



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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7	Cultural Resources	Chiropractic Examiners	10
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NORTH CAROLINA REGISTER
 Publication Schedule for January 2003 – December 2003

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	
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18:12	12/15/03	11/20/03	02/16/04	12/30/03	01/14/04	01/20/04	05/00/04	02/13/04	02/20/04	05/00/04	09/10/04

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

**EXECUTIVE ORDER NUMBER 44
EXTENDING REGISTRATION OF CERTAIN VEHICLES**

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

The vehicle registrations of those vehicles with special registration plates issued, pursuant to N.C.G.S § 20-79.4(b)(22), to members of the North Carolina General Assembly are hereby extended for thirty days from expiration.

This Order is effective immediately.

Done in Raleigh, North Carolina, this 11th day of February, 2003.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

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

Notice of Rule-making Proceedings is hereby given by the DHHS – Division of Medical Assistance 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.

Authority for the Rule-making: G.S. 108A-24; 108A-54; 143B-139.1; 150B-21.1

Statement of the Subject Matter: Medicaid Provider Enrollment

Reason for Proposed Action: Senate Bill 163 (Session Law 2002-164) directs the Medicaid program to deny enrollment to specific provider entities when an owner, principal or affiliate of the applicant provider has an ownership interest in a facility licensable under G.S. 122C or G.S. 131D which has had a license downgraded, suspended or revoked or has been assessed a penalty. Medicaid will also deny enrollment for additional services to any such provider. Denial of enrollment for new providers or new services is also imposed when the Department has previously sanctioned the provider.

Comment Procedures: Comments from the public shall be directed to Kris M. Horton, 1985 Umstead Dr., 2504 Mail Service Center, Raleigh, NC 27699-2504, phone (919) 857-4016, and fax (919) 733-6608.

Statement of the Subject Matter: Creation of a Gaddy Goose Refuge Buffer Zone.

Reason for Proposed Action: To establish a goose refuge "buffer" around an existing federal wildlife refuge in or near Anson County.

Comment Procedures: Comments from the public shall be directed to Brad Gunn, 1701 Mail Service Center, Raleigh, NC 27699-1701, phone (919) 733-3391, ext. 287.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 10F - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 75A-3; 75A-15

Statement of the Subject Matter: No wake zones under consideration for Chowan, Burke, Pender and Graham Counties.

Reason for Proposed Action: Rulemaking for No-wake zones is pursued in the interest of public safety at the request of local governments with territorial jurisdiction over the proposed areas.

Comment Procedures: The record will be open for receipt of written comments. Such written comments must be mailed to the North Carolina Wildlife Resources Commission, 1701 Mail Service Center, Raleigh, NC 27699-1701.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 10B .0105 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-134; 113-274; 113-291.1; 113-291.2; 50 C.F.R. 20.21; 50 C.F.R. 20.105

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

CHAPTER 02 - COMMUNITY COLLEGES

Notice of Rule-making Proceedings is hereby given by the State Board of Community Colleges in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the

RULE-MAKING PROCEEDINGS

Register the text of the rule(s) it proposes to amend 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: 23 NCAC 02D .0101 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 115D-5; 115D-54

Statement of the Subject Matter: To modify the type of work experience allowed for initial placement on the President's salary schedule.

Reason for Proposed Action: To increase the variety of work experiences eligible for initial placement on the Presidential salary schedule.

Comment Procedures: Comments from the public shall be directed to Clay T. Hines, NC Community College System, 5004 Mail Service Center, Raleigh, NC 27699-5004, (919) 733-7051, fax (919) 733-0680, and email hinesc@ncccs.cc.nc.us.

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

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend the rules cited as 11 NCA 11A .0501, .0503-.0506. Notice of Rule-making Proceedings was published in the Register on January 15, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: April 3, 2003

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: The amendments to these Rules are made in order to be in compliance with NAIC Model Laws.

Comment Procedures: Comments from the public shall be directed to Ray Martinez, 430 N. Salisbury St., Raleigh, NC 27611 and phone (919) 733-5633. Comments shall be received through April 16, 2003.

Fiscal Impact

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

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A - GENERAL PROVISIONS

SECTION .0500 - CPA AUDITS

11 NCAC 11A .0501 PURPOSE AND SCOPE

- (a) The purpose of this Section is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by CPAs of the financial statements reporting the financial condition and the results of operations of insurers.
(b) This Section applies to all insurers; provided that insurers having direct premiums written in North Carolina of less than two hundred fifty thousand dollars (\$250,000) in any year and having less than 500 policyholders in North Carolina at the end of any year are exempt from this Section for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Insurers must notify the Department on or before October 1 of each year of their exempt status.
(c) Foreign insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports are exempt from this Section if:

- (1) A copy of the Audited Financial Report and Report on Internal Control Structure Related Matters noted in an audit are filed with such other state.
(2) A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the Commissioner within the time specified by such other state.

This Section does not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers under the General Statutes or this Title.

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0503 FILING AND EXTENSIONS FOR FILING REPORTS

- (a) All insurers shall have an annual audit by a CPA and shall file an audited financial report with the Commissioner on or before May 10 for the previous calendar year. The Commissioner may require an insurer to file an audited financial report earlier than May 10 with 90 days advance notice to the insurer. Two copies of this report shall be filed in the office of the Chief Examiner, Examination Section of the Department.
(b) An extension of the May 10 filing date may be granted by the Commissioner for a period of up to 45 days upon a showing by the insurer and its CPA of the reasons for requesting such extension and a determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 15 days prior to the due date and must be in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

- (a) The annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for such year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.
(b) The annual Audited Financial Report shall include the following:
(1) Report of CPA.
(2) Balance sheet reporting admitted assets, liabilities, capital and surplus.
(3) Statement of operations.
(4) Statement of cash flows.
(5) Statement of changes in capital and surplus.
(6) Notes to financial statements. These notes shall be those required by the annual statement

and the appropriate notes under generally accepted accounting principles and shall also include:

- (A) A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to G.S. 58-2-165 with a written description of the nature of these differences; and
 - (B) A narrative explanation of all significant intercompany transactions and balances.
- (7) The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings the same as the relevant sections of the Annual Statement of the insurer filed with the Commissioner, and:
- (A) The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31; provided, however, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.
 - (B) Amounts may be rounded to the nearest dollar.
 - (C) Upon written application of any insurer, the Commissioner may permit the filing of consolidated statutory financial statements provided columnar consolidating worksheets are included in the filing, showing each company separately, and including a listing and description of intercompany eliminations.

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0505 DESIGNATION OF CPA

(a) Each insurer required by this Section to file an annual audited financial report must within 60 days after becoming subject to such requirement, file with the Commissioner a Designation of CPA letter indicating the name and address of the CPA retained to conduct the annual audit set forth in this Section. Insurers not retaining a CPA on the effective date of this Section shall provide the Designation of CPA letter not less than two months before the date when the first certification is to be filed.

(b) The insurer shall obtain an Accountant's Appointment Letter from such CPA, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the North Carolina General Statutes and Administrative Code that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying such exceptions as he may believe appropriate. In addition, the CPA

must affirm that he is aware of and will comply with the provisions of 11 NCAC 11A .0511.

(c) If a CPA who was not the CPA for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall within 30 days of the date the CPA is engaged notify the Department of this event. The insurer shall also furnish the Commissioner with a separate letter stating whether in the 24 months preceding such engagement there were any disagreements with the former CPA on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request such former CPA to furnish a letter addressed to the insurer stating whether the CPA agrees with the statements contained in the insurer's letter, and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former CPA to the Commissioner together with its own.

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

11 NCAC 11A .0506 QUALIFICATIONS OF INDEPENDENT CPA

- (a) The Commissioner shall not recognize:
- (1) Any person or firm as a CPA that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice; or
 - (2) Any person or firm that has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.
- (b) Except as otherwise provided in this Section, a CPA shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code.
- (c) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or part by a natural person who:
- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U. S. C. Sections 1961 to 1968k, or any dishonest conduct or practices under federal or state law; or
 - (2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or
 - (3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.
- (d) The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented,

PROPOSED RULES

may rule that the CPA is not independent for purposes of expressing an opinion on the financial statements in the annual Audited Financial Report made pursuant to this Section and require the insurer to replace the CPA with another whose relationship with the insurer is independent within the meaning of this Section.

Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3).

Raleigh, NC 27699-1617. Questions may be directed to Lin Xu at (919) 733-5083 ext. 357, or lin.xu@ncmail.net. The comment period will end on May 9, 2003.

Fiscal Impact

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02B .0243-.0244. Notice of Rule-making Proceedings was published in the Register on March 1, 2001 and June 15, 2001.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: April 14, 2003

Time: 7:00 p.m.

Location: Catawba Valley Community College, Hickory, NC

Date: April 21, 2003

Time: 7:00 p.m.

Location: Belmont Abbey College, Belmont, NC

Date: April 22, 2003

Time: 7:00 p.m.

Location: Mooresville Citizens Center, Mooresville, NC

Reason for Proposed Action: The purpose of this rulemaking is to make the temporary rules entitled "Catawba River Basin: Protection and Maintenance of Existing Riparian Buffers" (15A NCAC 2B .0243) and "Catawba River Basin: Mitigation Program for Protection and Maintenance of Existing Riparian Buffers in the Catawba River basin" (15A NCAC 2B .0244) permanent. The underlined and strike through text in Rule .0243 in this notice are changes in the proposed permanent rule compared to the temporary rule effective June 30, 2001. The provisions of these Rules are necessary to satisfy statutory requirements laid out in the Clean Water Act of 1999 (House Bill 1160, 1999 Session, Chapter 329). Part 7 of the Clean Water Act of 1999 gave authority to the Environmental Management Commission (EMC) to adopt temporary rules to protect water quality in the Cape Fear, Catawba and Tar-Pamlico River basins. The intent of the bill was to allow for development of rules for basinwide buffers or other water quality measures as required to carry out recommendations of the basinwide plans for those three river basins. In addition, 26 local governments in a 5-county area of the upper basin submitted local resolutions supporting buffers for the basin.

Comment Procedures: The purpose of this announcement is to encourage those interested in this rulemaking to provide written comments. We encourage comments on these draft rules. Written comments may be submitted to Lin Xu, DENR, Division of Water Quality, Planning Branch, 1617 Mail Service Center,

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0243 CATAWBA RIVER BASIN: PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS

The following is the management strategy for maintaining and protecting existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin.

- (1) PURPOSE. The purpose of this Rule shall be to protect and preserve existing riparian buffers along the Catawba River mainstem below Lake James and along mainstem lakes from and including Lake James to the North Carolina and South Carolina border in the Catawba River Basin in order to maintain their pollutant removal functions as an aid in protecting the water quality of the lakes and connecting river segments.
- (2) DEFINITIONS. For the purpose of this Rule, these terms shall be defined as follows:
 - (a) "Access Trails" means pedestrian trails constructed of pervious or impervious surfaces, and related structures to access a surface water, including but not limited to boardwalks, steps, rails, signage, etc.
 - (b) "Archaeological Activities" means activities conducted by a Registered Professional Archaeologist (RPA).
 - (c) "Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility," "airport," or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); the phrase "aeronautical facilities" as defined in

G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or other interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof; and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "Airport Facilities":

- (i) satellite parking facilities;
- (ii) retail and commercial development outside of the terminal area, such as rental car facilities; and
- (iii) other associated secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority.

- (d) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water. (current definition in Forest Practice Guidelines Related to Water Quality, 15A NCAC 01I .0102)
- (e) "DBH" means diameter at Breast Height of a tree, which is measured at 4.5 feet above ground surface level.
- (f) "Forest plantation" means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
- (g) "Full Pond Level" is a term used by Duke Energy Inc. that refers to the project water level, referenced to mean sea level, for each of the seven mainstem lakes along the Catawba River. The landward edge of the lakes at full pond level represents the project boundary for each lake.
- (h) "Greenway/Hiking Trails" means pedestrian trails constructed of pervious and impervious surfaces and related structures including but not limited to boardwalks, steps, rails, signage, etc.
- (i) "High Value Tree" means a tree whose stump diameter is equal to or exceeding 18 inches.
- (j) "Mainstem lakes" means the following impoundment created along the mainstem of the Catawba River: Lake James, Lake Rhodhiss, Lake Hickory, Lookout Shoals Lake, Lake Norman, Mountain Island Lake and Lake Wylie (North Carolina portion).
- (k) "Shoreline stabilization" is the in-place stabilization of a severely eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, will not be considered restoration or enhancement in most cases.
- (l) "Stream restoration" is defined as the process of converting an unstable,

- altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions.
- (m) "Stump diameter" means stump diameter of a tree, which is measured at six inches above ground surface level.
 - (n) "Surface water" means all waters of the state as defined in G.S. 143-212 except underground waters.
 - (o) "Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures, water dependent structures, and/or to maintain public traffic during construction.
 - (p) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter equal to or exceeding six inches.
- (3) **APPLICABILITY.** This Rule shall apply to a 50-foot wide riparian buffer directly adjacent to surface waters along the Catawba River mainstem below Lake James and along the mainstem lakes in the Catawba River Basin, excluding wetlands. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506. The riparian buffers protected by this Rule shall be measured pursuant to Item (4) of this Rule. Riparian buffers adjacent to surface waters of the Catawba River mainstem below Lake James and mainstem lakes shall be subject to this Rule unless one of the following applies.
- (a) **EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING.** This Rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:
 - (i) A use shall be considered existing if it was present within the riparian buffer as of June 30, 2001. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Rule. Change of ownership through legal purchase or inheritance is not considered a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of the Rule, and existing diffuse flow is maintained. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.
 - (ii) A use shall be considered as existing if projects or proposed development at a minimum have been determined by the Division or the appropriate local government with approved riparian buffer ordinance to meet at least one of the following criteria:
 - (A) Project requires a 401 Certification/404 Permit and these were issued prior to June 30, 2001;
 - (B) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and have received all required state permits prior to June 30, 2001;
 - (C) Projects that have been determined to have a Vested Right by the NC Attorney General's Office; or,

(D) Projects that have established a Vested Right under North Carolina zoning law as of June 30, 2001.

(iii) An existing use shall be considered to be converted to another use if any of the following applies:

(A) Impervious surface is added to the riparian buffer in locations where it did not exist previously; or

(B) An agricultural operation within the riparian buffer is converted to a non-agricultural use.

At the time an existing use is proposed to be converted to another use, this Rule shall apply.

(b) LOCAL GOVERNMENTS THAT HAVE APPROVED RIPARIAN BUFFER ORDINANCES. All local governments that have land use authority along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin may adopt local riparian buffer ordinances to protect water quality. The Division shall approve the local riparian buffer ordinance within 30 days after receiving the request from local governments, if the Division determines that the local riparian buffer ordinance provides equal to or greater water quality protection than this Rule. This Rule shall not apply in any area where a local government has obtained the Division's approval of the local riparian buffer ordinance, provided that the local government is implementing and enforcing the approved local riparian buffer ordinance. The Division, upon determination that the local government is failing to implement or enforce the approved local buffer ordinance, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification, then the Division shall implement and enforce the provisions of this Rule.

(c) RIPARIAN AREAS AND ACTIVITIES NOT REGULATED UNDER AN APPROVED LOCAL GOVERNMENT ORDINANCE. The Division shall be responsible for the implementation of this Rule for all riparian areas and activities not regulated under a Commission-approved local government ordinance.

(4) ZONES OF THE RIPARIAN BUFFER. The protected riparian buffer shall have two zones as follows:

(a) Zone 1 shall consist of a forested area that is undisturbed except for uses provided for in Item (6) of this Rule. The location of Zone 1 shall be as follows:

(i) For the Catawba River mainstem below Lake James, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the edge of the surface water.

(ii) For the mainstem lakes located on the Catawba River mainstem, Zone 1 shall begin at the most landward limit of the full pond level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the full pond level.

(b) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in Item (6) of this Rule. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to a vertical line marking the edge of Zone 1. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water along the Catawba River mainstem below Lake James and along mainstem lakes in the Catawba River Basin.

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- (5) **DIFFUSE FLOW REQUIREMENT.** Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer.
- (b) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.
- (c) No new stormwater conveyances are allowed through the buffers except for activities and uses provided for in Item (6) of this Rule.
- (6) **TABLE OF USES.** The following chart sets out the uses and their designation under this Rule as exempt, allowable, or allowable with mitigation. Any uses, which are not listed in the table, shall be considered as prohibited. The requirements for each category are given in Item (7) of this Rule.

	Exempt	Allowable	Allowable with Mitigation
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation and/or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer 	X	X	
<p>Airport facilities:</p> <ul style="list-style-type: none"> • Airport or airstrip facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport or airstrip facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer 		X	X
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer	X		
<p>Dam maintenance activities:</p> <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam 	X	X	

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or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3			
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: <ul style="list-style-type: none"> Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the riparian buffer New stormwater discharges to existing man-made conveyances (including, but not limited to, drainage ditches, roadside ditches, and stormwater outfalls) provided that the new stormwater discharge does not result in the need to alter the existing man-made conveyances 	X	X	X
Driveway crossings of surface waters subject to this Rule: <ul style="list-style-type: none"> Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer Driveway crossings on single family residential lots subdivided or recorded prior to the effective date of this Rule that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer In a subdivision that cumulatively disturbs equal to or less than 150 linear feet or one-third of an acre of riparian buffer In a subdivision that cumulatively disturbs greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X
Fences: <ul style="list-style-type: none"> Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule 	X	X	
Forest harvesting - see Item (11) of this Rule			
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized	X		
Greenway / hiking trails		X	
Historic preservation	X		
Mining activities: <ul style="list-style-type: none"> Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (4) and (5) of this Rule are established adjacent to the relocated channels Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Items (4) and (5) of this Rule are not established adjacent to the relocated channels 		X	X
Non-electric utility lines: <ul style="list-style-type: none"> Impacts other than perpendicular crossings in Zone 2 only ³ Impacts other than perpendicular crossings in Zone 1 ³ 		X	X
Non-electric utility line perpendicular crossings of surface			

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<p>waters subject to this Rule ³:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer 	X	X	X	
<p>Overhead electric utility lines:</p> <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only ³ • Impacts other than perpendicular crossings in Zone 1 ^{1,2,3} 	X			
<p>Overhead electric utility line perpendicular crossings of surface waters subject to this Rule ³:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 150 linear feet of riparian buffer ¹ • Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer ^{1,2} 	X	X		

¹ Provided that, in Zone 1, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Division.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

² Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division completes a no practical alternative evaluation.

³ Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°. New water intakes and new outfall lines which may be required to extend to or cross part of waterbodies will be implemented and enforced under this category.

	Exempt	Allowable	Allowable with Mitigation
<p>Playground equipment:</p> <ul style="list-style-type: none"> • Playground equipment provided that installation and use does not result in removal of trees as defined in this Rule • Playground equipment where installation and use requires removal of trees as defined in this Rule 	X	X	
<p>Properties that have been subdivided by an approved preliminary subdivision plat ⁴ within 2 years prior to June 30, 2001 for conventional subdivisions and within 5 years prior to June 30, 2001 for phased subdivisions:</p> <ul style="list-style-type: none"> • Uses in Zone 2 provided that the ground is stabilized and 			

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diffuse flow is maintained • Uses in Zone 1 provided that the ground is stabilized and diffuse flow is maintained. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1	X	X	
Properties that are included on a recorded subdivision plan prior to June 30, 2001: • Uses in Zone 2 provided that the ground is stabilized and diffuse flow is maintained • Uses in Zone 1 provided that the ground is stabilized and diffuse flow is maintained. On-site waste systems, septic tanks and drainfields are not allowed in Zone 1	X	X	
Protection of existing structures, facilities and shoreline when this requires additional disturbance of the riparian buffer or the channel		X	
Pumps for agricultural irrigation in Zone 1 provided that installation and use does not result in removal of trees as defined in this Rule		X	

⁴ The submitted preliminary subdivision plat shall include but not limited to all the following information:

- Total acreage of land proposed for platting.
- The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances accurately shown, including dimensions of all lot lines.
- Location and use of all existing and proposed easements. This includes easements for drainage and utilities.
- Location, width of rights-of-way and all proposed streets.
- Location of all utilities installations.
- Distance to nearest public water supply and sanitary sewerage systems.
- Significant natural features including existing riparian buffer areas, existing wetlands, lakes or rivers, or other natural features affecting the site.
- Existing physical features including buildings, streets, railroads, power lines, drainage ways, sewer and water or spring heads, and town limit lines both to or adjacent to the land to be subdivided.

	Exempt	Allowable	Allowable with Mitigation
Railroad impacts other than crossings of surface waters subject to this Rule			X
Recreational and accessory structures: • One recreational or accessory structures such as a deck, gazebo or shed with a footprint of less than 150 square feet provided that the structure is elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that it is not otherwise prohibited under the local water supply watershed ordinance • Recreational and accessory structures such as decks, gazebos, and sheds provided that the structures are elevated above pervious ground, that installation does not result in removal of trees as defined in this Rule, and that they are not otherwise prohibited under the local water supply watershed ordinance	X	X	
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of surface waters subject to this Rule			X
Road crossings of surface waters subject to this Rule: • Road crossings that impact equal to or less than 40 linear feet of riparian buffer	X		

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<ul style="list-style-type: none"> • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 		X	X
Scientific studies and gauging station	X		
Stormwater management ponds excluding dry ponds: <ul style="list-style-type: none"> • New stormwater management ponds provided that a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is established adjacent to the pond • New stormwater management ponds where a riparian buffer that meets the requirements of Items (4) and (5) of this Rule is NOT established adjacent to the pond • Stormwater constructed wetland and bio-retention area 		X	X
Shoreline stabilization		X	
Temporary roads: <ul style="list-style-type: none"> • Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads used for culvert installation, bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction 	X	X	X
Temporary sediment and erosion control devices: <ul style="list-style-type: none"> • In Zone 2 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5) of this Rule • In Zones 1 and 2 to control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer • In-stream temporary erosion and sediment control measures for work within a stream channel 	X	X	
Underground electric utility lines: <ul style="list-style-type: none"> • Impacts other than perpendicular crossings in Zone 2 only³ • Impacts other than perpendicular crossings in Zone 1^{3,5} 	X		
Underground electric utility line perpendicular crossings of surface waters subject to this Rule: ³ <ul style="list-style-type: none"> • Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer⁵ • Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer⁵ 	X	X	
Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities: <ul style="list-style-type: none"> • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 10 feet in width • Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 10 feet in width 		X	X

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View corridors - thinning of underbrush, shrubs, and low-hanging limbs up to 50% of tree height to enhance a lake view provided soils are undisturbed, diffuse flow is maintained and no stems of woody vegetation larger than 3" DBH are removed	X		
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⁵ Provided that, in Zone 1, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

	Exempt	Allowable	Allowable with Mitigation
Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Periodic mowing and harvesting of plant products in Zone 2 only • Planting vegetation to improve water quality protection function of the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life • Removal of individual trees which are dead, diseased or damaged • Removal of poison ivy • Removal of understory nuisance vegetation listed in Appendix III of: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30 	X		
Water dependent structures: <ul style="list-style-type: none"> • Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use do not result in disturbance to riparian buffers • Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers 	X	X	
Water wells: <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not 	X	X	

require DWQ approval for the use of a 401 Water Quality Certification				
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(7) **REQUIREMENTS FOR CATEGORIES OF USES.** Uses designated as exempt, allowable, and allowable with mitigation in Item (6) of this Rule and prohibited in this Rule shall have the following requirements:

- (a) **EXEMPT.** Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in Item (6) of this Rule for the specific use.
- (b) **ALLOWABLE.** Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and that disturbance to the buffer is minimized. These uses require prior written authorization from the Division or from a local government with an approved riparian buffer ordinance pursuant to Sub-Item (3)(b) of this Rule.
- (c) **ALLOWABLE WITH MITIGATION.** Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Item (8) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (10) of this Rule. These uses require written authorization from the Division or the local government with approved riparian buffer ordinance.
- (d) **PROHIBITED.** All uses not designated as exempt, allowable or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to Item (9) of this Rule. Mitigation may be required as one condition of a variance approval.

(8) **DETERMINATION OF "NO PRACTICAL ALTERNATIVES."** Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the Division or to the local government with approved riparian buffer ordinance. The applicant shall certify that the criteria identified in Sub-Item (8)(a) of this

Rule are met. The Division or the local government with approved riparian buffer ordinance shall grant an Authorization Certificate upon a "no practical alternatives" determination. The procedure for making an Authorization Certificate shall be as follows:

- (a) For any request for an Authorization Certificate, the Division or the local government with approved riparian buffer ordinance shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a "no practical alternatives" determination:
 - (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - (iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (b) Requests for an Authorization Certificate shall be reviewed and either approved or denied within 60 days of receipt of a complete submission based on the criteria in Sub-Item (8)(a) of this Rule by either the Division or the local government with approved riparian buffer ordinance. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated "no practical alternatives." The Division or the local government with approved riparian buffer ordinance may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions to the Division shall use the appropriate Pre-Construction Notification (PCN) Application Form and shall submit the completed form

to the Division. Complete submissions to the delegated local government shall include the following unless otherwise identified within an approved local government ordinance:

- (i) The name, address and phone number of the applicant;
- (ii) The nature of the activity to be conducted by the applicant;
- (iii) The location of the activity, including the jurisdiction;
- (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
- (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
- (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director for a decision. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

(9) VARIANCES. Persons who wish to undertake uses designated as prohibited may pursue a variance. The Division or the appropriate local government with approved riparian buffer ordinance shall make all of the following findings of fact and may grant variances. The variance request procedure shall be as follows:

- (a) For any variance request, the Division or the local government with approved riparian buffer ordinance shall make all of the finding of fact to insure that the following requirements have been met:
 - (i) There are practical difficulties or unnecessary hardships that prevent

compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:

- (A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division or the local government with approved riparian buffer ordinance shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible.
- (B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship.
- (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
- (D) The applicant did not cause the hardship by

- knowingly or unknowingly violating this Rule.
- (E) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
- (ii) The variance is in harmony with the general purpose and intent of the Catawba River Basin's riparian buffer protection requirements and preserves its spirit; and
- (iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (b) Variance requests shall be reviewed and approved based on the criteria in Sub-Item (9)(a) of this Rule by either the Division or the local government with approved riparian buffer ordinance pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The Division or the local government with approved riparian buffer ordinance may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the local government with approved riparian buffer ordinance shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345 for determinations made by the local government with approved riparian buffer ordinance.
- (10) MITIGATION. Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.
- (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (8) of this Rule.
- (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0244.
- (11) REQUIREMENTS SPECIFIC TO FOREST HARVESTING. The following requirements shall apply for forest harvesting operations and practices.
- (a) The following measures shall apply in Zone 1 of the riparian buffer:
- (i) Logging decks and sawmill sites shall not be placed in the riparian buffer.
- (ii) Timber felling shall be directed away from the water body.
- (iii) Skidding shall be directed away from the water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.
- (iv) Individual trees may be treated to maintain or improve their health, form or vigor.
- (v) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site. The Division of Forest Resources must notify the Division of all approvals.
- (vi) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
- (vii) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.

- (viii) High intensity prescribed burns shall not be allowed.
 - (ix) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
- (b) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through G.S. 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:
- (i) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 01I .0203 as enforced by the Division of Forest Resources.
 - (ii) Soil disturbing site preparation activities are not allowed.
 - (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
 - (iv) The following provisions for selective harvesting shall be met:
 - (A) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined.
 - (B) In the outer 20 feet of Zone 1, trees greater than 12-inch diameter stump may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.
- (C) In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 – .0200 as enforced by the Division of Forest Resources.
- (12) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all federal, state and local regulations and laws. Whichever regulation is more restrictive shall apply.

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1.

15A NCAC 02B .0244 CATAWBA RIVER BASIN: MITIGATION PROGRAM FOR PROTECTION AND MAINTENANCE OF EXISTING RIPARIAN BUFFERS IN THE CATAWBA RIVER BASIN

The following are the requirements for the Riparian Buffer Mitigation Program for the Catawba River Basin.

- (1) PURPOSE. The purpose of this Rule is to set forth the mitigation requirements that apply to maintain and protect existing riparian buffers on the Catawba River mainstem below Lake James and mainstem lakes from and including Lake James to the North Carolina/South Carolina border in the Catawba River Basin, as described in Rule 15A NCAC 02B .0243.
- (2) APPLICABILITY. This Rule applies to persons who wish to impact a riparian buffer in the Catawba Basin when one of the following applies:
 - (a) A person has received an Authorization Certificate pursuant to 15A NCAC 02B .0243 for a proposed

- use that is designated as "allowable with mitigation."
- (b) A person has received a variance pursuant to 15A NCAC 02B .0243 and is required to perform mitigation as a condition of a variance approval.
- (3) **THE AREA OF MITIGATION.** The required area of mitigation shall be determined by either the Division or a local government with an approved riparian buffer ordinance according to the following:
- (a) The impacts in square feet to each zone of the riparian buffer shall be determined by the Division or a local government with an approved riparian buffer ordinance by adding the following:
- (i) The area of the footprint of the use causing the impact to the riparian buffer.
- (ii) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use.
- (iii) The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
- (b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Sub-item (3)(a) of this Rule to each zone of the riparian buffer:
- (i) Impacts to Zone 1 of the riparian buffer shall be multiplied by 2.
- (ii) Impacts to Zone 2 of the riparian buffer shall be multiplied by 1.5.
- (4) **THE LOCATION OF MITIGATION.** The mitigation effort shall be the same distance from the Catawba River as the proposed impact and as close to the location of the impact as feasible.
- (5) **ISSUANCE OF THE MITIGATION DETERMINATION.** The Division or a local government with an approved buffer program shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Items (3) and (4) of this Rule.
- (6) **OPTIONS FOR MEETING THE MITIGATION DETERMINATION.** The mitigation determination made pursuant to Item (5) of this Rule may be met through one of the following options:
- (a) Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to Item (7) of this Rule.
- (b) Donation of real property or of an interest in real property pursuant to Item (8) of this Rule.
- (c) Restoration or enhancement of a non-forested riparian buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (9) of this Rule.
- (7) **PAYMENT TO THE RIPARIAN BUFFER RESTORATION FUND.** Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Riparian Buffer Restoration Fund shall meet the following requirements:
- (a) **SCHEDULE OF FEES:** The amount of payment into the Fund shall be determined by square feet of mitigation determination made pursuant to Item (5) of this Rule by ninety-six cents per square foot.
- (b) The required fee shall be submitted to the Division of Water Quality, Wetlands Restoration Program, Mail Service Center 1619, Raleigh, NC 27699-1619 prior to any activity that results in the removal or degradation of the protected riparian buffer for which a "no practical alternatives" determination has been made.
- (c) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Item (8) of this Rule.
- (d) The Division shall review the fee outlined in Sub-item (7)(a) of this Rule every two years and compare it to the actual cost of restoration activities conducted by the Department, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Division shall recommend revisions to Sub-item (7)(a) of this Rule when adjustments to this Schedule of Fees are deemed necessary.
- (8) **DONATION OF PROPERTY.** Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:
- (a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund

- pursuant to Item (7) of this Rule. The value of the property interest shall be determined by an appraisal performed in accordance with Sub-item (8)(d)(iv) of this Rule. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Sub-item (7)(a) of this Rule, the applicant shall pay the remaining balance due.
- (b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
 - (c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
 - (i) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin developed by the Department pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in Basinwide Wetlands and Riparian Restoration Plan for the Catawba River Basin.
 - (ii) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.
 - (iii) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
 - (iv) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (3) of this Rule.
- (v) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use.
 - (vi) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation.
 - (vii) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
 - (ix) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
 - (x) The property shall not contain any hazardous substance or solid waste.
 - (xi) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.
 - (xii) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.
 - (xiii) The property shall not have any encumbrances or conditions on the transfer of the property interests.
- (d) At the expense of the applicant or donor, the following information shall be submitted to the Division with any proposal for donations or

dedications of interest in real property:

- (i) Documentation that the property meets the requirements laid out in Sub-Item (8)(c) of this Rule.
 - (ii) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.
 - (iii) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.
 - (iv) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.
 - (v) A title certificate.
- (9) **RIPARIAN BUFFER RESTORATION OR ENHANCEMENT.** Persons who choose to meet their mitigation requirement through

riparian buffer restoration or enhancement shall meet the following requirements:

- (a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
 - (i) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Item (3) of this Rule.
 - (ii) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Item (3) of this Rule.
- (b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Item (4) of this Rule.
- (c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
- (d) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of 15A NCAC 02B .0243. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Division. The restoration or enhancement plan shall contain the following.
 - (i) A map of the proposed restoration or enhancement site.
 - (ii) A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity.
 - (iii) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer.
 - (iv) A fertilization plan.
 - (v) A schedule for implementation.
- (e) Within one year after the Division has approved the restoration or enhancement plan, the applicant shall present proof to the Division that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the State or a local riparian buffer ordinance.

PROPOSED RULES

- (f) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.
- (g) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

waters, waters previously used for drinking water supply purposes, or waters used by industry to supply their employees with raw drinking water supply sources. No water quality study was required for this proposed reclassification as the waters were formerly used as water supplies. If reclassified, ORW regulations that affect but allow new development and new non-discharging landfills activities would still apply in the watersheds; for the above-mentioned activities, these regulations are less restrictive than WS-I regulations but more restrictive than WS-V regulations. In addition, wastewater dischargers will still not be allowed and water supply water quality standards will still apply according to ORW and water supply regulations, respectively. Furthermore, DOT activities will still be affected by ORW regulations as well as WS-V regulations. There are no proposed discharges or development in the three watersheds.

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); S.L. 1999, c. 329, s. 7.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Environmental Management Commission intends to amend the rule cited as 15A NCAC 02B .0308. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: April 8, 2003

Time: 6:00 p.m.

Location: Western Piedmont Community College – Moore Hall, Leviton Auditorium, 1001 Burkemont Avenue, Morganton, NC

Reason for Proposed Action: City of Morganton staff requested the reclassification of a segment of three surface waters, namely He Creek, Jerry Branch, and Henry Fork (Burke County, Catawba River Basin) from Class Water Supply-I (WS-I) Outstanding Resource Waters (ORW) to Class WS-V ORW. Burke County staff submitted an additional request for the reclassification of Jerry Branch. This proposed reclassification consists of the main stem of each of the above-mentioned surface waters from source to a formerly used City of Morganton (City) Water Intake. These WS-I watersheds are located solely within the jurisdiction of Burke County, and Burke County staff support the proposed reclassification of Jerry Branch but are neither for or against the proposed reclassification of He Creek and Henry Fork. The NC Public Water Supply Section staff stated that they have no concerns associated with changing the current classifications of the proposed waters. The purpose of this rule change is to recognize that the City has discontinued using these waters as sources of drinking water, and there are no current or future plans for the waters to be used as drinking water sources. In addition, privately owned land, some of which is developed, has existed for decades in a portion of the Jerry Branch WS-I watershed; however, WS-I waters are supposed to be located within natural and undeveloped watersheds held in public ownership. WS-V waters are waters protected as water supplies which are generally upstream and draining to Class WS-IV

Comment Procedures: Written comments should be submitted Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617. Phone: (919) 733-5083 extension 369, fax: (919) 715-5637, email: Elizabeth.kountis@ncmail.net. Comments should be submitted by April 23, 2003.

Fiscal Impact

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0308 CATAWBA RIVER BASIN

- (a) The schedule may be inspected at the following places:
- (1) Clerk of Court:
 - Alexander County
 - Avery County
 - Burke County
 - Caldwell County
 - Catawba County
 - Gaston County
 - Iredell County
 - Lincoln County
 - McDowell County
 - Mecklenburg County
 - Union County
 - Watauga County
 - (2) North Carolina Department of Environment and Natural Resources:
 - (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
 - (B) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina.

PROPOSED RULES

(b) Unnamed Streams. Such streams entering South Carolina are classified "C."

(c) The Catawba River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) August 12, 1979;
- (3) April 1, 1982;
- (4) January 1, 1985;
- (5) August 1, 1985;
- (6) February 1, 1986;
- (7) March 1, 1989;
- (8) May 1, 1989;
- (9) March 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994;
- (13) July 1, 1995;
- (14) September 1, 1996;
- (15) August 1, 1998;
- (16) April 1, 1999;
- (17) August 1, 2000;
- (18) August 1, 2004.

(d) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1989 as follows:

- (1) Wilson Creek [Index No. 11-38-34] and all tributary waters were reclassified from Class B-trout and Class C-trout to Class B-trout ORW and Class C-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective May 1, 1989 as follows:

- (1) Henry Fork [Index Nos. 11-129-1-(1) and 11-129-1-(2)] from source to Laurel Creek, including all tributaries, were reclassified from Class WS-I, C and C trout to Class WS-I ORW, C ORW and C trout ORW, except Ivy Creek and Rock Creek which will remain Class C trout and Class C.
- (2) Jacob Fork [Index Nos. 11-129-2-(1) and 11-129-2-(4)] from source to Camp Creek, including all tributaries, were reclassified from Class WS-III trout and WS-III to WS-III trout ORW and WS-III ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective March 1, 1990 as follows:

- (1) Upper Creek [Index No. 11-35-2-(1)] from source to Timbered Branch including all tributaries except Timbered Branch (Index No. 11-35-2-9) was reclassified from Class C Trout to Class C Trout ORW.
- (2) Steels Creek [Index No. 11-35-2-12(1)] from source to Little Fork and all tributaries was reclassified from Class C Trout to Class C Trout ORW.

(g) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-

III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1994 as follows:

- (1) Friday Lake (Index No. 11-125.5) from its source to Little Paw Creek was reclassified from Class C to Class B.
- (2) The Linville River [Index No. 12-29-(1)] from Grandmother Creek to Linville Falls was reclassified from Class C Tr to Class B Tr.

(i) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective July 1, 1995 with the reclassification of Clark Creek from a point 0.6 mile downstream of Catawba County SR 2014 to 0.4 mile upstream of Larkard Creek [Index No. 11-129-5-(4.5)], and Howards Creek from its source to 0.7 mile upstream of Lincoln County State Road 1200 [Index No. 11-129-4], including associated tributaries from Class WS-IV to Classes C and WS-IV.

(j) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective September 1, 1996 as follows:

- (1) North Fork Catawba River [Index No. 11-24-(1)] from Laurel Branch to Armstrong Creek from Class C Tr to Class B Tr; and
- (2) Catawba River (Lake Hickory) from Rhodhiss dam to highway 321 [Index No. 11-(51)] from Class WS-IV CA to Class WS-IV&B CA.

(k) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the South Fork Catawba River [Index No. 11-129-(0.5)] and Hoyle Creek [Index No. 11-129-15-(1)] from Class WS-IV to Class WS-V.

(l) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective August 1, 1998 as follows:

- (1) Mill Creek [Index No. 11-7] from its source to Swannanoa Creek, including all tributaries, from Class C Tr to Class C Tr HQW; and
- (2) Toms Creek [Index Nos. 11-21-(1) and 11-21-(2)] from its source to Harris Creek, including all tributaries, from Class C Tr to Class C Tr HQW and from Harris Creek to McDowell County SR 1434, including all tributaries, from Class C to Class C HQW.

(m) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective April 1, 1999 with the reclassification of a portion of the Catawba River [Index Nos. 11-(27.5) and 11-(31)] from Class WS-IV & B and WS-IV to Class WS-V & B and WS-V.

(n) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended effective

PROPOSED RULES

April 1, 1999 with the reclassification of Armstrong Creek [Index Nos. 11-24-14-(1), 11-24-14-(13.5) and 11-24-14-(14)], and all tributaries from Classes WS-II Tr, WS-II, WS-II CA and C Tr to Classes C Tr HQW and C HQW.

(o) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended April 1, 1999 as follows:

- (1) Lookout Shoals Lake from Oxford Dam to Island Creek [Index No. 11-(67)] from Class WS-V to Class WS-IV CA, from Island Creek to Elk Shoal Creek [Index No. 11-(70.5)] from Class WS-IV to Class WS-IV CA and from Elk Shoal Creek to a point one half mile upstream of Lookout Shoals Dam [Index No. 11-(72)] from Class WS-IV&B to Class WS-IV&B CA; and
- (2) The primary classifications of tributary streams that are within five miles and draining to the normal pool elevation of Lookout Shoals Lake (Protected Area) have been revised to Class WS-IV; and
- (3) The primary classifications of tributary streams that are within one half mile and draining to the normal pool elevation of Lookout Shoals Lake (Critical Area) have been revised to Class WS-IV CA.

(p) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2000 with the reclassification of Little Grassy Creek (Index No. 11-29-2), including all tributaries, from its source to the Linville River from Class C Tr to Class C Tr ORW.

(q) The Schedule of Classifications and Water Quality Standards for the Catawba River Basin was amended August 1, 2004 with the reclassification fo a segment of three surface waters, more specifically Henry Fork [11-129-1-(1)], Jerry Branch [11-129-1-3-(1)], and He Creek [11-129-1-4-(1)], from source to a formerly used City of Morganton Water Intake from Class WS-I ORW to class WS-V ORW.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources and the Environmental Management Commission intends to adopt the rule cited as 15A NCAC 02H .1014, and amend the rule cited as 15A NCAC 02H .0126. Notice of Rule-making Proceedings was published in the Register on May 15, 2002 and November 15, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: April 1, 2003

Time: 7:00 p.m.

Location: Johnston County Community College, Smithfield, NC

Date: April 7, 2003

Time: 7:00 p.m.

Location: New Hanover County Northeast Regional Library, Wilmington, NC

Date: April 17, 2003

Time: 7:00 p.m.

Location: Asheville – Buncombe Tech. CC; Simpson Lecture Room, Simpson Building, Asheville, NC

Date: April 22, 2003

Time: 7:00 p.m.

Location: Municipal Building, Kernersville, NC

Date: April 28, 2003

Time: 7:00 p.m.

Location: Washington Civic Center, Washington, NC

Reason for Proposed Action: NC DENR is the delegated authority to implement the Federal NPDES Stormwater program. The federal rules changed on December 8, 1999. Rule changes are needed to implement the new program requirements. Temporary rules were approved and became effective November 1, 2002. The temporary rules established program requirements in a number of key areas needed for implementation. However, due to some unique conditions associated with ownership/operation of storm sewer systems in North Carolina, some gaps in program coverage are created under the temporary rules. The draft permanent rule language proposed here was developed to address this issue by using state regulatory authority to require these designated entities to implement stormwater management measures throughout their jurisdictional area. This requirement eliminates the gap in stormwater coverage created by the unique stormwater conveyance system owner/operator situation in North Carolina under the federal and temporary rules. This approach provides fairness between different jurisdictions and provides more consistent protection from an environmental standpoint. The draft permanent rules leave in place the temporary rule structure for handling owners and operators through the federal NPDES program and sets up a separate state permitting program for the designated local entities where ownership/operation of the storm sewer system is an issue.

Comment Procedures: Written comments should be submitted to Darren England, Stormwater & General Permits Unit, 1617 Mail Service Center, Raleigh, NC 27699-1617. Email: stormwater@ncmail.net. Comments should be submitted by May 16, 2003.

Fiscal Impact

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0126 STORMWATER DISCHARGES

Stormwater picks up pollutants as it drains to waters of the State. When man alters stormwater drainage, the pollutants carried by stormwater to waters of the State may be concentrated or increased, resulting in water pollution. The juncture at which stormwater reaches the waters of the State will either be a terminus of a pipe, ditch, or other discrete outlet, or in a diffuse sheet flow manner. Stormwater discharges subject to NPDES permitting are addressed in this section, which incorporates, supplements and expands the federal rules on stormwater NPDES discharges. Other stormwater control requirements are mainly addressed in Section 02H .1000 entitled "Stormwater Management", but may also be addressed in sections dedicated to particular water classifications or circumstances. If there is an overlap, the more stringent requirements apply. Regulated Public Entities, subject to NPDES permitting shall receive NPDES permits for stormwater discharges to surface waters issued in accordance with these Rules and United States Environmental Protection Agency regulations 40 CFR 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 sixty-nine dollars (\$69.00) each plus six dollars (\$6.00) shipping and handling. Copies are also available at the Division of 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) Built-upon area (BUA) means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)
 - (b) Department means the North Carolina Department of Environment and Natural Resources.
 - (c) Existing development means those projects that are built or those proposed that at a minimum have established a vested right under North Carolina zoning law as of the date of the local government ordinance, or such earlier time that an affected local government's ordinance shall specify, based on at least one of the following criteria:
 - (i) Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local

- (ii) government approval to proceed with the project; or
- (ii) Having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1; or
- (iii) Having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (d) Regulated Public Entities (RPE) means all municipalities and counties identified by a decennial U.S. Census as being located in whole or in part within a Urbanized Area, all federally designated public bodies, and all state designated public bodies.
- (e) 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.
- (f) 1 year, 24 hour storm means the surface runoff resulting from a rainfall of an intensity expected to be

- equaled or exceeded, on average, once in 12 months.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) 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; or
 - (ii) That 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 2B .0211 - .0222 and 15A NCAC 2B .0300.
- (k) 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.
- (l) 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 regulated public entities shall comply with the permit application schedule set forth in Item (6) 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 Rule. 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 Rule.

(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 municipal and non-municipal population (including permanent and seasonal population) is greater than 45,000 persons. The seasonal population will be determined from the most recent data

available from local, state and/or federal sources.
(C) Other public bodies. A public body may be designated if:

(I) They are a municipality located within a regulated 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.

(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 population growth or population 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 2 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)(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 .0300. The Department shall then make a final determination on designation for each of the listed public bodies.
 - (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) Other State designations
 - (a) Total Maximum Daily Load (TMDL) MS4s. 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.
- (5) 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:
 - (i) Petitions must be submitted on department approved forms.
 - (ii) A separate petition must be filed for each petitioned entity.
 - (iii) The petition must be complete prior to consideration by the department.
 - (iv) Petitions must demonstrate the need for NPDES stormwater permit coverage for the petitioned entity based on the following standards:
 - (A) For stormwater discharges to impaired waters, monitoring data must be submitted to demonstrate that the petitioned entity is the source of or a significant contributor of

- pollutants to the impairment.
- (B) For stormwater discharges to non-impaired waters, monitoring data must be submitted to demonstrate that the petitioned entity is a significant contributor of pollutants to the receiving waters.
- (C) Monitoring data must include, at a minimum, representative sampling of the stormwater discharges subject to the petition; and
- (D) 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.
- (E) The Petitioner shall notify the potential petitioned entity in advance of stormwater discharge monitoring activities.
- (v) The petitioner must certify that a copy of the petition and any subsequent additional information submitted by the petitioner 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.
- (vi) Petitions must include the following to be eligible for consideration:
- (A) Completed set of petition form(s);
- (B) In accordance with Sub-Item (5)(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;
- (C) Documentation of receiving waters impairment or degradation;
- (D) 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
- (E) Certification of petitioned entity notification.
- (viii) On a case by case basis the department may request additional information necessary to evaluate the petition.
- (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 stormwater permit application. The application shall be required to be submitted no later than 18 months from the date of notification.
- (6) Application schedule. Regulated public entities must submit applications on department approved forms. The applications shall include program descriptions for the minimum measures identified in Item (7) 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 regulated public entities, which must apply by March 10, 2003.

- (ii) Municipally operated industrial activities, which must apply by March 10, 2003.
- (b) Regulated public entities that are newly identified based upon the 2000 Decennial Census, or a future decennial census, must apply for permit coverage within 18 months of State notification. The Department, within 3 months of federal verification of decennial census data, will notify in writing all the public entities identified.
- (7) Stormwater Management Requirements
 - (a) All regulated public entities subject to this Rule shall develop, implement and enforce a stormwater management plan approved by the department in accordance with Sub-Items (7)(b)-(7)(e) of this Rule. The plan shall be designed to reduce discharge of pollutants 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 (10) 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) Minimum measures and permit coverage for regulated public entities:
 - (i) For municipalities which own and operate a small MS4:
 - (A) They shall implement all six minimum measures;
 - (B) Their permit will cover their jurisdictional area including any area where they have exercised their Extraterritorial Jurisdiction Authorities under

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- General Statute
G.S. 160A-360.
They shall
implement the six
minimum measures
in their ETJ areas to
the extent allowable
under existing rules
and statutes.
- (ii) For counties which own and operate one or more small MS4s:
(A) They shall implement all six minimum measures;
- (B) The permit will cover the jurisdictional area of the small MS4(s). The county may elect to have the permit cover their entire jurisdictional area;
- (iii) For regulated public entities that do not own or operate a small MS4. These RPE's shall be permitted in accordance with 15A NCAC 02H .1014.

NOTE: The Environmental Management Commission intends to address the gap in coverage created by North Carolina's unique road / drainage system structure through the use of existing state authorities. New state rule 15A NCAC 02H .1014 has been drafted to close the gap.

- (c) Within the jurisdictional area of all regulated public entities, the post construction controls pursuant to Item (10) of this Rule, shall be required and implemented where the construction activity drains in whole or in part to a publicly owned MS4.
- (d) All public bodies designated by petition shall meet the requirements set out in Sub-Item (7)(b) of this Rule as applicable.
- (e) All public bodies designated by TMDL, pursuant to Item (4) of this Rule, shall meet the requirements as set out in Sub-Item (7)(b) of this Rule as applicable including, but not limited to additional requirements associated with the TMDL.
- (f) The Department may allow regulated public entities to use existing state and local programs to meet the required permit minimum measures either in whole or in part.
- (8) Waiver. The department may waive the requirements set out in Item (7) of this Rule pursuant to 40 CFR 122.32(d) or 40 CFR 122.32(e).
- (9) Implementation Schedule.
Regulated public entities, 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 (7) and Item (10) of this Rule within five years from permit issuance.
- (10) Post-construction stormwater management
(a) All regulated public entities, must develop, implement and adopt by ordinance a post-construction stormwater management program for all new development and redevelopment as part of their plan to meet the minimum requirements pursuant to Sub-Item (7)(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. Regulated public entities 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 all 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 all 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

PROPOSED RULES

- 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) The deadlines for implementation of the local post-construction program are as follows:
 - (i) 1990 Decennial Census federally designated small MS4's, March 10, 2005.
 - (ii) 2000 Decennial Census and future decennial Census federally designated small MS4's, 12 months from date of permit issuance; and
 - (iii) All other regulated public entities, 12 months from date of permit issuance.
- (e) A post construction stormwater management program shall be developed and implemented that meets the following requirements:
 - (i) The program shall require all projects as defined in Sub-Item (10)(B) of this Rule to apply for locally issued permit coverage under one of the following stormwater management options:
 - (A) Low Density Projects. Projects shall be permitted as low density if the project meets the following:
 - (I) No more than XX dwelling units per acre or YY percent built-upon area BUA for all residential and non-residential development;

NOTE: The Environmental Management Commission intends to revisit the issue of dwellings per acre / built-upon area during the permanent rule making process. At this time they intend to look at setting the value in the 12% to 24% range, but this is subject to change based on information received during the process. The Commission is interested in what values the public feels are appropriate.

- (II) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable;
- (III) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic

PROPOSED RULES

- Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). An exception to this requirement may be pursued in accordance with Item (11) of this Rule; and
- (IV) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans.
- (B) High Density Projects. Projects exceeding the low density threshold established in Sub-Item (10)(e)(i)(A) of this Rule shall implement stormwater control measures that:
- (I) Control and treat the difference in stormwater runoff volume leaving the project site between the pre and post development conditions for the 1 year 24 hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours;

NOTE: 1 yr 24 hour storm use may be revised based on the permanent rule-making process deliberations

- (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) General Engineering Design
- (IV) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is
- Criteria for all projects shall be in accordance with 15A NCAC 02H .1008(c);

approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).

Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a).

An exception to this requirement may be pursued in accordance with Item (11) of this Rule; and

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

the approved project plans;

(f) The program shall include an operation and maintenance component that ensures the adequate long-term operation of the structural BMP's required by the program. The program shall include a requirement that the owner of a permitted structural BMP, submit annually to the local program, a maintenance inspection report on each structural BMP. The inspection must be conducted by a qualified professional; and

(g) 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. For municipalities, this program should be coordinated with the local county health department.

(h) 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 (10)(e) 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. Appropriate revisions to an existing litter ordinance can be

- used to meet this requirement; and
 - (B) Implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program should be coordinated with the local county health department; and
 - (ii) New direct points of stormwater discharge to SA waters or expansion of existing points of discharge to any constructed stormwater conveyance system, or constructed system of conveyances that discharge to SA waters, shall not be allowed. Expansion is defined as an increase in drainage area or an increase in impervious surface within the drainage area resulting in a net increase in peak flow or volume from the 1 year 24 hour storm. 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.
- (i) 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 (10)(e) of this Rule.
- (j) 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 (10)(e) 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.
 - (k) Public bodies may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of Item (10) of this Rule.
 - (l) 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.
 - (m) The Department may develop guidance on the scientific and engineering standards for best management practices that shall be used to meet the post construction 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.
- (11) Exceptions - The Division or the appropriate delegated local authority may grant an exception to the requirements of Sub-Items (10)(e)(i)(A)(III) and (10)(e)(i)(B)(IV) of this Rule. Delegated local authorities must document the exception procedure and submit an annual report on all exception proceedings. The exception request procedure shall be as follows:
 - (a) For any exception request, the Division or the delegated local authority shall make a finding of fact

as to whether the following requirements have been met:

(i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the requirements or unnecessary hardships shall be evaluated in accordance with the following:

(A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of his/her property. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

Moreover, the Division or delegated local authority shall consider whether the exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;

(B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;

(C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property;

(D) The applicant did not cause the

hardship by knowingly or unknowingly violating this Rule;

(E) The applicant did not purchase the property after the effective date of this Rule, and then request an appeal; and

(F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a exception would be a special privilege denied to others, and would not promote equal justice;

(ii) The exception is in harmony with the general purpose and intent of this Rule and preserves its spirit; and

(iii) In granting the exception, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(b) Exceptions. An exception request pertains to activities that are proposed to impact the area within 30 feet landward of all perennial and intermittent surface waters. Exception requests shall be reviewed and approved based on the criteria in Item (11) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A, Article 18, or G.S. 160A, Article 19. The Division or the delegated local authority may attach conditions to the exception approval that support the purpose, spirit and intent of the Rule. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of

Adjustment under G.S. 160A-388 or G.S. 153A-345.

- (c) The following uses, where no practical alternative exists, do not require exception request. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters. Also, these structures shall be located, designed, constructed, and maintained to have minimal disturbance, to provide maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices:
 - (i) Road crossings, railroad crossings, bridges, airport facilities, and utility crossings if conditions specified in Sub-Item(11)(c) of this Rule are met.
 - (ii) Stormwater management facilities and ponds, and utility construction and maintenance corridors for utilities such as water, sewer or gas as long as they are located 15 ft landward of all perennial and intermittent surface waters and the conditions specified in Sub-Item (11)(c) of this Rule are met.

impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

- (b) Department means the North Carolina Department of Environment and Natural Resources.
- (c) Existing development means those projects that are built or those projects that, at a minimum, have established a vested right under North Carolina zoning law as of the effective date of the local government ordinance, or such earlier time that an affected local government's ordinances shall specify, based on at least one of the following criteria:
 - (i) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or
 - (ii) having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1; or
 - (iii) having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (d) Regulated public entities (RPE) means all municipalities and counties identified by a decennial U.S. Census as being located in whole or in part within a Urbanized Area, all federally designated public bodies, and all state designated public bodies.
- (e) 1 year, 24 hour storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months.
- (f) 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.
- (g) Public body means the United States, the State of North Carolina, city,

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

SECTION .1000 - STORMWATER MANAGEMENT

15A NCAC 02H .1014 STORMWATER MANAGEMENT STATE RPE STORMWATER MANAGEMENT PROGRAM

Regulated Public Entity (RPE) stormwater discharges to the surface waters of the State, not subject to NPDES permitting, shall be permitted in accordance with these Rules. If these Rules overlap other rules, the more stringent requirements apply.

- (1) For the purpose of this Rule, these terms shall be defined as follows:
 - (a) Built-upon area (BUA) means that portion of a development project that is covered by impervious or partially

- 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.
- (h) Redevelopment means any rebuilding activity other than a rebuilding activity that;
- (i) Significant contributor of pollutants means 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; or
- (ii) That 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 .0300.
- (2) Designation: Designation into the State RPE stormwater management program will be conducted in accordance with the process defined in 15A NCAC 02H .0126, Sub-Item (2)(b).
- (3) Designation Administration: Administration of the designation process will be conducted in accordance with the process defined in 15A NCAC 02H .0126, Item (3).
- (4) Application schedule. Regulated public entities must submit applications on department approved forms.
- (a) The applications shall include program descriptions for the minimum measures identified in Item (5) of this Rule.
- (b) The application deadline will not be less than 18 months from the date of designation notification.
- (5) Stormwater Management Requirements
- (a) All regulated public entities subject to this Rule shall develop, implement and enforce a stormwater management plan approved by the department in accordance with Sub-Items (5)(b)-(5)(d) of this Rule. The plan shall be designed to reduce discharge of pollutants 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 RPE jurisdictional area. 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 waters of the State 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 waters of the State, pursuant to Item (7) 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) Minimum measures and permit coverage for regulated public entities:
 - (i) For municipalities:
 - (A) They shall implement all six minimum measures; and
 - (B) Their permit will cover their jurisdictional area including any area where they have exercised their Extraterritorial Jurisdiction Authorities under General Statute G.S. 160A-360. They shall implement the six minimum measures in their ETJ areas to the extent allowable under existing rules and statutes.
 - (ii) For counties:
 - (A) They shall implement all six minimum measures; and
 - (B) The permit will cover the unincorporated areas of the county's jurisdictional area.
 - (iii) For all other regulated public entities:
 - (A) They shall implement all six
- (B) The permit will cover their jurisdictional area.
- (c) All public bodies designated by petition shall meet the requirements set out in Sub-Items (5)(b) of this Rule as applicable.
- (d) The Department may allow regulated public entities to use existing state and local programs to meet the required permit minimum measures either in whole or in part.
- (6) Implementation Schedule. Regulated public entities, 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 (5) and Item (7) of this Rule within five years from permit issuance.
- (7) Post-construction stormwater management
 - (a) All regulated public entities must develop, implement and adopt by ordinance a post-construction stormwater management program for all new development and redevelopment as part of their plan to meet the minimum requirements pursuant to Sub-Item (5)(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. Regulated public entities 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 all 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 all 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.

PROPOSED RULES

- (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) The deadline for implementation of the local post-construction program is 12 months from date of permit issuance.
- (e) A post construction stormwater management program shall be developed and implemented that meets the following requirements;
 - (i) The program shall require all projects as defined in Sub-Item (7)(b) of this Rule to apply for locally issued permit coverage under one of the following stormwater management options:
 - (A) Low Density Projects. Projects shall be permitted as low density if the project meets the following:
 - (I) No more than XX dwelling units per acre or YY percent built-upon area BUA for all residential and non-residential development;

NOTE: May need to be revised based on the permanent rule-making process deliberations

(II) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable;

(III) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation

Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233 (3)(a). An exception to this requirement may be pursued in accordance

PROPOSED RULES

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- with Item 8 of this Rule; and
- (IV) The permit shall require recorded deed restrictions and protective covenants to ensure that development activities maintain the development consistent with the approved project plans.
- (B) High Density Projects. Projects exceeding the low density threshold established in Sub-Item (7)(e)(i)(A) of this Rule shall implement stormwater control measures that:
- (I) Control and treat the difference in stormwater runoff volume leaving the project site between the pre and post development conditions for the 1 year 24 hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours;
-

NOTE: 1 yr 24 hour storm use may be revised based on the permanent rule-making process deliberations

- (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) General Engineering Design Criteria for all projects shall be in accordance with 15A NCAC 02H .1008(c);
- (IV) All BUA shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey

(USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233 (3)(a). In addition, an exception to this requirement may be pursued in accordance with Item 8 of this Rule; and

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

(f) The program shall include an operation and maintenance component that ensures the adequate long-term operation of the structural BMP's required by the program. The program shall include a requirement that the owner of a permitted structural BMP, submit annually to the local program, a maintenance inspection report on each structural BMP. The inspection must be conducted by a qualified professional; and

(g) 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. For municipalities, this program should

be coordinated with the local county health department.

(h) 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 (7)(e) 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.

Appropriate revisions to an existing litter ordinance can be used to meet this requirement; and

(B) Implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program should be coordinated with the local county health department; and

(ii) New direct points of stormwater discharge to SA waters or expansion of existing points of discharge to any constructed stormwater conveyance system, or constructed system of conveyances that discharge to SA waters, shall not be allowed. Expansion

is defined as an increase in drainage area or an increase in impervious surface within the drainage area resulting in a net increase in peak flow or volume from the 1 year 24 hour storm. 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.

- (i) For programs with development/redevelopment draining to trout (Tr) 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 practices selected do not result in a sustained increase in the receiving water temperature, while still meeting the requirements of Sub-Item (7)(e) of this Rule.
- (j) 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 (7)(e) 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.
- (k) Public bodies may develop and implement comprehensive watershed protection plans that may be used to

meet part, or all, of the requirements of Item (7) of this Rule.

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

- (8) **Exceptions**
 The Division or the appropriate delegated local authority may grant an exception to the requirements of Sub-Items (7)(e)(i)(A)(III) and (7)(e)(i)(B)(IV) of this Rule. Delegated local authorities must document the exception procedure and submit an annual report on all exception proceedings. The exception request procedure shall be as follows:
 - (a) For any exception request, the Division or the delegated local authority shall make a finding of fact as to whether the following requirements have been met:
 - (i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the requirements or unnecessary hardships shall be evaluated in accordance with the following:
 - (A) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the exception would permit a greater profit from the property shall

- not be considered adequate justification for an exception. Moreover, the Division or delegated local authority shall consider whether the exception is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
- (B) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;
- (C) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property;
- (D) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule;
- (E) The applicant did not purchase the property after the effective date of this Rule, and then request an appeal; and
- (F) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a exception would be a special privilege denied to others, and would not promote equal justice;
- (ii) The exception is in harmony with the general purpose and intent of this Rule and preserves its spirit; and
- (iii) In granting the exception, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (b) Exceptions. An exception request pertains to activities that are proposed to impact the area within 30 feet landward of all perennial and intermittent surface waters. Exception requests shall be reviewed and approved based on the criteria in Item (8) of this Rule by the either the Division or the delegated local authority pursuant to G.S. 153A Article 18, or G.S. 160A-Article 19. The Division or the delegated local authority may attach conditions to the exception approval that support the purpose, spirit and intent of the Rule. Requests for appeals of decisions made by the Division shall be made to the Office of Administrative Hearings. Request for appeals made by the delegated local authority shall be made to the appropriate Board of Adjustment under G.S. 160A-388 or G.S. 153A-345.
- (c) The following uses, where no practical alternative exists, do not require exception request. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters. Also, these structures shall be located, designed, constructed, and maintained to have minimal disturbance, to provide maximum nutrient removal and erosion protection, to have the least adverse effects on aquatic life and habitat, and to protect water quality to the maximum extent practical through the use of best management practices:

PROPOSED RULES

- (i) Road crossings, railroad crossings, bridges, airport facilities, and utility crossings if conditions specified in Sub-Item(8)(c) of this Rule are met; and
- (ii) Stormwater management facilities and ponds, and utility construction and maintenance corridors for utilities such as water, sewer or gas as long as they are located 15 ft landward of all perennial and intermittent surface waters and the conditions specified in Sub-Item (8)(c) of this Rule are met.

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

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.

HURRICANE FLOYD TEMPORARY RULES

The following rules were adopted under temporary rulemaking authority provided in The Hurricane Floyd Recovery Act of 1999, S.L. Extra Session 1999-463. The adopting agencies have requested that the expiration date on the following rules be extended from January 1, 2003 to January 1, 2005:

- 1 NCAC 25 .1001-.1002
- 4 NCAC 01L .0101-.0106
- 4 NCAC 01M .0101-.0107
- 4 NCAC19L .1901-.1904

The following temporary rules expired January 1, 2003:

- 2 NCAC 56 .0101-.0104, .0201-.0204
- 15A NCAC 01C .0505
- 15A NCAC 01P .0101-.0105
- 15A NCAC 01Q .0101

EXPIRED TEMPORARY RULES

<u>Commission for Health Services</u>	<u>Effective Date</u>	<u>Expired</u>
15A NCAC 18A .1942	April 17, 2002	02/09/03
<u>DHHS/Division of Facility Services</u>		
10 NCAC 03R .6347	July 1, 2001	04/28/02
<u>DHHS/Division of Medical Assistance</u>		
10 NCAC 26H .0404	March 7, 2002	12/27/02
<u>Insurance</u>		
11 NCAC 12 .1717	April 1, 2001	12/27/02

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

rule will allow low income families access to Food Stamp benefits which will assist in meeting their nutritional needs.

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

Public Hearing:
Date: June 4, 2003
Time: 10:00 a.m.
Location: 325 N. Salisbury St., Albemarle Building, Room 832, Raleigh, NC

Rule-making Agency: *Social Services Commission*

Proposed Effective Date for Permanent Rule: *July 1, 2004*

Effective Date for Temporary Rule: *March 1, 2003*

Reason for Proposed Action: *The adoption and amendment of the above cited rules will allow the State to implement various provisions of the "2002 Farm Bill Act". The proposed changes to the APA rules will allow more families to be eligible for Food Stamp benefits or increase benefits for current Food Stamp households because of simplified utility allowances, transitional benefits, income and resource exclusions and streamlined reporting requirements. The enactment of the "2002 Farm Bill" was designed to streamline the eligibility and reporting process and to ensure food security for eligible families.*

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

Authority for the rulemaking: *G.S. 143B-153; P.L. 107-171*

Reason for Proposed Action for Temporary Rule: *The temporary adoption of these Rules will encourage and promote participation in the Food Stamp Program for families for whom certain types of income would normally result in ineligibility under current policy. The immediate adoption of this temporary*

Comment Procedures: *Should you desire to comment on the proposed rules please contact Vandella Bradley, APA Coordinator, Social Services Commission, NC Division of Social Services, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919) 733-3055, fax (919) 733-9386. Verbal comments may be expressed at the Commission meeting. Any written comment must be received by 10:00 a.m. on June 4, 2003.*

Effective Date: *March 1, 2003*

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

Authority for the rulemaking: *G.S. 108A-24; 108A-54; Alexander v. Bruton Consent Order dismissed effective February 1, 2002*

Fiscal Impact

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

Reason for Proposed Action:

10 NCAC 50A .0201, .0602-.0603, .0605-.0608; 50B .0201-.0204, .0206-.0207, .0209 – Once the Exit Plan was adopted by the federal court, the agency worked with the State Division of Social Services, State Division of Vocational Rehabilitation, the State Division of Information Resource Management, and six county departments of social services (Catawba, Duplin, Forsyth, Johnston, Martin, and Sampson) to determine how to implement the Exit Plan. Based on the agreements of the workgroup, the changes were implemented into Medicaid Eligibility Policy October 1. The changes in the rules are to make them consistent with the Exit Plan and federal regulations cited under the Exit Plan. The rules implement the federal court order adopting the Exit Plan.

10 NCAC 50B .0311-.0312 – Adherence to notice and hearing requirements would be contrary to the public interest. These changes were enacted by the General Assembly in the State Budget, S.L. 2001-126, to reduce Medicaid program expenditures to help balance the State Budget. Delay in implementing these changes in Medicaid policy will reduce the anticipated savings and jeopardize a balanced State Budget. The proposed rules revise Medicaid eligibility policy for Medically Needy Aged, Blind, and Disabled individuals to conform to Medicaid cost-containment provisions of the State Budget, S.L. 2002-126, Section 10.11(a). 10 NCAC 50B .0311 is amended to adopt the Supplemental Security Income (SSI) methodology for counting the value of income producing property and property used to provide goods and services for personal use. Policy in effect prior to this change excluded the equity of all income producing property. It was an optional policy allowed under section 1902(2) of the Social Security Act. The change in the law requires that we follow SSI policy, which excludes up to \$6,000 in income producing property and property used to produce goods and services for personal use. 10 NCAC 50B .0312 is amended to sanction the transfer of tenancy-in-common interest in real property. Policy in effect prior to this change did not sanction the transfer of tenancy-in-common interest real property.

CHAPTER 30 - FOOD ASSISTANCE

SECTION .0200 – MANUAL

10 NCAC 30 .0217 INCOME EXCLUSIONS

Income exclusions are found in 7 CFR 273.9(c) and this provision is hereby adopted by reference under G.S. 150B-21.6 and does not apply to subsequent amendments and editions. In addition, the following income shall be excluded in determining eligibility and benefit level: Earned income for census employment and educational assistance, except scholarships offered by civic groups, institutions, or athletic scholarships. A copy of the CFR may be obtained by contacting the Government Printing Office, Superintendent of Documents, P. O. Box 37194, Pittsburgh, PA 15250-7954 or accessing the CFR online at www.access.gpo.gov/nara/cfr.

History Note: Authority G.S. 108A-25; 108A-53; 143B-153; 7 C.F.R. 273.9(c); 7 U.S.C. 2026(b)(1); P.L. 107-171; Temporary Rule Eff. March 28, 1990, for a Period of 180 Days to Expire on August 31, 1990; Eff. September 1, 1990; Temporary Amendment Eff. March 1, 2003.

10 NCAC 30 .0219 RESOURCE EXCLUSIONS

Income exclusions are found in 7 CFR 273.8(e) and this provision is hereby adopted by reference under G.S. 150B-21.6 and does not apply to subsequent amendments and editions. In addition to the exclusions found in federal regulations, the following resources shall be excluded in determining eligibility and benefit level: funds from heir property, burial plots/space, lifetime interest, remainder interest, and land or buildings not excluded as a homesite, income producing or for the sale by good faith effort. A copy of the CFR may be obtained by contacting the Government Printing Office, Superintendent of Documents, P. O. Box 37194, Pittsburgh, PA 15250-7954 or accessing the CFR online at www.access.gpo.gov/nara/cfr.

History Note: Authority G.S. 143B-153; P.L. 107-171; Temporary Adoption Eff. March 1, 2003.

Rule-making Agency: *DHHS – Division of Medical Assistance*

Rule Citation: *10 NCAC 50A .0201, .0602-.0603, .0605-.0608; 50B .0201-.0204, .0206-.0207, .0209, .0311-.0312*

Comment Procedures: *Comments from the public shall be directed to Kris M. Horton, Rule-making Coordinator, Division of Medical Assistance, 1985 Umstead Dr., 2405 Mail Service Center, Raleigh, NC 27699-2405 and fax (919) 733-6608.*

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50A - GENERAL PROGRAM ADMINISTRATION

SECTION .0200 – DEFINITIONS

10 NCAC 50A .0201 DEFINITIONS

TEMPORARY RULES

For purposes of this Chapter, the following definitions apply:

- (1) "M-AA" means a program of medical assistance to persons 65 years of age and older, and also means the assistance itself.
- (2) "M-AB" means a program of medical assistance to blind persons, and also means the assistance itself.
- (3) "M-AD" means a program of medical assistance to disabled persons less than 65 years of age, and also means the assistance itself.
- (4) "M-AF" means a program of medical assistance for families and children, and also means the assistance itself.
- (5) "M-IC" means a program of medical assistance for infants and children, and also means the assistance itself.
- (6) "M-PW" means a program of medical assistance for pregnant women, and also means the assistance itself.
- (7) "M-QB" means a program of medical assistance for qualified medicare beneficiaries described at 42 U.S.C. 1396d(p), and also means the assistance itself.
- (8) "AFDC" means a program of assistance for families with dependent children, and also means the assistance itself.
- (9) "AFDC-MA" has the same meaning as "M-AF".
- (10) "Adequate Notice" means a written notice to inform the client of intended action. The client must receive this notice no later than the effective date of the action.
- (11) "Advance Notice" means a written notice to inform the client at least 10 work days prior to terminating assistance, beginning or increasing a deductible, or beginning or increasing patient monthly liability.
- (12) "Agency" means the Division of Medical Assistance and the county departments of social services, unless separately identified.
- (13) "Appeal" means an oral or written request from a client for a hearing to review the action of a county department of social services or the disability decision when the client is dissatisfied with the decision in his case.
- (14) "Application" means a written request for assistance on a form prescribed by the state which is signed under penalty of perjury by a client or an individual authorized by the client to be his representative for establishing his eligibility for medical assistance.
- (15) "Authorization Period" means the period for which all conditions of eligibility have been established and for which the client is authorized to receive a Medicaid card and benefits.
- (16) "Award Letter" means a statement to an individual from a governmental or private agency indicating benefits for which he is eligible.
- (17) "BENDEX" means Beneficiary Data Exchange with the Social Security Administration for social security status and amount of benefits.
- (18) "Budget Unit" means all persons whose income and needs are considered in the determination of eligibility for Medicaid.
- (19) "Caretaker Relative" means a parent or a person in one of the following groups with whom a child lives:
 - (a) any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;
 - (b) stepfather, stepmother, stepbrother, and stepsister;
 - (c) persons who legally adopt a child, their parents as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;
 - (d) spouses of any persons named in the groups in (19) (a) - (c) of this Rule even after the marriage is terminated by death or divorce.
- (20) "Certification Period" means the months for which eligibility is being established.
- (21) "Client" means any applicant for or recipient of Medicaid, or someone who makes inquiries, is interviewed, or has been otherwise served or someone acting responsibly for the client in accordance with agency policy.
- (22) "Client Information" or "Client Record" means any information, including information stored in computer data banks or computer files relating to a client, which was received in connection with the performance of any function of the agency.
- (23) "Collateral" means a person or agency who can substantiate or verify information necessary to establish eligibility.
- (24) "Contiguous Property" means real property with boundaries joining the homesite of the client.
- (25) "Court Order" means any written order from a judge or a written document from a judicial official which explicitly directs the release of client information.
- (26) "Deductible" means the amount which the client or budget unit member must personally spend or incur for medical expenses before he can be authorized to receive a Medicaid card and services which may be billed to the Medicaid program.
- (27) "Delegated Representative" means a staff member designated by the director to carry out the responsibilities established by the rules in this Subchapter. Designation is implied when

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- the assigned duties of an employee require access to confidential information.
- (28) "Deprivation" means the lack of support or care from one or both parents (including adoptive parents) of a dependent child, as a result of the absence, incapacity, unemployment, or death of either parent.
- (29) "Director" means the head of the Division of Medical Assistance or the county department of social services.
- (30) "Disregard of Earned Income" means the procedure for exempting certain portions of earned income as a resource when determining the amount of payment.
- (31) "Documentary Evidence" means information or records which can be relied on to prove the client's statements of fact.
- (32) "Effective Date" means the date on which an action will take effect.
- (33) "Equity" means the tax value of a resource less the amount of debts, liens, or other encumbrances.
- (34) "Excluded Income" means money received by a member of the budget unit which is not counted in determining eligibility for assistance.
- (35) "Foster Care Resource" means any private home or facility licensed to provide full time care to children.
- (36) "Fraud" means an act in which a client makes false statements or withholds information willfully and knowingly with the intent to deceive, or both, and as a result obtains assistance for which he is not eligible.
- (37) "Full-Time Student" means a student so designated by the school in which he is enrolled.
- (38) "Good Cause" means an acceptable reason for failure to comply with a regulation.
- (39) "Grandfathered Status" means Medicaid eligibility based on the individual's status as a blind or disabled client or as an essential spouse of aged, blind, or disabled client in December, 1973.
- (40) "Greater Weight of Evidence" means evidence of such quality as to persuade an ordinary and prudent person of the truth or falsity of a statement.
- (41) "Guardian" means an individual, corporation, or disinterested public agent appointed by the clerk of superior court to replace an individual's authority to make decisions about his person, family, or property when the individual does not have adequate capacity to make such decisions and has been adjudicated incompetent. A guardian can be a guardian of the person, a guardian of the estate, or a general guardian which is guardian of both the person and the estate.
- (42) "HCT (Healthy Children and Teens)" means a program which provides health screenings and treatment for clients from birth through age 20.
- (43) "Incapacity" means a physical or mental defect, illness or impairment which substantially reduces or eliminates a persons' ability to support or care for an otherwise eligible child, and which is expected to last at least 30 days.
- (44) "Income" means money which is available to members of the budget unit for their needs.
- (45) "Income, Earned" means money received as a result of employment.
- (46) "Income, Gross" means total income before allowable deductions.
- (47) "Income, Net" means income after all allowable deductions.
- (48) "Income, Unearned" means money received from any source other than employment.
- (49) "Incompetent Adult" means an adult who lacks sufficient capacity to manage his own affairs or to make or communicate important decisions concerning his person, family, or property whether such lack of capacity is due to mental illness, mental retardation, epilepsy, cerebral palsy, autism, senility, disease, injury, or similar cause or condition.
- (50) "Inmate of a Public Institution" means a person who lives in an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control and which provides treatment or services, food and shelter.
- (51) "Institutionalized Spouse" means an individual who:
(a) is in a medical institution or nursing facility or who is described under 42 U.S.C. 1396a (a) (10) (A) (ii) (VD); and (b) is married to an individual who is not in a medical institution or nursing facility;
but does not include any such individual who is not likely to meet the requirements of Subparagraph (a) for at least 30 consecutive days.
- (52) "Life Estate Interest" means the right to use property and receive income from the property for the remainder of one's life.
- (53) "Long Term Care" means care in:
(a) a general or specialty hospital in excess of 30 continuous days;
(b) a state mental hospital;
(c) a skilled nursing facility; or
(d) an intermediate care facility.
- (54) "Patient Monthly Liability" means the amount of a long term care patient's income that must be paid towards his cost of care.
- (55) "Remainder Interest" means ownership interest in property which will be inherited in full or jointly with other remainder interest holders at a life interest holder's death.

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| <p>(56) "Representative" means a person who is authorized by the client to act on behalf of the client.</p> <p>(57) "Reserve" means assets owned by members of the budget unit and which have a market value.</p> <p>(58) "Residence" means the county where a client lives with intent to remain for an indefinite time as governed by Rule .0303 of Subchapter 50B. Also, an individual under age 21 has the residence of the person with whom he resides unless he is in the custody of a social services agency, in which case he is a resident of the county of the custodial agency.</p> <p>(59) "Revocable Trust" means funds held in trust which are available for the client's use.</p> <p>(60) "RSDI (Retirement, Survivors, Disability Insurance)" means social security benefits.</p> <p>(61) "SDX" means State Data Exchange with the Social Security Administration for the purpose of providing a listing of all persons receiving supplemental security income, their current payment status and amount of SSI and other sources of income.</p> <p>(62) "SSI" means Supplemental Security Income - A federal assistance payment for aged, blind and disabled persons administered by the Social Security Administration.</p> <p>(63) "Stepparent" means a person legally married to the parent of a child in the Medicaid budget unit.</p> <p>(64) "Timely Notice" means the same as "Advance Notice".</p> <p>(65) "Time Standard" means the requirement to process an application within 45 or 90 days from the date of application.</p> <p>(66) "Verification" means the confirmation of facts and information used in determining eligibility.</p> | <p>(3) The certification periods of financially responsible persons need to be adjusted to coincide; or</p> <p>(4) Information received from any source is verified and is found to change the amount of the recipient's deductible, patient liability, authorized period or otherwise affect the recipient's eligibility status; or</p> <p>(5) Additional medical bills or verified medical expenses establish an earlier Medicaid effective date; or</p> <p>(6) The agency made an administrative error due to:</p> <p style="margin-left: 20px;">(A) Assistance was terminated or denied in error; or</p> <p style="margin-left: 20px;">(B) Failure to act properly on information received; or</p> <p style="margin-left: 20px;">(C) Incorrect determination of the authorization period, Medicaid effective date, or erroneous data entry; or</p> <p>(7) Monitoring under application processing requirements determines an error due to assistance denied in error or county failure to act properly on information received. Monitors or other state staff may find errors due to improperly treated denials, withdrawals, inquiries and for discouragement; or</p> <p>(8) Any other action deemed by the Medicaid Eligibility Section to be appropriate and with good cause.</p> <p>(b) Corrections in an applicant's or recipient's case shall be made by the Division of Medical Assistance when:</p> <p style="margin-left: 20px;">(1) Verified information is received showing that a terminated case has errors in the Medicaid eligibility segments, Buy-In effective date, eligible case members, CAP or HMO indicators and effective dates or other data that is causing valid claims to deny; or</p> <p style="margin-left: 20px;">(2) The county department of social services refuses to take required corrective actions; or</p> <p style="margin-left: 20px;">(3) An audit report shows verified errors in the Medicaid eligibility history or recipient identification number.</p> |
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History Note: Authority G.S. 108A-25(b); 108A-54; P.L. 99-509; P.L. 100-360; P.L. 100-485; 42 C.F.R. 431.211; 42 C.F.R. 431.214; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002; Eff. September 1, 1984; Amended Eff. August 1, 1990; Temporary Amendment Eff. March 1, 2003.

History Note: Authority G.S. 108A-54; 42 C.F.R. 431.246; 42 C.F.R. 435.904; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002; Eff. June 1, 1990; Temporary Amendment Eff. March 1, 2003.

SECTION .0600 - CORRECTIVE ACTIONS IN MEDICAID CASES

10 NCAC 50A .0602 CORRECTIVE ACTIONS

- (a) Corrections in an applicant's or recipient's case shall be made by the county department of social services when:
- (1) An individual was discouraged from filing an application; or
 - (2) An appeal or court decision overturns an earlier adverse decision; or

10 NCAC 50A .0603 TIME LIMITS FOR CORRECTIONS

- (a) The county department of social services and Division of Medical Assistance shall make necessary corrections promptly, but within 30 days after discovery of the need for action unless good cause exists for failure to act timely.
- (b) Good cause is limited to:
- (1) Need to verify other conditions of eligibility before authorizing eligibility; or

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- (2) The county department of social services is unable to locate the applicant or recipient; or
 - (3) The county department of social services disagrees with a decision requiring corrective action and has requested administrative review by the Medicaid Eligibility Section;
- (c) To receive state and federal financial participation in any benefits authorized retroactively by corrective actions, the effective date of the correction must correspond with the date assistance would have been effective had the decision not been adverse or had the error not occurred, but may be no earlier than the following dates:
- (1) Retroactive to the date ordered by the appeal or court decision if all eligibility conditions are met, including any legal retroactive coverage period associated with the adverse action; or
 - (2) If a reported change is beneficial to the recipient effective:
 - (A) The first of the calendar month following adequate notice; or
 - (B) Retroactive to the beginning of the current certification period; or
 - (C) Retroactive to the month within the current certification period in which the change occurred; or
 - (D) Retroactive to the original date of application for denials based on adoption of Title II or XVI decisions that have subsequently been reversed; or
 - (3) The earliest date in the current certification period on which additional medical expenses are sufficient to meet the case deductible; or
 - (4) For administrative errors up to 12 months immediately preceding the month the error was discovered; or
 - (5) Retroactive to the date required for corrective action due to errors cited from monitoring under application processing standards.
- (d) If the change is adverse to the recipient, it must be effective with the first calendar month "following" expiration of the ten work day advance notice period.

History Note: Authority G.S. 108A-54; 42 C.F.R. 431.246; 42 C.F.R. 431.250; 42 C.F.R. 435.904; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002; Eff. June 1, 1990; Temporary Amendment Eff. March 1, 2003.

10 NCAC 50A .0605 MONITORING THRESHOLDS AND CORRECTIVE ACTION

- (a) For all county departments of social services and the Disability Determination Section (DDS), the monitoring threshold for denials, withdrawals, inquires and discouragement is 80%.
- (b) If the agency falls below the 80% threshold, the agency must analyze why it fell below 80% and implement a corrective action plan if determined necessary by the Medicaid Program Representative.

- (c) The agency or DDS may dispute monitoring findings within 10 workdays of receipt of findings.
- (d) The agency must take corrective action to reopen cited cases within 30 calendar days of the final monitoring results.

History Note: Authority G.S. 108A-54; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002; Temporary Adoption Eff. March 1, 2003.

10 NCAC 50A .0606 TIMELINESS

- (a) Each county department of social services and disability determination section (DDS) shall be expected to process applications as follows:
 - (1) The average processing time (APT) standard for the county department of social services is 90 days for MAD and 45 days for all other aid/program categories.
 - (2) APT standard for DDS is 70 days.
 - (3) The percentage processed timely (PPT) standard for county departments of social services: Level I counties must process 85% of applications within the 45/90 day time standard. Level II and III counties must process 90% of applications within the 45/90 day time standard.
 - (4) PPT standard for DDS: DDS must render a decision within 70 days on 85% of cases for Level I counties and 90% of cases for Level II and III counties.
- (b) The county will analyze the reason for failure, document findings and work with the Medicaid Program Representative to achieve corrective action.
- (c) Failure to meet these time standards on the Adjusted Application Report Card may result in corrective action to alleviate problems as outlined in Rules 50A .0607 and .0608 of this Section.

History Note: Authority G.S. 108A-54; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002; Temporary Adoption Eff. March 1, 2003.

10 NCAC 50A .0607 LOCAL CORRECTIVE ACTION TEAM

- (a) A Local Corrective Action Team may be convened when the county department of social services (DSS) is out of compliance with APT or PPT processing thresholds in any category for three consecutive months, or, five months out of any 12 consecutive months.
- (b) A Local Corrective Action Team will not be held when:
 - (1) All failures are attributable to DDS; or
 - (2) It is determined by DMA Recipient and Provider Services that the reasons for non-compliance have been or are being corrected; or
 - (3) Budgetary constraints do not allow travel for the purpose of convening a corrective action team. Conference calls will be considered.

(c) The Local Corrective Action Team may design any remedy reasonable and necessary to bring the DSS into compliance with application processing requirements.

(d) The Team shall establish a corrective action plan within 40 calendar days of notice that a local corrective action team was required, and a date for compliance with the plan shall be set. Report card compliance must be achieved within three months after the date the compliance plan was required to be established.

(e) Failure to take corrective action, or meet compliance thresholds shall result in a referral to a State Corrective Action Team, unless the State Corrective Action Team grants an extension, not to exceed three months.

History Note: Authority G.S. 108A-54; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002; Temporary Adoption Eff. March 1, 2003.

10 NCAC 50A .0608 STATE CORRECTIVE ACTION TEAM

(a) A State Corrective Action Team will be convened by the Chairperson within 10 days when:

- (1) The county department of social services (DSS) has failed to meet the compliance thresholds by the date established by the local corrective action team; or
- (2) A local corrective action team requests an extension of time, not to exceed three months, to meet the compliance thresholds; or
- (3) DDS fails to meet its compliance thresholds for three consecutive or five out of 12 consecutive months.

(b) The State Corrective Action Team has broad powers and may design any remedy reasonable and necessary to bring the DSS or DDS into compliance with application processing requirements. This includes but is not limited to employing additional staff, altering office procedures (such procedures must be consistent with federal and state regulations, laws and Departmental rules and policies), purchasing office equipment, retaining private consultants, reopening of cases, ordering retroactive relief to applicants harmed by violation of application processing requirements, and ordering the State to assist in the operation of a county department.

(c) The State Corrective Action Team shall establish a corrective action plan for the DSS or DDS within 45 calendar days of convening. A date for compliance shall be established. For report card issues, compliance must be achieved within three months after the date the team was convened.

(d) Failure to achieve compliance may result in a request to the Local Government Commission to assess and determine the capacity of the county to expend resources to bring the county into compliance. The Commission may take enforcement action pursuant to G.S. 159 as appropriate. The various state agencies shall be available to assist in this review.

History Note: Authority G.S. 108A-54; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002; Temporary Adoption Eff. March 1, 2003.

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0200 - APPLICATION PROCESS

10 NCAC 50B .0201 ACCEPTANCE OF APPLICATION

(a) A client shall be allowed to apply without delay. Without delay is the same day the client appears at the county department of social services expressing a financial or medical need.

(b) The county department of social services shall not act to discourage any individual from applying for Medicaid. It shall be considered discouragement if any employee of the county department of social services:

- (1) requires or suggests the individual wait to apply until he applies for other benefits or until an application for other benefits has been approved or denied; or
- (2) incorrectly states or suggests the individual is ineligible for Medicaid; or
- (3) gives incorrect or incomplete information about Medicaid programs; or
- (4) Suggests that the individual make an appointment to apply when he appears at the agency; or
- (5) Suggests that the individual complete a mail-in application when he appears at the agency; or
- (6) Fails to explain the date of application when he appears at the agency and requests a mail-in application; or
- (7) Fails to explain and offer Medicaid to individuals requesting Work First Employment Services.

(c) The client shall be informed verbally and in writing, that:

- (1) he can apply without delay;
- (2) a decision shall be made concerning his eligibility within 45 calendar days from the date of application for Medicaid, except for M-AD. For M-AD the application processing standard shall be 90 calendar days from the date of application; and
- (3) he shall receive a written decision concerning his eligibility.

(d) The client shall apply in his county of residence.

(e) The date of the application shall be:

- (1) The date the client or his representative signs the state prescribed application form for Medicaid, including Work First, under penalty of perjury at the county department of social services; or
- (2) The date a signed complete state prescribed mail-in application form is received by the county department of social services in the county of residence. Complete is defined as information is legible, signed, submitted to correct county of residence, and has identifying information for the person applying, including but not limited to name, mailing address, date of birth and gender.

(f) If an individual requests assistance by mail, the letter shall be considered a request for information. Within three workdays following receipt of the request, the county agency shall mail follow-up information to the individual. The county agency shall advise the individual to come to the agency to apply and be interviewed, or if he is unable to come in person, to contact the agency so other arrangements can be made to take his application.

(g) If an individual requests assistance by telephone, he shall be advised to come to the county agency to sign an application and be interviewed; or, if he is unable to come to the agency in person other arrangements shall be made to take his application.

(h) If an individual sends in a complete state prescribed mail-in application form, the county department of social services shall use this application to determine eligibility for Medicaid. A mail-in application form may be picked up at a local county department of social services or other outstation locations as determined by the State and county.

(i) An individual or his representative must request a determination for retroactive SSI Medicaid no later than 60 days from the date of the SSI Medicaid disposition notice or 90 days if good cause is established. Good cause exists when:

- (1) the applicant does not receive the SSI Medicaid notice;
- (2) the applicant or his representative dies;
- (3) the applicant is incapacitated, incompetent, or unconscious and there is no representative acting on his behalf; or
- (4) the applicant or spouse, child, parent, or representative of applicant is hospitalized for an extended period of time.

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.906; 42 C.F.R. 435.907; 42 C.F.R. 435.911; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. January 1, 1995; April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003.

10 NCAC 50B .0202 FACE-TO-FACE INTERVIEW

(a) The county department of social services shall conduct a face-to-face interview with the client or his representative who appears at the agency requesting financial or medical assistance. The client may have any person or persons of his choice participate in the interview. During the interview, the Income Maintenance Caseworker shall explain the application process, the client's rights and responsibilities, the programs of public assistance and the eligibility conditions.

(b) The applicant shall be advised of his right to apply in more than one program category for which he qualifies and the advantages and disadvantages of the choices shall be explained.

(c) The client shall be informed of the following:

- (1) The client shall be told what information he shall provide, and what third party sources the agency shall contact to check the information. Third party sources are entities, other than the client, that can provide verification of information to determine eligibility.

- (2) The client has the right to:
 - (A) Receive assistance if found eligible;
 - (B) Be protected against discrimination on the grounds of race, creed, or national origin by Title VI of the Civil Rights Act of 1964. He may appeal such discrimination;
 - (C) Have any information given to the agency kept in confidence;
 - (D) Appeal, if he believes the agency's action to deny, change, or terminate assistance is incorrect, or his request is not acted on with reasonable promptness;
 - (E) Reapply at any time, if found ineligible;
 - (F) Withdraw from the program at any time;
 - (G) Request the agency's help in obtaining third party information which he is responsible to provide;
 - (H) Be informed of all information he must provide and all alternative sources of the information.

(3) The client shall be responsible for the following:

- (A) Provide the county department, state and federal officials, the necessary sources from which to locate and obtain information needed to determine eligibility;
- (B) Report to the county department of social services any change in situation that may affect eligibility within 10 calendar days after it happens. The meaning of fraud shall be explained. The applicant shall be informed that he may be suspected of fraud if he fails to report a change in situation and that in such situations, he may have to repay assistance received in error and that he may also be tried by the courts for fraud;
- (C) Inform the county department of social services of any persons or organization against whom he has a right to recovery. When he accepts medical assistance, the applicant assigns his rights to third party insurance benefits to the state. He shall be informed that it is a misdemeanor to fail to disclose the identity of any person or organization against whom he has a right to recovery;
- (D) Immediately report to the county department the receipt of an I.D. card which he knows to be erroneous. If he does not report such and uses the I.D. card, he may be required to repay any medical expenses paid in error.

History Note: Authority G.S. 108A-25(b); 108A-57; 42 C.F.R. 435.908; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; March 1, 1986; Temporary Amendment Eff. August 22, 1996; Amended Eff. August 1, 1998; Temporary Amendment Eff. March 1, 2003.

10 NCAC 50B .0203 APPLICATION PROCESSING STANDARDS

(a) The county department of social services shall comply with the following standards in processing applications:

- (1) A decision on an individual's eligibility for Medicaid shall be made within 45 calendar days from the date of application for Medicaid except for applications in which a disability determination has already been made or is needed. For those applications, a decision on an individual's eligibility shall be made within 90 days from the date of application. There may be unusual circumstances in which the decision on an application cannot be made in the specified timeframes. These circumstances may include when the applicant delays or fails to take a required action or when there is an emergency beyond the agency's control;
- (2) Only require information or verification necessary to establish eligibility for assistance;
- (3) Make at least two requests for all necessary information from the applicant or third party;
- (4) Allow at least 12 calendar days between the initial request and a follow-up request and at least 12 calendar days between the follow-up request and denial of the application;
- (5) Inform the client in writing, and verbally when possible, of the right to request help in obtaining information requested from the client. The county department of social services shall not discourage any client from requesting such help;
- (6) An application may pend up to 6 months for verification that the deductible has been met or disability established;
- (7) When a hearing decision reverses the decision of the county department of social services on an application, the application shall be reopened within five working days from the date the final appeal decision is received by the county department of social services or within five working days after the date the last piece of information is received by the county department of social services.

(b) The county department of social services shall obtain verification other than the applicant's statement for the following:

- (1) Any medical verification;

- (2) Proof a deductible has been met;
- (3) Legal alien status;
- (4) Proof of the rebuttal value for resources and of the rebuttal of intent to transfer resources to become eligible for Medicaid;
- (5) Proof of designation of liquid assets for burial;
- (6) Proof of legally binding agreement limiting resource availability;
- (7) Proof of valid social security number or application for a social security number;
- (8) Proof of reserve reduction when resources exceed the allowable reserve limit for adult applicants if the stated reserve exceeds one thousand two hundred dollars (\$1,200) and the applicant has taken no steps to obtain the missing reserve verification;
- (9) Proof of earned and unearned income, including deductions, exclusions, and operational expenses; and
- (10) Any other information for which the applicant does not know or cannot give an estimate.

(c) The county department of social services is responsible for verification of an item of information when:

- (1) A fee must be paid to obtain the verification;
- (2) It is available within the agency;
- (3) The county department of social services is required by federal law to assist or to use interagency or intra-agency verification aids;
- (4) The applicant requests assistance; and
- (5) The applicant is physically, mentally, or otherwise incapable of obtaining the information, or is unable to speak English or read and write, or is housebound, hospitalized, or institutionalized, and a representative does not accept responsibility for obtaining the information.

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.911; Alexander v. Flaherty, V.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003.

10 NCAC 50B .0204 EFFECTIVE DATE OF ASSISTANCE

(a) The first month of Medicaid coverage shall be:

- (1) The month of application, or for SSI recipients, the month of application for SSI; or
- (2) As much as three months prior to the month of application when the client received medical services covered by the program and was eligible during the month or months of medical need; or
- (3) If the client applies prior to meeting a non-financial requirement, Medicaid shall begin no earlier than the calendar month in which all non-financial requirements are met.

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(b) Assistance shall be authorized beginning on the first day of the month except when:

- (1) The client's income exceeds the income level and he must spenddown the excess income for medical care. The client shall be authorized on the day his incurred medical care costs equal the amount of the excess income.
- (2) For groups identified in Rule 50B .0311, Sub-Item (3)(a), the client shall be authorized on the day the resources are reduced, or incurred medical care costs equal the amount of the excess income, whichever occurs later.

(c) Medicaid coverage shall end on the last day of the last month of eligibility except for those individuals eligible for emergency conditions only as described in Rule .0302 of this Subchapter. The last month of eligibility shall be:

- (1) The month in which timely notice of termination expires; or
- (2) The month in which adequate notice of termination expires.

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.914; 42 C.F.R. 435.919; *Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. January 1, 1995; October 1, 1991; August 1, 1990; Temporary Amendment Eff. March 1, 2003.*

10 NCAC 50B .0206 DISPOSITION

(a) Disposition of the application shall complete the application process and shall consist of one of the following actions:

- (1) Approval of assistance;
- (2) Denial of assistance; (3) Denial of assistance for ineligible month or months of the certification period and approval for eligible month or months of the certification period; or
- (4) Voluntary withdrawal of the application by the client. The Income Maintenance Caseworker shall not suggest to the client that he withdraw his application and shall explain alternatives to withdrawal. The Income Maintenance Caseworker shall explain the client's right to reapply at anytime.

(b) The county department of social services shall not deny an application prior to 45 days, or for M-AD, 90 days, when:

- (1) It is established the applicant will not be able to meet the deductible;
- (2) The applicant cannot be located;
- (3) It is established the applicant is ineligible under any Medicaid program;
- (4) The applicant refuses or fails to cooperate or fails to provide information to establish eligibility; or
- (5) An application was taken but the applicant was not interviewed and two interview appointments were scheduled and the applicant failed to keep the appointments.

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.912; 42 C.F.R. 435.913; *Alexander v. Flaherty, U.S.D.C., W.D.N.C.,*

File No. C-C-74-183, Consent Order filed 15 December 1989; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003.

10 NCAC 50B .0207 REFERRALS AT A FACE-TO-FACE INTERVIEW

For all Medicaid applicants who have a face-to-face interview at the county department of social services, the Income Maintenance Caseworker shall explain and make referrals for:

- (1) Health Check;
- (2) Family planning services;
- (3) Food stamps;
- (4) Governmental benefits including RSDI, SSI, VA;
- (5) Women, Infants and Children Program (WIC). (WIC);
- (6) Carolina ACCESS;
- (7) Medicaid Transportation;
- (8) Life Line/Link-up;
- (9) Health Insurance Premium Payment program; and
- (10) Voter Registration.

History Note: Authority G.S. 108A-54; 42 C.F.R. 441.56; 42 U.S.C. 1396a(a); *Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. January 1, 1995; August 1, 1990; Temporary Amendment Eff. March 1, 2003.*

10 NCAC 50B .0209 HOURS FOR ACCEPTING FINANCIAL AND MEDICAL ASSISTANCE APPLICATIONS

The county department of social services must maintain the same number of operating hours as in February of 2002. Provisions must be made for acceptance of financial and medical assistance applications if the agency elects to close for lunch or for other reasons during the week.

History Note: Authority G.S. 108A-54; *Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Temporary Adoption Eff. March 1, 2003.*

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

10 NCAC 50B .0311 RESERVE

North Carolina has contracted with the Social Security Administration under Section 1634 of the Social Security Act to provide Medicaid to all SSI recipients. Resource eligibility for individuals under any Aged, Blind, and Disabled coverage group is determined based on standards and methodologies in Title XVI of the Social Security Act except as specified in Items (4) and (5) of this Rule. Applicants for and recipients of Medicaid shall use their own resources to meet their needs for living costs and medical care to the extent that such resources can be made available. Certain resources shall be protected to meet specific needs such as burial and transportation and a limited amount of resources shall be protected for emergencies.

- (1) The value of resources currently available to any budget unit member shall be considered in determining financial eligibility. A resource shall be considered available when it is actually available and when the budget unit member has a legal interest in the resource and he, or someone acting in his behalf, can take any necessary action to make it available.
- (a) Resources shall be excluded in determining financial eligibility when the budget unit member having a legal interest in the resources is incompetent unless:
- (i) A guardian of the estate, a general guardian or an interim guardian has been lawfully appointed and is able to act on behalf of his ward in North Carolina and in any state in which such resources are located; or
- (ii) A durable power of attorney, valid in North Carolina and in any state in which such resource is located, has been granted to a person who is authorized and able to exercise such power.
- (b) When there is a guardian, an interim guardian, or a person holding a valid, durable power of attorney for a budget unit member, but such person is unable, fails, or refuses to act promptly to make the resources actually available to meet the needs of the budget unit member, a referral shall be made to the county department of social services for a determination of whether the guardian or attorney in fact is acting in the best interests of the member and if not, the county department of social services shall contact the clerk of court for intervention. The resources shall be excluded in determining financial eligibility pending action by the clerk of court.
- (c) When a Medicaid application is filed on behalf of an individual who:
- (i) is alleged to be mentally incompetent,
- (ii) has or may have a legal interest in a resource that affects the individual's eligibility, and
- (iii) does not have a representative with legal authority to use or dispose of the individual's resources, the individual's representative or family member shall be instructed to file within 30 calendar days a judicial proceeding under G.S. 35A to declare the individual incompetent and appoint a guardian. If the representative or family member either fails to file such a proceeding within 30 calendar days or fails to timely conclude the proceeding, a referral shall be made to the services unit of the county department of social services for guardianship services. If the allegation of incompetence which has lasted, or is expected to last 30 consecutive days or more, or until the individual's death, is supported by competent evidence, as specified in Sub-item (1)(f) of this Rule, the resources shall be excluded beginning with the date that such evidence indicates that he became incompetent, except as provided in Sub-items (1)(d) or (1)(e) of this Rule.
- (d) The budget unit member's resources shall be counted in determining his eligibility for Medicaid beginning the first day of the month following the month a guardian of the estate, general guardian or interim guardian is appointed, provided that after the appointment, property which cannot be disposed of or used except by order of the court shall continue to be excluded until completion of the applicable procedures for disposition specified in G.S. 1 or G.S. 35A.
- (e) When the court rules that the budget unit member is competent or no ruling is made because of the death or recovery of the member, his resources shall be counted except for periods of time for which it can be established by competent evidence specified in Sub-item (1)(f) of this Rule, that the member was in fact incompetent for at least 30 consecutive days, or until his death. Any such showing of incompetence is subject to rebuttal by competent evidence as specified in Sub-item (1)(f) of this Rule.
- (f) For purposes of this Rule, competent evidence is limited to the written statement or testimony at a

- competency hearing of a physician, psychologist, nurse, or social worker with knowledge of the condition of the individual, the basis of that knowledge, the beginning date of incompetence, the reason the individual is incompetent, and if no longer incompetent, when the individual recovered competence.
- (2) The limitation of resources held for reserve for the budget unit shall be as follows:
- (a) for Family and Children's related categorically and medically needy cases, three thousand dollars (\$3,000.00) per budget unit;
- (b) for aged, blind, and disabled cases, two thousand dollars (\$2000.00) for a budget unit of one and three thousand dollars (\$3000.00) for a budget unit of two.
- (3) If the value of countable resources of the budget unit exceeds the reserve allowance for the unit, the case shall be ineligible:
- (a) For Family and Children's related cases and aged, blind or disabled cases protected by grandfathered provisions, and medically needy cases not protected by grandfathered provision, eligibility shall begin on the day countable resources are reduced to allowable limits or excess income is spent down, whichever occurs later;
- (b) For categorically needy aged, blind or disabled cases not protected by grandfathered provisions, eligibility shall begin no earlier than the month countable resources are reduced to allowable limits as of the first moment of the first day of the month.
- (4) Resources counted in the determination of financial eligibility for categorically needy aged, blind and disabled cases, and Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, Qualifying Individual and Qualified Disabled Working Individual cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:
- (a) The value of personal effects and household goods are not counted.
- (b) Value of tenancy in common interest in real property is not counted.
- (c) Value of life estate interest in real property is not counted.
- (d) Value of burial plots are not counted.
- (e) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) is not counted.
- (5) Resources counted in the determination of financial eligibility for medically needy aged, blind and disabled cases is based on resource standards and methodologies in Title XVI of the Social Security Act except for the following methodologies:
- (a) The value of personal effects and household goods are not counted.
- (b) Value of tenancy in common interest in real property is not counted.
- (c) Value of life estate interest in real property is not counted.
- (d) Individuals with resources in excess of the resource limit at the first moment of the month may become eligible at the point that resources are reduced to the allowable limit.
- (e) Value of burial plots are not counted.
- (f) The cash value of life insurance when the total face value of all cash value bearing life insurance policies does not exceed ten thousand dollars (\$10,000.00) is not counted.
- (6) Resources counted in the determination of financial eligibility for categorically needy Family and Children's related cases are:
- (a) Cash on hand;
- (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
- (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified;
- (d) The portion of lump sum payments remaining after the month of receipt;
- (e) Cash value of life insurance policies owned by the budget unit;
- (f) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
- (g) Patient accounts in long term care facilities;
- (h) Equity in non-essential personal property limited to:
- (i) Mobile homes not used as home,
- (ii) Boats, boat trailers and boat motors,
- (iii) Campers,
- (iv) Farm and business equipment;
- (v) Equity in vehicles in excess of one motor vehicle per adult;

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- (7) Resources counted in the determination of financial eligibility for medically needy Family and Children's related cases are:
- (a) Cash on hand;
 - (b) The balance of savings accounts, including savings of a student saving his earnings for school expenses;
 - (c) The balance of checking accounts less the current monthly income which had been deposited to meet the budget unit's monthly needs when reserve was verified or lump sum income from self-employment deposited to pay annual expenses;
 - (d) Cash value of life insurance policies when the total face value of all policies that accrue cash value exceeds one thousand five hundred dollars (\$1,500.00);
 - (e) Stocks, bonds, mutual fund shares, certificates of deposit and other liquid assets;
 - (f) Patient accounts in long term care facilities;
 - (g) Equity in non-essential, non-income producing personal property limited to:
 - (i) Mobile home not used as home,
 - (ii) Boats, boat trailers and boat motors,
 - (iii) Campers,
 - (iv) Farm and business equipment,
 - (v) Equity in motor vehicles in excess of one vehicle per adult if not income-producing.

In accordance with 42 U.S.C. 1396p(c), an individual who transfers resources and receives compensation that is less than the fair market value may be ineligible to receive nursing facility services.

- (1) As provided for by P.L. 100-360, Section 303(g) amended by P.L. 100-485, Section 608(d)(16)(D), the provisions of 42 U.S.C. 1396p(c) shall be effective for all transfers of resources, including transfers of tenancy-in-common interest in real property, except transfers between spouses, occurring on or after July 1, 1988. The provisions of 42 U.S.C. 1396p(c) shall be effective for transfers between spouses, occurring on or after October 1, 1989.
- (2) As allowed under 42 U.S.C. 1396p(c)(2)(D), the provisions of 42 U.S.C. 1396p(c) for ineligibility for nursing services due to transfer of resources shall not be applied:
 - (a) To individuals who transferred resources after July 1, 1988 and before March 15, 1989 and were found eligible prior to March 15, 1989;
 - (b) When it is determined by the agency's judgment that the applicant or recipient is a victim of fraud and did not take the action with the intent of becoming eligible for Medicaid.

History Note: Authority G.S. 108A-54; 108A-58; P.L. 100-360; P.L. 100-485; 42 U.S.C. 1396p(c); 42 C.F.R. 435.121; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435.845; S.L. 2002-126; Eff. September 1, 1984; Amended Eff. December 1, 1991; August 1, 1990; Temporary Amendment Eff. March 1, 2003.

History Note: Authority G.S. 108A-54; 108A-55; 108A-58; 42 U.S.C. 703, 704 1396; 42 C.F.R. 435.121; 42 C.F.R. 435.210; 42 C.F.R. 435.711; 42 C.F.R. 435.712; 42 C.F.R. 435.734; 42 C.F.R. 435.823; 42 C.F.R. 435.840; 42 C.F.R. 435.841; 42 C.F.R. 435-845; 42 C.F.R. 445.850; 42 C.F.R. 435.851; 45 C.F.R. 233.20; 45 C.F.R. 233.51; S.L. 2002-1126; Eff. September 1, 1984; Filed as a Temporary Amendment Eff. September 1, 1985, for a period of 92 days to expire on December 1, 1985; Amended Eff. January 1, 1995; November 1, 1994; September 1, 1993; March 1, 1993; Temporary Amendment Eff. September 13, 1999; Temporary Amendment Expired June 27, 2000; Temporary Amendment Eff. September 12, 2000; Amended Eff. March 19, 2001; Temporary Amendment Eff. April 16, 2001; Amended Eff. August 1, 2002; Temporary Amendment Eff. March 1, 2003.

10 NCAC 50B .0312 TRANSFER OF RESOURCES

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *Environmental Management Commission*

Rule Citation: *15A NCAC 02D .1205*

Effective Date: *March 1, 2003*

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

Authority for the rulemaking: *G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5),(10); S.L. 2002, c.24, s.2*

Reason for Proposed Action: *Current rule has a final compliance date of March 1, 2003. Session Law 2002, c. 24, s. 2 requires the Environmental Management Commission to change final compliance date to December 1, 2004 or later.*

Comment Procedures: *Comments from the public shall be directed to Thomas Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-2641, phone (919) 733-1489, fax (919) 715-7476, and email thom.allen@ncmail.net.*

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

15A NCAC 02D .1205 MUNICIPAL WASTE COMBUSTORS

(a) Applicability. This Rule applies to:

- (1) Class I municipal waste combustors, as defined in Rule .1202 of this Section; and
- (2) Large municipal waste combustors, as defined in Rule .1202 of this Section.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51b and 40 CFR 60.1940 (except administration means the Director of the Division of Air Quality) shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to any municipal waste combustor subject to the requirements of this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (13) or (14) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
- (2) Particulate Matter. Emissions of particulate matter from each municipal waste combustor shall not exceed 27 milligrams per dry standard cubic meter corrected to seven percent oxygen.
- (3) Visible Emissions. The emission limit for opacity from any municipal waste combustor shall not exceed 10 percent (average of 30 6-minute averages).
- (4) Sulfur Dioxide.
 - (A) Emissions of sulfur dioxide from each class I municipal waste combustor shall be reduced by at least 75 percent by weight or volume of potential sulfur dioxide emissions or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily block geometric average concentration percent reduction.

(B) Emissions of sulfur dioxide from each large municipal waste combustor shall be:

- (i) reduced by at least 75 percent by weight or volume, or to no more than 31 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2000. Compliance with this emission limit is based on a 24-hour daily geometric mean; and
- (ii) reduced by at least 75 percent by weight or volume, or to no more than 29 parts per million by volume corrected to seven percent oxygen (dry basis), whichever is less stringent, by August 1, 2002. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(5) Nitrogen Oxide.

- (A) Emissions of nitrogen oxide from each class I municipal waste combustor shall not exceed the emission limits in Table 3 40 CFR 60, Subpart BBBB.
- (B) Emissions of nitrogen oxide from each large municipal waste combustor shall not exceed the emission limits in Table 1 of Paragraph (d) of 40 CFR 60.33b. Nitrogen oxide emissions averaging is allowed as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(v).
- (C) In addition to the requirements of Part (B) of this Subparagraph, emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 180 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002. If nitrogen oxide emissions averaging is used as specified in 40 CFR 60.33b(d)(1)(i) through (d)(1)(V), emissions of nitrogen oxide from fluidized bed combustors located at a large municipal waste combustor shall not exceed 165 parts per million by volume, corrected to seven percent oxygen, by August 1, 2002.

(6) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this

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

mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all incinerators at a facility subject to this Rule:

- (i) arsenic and its compounds
2.3x10⁻⁷
- (ii) beryllium and its compounds
4.1x10⁻⁶
- (iii) cadmium and its compounds
5.5x10⁻⁶
- (iv) chromium (VI) and its compounds
8.3x10⁻⁸

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

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

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

(d) Operational Standards.

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

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

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

- (i) table 3 of 40 CFR 60.34b(a) for large municipal waste combustors. The municipal waste combustor technology named in this table is defined in 40 CFR 60.51b; and
- (ii) table 5 of 40 CFR 60 Subpart BBBB. The municipal waste combustor

technology named in this table is defined in 40 CFR 60.1940.

(B) The load level shall not exceed 110 percent of the maximum demonstrated municipal waste combustor unit load (four-hour block average).

(C) The temperature at which the combustor operates measured at the particulate matter control device inlet shall not exceed 63 degrees F above the maximum demonstrated particulate matter control device temperature (four-hour block average).

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

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

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

(3) Except during start-up where the procedure has been approved according to Rule .0535(g)

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

- (4) The operational standards of this Paragraph apply at all times except during periods of municipal waste combustor startup, shutdown, or malfunction that last no more than:
- (A) three hours for Class I combustors; or
 - (B) three hours except as specified in 40 CFR 60.58b9(a)(1)(iii) for large municipal waste combustors.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The owner or operator of a municipal waste combustor shall do compliance and performance testing according to 40 CFR 60.58b.
- (3) For large municipal waste combustors that achieve a dioxin and furan emission level less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to seven percent oxygen, the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.58b(g)(5)(iii). For class I municipal waste combustors the performance testing shall be performed according to the testing schedule specified in 40 CFR 60.1785 to demonstrate compliance with the applicable emission standards in Paragraph (c) of this Rule.
- (4) The Director may require the owner or operator of any incinerator subject to this Rule to test his incinerator to demonstrate compliance with the emission standards in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator that has installed air pollution abatement

equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

- (3) The owner or operator of a municipal waste combustor shall:
 - (A) install, calibrate, operate, and maintain, for each municipal waste combustor, continuous emission monitors to determine the following:
 - (i) opacity according to 40 CFR 60.58b(c) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
 - (ii) sulfur dioxide according to 40 CFR 60.58b(e) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
 - (iii) nitrogen oxides according to 40 CFR 60.58b(h) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors;
 - (iv) oxygen (or carbon dioxide) according to 40 CFR 60.58b(b) for large municipal waste combustors and 40 CFR 60.1720 for class I municipal waste combustors; and
 - (v) temperature level in the primary chamber and, where there is a secondary chamber, in the secondary chamber;
 - (B) monitor load level of each class I municipal waste combustor according to 40 CFR 60.1810;
 - (C) monitor temperature of the gases flue at the inlet of the particulate matter air pollution control device according to 40 CFR 60.1815;
 - (D) monitor carbon feed rate if activated carbon is used to abate dioxins and furans or mercury emissions according to 40 CFR 60.1820;
 - (E) maintain records of the information listed in 40 CFR 60.59b(d)(1) through (d)(15) for large municipal waste combustors and in 40 CFR 60.1840 through 1855 for class I municipal waste combustors for a period of at least five years;
 - (F) following the initial compliance tests as required under Paragraph (e) of

this Rule, submit the information specified in 40 CFR 60.59b(f)(1) through (f)(6) for large municipal waste combustors and in 40 CFR 60.1875 for class I municipal waste combustors, in the initial performance test report;

(G) following the first year of municipal combustor operation, submit an annual report specified in 40 CFR 60.59b(g) for large municipal waste combustors and in 40 CFR 60.1885 for class I municipal waste combustors, as applicable, no later than February 1 of each year following the calendar year in which the data were collected. Once the unit is subject to permitting requirements under 15A NCAC 02Q .0500, Title V Procedures, the owner or operator of an affected facility shall submit these reports semiannually; and

(H) submit a semiannual report specified in 40 CFR 60.59b(h) for large municipal waste combustors and in 40 CFR 60.1900 for class I municipal waste combustors, for any recorded pollutant or parameter that does not comply with the pollutant or parameter limit specified in this Section, according to the schedule specified in 40 CFR 60.59b(h)(6).

(g) Excess Emissions and Start-up and Shut-down. All municipal waste combustors subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

(h) Operator Training and Certification.

(1) By January 1, 2000, or six months after the date of start-up of a class I municipal waste combustor, whichever is later, and by July 1, 1999 or six months after the date of start-up of a large municipal waste combustor, whichever is later:

(A) Each facility operator and shift supervisor of a municipal waste combustor shall obtain and maintain a current provisional operator certification from the American Society of Mechanical Engineers (ASME QRO-1-1994).

(B) Each facility operator and shift supervisor of a municipal waste combustor shall have completed full certification or shall have scheduled a full certification exam with the American Society of Mechanical Engineers (ASME QRO-1-1994).

(C) The owner or operator of a municipal waste combustor plant shall not allow the facility to be operated at any time

unless one of the following persons is on duty at the affected facility:

- (i) a fully certified chief facility operator;
- (ii) a provisionally certified chief facility operator who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph;
- (iii) a fully certified shift supervisor; or
- (iv) a provisionally certified shift supervisor who is scheduled to take the full certification exam according to the schedule specified in Part (B) of this Subparagraph.

(D) If one of the persons listed in this Subparagraph leaves the large municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements of this Part.

(E) If one of the persons listed in this Subparagraph leaves the class I municipal waste combustor during his operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirements specified in 40 CFR 60.1685.

(2) The owner or operator of each municipal waste combustor shall develop and update on a yearly basis a site-specific operating manual that shall at the minimum address the elements of municipal waste combustor unit operation specified in 40 CFR 60.54b(e)(1) through (e)(11).

(3) By July 1, 1999, or six months after the date of start-up of a municipal waste combustor, whichever is later, the owner or operator of the municipal waste combustor plant shall comply with the following requirements:

(A) All chief facility operators, shift supervisors, and control room operators shall complete the EPA municipal waste combustor training course.

- (i) The requirements specified in Part (A) of this Subparagraph shall not apply to chief facility operators, shift supervisors and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before July 1, 1998.

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- (ii) As provided under 40 CFR 60.39b(c)(4)(iii)(B), the owner or operator may request that the Administrator waive the requirement specified in Part (A) of this Subparagraph for the chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before July 1, 1998.
- (B) The owner or operator of each municipal waste combustor shall establish a training program to review the operating manual, according to the schedule specified in Subparts (i) and (ii) of this Part, with each person who has responsibilities affecting the operation of an affected facility, including the chief facility operators, shift supervisors, control room operators, ash handlers, maintenance personnel, and crane-load handlers.
 - (i) Each person specified in Part (B) of this Subparagraph shall undergo initial training no later than the date specified in Items (I) through (III) of this Subpart, whichever is later.
 - (I) The date six months after the date of start-up of the affected facility;
 - (II) July 1, 1999; or
 - (III) A date prior to the day when the person assumes responsibilities affecting municipal waste combustor unit operation.
 - (ii) Annually, following the initial training required by Subpart (i) of this Part.
- (C) The operating manual required by Subparagraph (2) of this Paragraph shall be updated continually and be kept in a readily accessible location for all persons required to undergo training under Part (B) of this Subparagraph. The operating manual and records of training shall be available for inspection by the personnel of the Division on request.
- (D) The operating manual of class I municipal waste combustors shall contain requirements specified in 40 CFR 60.1665 in addition to requirements of Part (C) of this Subparagraph.
- (4) The referenced ASME exam in this Paragraph is hereby incorporated by reference and includes subsequent amendments and editions. Copies of the referenced ASME exam may be obtained from the American Society of Mechanical Engineers (ASME), 22 Law Drive, Fairfield, NJ 07007, at a cost of forty nine dollars (\$49.00).
 - (i) Compliance Schedules.
 - (1) The owner or operator of a large municipal waste combustor shall choose one of the following three compliance schedule options:
 - (A) comply with all the requirements or close before August 1, 2000;
 - (B) comply with all the requirements before three years following the date of issuance of a revised construction and operation permit, if permit modification is required, or after August 1, 2000, but before August 1, 2002, if a permit modification is not required. If this option is chosen, then the owner or operator of the facility shall submit to the Director measurable and enforceable incremental steps of progress towards compliance which include:
 - (i) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;
 - (ii) a date by which on site construction, installation, or modification of emission control equipment shall begin;
 - (iii) a date by which on site construction, installation, or modification of emission control equipment shall be completed;
 - (iv) a date for initial start-up of emissions control equipment;
 - (v) a date for initial performance test(s) of emission control equipment; and
 - (vi) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later than three years from the issuance of the permit; or
 - (C) close between August 1, 2000, and August 1, 2002. If this option is

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- chosen then the owner or operator of the facility shall submit to the Director a closure agreement which includes the date of the plant closure.
- (2) All large municipal waste combustors for which construction, modification, or reconstruction commenced after June 26, 1987, but before September 19, 1994, shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Subparagraph (c)(11) of this Rule within one year following issuance of a revised construction and operation permit, if a permit modification is required, or by August 1, 2000, whichever is later.
- (3) The owner or operator of a class I municipal waste combustor shall choose one of the following four compliance schedule options:
- (A) comply with all requirements of this Rule beginning July 1, 2002;
- (B) comply with all requirements of this Rule by July 1, 2002 whether a permit modification is required or not. If this option is chosen, then the owner or operator shall submit to the Director along with the permit application if a permit application is needed or by September 1, 2002 if a permit application is not needed a compliance schedule that contains the following increments of progress:
- (i) a final control plan as specified in 40 CFR 60.1610;
- (ii) a date by which contracts for the emission control system or equipment shall be awarded or orders issued for purchase of component parts;
- (iii) a date by which onsite construction, installation, or modernization of emission control system or equipment shall begin;
- (iv) a date by which onsite construction, installation, or modernization of emission control system or equipment shall be completed; and
- (v) a date by which the municipal waste combustor shall be in compliance with this Rule, which shall be no later no later than December 1, 2004;
- (C) comply with all requirements of this Rule by closing the combustor by July 1, 2002 and then reopening it. If this option is chosen the owner or operator shall:
- (i) meet increments of progress specified in 40 CFR 60.1585, if the class I combustor is closed and then reopened prior to the final compliance date; and
- (ii) complete emissions control retrofit and meet the emission limits and good combustion practices on the date that the class I combustor reopens operation if the class I combustor is closed and then reopened after the final compliance date; or
- (D) comply by permanently closing the combustor. If this option is chosen the owner or operator shall:
- (i) submit a closure notification, including the date of closure, to the Director by July 1, 2002 if the class I combustor is to be closed on or before September 1, 2002; or
- (ii) enter into a legally binding closure agreement with the Director by July 1, 2002 if the class I combustor is to be closed after September 1, 2002, and the combustor shall be closed no later than December 1, 2004.
- (4) The owner or operator of a class I municipal waste combustor that began construction, reconstruction or modification after June 26, 1987 shall comply with the emission limit for mercury specified in Subparagraph (c)(8) of this Rule and the emission limit for dioxin and furan specified in Part (c)(11)(B) of this Rule by July 1, 2002.
- (5) The owner or operator of any municipal waste combustor shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5); 40 CFR 60.35b; 40 CFR 60.34e; 40 CFR 60.1515; Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; Temporary Amendment Eff. March 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment Eff. March 1, 2003.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting December 21, 2002, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 2002 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

In Volume 17, Issue 16 on page 1553, Rule 21 NCAC 46 .2803 was inadvertently printed in place of Rule 21 NCAC 54 .2803. Below is the text of approved Rule 21 NCAC 54 .2803 as approved by the Rules Review Commission on December 21, 2002.

APPROVED RULE CITATION
21 NCAC 54 .2803

**REGISTER CITATION TO THE
NOTICE OF TEXT**
16:23 NCR

CHAPTER 54 - PSYCHOLOGY BOARD

**21 NCAC 54 .2803 EMPLOYMENT AND
SUPERVISION OF UNLICENSED INDIVIDUALS**

(a) Any psychologist who employs or supervises unlicensed individuals who provide ancillary services as specified in Rule .2801 of this Section shall maintain documentation of the relationship between the psychologist and the unlicensed individual beginning with the date upon which the relationship is initiated. Written documentation that includes the responsibilities of both parties shall be maintained by the licensee. Except when prevented from doing so by circumstances beyond the psychologist's control, the psychologist shall maintain documentation of the relationship with the unlicensed individual for a minimum of seven years after the termination of the relationship and shall present the documentation to the Board upon written request. If the unlicensed individual is supervised by more than one psychologist, there shall be a psychologist appointed to have primary responsibility for the coordination of and provision of ancillary services by the unlicensed individual. The appointed psychologist shall have responsibility for clinical record keeping with regard to the ancillary services provided by the unlicensed individual. Any psychologist supervising or employing persons who provide ancillary services shall not submit records

regarding ancillary services personnel to the Board unless ordered to do so pursuant to G.S. 90-270.9.

(b) The psychologist shall be competent to render all ancillary services specified in Rule .2801 of this Section that the employee or supervisee shall render. However, supervision may be delegated to other psychologists affiliated with the employment setting whose competence in the delegated areas has been demonstrated by previous education, training, and experience.

(c) Any psychologist who employs or supervises individuals to provide ancillary services shall be accessible at all times, either on-site or through electronic communication, and shall be available to render assistance when needed to the unlicensed individual and patient or client, or shall have arranged for another psychologist to be accessible and available in the absence of the supervising psychologist. Psychologists shall meet with all unlicensed individuals whom they supervise to the extent necessary to provide supervision for the activities in which the unlicensed individual is engaged. The psychologist shall maintain documentation of supervisory sessions, including dates, appointment times, and length of time of each supervision session, for a period of at least seven years following the termination of ancillary services by ancillary services personnel.

*History Note: Authority G.S. 90-270.9; 90-270.21;
Eff. April 1, 2003.*

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, March 20, 2003, 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 by Friday, March 14, 2003 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

March 20, 2003 April 17, 2003
May 15, 2003 June 19, 2003

Commission Review/Administrative Rules

Log of Filings (Log #195)

January 21, 2003 through February 20, 2003

STATE BUILDING COMMISSION

Pre-Selection

1 NCAC 30D .0302 Amend

DEPARTMENT OF AGRICULTURE/STATE MARKETING AUTHORITY

Scope

2 NCAC 09C .0701 Amend

DENR/DHHS/COMMISSION FOR HEALTH SERVICES

General

15A NCAC 13A .0101 Amend

Standards for Owners/Operators of HWTSD

15A NCAC 13A .0109 Amend

The Hazardous Waste Permit Program Part 270

15A NCAC 13A .0113 Amend

DENR/DIVISION OF FOREST RESOURCES

Grading

15A NCAC 18A .2606 Amend

SECRETARY OF STATE/SECRETARY OF STATE

Location

18 NCAC 01 .0101 Amend

Petition for Rule-Making or Declaratory Ruling

18 NCAC 01 .0103 Amend

Secretary State

18 NCAC 02 .0102 Amend

Deputy Secretary of State

18 NCAC 02 .0103 Amend

Forms

18 NCAC 02 .0302 Amend

Location and Hours

18 NCAC 03 .0101 Amend

Location and Hours of Operation

18 NCAC 03 .0701 Amend

Location and Hours

18 NCAC 04 .0101 Amend

Location and Hours

18 NCAC 06 .1101 Amend

Securities Exchanges/Auto Quotation

18 NCAC 06 .1210 Amend

Rescission Offers

18 NCAC 06 .1501 Amend

Procedure for Application for Registration

18 NCAC 06 .1602 Amend

Obtaining Certificates of Registration

18 NCAC 06 .1604 Amend

AGENDA

Rules Review Commission

March 20, 2003

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting

III. Follow Up Matters

- A. Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 Carried over to March from 12/19/02 (DeLuca)
- B. Department of Agriculture – 2 NCAC 52C .0701 Objection 12/19/02 (DeLuca)
- C. Board of Elections – Extend Period of Review 01/16/03 (DeLuca)
- D. DHHS/Medical Care Commission – 10 NCAC 3D .2508; .2521; .2522; .2601; .2602; .2701; .2901; .2902; .2905; .2908; .2909; .3001; .3002; .3003; .3101 Objection 11/21/02 (Bryan)
- E. Department of Health and Human Services – 10 NCAC 26H .0211; .0213; Objection 12/19/02 (Bryan)
- F. Board of Pharmacy – 21 NCAC 46 .1812 (for consideration at April meeting)
- G. Board of Pharmacy – 21 NCAC 46 .2502 Objection 11/21/02 (for consideration at April meeting) (DeLuca)
- H. Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – 21 NCAC 50 .0103 Objection 12/19/02 (Bryan)
- I. NC State Board of Community Colleges – 23 NCAC 2E .0201 Objection 01/16/03 (DeLuca)
- J. State Personnel Commission – 25 NCAC 1D .1945 Objection 02/20/03 (Bryan)
- K. State Personnel Commission - 25 NCAC 1E .0805 Objection 02/20/03 (Bryan)

IV. Commission Business

- V. Next meeting: April 17, 2003

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>				
NC ABC Commission v. Issa Fuad Shaikh T/A Variety Pic Up #14	01 ABC 0874	Conner	12/03/02	
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm.	01 ABC 1396	Wade	06/26/02	
NC ABC Commission v. Headlights, Inc. T/A Headlights	01 ABC 1473	Wade	06/28/02	
NC ABC Commission v. Jerry Lynn Johnson T/A E & J Millenium	02 ABC 0115	Conner	10/23/02	
Roy Hoyt Durham, Lisa Chambers Durham t/a Lincoln House v. NC ABC Commission	02 ABC 0157	Mann	12/03/02	
Edward L. Mumford v. NC Alcoholic Control Commission	02 ABC 0264	Conner	08/29/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
Jrs Nigh Hawk, James Theron Lloyd Jr v. NC ABC Commission	02 ABC 0629	Chess	11/19/02	17:13 NCR 1116
NC ABC Commission v. Cevastiano Hernandez T/A Cristy Mexican Store	02 ABC 0667	Gray	10/17/02	
NC ABC Commission v. Easy Street Bistro, Inc. T/A Raleigh Live	02 ABC 0781	Wade	10/23/02	
<u>APPRAISAL BOARD</u>				
NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
<u>CEMETARY COMMISSION</u>				
Lee Memory Gardens, Inc. v. NC Cemetary Commission	02 COM 0126	Gray	09/19/02	
<u>UTILITIES COMMISSION</u>				
Tracy Woody v. State of NC Utilities Commission	02 COM 1004	Morrison	08/26/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Carol Peebles v. Crime Victims Compensation Commission	02 CPS 0180	Gray	02/05/03	
Linda Hawley v. Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
Elbert Reid, Jr. v. Crime Victims Compensation Commission	02 CPS 0431	Conner	11/13/02	
Francis Michael McLaurin on behalf of B.W. McLaurin v. Crime Victims Compensation Commission	02 CPS 0760	Chess	11/19/02	
Willie Ray Lucas v. Crime Victims Compensation Commission	02 CPS 0770	Wade	01/06/03	
Claudia White v. Crime Victims Compensation Commission	02 CPS 0894	Conner	01/08/03	
Phyllis Ponder Duren v. Crime Victims Compensation Commission	02 CPS 1173	Gray	11/06/02	
Brenda S. DuBois on behalf of victim Priscilla Bryant v. Dept. of Crime Control & Public Safety, Div. of Victim Comp. Services	02 CPS 1332	Lassiter	09/20/02	
William S. McLean v. Crime Victims Compensation Commission	02 CPS 1600	Lassiter	11/18/02	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Lisa Williams v. NC DHHS, Div. of Soc. Svc., Child Supp. Enf. Sec.	01 DCS 2351	Elkins	10/28/02	17:11 NCR 1024
Thelma Street v. NC DHHS	01 DHR 0303	Reilly	09/17/02	
Emilia E Edgar v. DHHS, Div. of Facility Services	01 DHR 1356	Hunter	09/09/02	
Joyce Jeanette Jones v. DHHS, Div. of Facility Services	02 DHR 1663	Conner	11/15/02	
Evelia Williams v. NC DHHS	01 DHR 1750	Conner	07/15/02	

CONTESTED CASE DECISIONS

Jacob Jones v. NC DHHS, Div. of Medical Assistance	01 DHR 2169	Wade	10/04/02	
Kathy Mumford v. DHHS, Div. of Facility Services	01 DHR 2253	Chess	07/26/02	
Brenda L. McQueen v. DHHS, Div. of Facility Services	01 DHR 2321	Morrison	10/17/02	
Tammy Baldwin v. DHHS, Div. of Facility Services	01 DHR 2329	Morrison	10/16/02	
Pamela S Vuncannon v. DHHS, Div of Child Development	01 DHR 2332	Chess	11/18/02	
James Bell v. NC DHHS, Div. of Facility Services	01 DHR 2340	Elkins	06/27/02	
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Ramiro Ramos v. NC DHHS and Chris Hoke, State Registrar	01 DHR 2366	Conner	09/11/02	
Effie M. Williams v. NC Department of Health and Human Services	02 DHR 0001	Gray	08/08/02	
Kathy Denise Urban v. NC DHHS, Div. of Facility Services	02 DHR 0055	Hunter	09/10/02	
Betty Carr v. DHHS, Div. of Facility Services	02 DHR 0070	Mann	09/10/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Ursula Philomena Nwapa v. DHHS	02 DHR 0091	Wade	12/18/02	
Albemarle Home Care & Ginger Parrish, PhD v. DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
Shonta R. Fox v. Dept. of Health & Human Services	02 DHR 0218	Conner	11/08/02	
Birgit James v. Dept. of Health & Human Services	02 DHR 0255	Conner	07/01/02	
Geraldine Rountree Cooper v. DHHS, Div. of Facility Services	02 DHR 0267	Elkins	07/15/02	
Gemela Kidada Davis v. DHHS, Div. of Facility Services	02 DHR 0283	Lassiter	02/24/03	
Unieca Richardson v. DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Greg McKinney & Virgie Elaine McKinney v. DHHS	02 DHR 0301	Mann	08/01/02	
Jerry Dean Webber v. DHHS, Broughton Hospital	02 DHR 0306	Conner	08/28/02	
Donna R Anderson v. DHHS, Broughton Hospital	02 DHR 0340	Gray	08/01/02	
Notisha Utley v. DHHS, Division of Facility Services	02 DHR 0379	Conner	07/26/02	
Isa Spaine v. Department of Health & Human Services	02 DHR 0403	Chess	06/24/02	
Debra A. Browner v. DHHS, Broughton Hospital	02 DHR 0405	Conner	08/28/02	
Vernon Farley v. DHHS, Div. of Medical Assistance	02 DHR 0450	Gray	01/29/03	
NC Community Association v. DHHS, Off. of Economic Opportunity	02 DHR 0497	Morrison	12/11/02	17:14 NCR 1200
Bill & Suzy Crawford for (NEELY) Crawford v. DHHS	02 DHR 0539	Wade	12/18/02	
Mooresville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section	02 DHR 0541	Chess	08/07/02	
Wayne Douglas Temples v. DHHS, NC Off. of Emer. Med. Svcs.	02 DHR 0543	Morrison	10/09/02	
Mark Thomas v. DHHS, Div. of Facility Services	02 DHR 0555	Chess	10/17/02	
Eli Maxwell v. DHHS, Div. of Facility Services, Health Care Registry	02 DHR 0556	Lassiter	08/08/02	
Robin Lee Arnold v. DHHS, Div. of Facility Services	02 DHR 0558	Conner	08/15/02	
Laura Sheets v. DHHS, Div. of Facility Services	02 DHR 0569	Conner	10/17/02	
Evelyn Denise Humphrey v. DHHS, Div. of Facility Services	02 DHR 0624	Morrison	08/08/02	
James Parks v. Dept. of Health and Human Services	02 DHR 0680	Morrison	08/07/02	
Andrea Green, Parent, on behalf of her minor child, Andrew Price v. The Durham Clinic	02 DHR 0682	Gray	11/07/02	
Lisa Murphy v. DHHS, Division of Facility Services	02 DHR 0694	Mann	07/26/02	
Vernessa B Pittman v. DHHS	02 DHR 0734	Chess	11/21/02	
Mary's Family Care #2, Beulah Spivey v. OAH	02 DHR 0735	Morrison	08/27/02	
Clinita Faye Hooker v. DHHS, Div. of Facility Services	02 DHR 0748	Lassiter	01/02/03	
Miranda Lynn Stewart v. DHHS, Div. of Facility Services	02 DHR 0791	Mann	11/08/02	17:12 NCR 1086
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	
Jeffrey Wayne Radcliff v. DHHS	02 DHR 0838	Conner	12/16/02	
Mr. Mohamed Mohamed v. DHHS, Women's & Children's Health (WIC Program)	02 DHR 0866	Chess	10/02/02	
Mooresville Hospital Management Assoc, Inc. d/b/a Lake Norman Reg. Med. Ctr v. DHHS, Div. of Fac. Svcs, CON Section, Robert J Fitzgerald in his official capacity as Director of the Div of Fac Svcs, and Lee B Hoffman in her official capacity as Chief of the CON Section and The Presbyterian Hospital and the Town of Huntersville	02 DHR 0888	Morrison	11/26/02	17:13 NCR 1120
Cleon A Gibbs v. Division of Medical Assistance (DMA)	02 DHR 0901	Elkins	12/16/02	
Martha L Cox v. DHHS, Div. of Facility Services	02 DHR 0935	Morrison	10/25/02	
Tracy Woody v. Coop Ex. Svc, Coll of Ag & Life Sc Family & Consumer Svcs, In-Home Breastfeeding Support Program & Nash Co. Dept. of Social Svcs, Child Protective Svcs & State WIC Program for Nash County	02 DHR 0944	Morrison	09/25/02	
Stacy L Pleaze-Wilson v. DHHS, Health Care Personnel Registry	02 DHR 0973	Wade	01/31/03	
Sheryl L Hoyle v. DHHS, Div. of Facility Services	02 DHR 1009	Conner	10/24/02	
Carmelita T. England v. Ms. Lisa Moor, Chief Advocate, Black Mtn Ctr.	02 DHR 1033	Chess	08/15/02	
Gloria Dean Gaston v. Office of Administrative Hearings	02 DHR 1081	Morrison	07/26/02	
Teresa King v. Division of Mental Health	02 DHR 1154	Chess	12/19/02	
Maria Goretti Obialor v. DHHS, Div. of Facility Services	02 DHR 1187	Mann	09/11/02	
Lashanda Skinner v. DHHS	02 DHR 1190	Lassiter	09/09/02	
Robert A. Thomas v. DHHS, Div. of Facility Services	02 DHR 1254	Lassiter	09/13/02	
Janet Cook v. Division of Medical Assistance	02 DHR 1272	Lassiter	11/15/02	
Shirley's Development Center, Shirley Campbell v. State of DHHS, Div. of Child Development	02 DHR 1309	Morrison	10/08/02	
Joann V Blakeney v. Piedmont Behavior Healthcare	02 DHR 1319	Conner	12/16/02	
Jack Irizarry v. DHHS, Div. of Facility Services, Adult Care License Sec.	02 DHR 1331	Elkins	02/19/03	
Timothy W Andrews for Ridgcrest Retirement LLC v. DHHS, Div of Facility Services	02 DHR 1417	Elkins	11/26/02	
Psychiatric Solutions, Inc. d/b/a Holly Hill Hospital v. Div. of Medical Assistance, DHHS	02 DHR 1499	Elkins	12/12/02	
Evy's Group Care v. DHHS, Div. of Mental Health, Program Accountability	02 DHR 1462	Gray	01/27/03	
LatissueMcRae v. Dept Health Care Personnel Registry Section	02 DHR 1533	Lassiter	01/14/03	

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Marquelle's Enrichment Center for Edith James & Wilhelmenia Bridges v. Div. of Child Dev. Regulatory Services Section	02 DHR 1537	Gray	01/27/03
Betty J. Hastings v. Office of Administrative Hearings	02 DHR 1592	Lassiter	02/11/03
Twakeena Rachel Simmons v. Office of Administrative Hearings	02 DHR 1626	Chess	01/13/03
Peggy Renee Smith v. DHHS, Div. of Facility Svcs, Hlth Care Per Reg	02 DHR 1683	Lassiter	11/13/02
Sherry D Tucker v. DHHS, Div. of Facility Services	02 DHR 1753	Mann	01/02/03
Donna Stillie v. Nurse Registry for CAN's	02 DHR 1940	Chess	01/15/03
Opportunities Industrialization Center of America, Inc. (via counsel, David C. Smith) v. DHHS	02 DHR 1982	Chess	01/27/03
Shirley Suggs v. DHHS, Division of Facility Services	02 DHR 2038	Gray	02/13/03
Ziad El-Hilou, A&T Food v. Food & Nutrition Service – USDA, and DHHS	02 DHR 2165	Elkins	01/08/03

ADMINISTRATION

San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02
James J. Lewis v. DOA, Gov. Advocacy Council for Persons w/Disabilities	02 DOA 0545	Chess	08/26/02

JUSTICE

Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis	02 DOJ 1038	Gray	08/08/02
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Alarm Systems Licensing Board

Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02
Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02
Jeffery Lee Garrett v. Alarm Systems Licensing Board	02 DOJ 0908	Morrison	08/06/02
Robert Bradley Tyson v. Alarm Systems Licensing Board	02 DOJ 1266	Morrison	10/09/02
Larry Thomas Medlin Jr. v. Alarm Systems Licensing Board	02 DOJ 1433	Lassiter	11/19/02
Lottie M Campbell v. Alarm Systems Licensing Board	02 DOJ 1602	Mann	11/27/02
John Courtney Rose v Alarm Systems Licensing Board	02 DOJ 1954	Morrison	12/19/02
Adam David Braswell v Alarm Systems Licensing Board	02 DOJ 1955	Morrison	12/19/02
Jason Lee Davenport v. Alarm Systems Licensing Board	02 DOJ 1956	Morrison	12/19/02

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Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02
Benita Lee Luckey v. Private Protective Services Board	02 DOJ 0530	Elkins	07/12/02
Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02
Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02
Barry Snadon, Sr. v. Private Protective Services Board	02 DOJ 0907	Elkins	07/12/02
Gregory Darnell Martin v. Private Protective Services Board	02 DOJ 0916	Morrison	08/06/02
Marvin Ray Johnson v. Private Protective Services Board	02 DOJ 0945	Morrison	08/06/02
Quincey Adam Moring v. Private Protective Services Board	02 DOJ 1084	Morrison	08/06/02
Philip Garland Cameron v. Private Protective Services Board	02 DOJ 1258	Morrison	09/06/02
Jamaal Ahkiem Gittens v. Private Protective Services Board	02 DOJ 1260	Conner	01/08/03
Desantis Lamarr Everett v. Private Protective Services Board	02 DOJ 1259	Morrison	09/06/02
Junius Buddy Weaver Jr v. Private Protective Services Board	02 DOJ 1432	Morrison	11/21/02
John Curtis Howell v. Private Protective Services Board	02 DOJ 1562	Lassiter	10/04/02

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Kevin Warren Jackson v. Sheriffs' Education & Training Stds. Comm.	01 DOJ 1587	Chess	07/16/02
Andrew Arnold Powell Jr v. Criminal Justice & Training Stds. Comm.	01 DOJ 1771	Chess	11/26/02
Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0004	Mann	06/28/02
Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm.	02 DOJ 0057	Gray	07/15/02
Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0089	Conner	06/25/02
Clarence Raymond Adcock v. Criminal Justice Ed. & Trng. Stds. Comm.	02 DOJ 0104	Chess	09/09/02
Joseph Garth Keller v. Criminal Justice & Trng. Stds. Comm.	02 DOJ 0170	Gray	09/11/02
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02
Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0304	Reilly	07/17/02
Michael A Carrion v. Criminal Justice Educ & Trng Stds. Comm.	02 DOJ 0416	Conner	09/25/02
Wallace A. Hough, Jr. v. Criminal Justice & Training Stds. Comm.	02 DOJ 0474	Morrison	08/08/02
Jerome Martrice Johnson v. Criminal Justice Educ. & Trng. Stds. Comm.	02 DOJ 0484	Elkins	09/23/02
Antonio Fitzgerald McNeil v. Criminal Justice Educ. & Trng. Stds. Comm.	02 DOJ 0526	Wade	09/25/02
Wanda L Grant v. Sheriffs' Education & Training Standards Comm.	02 DOJ 0602	Mann	10/18/02
Bentrell Blocker v. Sheriffs' Educ. & Training Stds. Commission	02 DOJ 0603	Chess	11/15/02
Sharon L. Joyner v. Sheriffs' Educ. & Training Stds. Commission	02 DOJ 0604	Morrison	09/05/02
Debra E. Taylor v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0605	Wade	11/05/02
Keith E. Kilby, Sr. v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0609	Lassiter	08/07/02
John R. Tucker v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0632	Morrison	06/26/02
Eddie Kurt Newkirk v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0870	Gray	08/28/02
Marshall Decarlos Williams v. Criminal Justice Educ. & Trng. Stds. Comm.	02 DOJ 1039	Conner	12/16/02
Mike Doyle Colvin Jr v. Sheriffs' Educ. & Training Standards Comm.	02 DOJ 1122	Chess	10/25/02
Dennis Damon Foster v. Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 1162	Mann	10/18/02
Vickie Renee Kirkland v. Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 1163	Gray	10/14/02
Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm.	02 DOJ 1420	Wade	06/27/02
Charles S Grainger v. Criminal Justice Educ. & Training Stds. Comm.	02 DOJ 1584	Wade	02/07/03
Mark A Faucette Sr. v. Criminal Justice & Training Stds. Comm	02 DOJ 1585	Chess	01/02/03
Ricky Hargrove v. Criminal Justice Education & Training Stds. Comm.	02 DOJ 1946	Elkins	01/26/03

DEPARTMENT OF PUBLIC INSTRUCTION

Melvin Quincy Etheridge v. Department of Public Instruction	02 EDC 1174	Mann	02/11/03
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ENVIRONMENT AND NATURAL RESOURCES

Enviro-Soil, Inc. v. St. of NC DENR, Div. of Env. Management	94 EHR 1296	Gray	12/03/02
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Town of Belville v. NC DENR, Div. of Coastal Management	96 EHR 0598	Gray	07/29/02	
Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 0363 ⁵	Conner	11/21/02	
Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 1475 ⁵	Conner	11/21/02	
Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1	01 EHR 0182 ⁴	Conner	11/04/02	
Squires Enterprises, Inc. v. NC DENR (LQS00-091)	01 EHR 0300	Mann	09/23/02	
Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1	01 EHR 0312 ⁴	Conner	11/04/02	
Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality	01 EHR 0976	Chess	07/16/02	
SRF Dev. Corp. v. NC DENR, Div. of Land Resources	01 EHR 1040 ³	Gray	10/02/02	
SRF Dev. Corp. v. NC DENR, Div. of Land Resources	01 EHR 1402 ³	Gray	10/02/02	
Rhett & Julie Taber, Robert W. Sawyer, John T. Talbert, Stephen Bastian, Dr. Ernest Brown, Thomas Read, Keith Brown, Fred Johnston, James L. Dickens, James T. Coin, Eleanor Coin & James Vaughn v. NC DENR, Div. of Coastal Management	01 EHR 1512	Conner	09/11/02	
Grassy Creek Neighborhood Alliance Inc v. DHHS, Div. of Waste Mgmt, & City of Winston Salem & City/County Utility Commission	01 EHR 1585	Mann	02/07/03	
Lucy, Inc. George Chemall v. NC DENR, Div. of Waste Management	01 EHR 1695	Morrison	10/22/02	
Town of Ocean Isle Beach v. NC DENR	01 EHR 1885	Chess	07/31/02	17:06 NCR 557
Valley Proteins, Inc. v. NC DENR, Div. of Air Quality	01 EHR 2362	Mann	09/26/02	
Frederick M. and Anne C. Morris, et al v. NC DENR, Div. of Air Quality and Martin Marietta Materials, Inc.	02 EHR 0068	Gray	10/18/02	
Helen Smith v. NC DENR	02 EHR 0152	Morrison	08/09/02	
Helen R. Bass v. County of Durham	02 EHR 0191	Gray	06/26/02	
Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0244	Gray	06/05/02	
J.B. Hooper v. NC DENR	02 EHR 0285	Conner	08/21/02	
Elwood Montgomery v. NC DENR, Div. of Waste Management	02 EHR 0329	Wade	09/26/02	
J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0395	Mann	06/10/02	
Kathy Teel Perry v. Environmental Health Division	02 EHR 0576	Chess	10/09/02	
Linda L. Hamrick v. NC DENR	02 EHR 0600	Conner	07/23/02	
Mitchell Oil Company Larry Furr v. DENR	02 EHR 0676	Lassiter	08/07/02	
Johnnie Burgess v. NC DENR, Div. of Waste Management	02 EHR 0688	Morrison	10/11/02	
County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality	02 EHR 0690	Chess	06/17/02	
Michael John Barri v. New Hanover Co. Health Dept./Env. Health	02 EHR 0742	Conner	09/03/02	
Christopher L. Baker v. City of Asheville	02 EHR 0763	Gray	09/11/02	
Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm.	02 EHR 0777	Wade	07/11/02	
E Scott Stone, Env & Soil Serv. Inc v. NC DENR, Div. of Env Health	02 EHR 1305	Mann	11/20/02	
GT of Hickory, Inc, Cole Alexander Gaither v. NC DENR	02 EHR 1534	Lassiter	11/18/02	
Brian Drive LLC, Cole Alexander Gaither v. NC DENR	02 EHR 1535	Lassiter	11/18/02	
Ronald E. Petty v. Office of Administrative Hearings	02 EHR 1183	Gray	09/20/02	
Madison M Day v Environment & Natural Resources	02 EHR 1307	Mann	12/12/02	
Randall E Kissiah v. Richmond Co. Health Dept, Env. Health Section	02 EHR 1671 ⁹	Conner	02/12/03	
Randall E Kissiah v. Richmond Co. Health Dept, Env. Health Section	02 EHR 1945 ⁹	Conner	02/12/03	
Bobby Long v. DENR	02 EHR 2026	Lassiter	02/11/03	
Lawrence N Ferguson, Jr. (SGI) and Ready Mixed Concrete Co. (RMC) v. NC DENR Underground Storage Tank Secion, Trust Fund Branch	02 EHR 2181	Chess	01/15/03	
<u>ENGINEERS AND LAND SURVEYORS</u>				
NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02	
<u>TEACHERS & ST. EMP. COMP MAJOR MEDICAL PLAN</u>				
Philip M Keener v. Bd. of Trustees & Exec. Admin. for the State Health Plan	02 INS 0252	Mann	12/11/02	17:14 NCR 1205
Sandra Halperin v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0337	Elkins	10/02/02	
Seena Binder v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0766	Wade	12/18/02	
Bryan Atarian v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0837	Elkins	01/06/03	
Charles Brent & Marisha Boone v Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 1589	Conner	02/18/03	
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Howard A Reeves, Walter W Norris v. Swansboro Bd. of Adjustment	02 MIS 2208	Morrison	12/23/02	
<u>NURSING HOME ADMINISTRATORS</u>				
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<u>OFFICE OF STATE PERSONNEL</u>				
Helen McIntyre v. UNC-TV, University of Chapel Hill	97 OSP 1164	Gray	12/20/02	
Robin Heavner Franklin v. Lincoln Co. Dept. of Social Services	98 OSP 1239	Conner	08/28/02	
Danny Wilson Carson v. NC DHHS, NC School for the Deaf	99 OSP 0641	Gray	11/15/02	

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Theodore M Banks v. DOC, Harnett Correctional Institute	00 OSP 0474 ⁷	Gray	12/20/02		
Laura C. Seamons v. NC DHS/Murdoch Center	00 OSP 0522	Wade	06/28/02		
James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist.	00 OSP 0722	Wade	06/28/02		
Diane Oakley v. DHHS/John Umstead Hospital	00 OSP 1186	Gray	02/18/03		
Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02	17:01 NCR	93
Theodore M Banks v. DOC, Harnett Correctional Institute	00 OSP 1258 ⁷	Gray	12/20/02		
Berry Eugene Porter v. Department of Transportation	01 OSP 0019	Gray	07/03/02		
C.W. McAdams v. Div. of Motor Vehicles	01 OSP 0229	Conner	09/30/02		
Linda R. Walker v. Craven County Health Department	01 OSP 0309	Gray	07/12/02		
Thomas Michael Chamberlin v. Dept. of Crime Control & Pub. Safety	01 OSP 0479	Gray	11/19/02		
J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services	01 OSP 0734	Morgan	06/06/02		
Dennis Covington v. NC Ag. & Tech. State University	01 OSP 1045	Wade	06/28/02		
Reginald Ross v. Department of Correction	01 OSP 1122/23	Wade	06/28/02		
Bob R Napier v. Department of Correction	01 OSP 1379	Lassiter	09/26/02	17:09 NCR	914
Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02	17:01 NCR	93
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02		
Joseph E. Teague, Jr. PE, CM v. Dept. of Transportation	01 OSP 1511	Lassiter	10/17/02		
Marshall E Carter v Department of Transportation	01 OSP 1516	Wade	12/19/02		
Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC	01 OSP 1559	Gray	08/13/02		
Anthony W. Price v. Eliz City State University	01 OSP 1591	Lassiter	11/05/02		
Wade Elms v. Department of Correction	01 OSP 1594	Gray	06/27/02		
Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR	103
Linwood Dunn v. NC Emergency Management	01 OSP 1691	Lassiter	08/21/02		
Gladys Faye Walden v. Department of Correction	01 OSP 1741	Mann	07/12/02		
Bruce A Parsons v. Gaston County Board of Health	01 OSP 2150	Gray	11/04/02		
Barbara A. Harrington v. Harnett Correctional Institution	01 OSP 2178	Conner	09/03/02		
Joy Reep Shuford v. Department of Correction	01 OSP 2179	Overby	06/25/02		
Debra R. Dellacrocce v. NC DHHS	01 OSP 2185	Conner	09/11/02		
Thomas E Bobbitt v. NC State University	01 OSP 2196 ⁶	Reilly	11/21/02		
Thomas E Bobbitt v. NC State University	01 OSP 2197 ⁶	Reilly	11/21/02		
Jana Washington v Department of Corrections (Central Prison)	01 OSP 2224	Wade	12/19/02		
Joseph Kevin McKenzie v. DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02		
Bryan Aaaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02		
Theressa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02		
Mark Wayne Faircloth v. Forest Service	01 OSP 2374	Conner	06/20/02		
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 2385 ²	Elkins	08/07/02		
James Donoghue v. Department of Correction	02 OSP 0011	Mann	08/26/02		
Robert N. Roberson v. DOC, Div. of Community Corrections	02 OSP 0059	Conner	10/14/02		
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR	329
Stacey Joel Hester v. Dept. of Correction	02 OSP 0071	Gray	10/18/02		
Gwendolyn Gordon v. Department of Correction	02 OSP 0103	Gray	10/24/02	17:14 NCR	1218
Gwendolyn Gordon v. NC Department of Correction	02 OSP 0103	Gray	11/25/02	17:14 NCR	1223
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	02 OSP 0110 ²	Elkins	08/07/02		
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02		
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02		
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02		
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02		
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02		
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02		
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02		
Karen Lynette Smith v Dr. Steven Ashby, Dir. The Durham Center	02 OSP 0316	Elkins	12/18/02		
Gerald W Jones v. NC Dept. of Transportation	02 OSP 0318	Wade	10/25/02		
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02		
Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02		
Ronald P Covington v. NC DOC, Dept. of Prisons	02 OSP 0404	Morrison	11/07/02		
Isiah A Black Jr v. NC DOC Div of Community Corrections	02 OSP 0435	Morrison	11/05/02		
Michael Forreect Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02		
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02		
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02		
Trayce H Butler v Durham County Dept. of Social Services	02 OSP 0499	Wade	02/11/03		
Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02		
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02		
Robert L. Swinney v. NC Dept. of Transportation	02 OSP 0570	Lassiter	10/23/02		
Janet Watson v. Nash Co. DSS, Carl Daughtry, Director	02 OSP 0702	Chess	08/13/02		
Lisa A Forbes v Dorothea Dix Hospital	02 OSP 0757	Wade	02/11/03		
Jackie Brannon v. Durham Co. Social Services, Daniel Hudgins	02 OSP 0769	Wade	12/19/02		
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02		
Alber L Scott v. UNC General Administration	02 OSP 0828	Gray	01/15/03		
Linda Kay Osbon v. Isothermal Community College	02 OSP 0911	Elkins	09/25/02		
Deona Renna Hooper v. NCC Police Dept, NCCU	02 OSP 0984	Lassiter	10/31/02		
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02		
Jerry J. Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	09/05/02		
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02		
Ella Fields-Bunch v. Martin-Tyrrell-Washington Dist. Health Dept.	02 OSP 1037	Conner	10/16/02		
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02		
Karen C. Weaver v. State of NC Dept. of Administration	02 OSP 1052	Lassiter	10/25/02		
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02		

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John C Candillo v. Roselyn Powell				
John C Candillo v. Roselyn Powell, Jud. Div Chief, NC DOCC, Jud Div. 3	02 OSP 1067	Conner	10/21/02	
Juanita M Brown v. DOC, Harnett Correctional Institution	02 OSP 1104 ⁸	Wade	01/13/03	
Hoyte Phifer, Jr. v. UNC-Greensboro	02 OSP 1105	Gray	01/15/03	
Carolyn Davis v Durham Co. MHDDSAS Area Authority	02 OSP 1116	Lassiter	01/16/03	
Donald B. Smith v. NC DOC, Div. of Community Corrections	02 OSP 1117	Chess	10/03/02	
Russell V Parker v Capt Dennis Daniels Pasquotank Corr. Inst	02 OSP 1127	Lassiter	11/05/02	
Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02	
James J. Lewis v. Department of Correction	02 OSP 1158	Mann	08/20/02	
James J. Lewis v. Department of Commerce/Industrial Commission	02 OSP 1179	Mann	09/19/02	
Melvin Kimble v. NC Dept. of Crime Control & Public Safety	02 OSP 1318	Lassiter	11/06/02	
Gwendolyn H Abbott v. Wayne Talbert, Asst Super. NC DOC, Div. of Prisons, Dan River Work Farm (3080)	02 OSP 1334	Conner	12/03/02	
Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1367 ⁷	Gray	12/20/02	
Mark Tony Davis v DHHS	02 OSP 1372	Overby	02/12/03	
Marie D Barrentine v. Robert William Fisher, NC Probation/Parole	02 OSP 1410	Elkins	02/11/03	
Onyedika Nwaebube v Employment Security Commission of NC	02 OSP 1443	Gray	01/24/03	
Alber LScott v UNC General Administration	02 OSP 1444	Gray	01/22/03	
Esther L Jordan v. Pasquotank Correctional Ins. (Ernest Sutton)	02 OSP 1453	Conner	02/06/03	
Martha Ann Brooks v. State of NC Brown Creek Correctional Inst.	02 OSP 1468	Chess	10/25/02	
Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1482 ⁷	Gray	12/20/02	
James Orville Cox II v. NC DOC, Adult Probation/Parole	02 OSP 1526	Chess	10/17/02	
Renee Shirley Richardson v Albert Blake, Interim Dir. of Eng Svcs, DDH	02 OSP 1551	Gray	12/20/02	
Juanita M Brown v. DOC, Harnett Correctional Institution	02 OSP 1599 ⁸	Wade	01/13/03	
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<u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u>				
NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02	
<u>UNIVERSITY OF NORTH CAROLINA</u>				
Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR 571
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Dee C Driver/Jenny Driver one and the same and Philip L Driver v. UNC Hospitals	02 UNC 1635	Gray	01/15/03	

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