *02 NCAC 57 .0101-.0103, .0201-.0210, .0301-.0309*

Effective Date: *May 15, 2002*

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

Authority for the rulemaking: *G.S. 143-715; 143-716; 143-718; 143-720; 143-721*

Reason for Proposed Action: *The Tobacco Trust Fund Commission was created by the General Assembly in 2000 to administer a portion of the funds received by the State from the National Tobacco Settlement. The Commission was authorized*

TEMPORARY RULES

to adopt temporary rules at that time in order to expedite the distribution of the funds. The Commission was unable, for a variety of reasons, to adopt temporary rules before that authority expired, so the General Assembly, in 2001, again authorized the Commission to adopt temporary rules in order to avoid further delays in distributing funds to the intended beneficiaries of the Tobacco Trust Fund. The rules establish purposes and procedures for distribution of these funds.

Comment Procedures: *Written comments may be submitted to William Upchurch, Executive Director, Tobacco Trust Fund Commission, PO Box 27647, Raleigh, NC 27611.*

CHAPTER 57 – TOBACCO TRUST FUND COMMISSION

SECTION .0100 – GENERAL PROVISIONS

02 NCAC 57 .0101 POLICY

(a) North Carolina's prosperity has historically been supported by its agricultural economy and particularly by the tobacco-related segment of its agricultural economy.

(b) The tobacco-related segment of the State's economy is experiencing severe economic hardship as it confronts a national decline in the use and demand for tobacco products.

(c) The Master Settlement Agreement between North Carolina and various cigarette manufacturers has contributed to the decline in the tobacco-related segment of the State's economy. It is therefore appropriate for some of the money from the Master Settlement Agreement to be spent for the public purpose of alleviating or avoiding unemployment and fiscal distress in the tobacco-related segment of the State's economy, stabilizing local tobacco-dependent economies, stabilizing and maintaining local tax bases, and optimally using natural resources.

History Note: Authority G.S. 143-715; Temporary Adoption Eff. May 15, 2002.

02 NCAC 57 .0102 AUTHORIZATION

(a) The Tobacco Trust Fund Commission is authorized by G.S. 143, Article 75 to develop Compensatory Programs and Qualified Agricultural Programs to provide financial assistance from the Tobacco Trust Fund to eligible recipients.

(b) As part of its authority to develop guidelines and criteria for eligibility for disbursement of funds, to determine forms of direct and indirect economic assistance to be awarded, and to develop procedures for applying for and reviewing applications for assistance from the Fund, the Commission may periodically set a list of funding priorities which it will follow in awarding grants for qualified agricultural programs and in granting compensatory programs.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002.

02 NCAC 57 .0103 DEFINITIONS

The following definitions are in effect throughout this Chapter:

- (1) Commission. The definition of the Tobacco Trust Fund Commission as contained in G.S. 143-716(1) or the Commission staff;

- (2) Compensatory Programs. The definition of Compensatory Programs contained in G.S. 143-716(2);
- (3) Fund. The Tobacco Trust Fund established by G.S. 143-719;
- (4) Lost Quota. The difference in total aggregate annual tobacco quota poundage between the year in question and 1997;
- (5) Master Settlement Agreement. The definition of Master Settlement Agreement as found in G.S. 143-716(4);
- (6) National Tobacco Grower Settlement Trust. Defined in G.S. 143-316(5);
- (7) Person. An individual human being;
- (8) Qualified Agricultural Programs. Defined in G.S. 143-716(6);
- (9) Tobacco allotment. An amount of tobacco allowed to be grown on a tract of land;
- (10) Tobacco allotment holder. A person who, at the time of the grant application, owns a certain amount of tobacco quota on a tract of land, as determined by the U.S. Farm Service Agency records for the county in which the quota is located;
- (11) Tobacco product component business. Defined in G.S. 143-716(7);
- (12) Tobacco grower. Tobacco producer;
- (13) Tobacco producer. A person or entity actively engaged in planting, growing, harvesting and marketing tobacco, or who shares in the expense of producing the crop, and for that reason is entitled to share in the revenues derived from marketing the crop;
- (14) Tobacco products. Cigarettes, cigars, smokeless tobacco, pipe tobacco, roll your own tobacco or any other tobacco product sold at retail intended for human consumption;
- (15) Tobacco-related business. Defined in G.S. 143-716(8);
- (16) Tobacco-related employment. Defined in G.S. 143-716(9); and
- (17) Tobacco-related segment of the State's agricultural economy. That part of the State's agricultural economy that includes tobacco producers, tobacco allotment holders, persons who work on tobacco farms and tobacco auction-related workers or warehousemen.

History Note: Authority G.S. 143-716; 143-718; Temporary Adoption Eff. May 15, 2002.

SECTION .0200 - COMPENSATORY PROGRAM GRANTS

02 NCAC 57 .0201 PURPOSE

The purpose of the Commission's Compensatory Program is to directly or indirectly compensate or indemnify tobacco producers, tobacco allotment holders, individuals displaced from tobacco-related employment and persons engaged in tobacco-related business for economic losses resulting from lost quota

and declining market conditions caused by the Master Settlement Agreement.

History Note: Authority G.S. 143-720; Temporary Adoption Eff. May 15, 2002.

02 NCAC 57 .0202 TYPES OF PROGRAMS

Grants from Compensatory Programs shall compensate or indemnify grant beneficiaries for losses occurring in 1998 and after. Grants for financial assistance shall be for no more than one year at a time, but may at the Commission's discretion be renewed for one or more subsequent years.

History Note: Authority G.S. 143-720; Temporary Adoption Eff. May 15, 2002.

02 NCAC 57 .0203 ELIGIBILITY TO RECEIVE GRANTS

Persons receiving, or organizations administering, Compensatory Program grants shall be, or shall benefit, one or more of the following:

- (1) Tobacco producers, allotment holders and persons engaged in tobacco-related businesses who can quantify adverse economic effects in North Carolina to themselves individually from the Master Settlement Agreement after payment of any funds from the National Tobacco Grower Settlement Trust;
- (2) Tobacco producers, allotment holders and persons engaged in tobacco-related businesses who can quantify economic loss to themselves individually resulting from lost tobacco quota due to the Master Settlement Agreement;
- (3) Tobacco producers who can quantify a decline in the value of tobacco-related personal property assets due to the Master Settlement Agreement;
- (4) Tobacco product component businesses which are adversely affected by the Master Settlement Agreement and which need financial assistance to:
 - (a) Retool machinery or equipment; or
 - (b) Retrain workers in order to convert to the production of new products or non-tobacco use of existing products; or
 - (c) Effect other similar changes;
- (5) Persons engaged in tobacco-related businesses who can quantify individual financial losses due to the Master Settlement Agreement; or
- (6) Individuals displaced from tobacco-related employment who can show that the Master Settlement Agreement caused their displacement and who can further show that the displacement has resulted in actual economic loss to them.

History Note: Authority G.S. 143-720; Temporary Adoption Eff. May 15, 2002.

02 NCAC 57 .0204 APPLICATIONS FOR GRANTS

(a) Grant proposals shall be typed or printed and five copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. To the extent possible, applicants should also provide an electronic copy in a format such as a formatted diskette or via e-mail using Microsoft Word. For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. For all grant proposals submitted after 2002, completed grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.

(b) To be eligible for consideration for funding, applicants shall complete the Tobacco Trust Fund Grant Application Form which shall contain at a minimum the following information:

- (1) Names, mailing addresses, telephone numbers, signatures and driver's license number or federal identification number of the applicant;
- (2) If the applicant is an organization, consortium, cooperative or other entity representing multiple eligible beneficiaries, a description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and members of the Board of Directors. If the applicant involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the Compensatory Program;
- (3) A description of the Compensatory Program, its goals and objectives, and the manner in which it will accomplish its goals and objectives, including how the applicant will quantify actual losses due to the Master Settlement Agreement that are not compensated by payments from the National Tobacco Grower Settlement Trust;
- (4) A detailed statement of the projected cost of the Compensatory Program, including any administrative costs and including expected funding from any other source;
- (5) A description of how the project will be completed including time lines;
- (6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State Auditor;
- (7) An explanation of how the project's results will be evaluated;
- (8) At least two references who may be contacted by the Commission;
- (9) Any other information required by G.S. 143, Article 75 or required by the Commission in order to make a decision on the grant proposal;
- (10) An explanation of how the project will enhance North Carolina's tobacco-related economy for the common good; and
- (11) A list and history of the applicant's past projects funded by grants or awards.

(c) As a condition of applying for a compensatory program or of receiving a grant for a compensatory program, applicants or

TEMPORARY RULES

grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0205 SPECIAL INFORMATION NEEDED FOR DIRECT COMPENSATORY PROGRAMS

If a request is for direct compensation or indemnification or for a program to administer direct compensation or indemnification to an eligible beneficiary or beneficiaries, then the application for the Compensatory Program must contain the following:

- (1) Documentation demonstrating the amount of actual loss of tobacco-related income in North Carolina in 1998 or years subsequent. An applicant may make such demonstration with:
 - (a) A verified letter from a Certified Public Accountant or an attorney licensed in North Carolina that details the amount of the actual loss; or
 - (b) That portion of a federal or state income tax return that shows a loss of tobacco-related income. (Please be aware that any such tax information included in an application will become part of the public record); or
 - (c) A verified statement from a North Carolina employer quantifying the applicant's loss in tobacco-related income in North Carolina for any given year from 1998 forward; or
 - (d) Any other similar reliable, accurate and verifiable documentation which the Commission in its discretion may accept as proof of actual loss;
- (2) Documentation demonstrating that the amount of actual loss or quantifiable adverse effect on income is attributable to the Master Settlement Agreement and not simply because of a decline in quota not caused by the Master Settlement Agreement. Applicants may demonstrate the actual loss with verified information from an independent expert in the field, which expert may be, but is not limited to, an economist or an accountant. The Commission will compare this demonstration with any independent expert information it may have about losses caused by the Master Settlement Agreement and losses compensated by the National Tobacco Grower Settlement Trust; and
- (3) Documentation of any compensation received from the National Tobacco Grower Settlement Trust, or any other source to cover actual losses due to the Master Settlement Agreement, or a verified statement that no compensation was received from the National Tobacco Growers' Settlement Trust or from any other source to compensate losses caused by the Master Settlement Agreement.

*History Note: Authority G.S. 143-718; 143-720;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0206 OUT OF CYCLE AWARD OF GRANTS

The Commission may consider and award grants for compensatory programs out of cycle for good cause shown if the following conditions are met:

- (1) The requested program will respond to a serious and unforeseen threat to the public health, safety or welfare; or
- (2) The requested program is required in response to a recent change in federal or State budgetary policy; or
- (3) The requested program is in response to a disaster as that term is defined in G.S. 166, Article 1; or
- (4) The Commission determines that awarding a grant or grants out of cycle is in the public interest.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0207 REVIEW OF PROPOSALS

- (a) The Executive Director of the Commission and his or her staff or designee shall screen applications to see if they are complete. The Executive Director shall notify applicants if the grant application is incomplete.
- (b) Applications that have been deemed complete will be forwarded to one or more Compensatory Program Review Committees of the Commission. Compensatory Program Review Committee members shall include Commissioners and may include invited outsiders who have particular expertise in technical areas.
- (c) During the review and evaluation of proposals, the Compensatory Program Review Committees may request that the Commission staff or designee make reports on any site visits that may be required for full consideration of the grant proposal. The Compensatory Program Review Committees will make recommendations to the Commission.
- (d) The Commission will receive the suggestions of the Review Committees and will evaluate proposals based on the beneficial impact of the request on the State's tobacco-related economy. In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, the cost of administering the grant and whether the grant will benefit tobacco dependent economies of the State in a measurable manner. Proposals will be given a preference for statewide impact and for containing a delivery mechanism to intended beneficiaries.
- (e) No grant may be awarded for a project that is unlawful.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0208 AWARD OF GRANTS

- (a) All applicants will be notified in writing whether they have received a grant or not.

TEMPORARY RULES

(b) The grant proposal shall be incorporated into the grant and the goals, time lines and other grant objectives shall be performance standards for the grant.

(c) Funds will be conveyed to grantees through contracts with the Commission.

(d) Of the total funds granted for each project, up to 50 percent may be paid upon signing of the contract if such payment is requested as part of the grant application for start up costs and initial administration.

(e) Of the total funds granted for each project, 25 percent shall be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met.

(f) Other payments to successful applicants shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.

(g) For good cause shown, the Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the Compensatory Program.

(h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding Compensatory Programs. The Commission shall not award money to an applicant whose past performance of a Commission grant or program has been unsatisfactory.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0209 REPORTING

(a) Successful applicants shall submit written progress reports at six-month intervals or at shorter intervals as established by the Commission. Written reports shall describe the status of the Compensatory Program, progress toward achieving program objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems. Upon completion of the Compensatory Program, the successful applicant must make a final written report to the Commission which final report shall include an evaluation of the success of the program.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received in the specified time the Commission may withhold the next grant payment.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0210 POLICIES GOVERNING COMPENSATORY PROGRAMS

(a) Successful applicants must keep financial and other records of the Compensatory Program for five years and must comply with audit requests. If the Commission in its informed discretion determines that the amount of the money awarded or the

performance or alleged non-performance of the grantee compels it, the Commission may require a compliance audit of the Compensatory Program.

(b) All applications, attachments to applications and written reports received by the Commission are public documents.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

SECTION .0300 - QUALIFIED AGRICULTURAL PROGRAM GRANTS

02 NCAC 57 .0301 PURPOSE

The purpose of the Commission's grants for Qualified Agricultural Programs is to support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy, particularly the segment adversely affected by the Master Settlement Agreement. Projects shall address one or more of the following goals:

- (1) Alleviating and avoiding unemployment in the tobacco-related sector of the State's agricultural economy;
- (2) Preserving and increasing local tax bases in agricultural areas;
- (3) Encouraging the economic stability of participants in the State's agricultural economy;
- (4) Optimally using natural resources in the tobacco-related segment of the State's agricultural economy; or
- (5) Any other goal that will promote the public good by supporting and fostering the vitality and solvency of the tobacco-related sector of the State's agricultural economy.

*History Note: Authority G.S. 143-716;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0302 ELIGIBILITY TO RECEIVE GRANTS

Entities receiving Qualified Agricultural Program grants shall be one or more of the following:

- (1) Agencies and departments of the State of North Carolina;
- (2) Local governmental units;
- (3) Agencies and departments of the United States government; or
- (4) Members of the private sector, including non-profit organizations.

*History Note: Authority G.S. 143-721;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0303 THE PRIMARY BENEFICIARY

The primary beneficiary of Qualified Agricultural Programs shall be the tobacco-related segment of the State's agricultural economy.

*History Note: Authority G.S. 143-716;
Temporary Adoption Eff. May 15, 2002.*

TEMPORARY RULES

02 NCAC 57 .0304 APPLICATIONS FOR GRANTS

(a) Grants proposals shall be typed or printed and five copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. To the extent possible, applicants should also provide an electronic copy formatted in Microsoft Word to the Commission. For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. For all grant proposals submitted after 2002, completed grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.

(b) To be eligible for consideration for funding, applicants shall complete the Tobacco Trust Fund Grant Application Form which shall contain at a minimum the following information:

- (1) Names, mailing addresses, telephone numbers, signatures and driver's license number or federal identification number of the applicant;
- (2) A description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and a list of the members of the Board of Directors. If the applicant involves more than one person, organization or entity, the applicant shall identify participating persons, organizations or entities and define their roles in completing the grant;
- (3) A description of the Qualified Agricultural Program, its objectives and the manner in which it will accomplish the requirement that the Qualified Agricultural Program foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy;
- (4) A detailed statement of the projected cost of the Qualified Agricultural Program, including any administrative costs and including expected funding from any other source;
- (5) A description of how the project will be completed including time lines;
- (6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State auditor;
- (7) An explanation of how the project's results will be evaluated;
- (8) At least two references which the Commission may contact;
- (9) Any other information required by G.S. 143, Article 75 or by the Commission in order to make a decision on the grant proposal; and
- (10) A list and history of the applicant's past projects funded by grants or awards.

(c) As a condition of applying for the grant or of receiving a grant, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0305 OUT OF CYCLE CONSIDERATION OF GRANTS

The Commission may consider and award grants out of cycle for good cause shown if the following conditions are met:

- (1) The grant will respond to a serious and unforeseen threat to the public health, safety or welfare; or
- (2) The grant is required in response to a recent change in federal or State budgetary policy; or
- (3) The grant is in response to a disaster as that term is defined in G.S. 166, Article 1; or
- (4) The Commission determines that awarding a grant or grants out of cycle is in the public interest.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0306 REVIEW OF PROPOSALS

(a) The Executive Director of the Commission and his or her staff or designee shall screen applications to see if they are complete. The Executive Director shall notify applicants if the grant application is incomplete.

(b) Applications that have been deemed complete will be forwarded to one or more Grant Review Committees of the Commission. Grant Review Committee members shall include Commissioners and may include invited outsiders who have particular expertise in technical areas.

(c) During the review and evaluation of grant proposals, the Grant Review Committees may request that the Commission staff or designee make reports on any site visits that may be required for full consideration of the grant proposal. The Grant Review Committees will make recommendations to the Commission based on its review and evaluation.

(d) The Commission will evaluate grant proposals and recommendations made to it by the Review Committees based on the beneficial impact of the grant request on the solvency and vitality of the tobacco-related segment of the State's agricultural economy.

(e) In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, how the grant project will alleviate or avoid unemployment, stabilize local tax bases, encourage the economic stability of participants in the State's agricultural economy or encourage the optimal use of natural resources in the tobacco-related segment of the State's agricultural economy. Proposals will be given a preference for statewide impact, for containing a delivery mechanism to intended beneficiaries, for providing alternate markets for tobacco or for providing for diversification of the tobacco crop or the tobacco grower.

(f) No grant will be awarded that is unlawful.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002.*

02 NCAC 57 .0307 AWARD OF GRANTS

(a) The Commission will award grants to proposals which have the greatest impact on the long-term health of the State's tobacco-related agricultural economy. All applicants will be notified in writing whether they have received a grant or not.

(b) The grant proposal shall be incorporated into the grant and the goals, time lines and other grant objectives shall be performance standards for the grant.

(c) Funds will be conveyed to grantees through contracts with the Commission.

(d) Of the total funds granted for each project, up to 50 percent may be paid upon signing of the contract if such payment is requested as part of the grant application for start up costs and initial administration.

(e) Of the total funds granted for each project, 25 percent shall be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met.

(f) Other payments to grantees shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.

(g) For good cause shown, the Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the grant.

(h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding grants. The Commission shall not award a grant to an application whose past performance of Commission grants or programs has been unsatisfactory.

History Note: Authority G.S. 143-718; 143-721; Temporary Adoption Eff. May 15, 2002.

02 NCAC 57 .0308 REPORTING

(a) Grantees shall submit written progress reports at six-month intervals or at shorter intervals as established by the Commission. Written reports shall describe the status of the grant projects, progress toward achieving project objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems. Upon completion of the Project, the grantee must make a final written report to the Commission which final report shall include an evaluation of the success of the project.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received within the specified time, the Commission may withhold the next payment under the grant.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002.

02 NCAC 57 .0309 POLICIES GOVERNING QUALIFIED AGRICULTURAL PROGRAM GRANTS

(a) Grantees must keep financial and other records of the grant project for five years and must comply with audit requests. If the Commission in its informed discretion determines that the size of the grant or the performance or alleged non-performance of the grantee compels it, the Commission may require a compliance audit of the grant.

(b) All grant applications, attachments to grant applications and written reports received by the Commission are public documents.

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: Environmental Management Commission

Rule Citation: 15A NCAC 02L .0202

Effective Date: June 30, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: GS. 143-214.1; 143B-282(a)(2)

Reason for Proposed Action: Pursuant to a recommendation by the Environmental Management Commission, this action is to amend the Groundwater Quality Standard for Arsenic to a lower concentration level of 0.010 milligrams per liter.

Comment Procedures: Comments, data, statements and other information about this rulemaking may be submitted in writing to David Hance at ENR-DWQ-Groundwater Section, 1636 Mail Service Center, Raleigh, NC 27699-1636, phone (919) 715-6189, fax (919) 715-0588, email David.Hance@ncmail.net. The Environmental Management Commission will accept comments on the temporary rule through July 15, 2002.

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02L – GROUNDWATER CLASSIFICATIONS AND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND GROUNDWATER QUALITY STANDARDS

15A NCAC 02L .0202 GROUNDWATER QUALITY STANDARDS

(a) The groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage.

(b) The groundwater quality standards for contaminants specified in Paragraphs (g) and (h) of this Rule shall be as listed, except that:

- (1) Where the standard for a substance is less than the practical quantitation limit, the detection of that substance at or above the practical quantitation limit shall constitute a violation of the standard.
- (2) Where two or more substances exist in combination, the Director shall consider the effects of chemical interactions as determined by the Division of Epidemiology and may

TEMPORARY RULES

establish maximum concentrations at values less than those established in accordance with Paragraphs (c) and (g) of this Rule. In the absence of information to the contrary, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.

- (3) Where naturally occurring substances exceed the established standard, the standard will be the naturally occurring concentration as determined by the Director.

(c) Except for tracers used in concentrations which have been determined by the Division of Epidemiology to be protective of human health, and the use of which has been permitted by the Division, substances which are not naturally occurring and for which no standard is specified shall not be permitted in detectable concentrations in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for an unspecified substance, however, the burden of demonstrating those concentrations of the substance which correspond to the levels described in Paragraph (d) of this Rule rests with the petitioner. The petitioner shall submit relevant toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with the procedure prescribed in Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.

(d) Groundwater quality standards for substances in Class GA and Class GSA groundwaters are established as the lesser of:

- (1) Systemic threshold concentration calculated as follows: [Reference Dose (mg/kg/day) x 70 kg (adult body weight) x Relative Source Contribution (.10 for inorganics; .20 for organics)] / [2 liters/day (avg. water consumption)];
- (2) Concentration which corresponds to an incremental lifetime cancer risk of 1x10⁻⁶;
- (3) Taste threshold limit value;
- (4) Odor threshold limit value;
- (5) Maximum contaminant level; or
- (6) National secondary drinking water standard.

(e) The following references, in order of preference, shall be used in establishing concentrations of substances which correspond to levels described in Paragraph (d) of this Rule.

- (1) Integrated Risk Information System (U.S. EPA).
- (2) Health Advisories (U.S. EPA Office of Drinking Water).
- (3) Other health risk assessment data published by U.S. EPA.
- (4) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.

(f) Groundwater quality standards specified in Paragraphs (g) and (h) of this Rule and interim maximum allowable concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a biennial basis. Appropriate modifications to established standards will be made in accordance with the

procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.

(g) Class GA Standards. Where not otherwise indicated, the standard refers to the total concentration in milligrams per liter of any constituent in a dissolved, colloidal or particulate form which is mobile in groundwater. This does not apply to sediment or other particulate matter which is preserved in a groundwater sample as a result of well construction or sampling procedures.

- (1) acetone: 0.7
- (2) acrylamide (propenamide): 0.00001
- (3) arsenic: ~~0.05~~ 0.010
- (4) barium: 2.0
- (5) benzene: 0.001
- (6) boron: 0.32
- (7) bromoform (tribromomethane): 0.00019
- (8) butylbenzyl phthalate: 0.10
- (9) cadmium: 0.005
- (10) carbofuran: 0.036
- (11) carbon tetrachloride: 0.0003
- (12) chlordane: 2.7 x 10⁻⁵
- (13) chloride: 250.0
- (14) chlorobenzene: 0.05
- (15) chloroform (trichloromethane): 0.00019
- (16) 2-chlorophenol: 0.0001
- (17) chromium: 0.05
- (18) cis-1,2-dichloroethene: 0.07
- (19) coliform organisms (total): 1 per 100 milliliters
- (20) color: 15 color units
- (21) copper: 1.0
- (22) cyanide: 0.154
- (23) 2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07
- (24) 1,2-dibromo-3-chloropropane: 2.5 x 10⁻⁵
- (25) dichlorodifluoromethane (Freon-12; Halon): 1.4
- (26) 1,1 dichloroethane: 0.7
- (27) 1,2-dichloroethane (ethylene dichloride): 0.00038
- (28) 1,1-dichloroethylene (vinylidene chloride): 0.007
- (29) 1,2-dichloropropane: 0.00056
- (30) di-n-butyl (or dibutyl) phthalate (DBP): 0.7
- (31) diethylphthalate (DEP): 5.0
- (32) di(2-ethylhexyl) phthalate (DEHP): 0.003
- (33) di-n-octyl phthalate: 0.14
- (34) p-dioxane (1,4-diethylene dioxide): 0.007
- (35) dioxin: 2.2 x 10⁻¹⁰
- (36) dissolved solids (total): 500
- (37) diundecyl phthalate (Santicizer 711): 0.14
- (38) endrin: 0.002
- (39) epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354
- (40) ethylbenzene: 0.029
- (41) ethylene dibromide (EDB; 1,2-dibromoethane): 4.0 x 10⁻⁷
- (42) ethylene glycol: 7.0
- (43) fluorene: 0.28
- (44) fluoride: 2.0
- (45) foaming agents: 0.5

TEMPORARY RULES

- (46) gross alpha (adjusted)particle activity (excluding radium-226 and uranium): 15 pCi/l
(47) heptachlor: 8.0 x 10^-6
(48) heptachlor epoxide: 4.0 x 10^-6
(49) heptane: 2.1
(50) hexachlorobenzene (perchlorobenzene): 0.00002
(51) n-hexane: 0.42
(52) iron: 0.3
(53) lead: 0.015
(54) lindane: 2.0 x 10^-4
(55) manganese: 0.05
(56) mercury: 0.0011
(57) metadichlorobenzene (1,3-dichlorobenzene): 0.62
(58) methoxychlor: 0.035
(59) methylene chloride (dichloromethane): 0.005
(60) methyl ethyl ketone (MEK; 2-butanone): 0.17
(61) methyl tert-butyl ether (MTBE): 0.2
(62) naphthalene: 0.021
(63) nickel: 0.1
(64) nitrate: (as N) 10.0
(65) nitrite: (as N) 1.0
(66) orthodichlorobenzene (1,2-dichlorobenzene): 0.62
(67) oxamyl: 0.175
(68) paradichlorobenzene (1,4-dichlorobenzene): 0.075
(69) pentachlorophenol: 0.0003
(70) pH: 6.5 - 8.5
(71) phenanthrene: 0.21
(72) phenol: 0.30
(73) radium-226 and radium-228 (combined): 5 pCi/l
(74) selenium: 0.05
(75) silver: 0.018
(76) styrene (ethenylbenzene): 0.1
(77) sulfate: 250.0
(78) tetrachloroethylene (perchloroethylene; PCE): 0.0007
(79) toluene (methylbenzene): 1.0
(80) toxaphene: 3.1 x 10^-5
(81) 2, 4, 5,-TP (Silvex): 0.05
(82) trans-1,2-dichloroethene: 0.07
(83) 1,1,1-trichloroethane (methyl chloroform): 0.2
(84) trichloroethylene (TCE): 0.0028
(85) trichlorofluoromethane: 2.1
(86) vinyl chloride (chloroethylene): 1.5 x 10^-5
(87) xylenes (o-, m-, and p-): 0.53
(88) zinc: 2.1

(h) Class GSA Standards. The standards for this class shall be the same as those for Class GA except as follows:

- (1) chloride: allowable increase not to exceed 100 percent of the natural quality concentration.
(2) total dissolved solids: 1000 mg/l.

(i) Class GC Waters.

- (1) The concentrations of substances which, at the time of classification exceed the standards applicable to Class GA or GSA groundwaters shall not be caused to increase, nor shall the concentrations of other substances be caused

to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC.

- (2) The concentrations of substances which, at the time of classification, exceed the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the groundwater or surface water quality standards in adjoining waters of a different class.

- (3) Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter.

History Note: Authority G.S. 143-214.1; 143B-282(a)(2); Eff. June 10, 1979; Amended Eff. November 1, 1994; October 1, 1993; September 1, 1992; August 1, 1989; Temporary Amendment Eff. June 30, 2002.

Rule-making Agency: Commission for Health Services

Rule Citation: 15A NCAC 18A .1942

Effective Date: April 17, 2002

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 130A-33(e); 150B-21.1(a)(5)

Reason for Proposed Action: The On-Site Wastewater Section of the Division of Environmental Health was directed in the Final Decision (OAH Hearing) of Stephenson vs. DENR to "immediately initiate a process to develop, adopt and implement temporary, and thru permanent, rules to establish such a policy" for determining soil wetness conditions using a 14 day continuous saturation standard.

Comment Procedures: The draft temporary rules may be viewed on the On-Site Wastewater Section Website of www.deh.enr.state.nc.us/oww. Comments made be submitted to Steve Steinbeck, 1642 Mail Service Center, Raleigh, NC 27699-1642 or steve.steinbeck@ncmail.net.

CHAPTER 18 – ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .1900 – SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1942 SOIL WETNESS CONDITIONS

- (a) Soil wetness conditions caused by seasonal high-water table, perched water table, tidal water, seasonally saturated soil or by lateral water movement shall be determined by the first

~~indication observation~~ of colors of chroma two or less (equal to or greater than 1 percent of soil volume as determined by reference to Munsell Soil Color Charts ~~Munsell color chart~~) in mottles or a solid mass. ~~If drainage modifications have been made, the Department may make a determination of the soil wetness conditions by direct observation of the water surface during periods of typically high water elevations. However, colors of chroma two or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition. Sites where soil wetness conditions are greater than 48 inches below the naturally occurring soil surface shall be considered SUITABLE with respect to soil wetness. Sites where soil wetness conditions are between 36 and 48 inches below the naturally occurring soil surface shall be considered PROVISIONALLY SUITABLE with respect to soil wetness. Sites where soil wetness conditions are less than 36 inches below the naturally occurring soil surface shall be considered UNSUITABLE with respect to soil wetness.~~

(b) The Department may substitute a determination of soil wetness conditions by direct observation of the water surface in wells during periods of typically high water elevations utilizing monitoring procedures in Paragraph (c) of this Rule and one of the interpretation methods in Paragraph (d) of this Rule, when:

- (1) drainage modifications have been made on the lot or tract of land, including the installation of subsurface drain tile, open drainage ditches or surface landscape modifications;
- (2) regional ground water lowering features are present, including drainage canals or ditches and streams, which are close enough to influence the soil wetness depth on the site;
- (3) there are observed shallow soil wetness conditions but no observed low chroma colors; or
- (4) when other factors are specifically identified which bring into question the determination of soil wetness based upon Paragraph (a) of this Rule.

(c) The following procedure shall be used to monitor water surface elevation and precipitation for determining soil wetness conditions by direct observation.

- (1) The property owner/applicant shall notify the local health department of the intent to monitor water surface elevations by submitting a site monitoring plan no later than November 1 prior to the well monitoring period. An applicant other than the property owner shall have written authorization from the owner to be the owner's representative.
 - (A) The monitoring plan shall include a site plan showing proposed wastewater system area(s) and specify any proposed site modifications.
 - (B) The monitoring plan shall indicate the proposed number, location, installation depth, screening depth, materials of construction and installation procedures for each monitoring well.

(C) The local health department shall be given the opportunity to conduct a site visit and verify the appropriateness of the proposed plan. Well locations shall include portions of the initial and replacement drainfield areas containing the most limiting soil/site conditions. Prior to installation of the wells the LHD shall approve the plan. Well observations shall not be made prior to plan approval.

- (2) Water surface observations and rainfall shall be recorded at least daily from January 1 to April 30, taken at the same time during the day (plus or minus two hours).
- (3) A minimum of three water level monitoring wells shall be installed for water surface observation at each site.
- (4) Wells shall extend four feet below the natural soil surface, except one or more shallower wells may be required on sites where shallow lateral water movement or perched soil wetness conditions are anticipated.
- (5) A rain (precipitation) gauge is required at every non-contiguous site. At least daily rainfall shall be recorded beginning no later than December 1 prior to the well monitoring period.
- (6) Soil wetness and rainfall monitoring shall be conducted under the responsible charge of a third-party consultant(s), licensed or registered in accordance with G.S. 89C (Engineers), G.S. 89E (Geologists), G.S. 89F (Soil Scientists), or G.S. 90A, Article 4 (Registered Sanitarians), or by the property owner/applicant. The owner/applicant shall submit the name(s) of the consultant(s) performing any monitoring on their behalf to the local health department.

(d) One of the following interpretation procedures shall be used for the determination of soil wetness condition from the direct observation of the water surface in wells.

- (1) An approved ground water simulation model, such as DRAINMOD, or equivalent, shall be used to predict daily water levels over at least a 30-year historic time period after the model is calibrated using the water surface and rainfall observations made on-site during the monitoring period. The soil wetness condition shall be determined as the level which is saturated for at least one 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of 9 years in 30).
 - (A) Weather input files, required to run the approved groundwater simulation model, shall be developed from the on-site rainfall observations and from rainfall and temperature data collected over at least a 30-year period from the closest available

TEMPORARY RULES

- National Weather Service, or equivalent, measuring station to the site. Daily maximum and minimum temperature data for the January 1 through April 30 monitoring period, plus for at least 30 days prior to this period, shall be obtained from the closest available weather station.
- (B) Soil and site inputs for the approved groundwater simulation model, including a soils data file specific to the soil series identified, depths of soil horizons, hydraulic conductivity of each horizon, depth and spacing of drainage features and depression storage, shall be selected in accordance with procedures outlined in the user guide for the approved simulation model (e.g. DRAINMOD User's Guide, in Report No. 333 of the University of North Carolina's Water Resources Research Institute and in the Water Resources Research Institute Project No. 70175 final report). Inputs shall be based upon site-specific soil profile descriptions and at least one of the following:
- (i) site-specific drain depth and spacing, when parallel drains are present, or
 - (ii) site-specific hydraulic conductivity measurements for each identified soil layer.
- Soil and site input factors not determined by on-site measurement shall be adjusted during the model calibration process to achieve a best fit by least squares analysis of the daily observations (measured-vs.-predicted), and to achieve the best possible match between the duration of periods (measured-vs.-predicted) when the water tables are within 24 inches of the natural soil surface.
- (C) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals who are qualified to use the ground water simulation model by training and experience.
- (2) The following method of determining depth to soil wetness condition from water surface observations in wells may be used whenever the total measured rainfall for the January 1 through April 30 monitoring period equals or exceeds the long-term (historic) January to April rainfall with a 30 percent or more recurrence frequency at the closest National Weather Service station, or equivalent, that has at least a 30-year historic rainfall record.
- (A) The soil wetness condition shall be determined as the highest level that is continuously saturated for at least two consecutive days during the January through April monitoring period.
 - (B) If data is collected during monitoring periods which span multiple years, the highest (shallowest) level determined shall be applicable.
 - (C) The owner/applicant may subsequently choose to apply the ground water simulation method described in Subparagraph (d)(1) of this Rule to support a depth to soil wetness deeper than determined by application of this method.
- (e) Notwithstanding which method is used to determine soil wetness condition from the observations of the water surface elevation in wells pursuant to Paragraph (d) of this Rule, the following conditions shall apply.
- (1) Whenever the observed water surface is within 12-inches of the naturally occurring soil surface for 14 or more consecutive days during the monitoring period, the site shall be considered UNSUITABLE.
 - (2) Existing fill sites meeting the requirements of 15A NCAC 18A .1957(b)(2) shall be considered UNSUITABLE when the observed water surface is within 18 inches of the ground surface of the existing fill for 14 or more consecutive days.
 - (3) When direct observation in wells is utilized to determine soil wetness conditions on drainage modified sites, the requirements of Rule .1956(2) are also applicable 15A NCAC 18A Rule .1956(2).
- (f) Sites where soil wetness conditions, determined pursuant to Paragraph (a) of this Rule or Paragraphs (b) through (d) of this Rule, are greater than 48 inches below the naturally occurring soil surface shall be considered SUITABLE with respect to soil wetness. Sites where soil wetness conditions are between 36 and 48 inches below the naturally occurring soil surface shall be considered PROVISIONALLY SUITABLE with respect to soil wetness. Sites where soil wetness conditions are less than 36 inches below the naturally occurring soil surface shall be considered UNSUITABLE with respect to soil wetness.
- ~~(b)(g)~~ (g) Where the site is UNSUITABLE with respect to soil wetness conditions, it may be reclassified PROVISIONALLY SUITABLE after an investigation indicates that a modified or alternative system can be installed in accordance with Rules .1956, 1956 or .1957-.1957 or .1969 of this Section.

*History Note: Authority G.S. 130A-335(e);
Eff. July 1, 1982;
Amended Eff. January 1, 1990;
Temporary Amendment Eff. April 17, 2002.*

RULES REVIEW COMMISSION

This Section contains the minutes for the meeting of the Rules Review Commission on Thursday, April 30, 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. 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

July 18, 2002

RULES REVIEW COMMISSION

April 30, 2002
MINUTES

The Rules Review Commission met on Tuesday morning, April 30, 2002, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Laura Devan, Jeffrey Gray, Thomas Hilliard, Jim Funderburk, John Tart, and Robert Saunders.

Staff members present were: Joe DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson. The following people attended:

David Tuttle	NC Board of Examiners for Engineers & Surveyors
John Dunbar	NC Pest Control Association
Dee Williams	NC Board of Cosmetic Art Examiners
Barbara Jackson	NC Department of Labor
Howard Kramer	NC Board of Nursing
Carl Falco	NC Department of Agriculture

APPROVAL OF MINUTES

The meeting was called to order at 10:05 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the April 18, 2002, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

2 NCAC 34 .0102; .0501; .0503; .0505; .0506; .0601; .0604; .0605; .0703; .0803; .0805; .0806; .0904: NC Department of Agriculture – The Commission approved these rules.

10 NCAC 14J .0206: DHHS/Commission for MH/DD/SAS – The agency has not responded to the Commission's objection. The Commission took no action on this rule.

13 NCAC 7A .0302: NC Department of Labor – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14P .0116: Board of Cosmetic Art Examiners – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 14Q .0101; .0102; .0104; .0106: Board of Cosmetic Art Examiners – The Commission approved the rewritten rules submitted by the agency. Commissioner Tart voted against the motion to approve.

21 NCAC 14Q .0107: Board of Cosmetic Art Examiners – The Commission returned this rule at the agency's request.

RULES REVIEW COMMISSION

21 NCAC 32B .0101; .0104; .0106: NC Medical Board – The agency has not responded to the Commission’s objection. The Commission took no action on these rules.

21 NCAC 32M .0112: NC Medical Board – The agency has not responded to the Commission’s objection. The Commission took no action on this rule.

21 NCAC 36 .0109: NC Board of Nursing – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 56 .0501; .0502; .0505; .0602; .0606; .0701; .0804; .0901; .1103; .1605; .1606; .1607; .1608; .1609; .1708; .1713: NC Board of Examiners of Engineers and Surveyors - The Commission approved these rules.

COMMISSION PROCEDURES AND OTHER BUSINESS

No new business was discussed.

The next meeting of the Commission is Thursday, July 18, 2002.

The meeting adjourned at 10:29 a.m.

Respectfully submitted,
Lisa Johnson

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>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
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	
Richard Burnette Jones T/A Louie's Lounge v. NC ABC Commission	01 ABC 0949	Wade	04/18/02	
NC ABC Commission v. James Okwudili Nwizu, T/A Sahara Mini Mart	01 ABC 1209	Elkins	02/01/02	
NC ABC Commission v. Colap Ent., Inc. T/A Pantana Bobs	01 ABC 1472	Morrison	03/05/02	
NC ABC Commission v. W D B, Inc. T/A Twin Peeks	01 ABC 1962	Wade	03/11/02	
NC ABC Commission v. Fadhle Kassim Hussein T/A Hornes Church Convenient Mart	01 ABC 2294	Lassiter	03/12/01	
<u>BOARD OF MORTUARY SCIENCE</u>				
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	
<u>BOARD OF GEOLOGISTS</u>				
O. Phillip Kimbrell, P.G. v. NC Board for the Licensing of Geologists	99 BOG 1254	Conner	05/29/01	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
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	
Mark A Carroll v. NC Crime Victims Compensation Commission	01 CPS 1108	Gray	04/23/02	
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	
Kiffin Johnson v. NC Dept. of Crime Control & Public Safety	01 CPS 1517	Morrison	03/14/02	
<u>CULTURAL RESOURCES</u>				
Howard W & Rebecca Hoover v. NC Dept. of Cultural Resources State Historic Preservation Office	01 DCR 0243	Wade	06/26/01	

CONTESTED CASE DECISIONS

HEALTH AND HUMAN SERVICES

Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1077 ³	Wade	08/16/01	
Wendy Gay Dayberry v. NC Dept. of Health & Human Services	00 DHR 1324 ³	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	
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	
Millsway Healthcare, Inc. v. Blue Ridge Area Authority	01 DHR 0628 ¹	Conner	02/25/02	
Tawn Milteer-Ellerbe v. Dept. of Health & Human Services	01 DHR 0629	Conner	09/04/01	
Blue Ridge Authority v. Millsway Healthcare, Inc.	01 DHR 0640 ¹	Conner	02/25/02	
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	
Kathy Marie Pollard v. NC Dept. of Human Services	01 DHR 0867	Conner	03/14/02	
Wendy Nicole Smith Pearson v. NC DHHS (Health Care Personnel Registry Section)	01 DHR 0883	Smith	03/08/02	
Donna Faye Smith v. Department of Human Resources	01 DHR 0887	Mann	11/02/01	
James & Patricia Galbraith v. NC Dept. of Health & Human Services	01 DHR 0929 ²⁴	Hunter	03/26/02	16:21 NCR 2408
Stephen & Sandra Aycock v. NC DHHS	01 DHR 0947	Gray	03/11/02	
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	
James & Patricia Galbraith v. NC Dept. of Health & Human Services	01 DHR1018 ²⁴	Hunter	03/26/02	16:21 NCR 2498
Portia A Davis v. Dept. of Health & Human Services	01 DHR 1055	Mann	08/06/01	
Dorothy Davis v. Janet Jones RN, HCPR Nurse Investigator	01 DHR 1105	Conner	10/25/01	
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	
Carolyn M Steelman v. NC Dept. of Health & Human Services	01 DHR 1342	Conner	03/13/02	16:21 NCR 2411
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	
Sylvia Bosier v. NC DHHS	01 DHR 1447	Mann	03/21/02	
Great Am. Foods, Inc. Anan Abour 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	
David Jose Tuzo v. NC Dept. of Health & Human Services	01 DHR 1519	Elkins	04/08/02	
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	
Gudrun Davis v. NC Dept. of Health and Human Services	01 DHR 2160	Wade	02/27/02	

1 Combined Cases
 21 Combined Cases
 24 Combined Cases

CONTESTED CASE DECISIONS

Dr. Gregory Ruff, Dept. of Surgery, Duke Univ. Med Ctr. v. NC DHHS	01 DHR 2325	Conner	04/19/02	
Woodbridge Alternative, Inc., Maxine Dunn v. Woodbridge Alternative DSS, Elizabeth Brantley	01 DHR 2396	Lassiter	02/21/02	
Gloria Jean Hairston v. Health Care Personnel Registry	02 DHR 0072	Chess	03/04/02	
Bonner Family Childcare Ctr. v. NC DHHS, Arnett Cowan	02 DHR 0090	Chess	03/07/02	
Stephen Foster v. NC Dept. of Health & Human Services	02 DHR 0107	Wade	04/19/02	
Helping Hands Home Care, Inc., Charles F. Forte v. DMA Hearing Unit (Mary J. Coward) Vickie Campbell (Deceased) PI Case #2001-1604	02 DHR 0118	Mann	04/22/02	
Latarisha D. Baker v. Office of Administrative Hearings	02 DHR 0330	Wade	04/17/02	
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 ²	Gray	12/28/01	
Sarah's Child Care Center, Inc. v. NC DHHS, Div. of Child Dev.	01 DHR 0830 ²	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				
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	
Division of Facility Services				
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	
Chrishana Lindsay-Dixon v. DHHS, Division of Facility Services	01 DHR 1012	Mann	10/12/01	
Dannette Byrd v. Community Innovations, Health Care Personnel Registry	01 DHR 1016	Wade	11/20/01	
Genevieve McLean, McLean Family Care Home v. DHHS, Div. of Facility Services	01 DHR 1021	Conner	02/25/02	
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 ⁹	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	
Tiffany L Wilkerson v. NC DHHS, Div. of Facility Services (Rosemary H. Harrell, RN, BSN)	01 DHR 1279	Chess	09/07/01	
Dorothy J. Gilmore v. DHHS, Division of Facility Services	01 DHR 1295	Gray	12/04/01	
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	

² Combined Cases

⁹ Combined Cases

CONTESTED CASE DECISIONS

Katie V Parker, RN v. NC DHHS, Div. of Fac. Svcs., Adult Care Lic. Sec.	01 DHR 1423	Wade	10/17/01
Rex Hospital v. NC DHHS, Div. of Fac. Svcs., CON Section & Raleigh Heamatology Oncology, P.C. & Raleigh Radiation Oncology, P.C.	01 DHR 1446	Lassiter	03/11/02
Mooresville Hosp. Management Assoc., Inc. d/b/a Lake Norman Regional Medical Center v. NC DHHS, Div. of Facility Svcs., CON Sec.	01 DHR 1455	Wade	03/07/02
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 ³	Conner	01/24/02
Archie Daniels v. NC DHHS, Division of Facility Services	01 DHR 1831	Elkins	04/10/02
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
Winnie Jane Johnson v. NC DHHS, Div. of Facility Services, Adult Care Licensure Section	01 DHR 2209	Morrison	04/10/02
Angela Roberson v. DHHS, Division of Facility Services	01 DHR 2215	Lassiter	01/07/02
Lisa Marie Burlson v. DHHS, Division of Facility Services	01 DHR 2345	Morrison	02/05/02
Affiah, Ndarake Effiong v. NC DHHS, Div. of Facility Svcs., Health Care Registry Section	01 DHR 2353	Conner	02/26/02
Dorothy Stinson v. DHHS, Division of Facility Services	01 DHR 2370	Mann	03/26/02
Lanella McRae v. DHHS, Division of Facility Services	02 DHR 0065	Gray	02/22/02
Rachel Rios v. DHHS, Division of Facility Services	02 DHR 0221	Wade	04/18/02

Division of Social Services

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
Elizabeth Jackson v. DHHS, Dept. of Social Services	01 DHR 0601	Lassiter	06/22/01
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
Judy P Miller v. Ashe Co. Dept. of Social Services, NC DHHS, Division of Facility Services, Health Care Personnel Registry	01 DHR 1363	Gray	09/18/01

Child Support Enforcement Section

A list of Child Support Decisions may be obtained by accessing the OAH Website – www.ncoah.com/decisions

ADMINISTRATION

Fordion Packaging, Ltd., Bird Bailey v. Dept. of State Purchasing, J. Arthur Leaston	01 DOA 1001	Gray	08/24/01
Sara E Parker v. GACPD	01 DOA 1606	Lassiter	03/04/02

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
Benjamin Sabbath Krizon v. Alarm Systems Licensing Board	01 DOJ 1303	Conner	09/14/01
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
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
Robert A. Phelps v. Alarm System Licensing Board	01 DOJ 1815	Morrison	12/06/01
Tony Legrand Reid v. Alarm System Licensing Board	01 DOJ 1816	Morrison	02/13/02
Morgan Andrew Glenn v. Alarm System Licensing Board	01 DOJ 1855	Morrison	02/13/02
Edward Phillip Singler v. Alarm System Licensing Board	01 DOJ 2217	Wade	02/21/02
Michael William Rich v. Alarm System Licensing Board	02 DOJ 0025	Morrison	02/13/02
Lawrence P. Carvana, Jr. v. Alarm System Licensing Board	02 DOJ 0193	Mann	04/09/02

16:10 NCR 947

Private Protective Services Board

Linda Morton Kiziah v. Private Protective Services Board	01 DOJ 0353	Wade	06/01/01
Willie Carl Wilson v. Private Protective Services Board	01 DOJ 0580	Morrison	06/04/01
Emar I. Ifediora v. Private Protective Services Board	01 DOJ 0823	Conner	10/16/01
Adonte Mekail Macon v. Private Protective Services Board	01 DOJ 0999	Lassiter	07/05/01
Calvin McNair v. Private Protective Services Board	01 DOJ 1000	Lassiter	07/03/01
Michael David Faris v. Private Protective Services Board	01 DOJ 1271	Gray	10/12/01
Donald Walter Thompson, Jr. v. Private Protective Services Board	01 DOJ 1495	Elkins	11/14/01

CONTESTED CASE DECISIONS

Johnny Randolph Clark v. Private Protective Services Board	01 DOJ 1509	Wade	12/27/01
Ricky (Richard struck) Derrick Johnson v. Private Protective Services Bd.	01 DOJ 1550	Elkins	11/15/01
Tamera Ramelle Adams v. Private Protective Services Board	01 DOJ 1817	Morrison	12/06/01
Marsha Lynn Marshall v. Private Protective Services Board	01 DOJ 1856	Morrison	12/06/01
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
John C Bilyk, Jr. v. Private Protective Services Board	01 DOJ 2218	Morrison	03/14/02

Sheriffs' Education & Training Standards Commission

Larry Russell Jackson v. NC Criminal Justice & Trng. Stds. Comm.	00 DOJ 0721	Gray	07/20/01
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 Sheriffs' Educ. & Training Standards Comm.	00 DOJ 2267	Wade	10/17/01
Anita Allen Coats v. NC Criminal Justice & Training Stds. Comm.	01 DOJ 0023	Morrison	09/07/01
Alan Henry Roebuck v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 0444	Gray	11/30/01
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
Mervin Bernard Vaught v. NC Criminal Justice Educ. & Trng. Stds. Comm.	01 DOJ 1266	Conner	03/21/02
Gary C Daugherty v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1267	Chess	10/04/01
Stephen Charles Conely v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1588	Morrison	03/08/02
William T. Young v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1600	Wade	02/27/02
Kevin Hoover v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1601	Elkins	12/04/01
Keith A Riddick v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1602	Chess	03/26/02
James W. Bush v. NC Sheriffs' Educ. & Trng. Stds. Comm.	01 DOJ 1617	Morrison	04/16/02
Darius Zeb Brevard, Jr. v. NC Criminal Justice & Trng. Stds. Comm.	01 DOJ 2309	Wade	02/27/02
Ollie Rose v. NC Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 0063	Conner	04/10/02

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	
Kenneth P. Dankwardt v. NC Dept. of Public Instruction	01 EDC 1175	Chess	03/18/02	
Penny Mae Roberts v. Jones Sr. Hi. Maysville Law Enf., Jones Co. DSS	01 EDC 2305	Mann	04/15/02	
Bobby E Hart v. Superintendent Cumberland Co. Sch., Rockfish Elem.	02 EDC 0106	Mann	02/18/02	
Dr. Monroe R Parker, Esq., v. Brock Murray & NC Dept. of Public Inst.	02 EDC 0261	Gray	03/13/02	

ENVIRONMENT AND NATURAL RESOURCES

Dennis Johnson v. Coastal Resources Commission	96 EHR 2112	Gray	04/01/02	
Dennis Johnson v. Coastal Resources Commission	97 EHR 0108	Gray	04/01/02	
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	
Thomas E Graham v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0439	Conner	08/17/01	
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	00 EHR 0554	Conner	08/17/01	

CONTESTED CASE DECISIONS

& Mid South Water Systems, Inc. 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 E Dennis Spring v. NC DENR, Div. of Water Quality & Mid South Water Systems, Inc.	00 EHR 0635 00 EHR 0698	Conner Conner	11/29/01 08/17/01		
David T. Stephenson, owner, John P. Williams, Agent, Lot 86 v. NC DENR (Brunswick County Health Department)	00 EHR 0769 ³	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. Gullely Jr., (Agent) v. NC DENR (Brunswick County Health Department)	00 EHR 1214 ¹	Gray	08/07/01	16:05 NCR	463
Albert Galluzzo, James T. Gullely, Jr. (Agent) v. NC DENR	00 EHR 1245 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 62 v. NC DENR (Brunswick County Health Department)	00 EHR 1249 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 65 v. NC DENR (Brunswick County Health Department)	00 EHR 1250 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 64 v. NC DENR (Brunswick County Health Department)	00 EHR 1251 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 69 +½ 68 v. NC DENR, (Brunswick County Health Department)	00 EHR 1252 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, (Brunswick County Health Dept.)	00 EHR 1253 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 90 v. NC DENR, (Brunswick County Health Department)	00 EHR 1254 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson, Lot 66 v. NC DENR (Brunswick County Health Department)	00 EHR 1255 ¹	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR, Lot 66					
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 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 ³	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1877 ³	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1878 ³	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1879 ³	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1880 ³	Gray	08/07/01	16:05 NCR	463
David T. Stephenson v. NC DENR (Brunswick County Health Dept.)	00 EHR 1881 ³	Gray	08/07/01	16:05 NCR	463
Tate Terrace Realty Investors, Inc. d/b/a Arland Comm. Dev. v. NC Dept. of Env. & Natural Resources	01 EHR 0034	Lassiter	03/28/01		
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		
Laura Walters v. Environmental Management Commission	01 EHR 0230	Lassiter	07/19/01		
Brandon H Clewis, Christy Swails Clewis v. Chatham County Health Dept., Office of Environmental Health	01 EHR 0305	Lassiter	06/04/01		
Thomas Tilley, Trustee v. NC DENR, Div. of Water Quality	01 EHR 0339 ²¹	Elkins	03/26/02		
James L. Horton v. NC DENR, Division of Land Resources	01 EHR 0310	Conner	08/30/01		
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 NC DENR	01 EHR 0730	Morrison	06/26/01		
Richard W Brannock v. NC DENR, Div. of Waste Management	01 EHR 0767	Elkins	07/30/01		
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	16:14 NCR	1634
Thomas Tilley, Trustee v. NC DENR, Div. of Water Quality	01 EHR 1107 ²¹	Elkins	03/26/02		
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		
Thomas Tilley, Trustee v. NC DENR, Div. of Water Quality	01 EHR 1518	Morrison	03/27/02		

3 Combined Cases
21 Combined Cases

CONTESTED CASE DECISIONS

Clyde Harkey, Sr. v. NC DENR, Div. of Waste Management	01 EHR 1536	Mann	04/05/02	16:21 NCR 2416
Nucor Steel v. NC DENR, Div. of Air Quality	01 EHR 2199	Lassiter	03/19/02	
Lucille K. Barrow, d/b/a BBC v. NC DENR, Div. of Waste Mgmt.	02 EHR 0041	Chess	04/04/02	
Thomas M Alphin v. NC DENR, Div. of Water Quality	02 EHR 0178	Chess	03/07/02	

ENGINEERS AND LAND SURVEYORS

NC Bd. of Examiners for Engineers and Surveyors v. C. Phil Wagoner	01 ELS 0078	Overby	07/11/01	
--	-------------	--------	----------	--

OFFICE OF INFORMATION TECHNOLOGY

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

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	
Granite State Ins. Company v. NC Department of Insurance	02 INS 0288	Gray	03/13/02	
R.T. v. NC Teachers & St. Emp. Comp. Major Med. Plan	01 INS 1561	Gray	04/17/02	16:22 NCR 2506

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	
--	-------------	--------	----------	--

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	
James E Price v. College of the Albemarle & NC Comm. College Sys.	01 MIS 0122	Conner	03/06/02	

OFFICE OF ADMINISTRATIVE HEARINGS

James Spencer, Jr. v. Office of Administrative Hearings	01 OAH 1115	Chess	10/22/01	
---	-------------	-------	----------	--

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 th Judicial District	00 OSP 0424 ¹⁰	Reilly	02/05/02	
Ricky E Yates v. NC Department of Correction	00 OSP 0453	Gray	01/31/02	16:17 NCR 1959
Victor Garnett v. Dept. of Correction, Craven Correctional Inst.	00 OSP 0722	Elkins	01/11/02	16:17 NCR 1966
Isaac Randall Hall, Jr. v. NC Dept. of St. Treasurer, Ret. Sys. Div.	00 OSP 0760	Wade	02/27/02	
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	16:06 NCR 550
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 ⁵	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 ⁸	Gray	12/31/01	16:16 NCR 1853
Bobbie D Sanders v. UNC-CH	00 OSP 1806	Chess	06/21/01	16:03 NCR 271
Robert J Lane v. NC Department of Correction, Central Engineering	00 OSP 1841	Elkins	06/26/01	
Natalynn P. Tollison v. NCSU et al	00 OSP 1909	Wade	06/01/01	
Michael H. Vanderburg v. NC Department of Revenue	00 OSP 2117 ²	Gray	12/31/01	16:16 NCR 1853
Andora Taylor Hailey v. NC Department of Correction	00 OSP 2180 ⁵	Conner	11/26/01	
Jerrelle B Jones v. DHHS, O'Berry Center	01 OSP 0003	Lassiter	06/26/01	
Leonard Eugene Leak v. NC Dept. of Correction	01 OSP 0020	Gray	02/25/02	
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	
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	

⁵ Combined Cases
⁸ Combined Cases

CONTESTED CASE DECISIONS

Arlene R. Burwell v. Warren Correctional Institute	01 OSP 0448	Mann	07/18/01
Virginia D. Lindsey v. NC Dept. of Health & Human Services	01 OSP 0543	Mann	04/08/02
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 th Judicial District	01 OSP 0643 ²	Reilly	02/05/02
Marianne E Moss v. NC Dept. of Health & Human Services	01 OSP 0778	Conner	02/15/02
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
James W. Robbins, II v. NC Central University	01 OSP 1043	Elkins	04/02/02
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. WC 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
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
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 1312 ²²	Elkins	04/03/02
James L Ragland v. The Harnett Co. Board of Education	01 OSP 1337	Gray	10/15/01
Jerry Lee Glover v. Gary Miller, NC Dept. of Corrections	01 OSP 1365	Elkins	03/08/02
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 Seegers, 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
Christina B. Urbina v. Johnston Co. Public Health Dept. Dr. L.S. Woodall	01 OSP 1515	Elkins	04/01/02
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
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 1727 ²²	Elkins	04/03/02
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
James J. Lewis v. NC Dept. of Correction	01 OSP 1933 ⁴	Mann	03/13/02
James J. Lewis v. NC Dept. of Correction	01 OSP 1951 ¹⁶	Mann	03/13/02
Sheila Nickerson v. UNC-CH	01 OSP 2016	Lassiter	01/02/02
Rebecca Jane Babaoff v. Buncombe Co. DSS, Asheville, NC	01 OSP 2096	Chess	03/04/02
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 2110 ²²	Elkins	04/03/02
Michael L. Hillis v. NC DHHS, Eastern NC School for the Deaf	01 OSP 2176 ²²	Elkins	04/03/02
Elana B Brown v. NC A & T State University	01 OSP 2177	Gray	03/05/02
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
Stephanie W. Taylor v. NC Department of Correction	01 OSP 2277 ²³	Gray	03/28/02
Carolyn Cook Evans v. NC A & T State University	01 OSP 2233	Gray	03/05/02
Judy Dobson v. Durham Co. Dept. of Social Services	01 OSP 2297	Conner	04/11/02
Elizabeth Hall Austin v. University of North Carolina at Charlotte	01 OSP 2338	Mann	02/07/02
Nona W Hubbard v. Div. of Comm. Corrections, Frank Davis, Donna Stone and Jerry Wilson	02 OSP 0084	Lassiter	03/04/02
Vernestine Speller Melton v. Bertie Co. Partnership for Children, Board of Directors, Patricia Ferguson, Chair	02 OSP 0236	Gray	03/21/02
Jesse C Whitaker v. University Towers (Student Dining Svc.) Glendora	02 OSP 0108	Gray	02/22/02
Stephanie W. Taylor v. NC Department of Correction	02 OSP 0150 ²³	Gray	03/28/02

16:12 NCR 1263

22 Combined Cases
 22 Combined Cases
 4 Combined Cases
 22 Combined Cases
 23 Combined Cases
 23 Combined Cases
 23 Combined Cases

CONTESTED CASE DECISIONS

Raymond L. Smith v. Div. of Facility Svcs., Off. of Emergency Med. Svcs. NC Dept. of Health & Human Services	02 OSP 0260	Elkins	04/04/02
Ruby H. Cox v. Employment Security Commission	02 OSP 0269	Elkins	03/26/02
Viola Moore Forte v. NC Special Care Center	02 OSP 0275	Gray	04/23/02
<u>DEPARTMENT OF REVENUE</u>			
George T. Brower, Phillip J. Taylor v. NC Dept. of Revenue	01 REV 1779	Gray	01/10/02
<u>SECRETARY OF STATE</u>			
Moab Tiara Cherokee Kituwah Nation Anewa Tiari-El, Empress v. Secretary of State, Elaine Marshall	01 SOS 1798	Morrison	12/11/01
<u>UNIVERSITY OF NORTH CAROLINA</u>			
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
<u>WELL CONTRACTORS</u>			
Floyd V. Robertson v. Well Contractor's Certification Commission	01 WCC 0147	Conner	09/19/01

OPINION OF THE ADMINISTRATIVE LAW JUDGE

Based upon careful consideration of the material and relevant testimony and evidence presented at the March 5, 2001 hearing, the documents and exhibits received into evidence during said hearing, the administrative record in this proceeding, and the applicable statutes and regulations, the undersigned makes the following:

FINDINGS OF FACT

1. At all times relevant to this action, Petitioner was a member of the health benefits plan administered by Respondent, the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan ("State Health Plan"), by virtue of her husband's employment with the State.
2. The State Health Plan provides limited hospital, medical and mental health benefits for its members subject to the limitations described in Chapter 135. Mental health benefits are managed by ValueOptions, a subcontractor of Blue Cross Blue Shield of North Carolina, which administers the benefits of the State Health Plan.
3. Prior to October 2000, Petitioner visited an emergency room or was hospitalized several times for mental health issues. During that time, Petitioner began receiving outpatient psychotherapy services from Dr. Edward McFadden. Dr. McFadden's office is over an hour's travel from Petitioner's home.
4. After receiving 26 outpatient visits for psychotherapy in a fiscal year, Petitioner was required to obtain prior approval from ValueOptions for outpatient visits. Petitioner did receive approval for 1-2 visits per week with Dr. McFadden beginning in 2000.
5. Beginning in October 2000, Petitioner began telephoning Dr. McFadden outside of regular office visits during exacerbations of her mental health issues. Dr. McFadden accepted these calls and would at times provide counseling services lasting from 30 to 90 minutes to Petitioner.
6. In October 2000, Petitioner contacted ValueOptions and inquired whether the telephone therapy and counseling would be a covered benefit under the State Health Plan. Charlotte Craver, Account Executive for ValueOptions, responded on October 19, 2000 that "phone consultations are indicated as not covered in the benefits book. Therefore, telephone therapy for crisis situations are not a covered benefit by the Plan."
7. Petitioner continued to telephone Dr. McFadden outside of their regularly scheduled therapy. She generally contacted him one to two times per month, and continues to contact him occasionally by telephone when she believes it is necessary. Dr. McFadden has submitted bills to Respondent for payment of telephone therapy.
8. Since Petitioner began therapy with Dr. McFadden, including contacting him during crisis events, the frequency of her emergency room visits and subsequent hospitalization has decreased. Both Petitioner and her husband believe that Dr. McFadden's interventions are the primary reason for the decrease in number of emergency room visits and hospitalizations.
9. To Ms. Klarman's knowledge, Respondent never has approved coverage for telephone therapy services for any other member of the State Health Plan. The reason is that the medical policy adopted by the State Health Plan, number AD0430 and entitled "Mental Health and Chemical Dependency Case Management," states that "Treatment or consultations provided via telephone" are not covered expenses.
10. Petitioner requested and was granted the opportunity to appeal the decision of ValueOptions to the Board of Trustees of the State Health Plan. The Board of Trustees upheld the denial of payment of these services as a non-covered benefit.
11. The cost of 30-90 minutes of telephone therapy from Dr. McFadden is significantly less than the cost of an inpatient hospitalization stay.
12. By virtue of the limitations in Chapter 135, the State Health plan is a limited benefit plan. Among other things, it provides that if "a covered person, as a result of accidental bodily injury, disease or pregnancy, incurs *covered* expenses, the Plan will pay benefits up to the amounts described in G.S. 135-40.5 through G.S. 135-40.9." N.C. Gen. Stat. § 135-40.4 (a) (emphasis added). Covered services is defined as "Any medically necessary, reasonable, and customary items of service, at least a portion of the expense of which is covered under at least one of the plans covering the person for whom claim is made or service provided. It shall be synonymous with allowable expenses, and with benefit or benefits." N.C. Gen. Stat. § 135-40.1 (1a).
13. North Carolina General Statutes § 135-40.7B governs chemical dependency and mental health benefits, however the provisions do not mandate that telephone therapy is covered or excluded. For benefits that are not mandated by statute, the North

CONTESTED CASE DECISIONS

Carolina General Statutes authorize the Executive Administrator and Board of Trustees to issue rules and regulations to implement and limit the benefits. N.C. Gen. Stat. § 135-39.8.

14. The rules and regulations issued by the State Health Plan are not subject to the rule making provisions of Chapter 150B. N.C. Gen. Stat. § 150B-1 (d)(7).

15. The Board of Trustees has issued policy number AD0430 entitled "Mental Health and Chemical Dependency Case Management." Under the section "Limitations and Exclusions, subsection hhh.," the policy excludes coverage for "Treatment or consultations provided via telephone."

16. The State Health Plan, by the issuance of its policy AD0430, has determined that treatment or consultations for mental health therapy purposes are not a covered service or benefit under the State Health Plan.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction to hear this contested case.
2. The State Health Plan has authority, within its sound discretion, to exclude telephone therapy from the benefits provided to members. Respondent is not required to provide reimbursement for psychotherapy services provided via telephone by Petitioner's mental health provider.

Based upon the foregoing findings of fact and conclusions of law, the undersigned makes the following:

DECISION

Respondent's decision to deny Petitioner's reimbursement claim for telephonic psychotherapy services should be affirmed as supported by the evidence in this contested case.

ORDER

It is hereby ordered that the agency serve a copy of its final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714 in accordance with N.C. Gen. State. §150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the Board of Trustees of the North Carolina Teachers' and State Employees' Comprehensive Major Medical Plan.

This the 17th day of April, 2002.

Beecher R. Gray
Administrative Law Judge