

**NORTH CAROLINA**

**IN THIS ISSUE**

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**NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM**

*The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.*

<b>NCAC TITLES</b>		<b>TITLE 21 LICENSING BOARDS</b>	<b>TITLE 24 INDEPENDENT AGENCIES</b>
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
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		61 Respiratory Care	
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		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
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**Note:** Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2005 – December 2005

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 <sup>th</sup> day from publication in the Register
19:13	01/03/05	12/08/04	01/18/05	03/04/05	03/21/05	05/01/05	05/06	09/30/05
19:14	01/18/05	12/22/04	02/02/05	03/21/05	04/20/05	06/01/05	05/06	10/15/05
19:15	02/01/05	01/10/05	02/16/05	04/04/05	04/20/05	06/01/05	05/06	10/29/05
19:16	02/15/05	01/25/05	03/02/05	04/18/05	04/20/05	06/01/05	05/06	11/12/05
19:17	03/01/05	02/08/05	03/16/05	05/02/05	05/20/05	07/01/05	05/06	11/26/05
19:18	03/15/05	02/22/05	03/30/05	05/16/05	05/20/05	07/01/05	05/06	12/10/05
19:19	04/01/05	03/10/05	04/16/05	05/31/05	06/20/05	08/01/05	05/06	12/27/05
19:20	04/15/05	03/24/05	04/30/05	06/14/05	06/20/05	08/01/05	05/06	01/10/06
19:21	05/02/05	04/11/05	05/17/05	07/01/05	07/20/05	09/01/05	05/06	01/27/06
19:22	05/16/05	04/25/05	05/31/05	07/15/05	07/20/05	09/01/05	05/06	02/10/06
19:23	06/01/05	05/10/05	06/16/05	08/01/05	08/22/05	10/01/05	05/06	02/26/06
19:24	06/15/05	05/24/05	06/30/05	08/15/05	08/22/05	10/01/05	05/06	03/12/06
20:01	07/01/05	06/10/05	07/16/05	08/30/05	09/20/05	11/01/05	05/06	03/28/06
20:02	07/15/05	06/23/05	07/30/05	09/13/05	09/20/05	11/01/05	05/06	04/11/06
20:03	08/01/05	07/11/05	08/16/05	09/30/05	10/20/05	12/01/05	05/06	04/28/06
20:04	08/15/05	07/25/05	08/30/05	10/14/05	10/20/05	12/01/05	05/06	05/12/06
20:05	09/01/05	08/11/05	09/16/05	10/31/05	11/21/05	01/01/06	05/06	05/29/06
20:06	09/15/05	08/25/05	09/30/05	11/14/05	11/21/05	01/01/06	05/06	06/12/06
20:07	10/03/05	09/12/05	10/18/05	12/02/05	12/20/05	02/01/06	05/06	06/30/06
20:08	10/17/05	09/26/05	11/01/05	12/16/05	12/20/05	02/01/06	05/06	07/14/06
20:09	11/01/05	10/11/05	11/16/05	01/03/06	01/20/06	03/01/06	05/06	07/29/06
20:10	11/15/05	10/24/05	11/30/05	01/17/06	01/20/06	03/01/06	05/06	08/12/06
20:11	12/01/05	11/07/05	12/16/05	01/30/06	02/20/06	04/01/06	05/06	08/28/06
20:12	12/15/05	11/22/05	12/30/05	02/13/06	02/20/06	04/01/06	05/06	09/11/06

## 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 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:** An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed 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.

CITIES OF CONCORD AND KANNAPOLIS PROPOSED INTERBASIN TRANSFER

NOTICE OF PUBLIC HEARINGS

**JUNE 22, 2005, 5:00 PM**  
**MCKNIGHT AUDITORIUM IN THE CONE CENTER, THIRD FLOOR**  
**UNC-CHARLOTTE**

**JUNE 23, 2005, 5:00 PM**  
**ALBEMARLE CITY HALL ANNEX**  
**157 N. SECOND STREET**  
**ALBEMARLE, NC 28001**

The North Carolina Environmental Management Commission will hold two public hearings to receive comments on a petition for an interbasin transfer from the Catawba River and Yadkin River Sub-Basins to the Rocky River Sub-Basin. The Cities of Concord and Kannapolis are requesting an interbasin transfer (IBT) certificate from the North Carolina Environmental Management Commission for a total transfer of 48 million gallons per day (MGD) on a maximum day basis. The maximum day IBT under the proposal would be up to 38 MGD from the Catawba River Sub-Basin and up to 10 MGD from the Yadkin River Sub-Basin.

Under the proposal, the applicants would meet short-term water supply demand increases using interconnections with Charlotte (Catawba), Salisbury (Yadkin), and Albemarle (Yadkin). Long-term demands would be met by developing a raw water supply from Lake Norman (Catawba) to supplement flows to Lake Howell and Kannapolis Lake. IBT occurs because of consumptive use in and discharge to the Rocky River Sub-Basin via the Water and Sewer Authority of Cabarrus County's Rocky River Regional Wastewater Treatment Plant. The IBT certificate is being requested to meet a projected cumulative water demand shortfall of 24 MGD (average day demand) in 2035.

Notice of these hearings is given in accordance with N.C. General Statute 143-215.22I(d). The first public hearing will start at 5:00 PM on June 22, 2005 on the Third Floor of McKnight Auditorium on the campus of the University of North Carolina at Charlotte, Charlotte, NC. The second hearing will begin at 5:00 PM on June 23, 2005 in the Albemarle City Hall Annex, Albemarle, NC. In addition, Division of Water Resources (DWR) staff will be available to answer questions from 4:00 – 5:00 PM at the hearing locations. The public may inspect the staff's recommendation report, the interbasin transfer petition, and the draft Environmental Impact Statement (EIS) supporting the petition during normal business hours at the offices of DWR, 512 N. Salisbury Street, Room 1106, Archdale Building, Raleigh. These documents may also be viewed at the DWR web site:

[http://www.ncwater.org/Permits\\_and\\_Registration/Interbasin\\_Transfer/Status/Concord/](http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/Status/Concord/)

**According to the draft EIS, there are no expected significant direct impacts in either the Catawba River or Yadkin River Sub-Basins. No significant changes are predicted in lake levels, downstream flows, or water supply withdrawals. Direct impacts on water supply, water quality, wastewater assimilation, fish and wildlife resources, navigation, or recreation are not expected since there will be no significant changes in the hydrology of the system due to the increased withdrawal. There is some potential for loss of power generation capacity in the Yadkin Sub-basin.**

**The draft EIS concludes that there are no secondary impacts related to growth in either of the source basins. However, the IBT will provide additional water supply to support growth and development in the receiving basin. Mitigation measures presented in the IBT petition are expected to mitigate secondary impacts related to growth and development in the receiving basin.**

The draft EIS was circulated among agencies of the Department of Environment and Natural Resources. The Division of Water Quality, Natural Heritage Program, and the Wildlife Resources Commission were the primary commenting agencies. Their comments included concerns concentrated on secondary and cumulative impacts in the receiving basin on aquatic habitat and water quality. Suggested mitigation measures were specified, such as stream buffers and development ordinances, including low impact development measures.

The purpose of this announcement is to encourage those interested in this matter to provide comments and to comply with statutory notice requirements. You may attend either of the public hearings and make relevant oral comments and/or submit written comments, data, or other relevant information. Written submissions of oral comments at the hearings are requested. The hearing officers may limit the length of oral presentations if many people want to speak. If you are unable to attend, written comments can be mailed to Phil Fraganane, Division of Water Resources, DENR, 1611 Mail Service Center, Raleigh, NC 27699-1611. Comments may also be

submitted electronically to Phil.Fragapane@ncmail.net. All comments must be received before July 1, 2005. Oral, mailed, and emailed comments will be given equal weight.

Under the Regulation of Surface Water Transfers Act (G.S. 143-215.221), persons intending to transfer 2.0 mgd or more, or increase an existing transfer by 25 percent or more, must first obtain a certificate from the Environmental Management Commission. As part of the petition process, the applicants completed an environmental impact statement. Review of the environmental impact statement by the Department of Environment and Natural Resources has been completed in accordance with the State Environmental Policy Act.

*The public is invited to comment on the applicants' petition and supporting environmental impact statement.* The Commission is considering and seeking comments on three options with regard to the interbasin transfer request. The options are: (a) grant the certificate for the interbasin transfer request; (b) deny the interbasin transfer request; or (c) grant the certificate including any conditions necessary to achieve the purposes of the statute or to provide mitigation measures.

The public is invited to comment on the following possible conditions and to suggest any other appropriate conditions, including limitations on the amount of the transfer:

1. The Cities of Concord and Kannapolis will enact the following buffer definitions as part of the Unified Development Ordinance (UDO):

- A perennial stream buffer shall be an undisturbed area measured, at minimum, 50 feet from the top of stream bank plus 20 feet of vegetated setback, totaling 70 feet
- An intermittent stream buffer shall be an undisturbed area measured from the top of stream bank perpendicularly for a distance of 20 feet with an additional 10 feet of vegetated setback, totaling 30 feet

The UDO shall require that within stream buffer areas, the following regulations will apply:

- No new on-site sewage systems utilizing ground adsorption
- No new structures
- Maintenance of stream buffers to maintain sheet flow and provide for diffusion and infiltration of runoff and filtering of pollutants

2. All municipalities and counties receiving water and/or sewer services from the Cities of Concord and/or Kannapolis shall comply with the UDO, including the stream buffer requirements. Municipalities and counties potentially affected include Harrisburg, Landis, Midland, Mount Pleasant, and Cabarrus County.

3. Prior to transferring water under the proposed IBT certificate, the holders of the certificate will work with the Division of Water Resources to develop a compliance and monitoring plan subject to approval by the Division. The plan will include methodologies and reporting schedules for reporting the following information: maximum daily transfer amounts, compliance with permit conditions, progress on mitigation measures, and drought management. A copy of the approved plan will be kept on file with the Division for public inspection. The Division of Water Resources will have the authority to make modification to the compliance and monitoring plan as necessary to assess compliance with the certificate.

4. If either the EIS were to be found at a later date to be incorrect or new information were to become available such that the environmental impacts associated with the proposed transfer were substantially different from the projected impacts that formed the basis for certifying the IBT, the Environmental Management Commission can reopen the certificate to adjust the conditions or to require new conditions to ensure that the detriments of the transfer continue to be mitigated to a reasonable degree.

For more information or to download the EIS supporting this IBT request, visit the Division of Water Resources' website at

[http://www.ncwater.org/Permits\\_and\\_Registration/Interbasin\\_Transfer/Status/Concord/](http://www.ncwater.org/Permits_and_Registration/Interbasin_Transfer/Status/Concord/)

You may also contact Phil Fragapane in the Division of Water Resources at 919-715-0389, or email: [Phil.Fragapane@ncmail.net](mailto:Phil.Fragapane@ncmail.net)

North Carolina Department of Labor  
Division of Occupational Safety and Health  
4 West Edenton Street  
Raleigh, NC 27601

(919) 807-2875

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**NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS**

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0101, 13 NCAC 07F .0501, and 13 NCAC 07F .0201, to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Parts, 1910, 1915, and 1926 promulgated as of March 7, 2005, except as specifically described, and

the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

General Industry, Shipyard Employment, and Construction  
70 FR 1111-1144 (1/05/05)

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance  
Occupational Safety and Health Division  
North Carolina Department of Labor  
4 West Edenton Street  
Raleigh, North Carolina 27601

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel  
North Carolina Department of Labor  
Legal Affairs Division  
4 West Edenton Street  
Raleigh, NC 27601

U.S. Department of Justice

Civil Rights Division

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JDR:MSR:NT:par  
DJ 166-012-3  
2005-0457  
2005-0928

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

March 28, 2005

David A. Holec, Esq.  
City Attorney  
P.O. Box 7207  
Greenville, NC 27835

Dear Mr. Holec:

This refers to ten annexations (adopted December 9, 2004 through January 13, 2005) and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on February 14 and March 10, 2005.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich  
Chief, Voting Section



**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

**TITLE 01 – DEPARTMENT OF ADMINISTRATION**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt the rules cited as 01 NCAC 30I .0301-.0310 with changes from the proposed text noticed in the Register, Volume 19, Issue 01, pages 39-42.*

**Proposed Effective Date:** September 1, 2005

**Public Hearing:**

**Date:** June 1, 2005

**Time:** 2:00 p.m. – 4:00 p.m.

**Location:** NC Archives Auditorium, 109 E. Jones Street, Raleigh, NC

*Persons wishing to speak shall sign up by 3:00 p.m. To insure accuracy, please submit all public comments in writing.*

**Reason for Proposed Action:** Compliance with G.S. 143-128.3(e).

**Procedure by which a person can object to the agency on a proposed rule:** *Written objections may be submitted to the Assistant to the Secretary, Office of Historically Underutilized Businesses. Objections will be received by mail, delivery service, hand delivery or facsimile transmission. Objections may be directed to Bridget Wall, Assistant to the Secretary, Office for Historically Underutilized Businesses, 1336 Mail Service Center, Raleigh, NC 27699-1336, fax (919) 807-2335.*

**Written comments may be submitted to:** *Bridget Wall, Assistant to the Secretary, Office for Historically Underutilized Businesses, 1336 Mail Service Center, Raleigh, NC 27699-1336, phone (919) 807-2330, fax (919) 807-2335 or email [bridget.wall@ncmail.net](mailto:bridget.wall@ncmail.net).*

**Comment period ends:** July 15, 2005

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 30 - STATE CONSTRUCTION OFFICE**

**SUBCHAPTER 30I - MINORITY BUSINESS PARTICIPATION GOALS**

**SECTION .0300 - RECRUITMENT AND SELECTION OF MINORITY BUSINESSES FOR PARTICIPATION IN STATE CONSTRUCTION CONTRACTS**

**01 NCAC 30I .0301 SCOPE**

These Rules apply to minority business participation in single-prime bidding, separate-prime bidding, construction manager at risk, and alternative contracting methods, on State and local government construction projects as defined in G.S. 143-128.2(a).

*Authority G.S. 143-128.2; 143-128.3(e).*

**01 NCAC 30I .0302 DEFINITIONS**

As used in this Section and G.S. 143-128.2 and G.S. 143-128.3

- (1) "Bidder" means any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a public contract or subcontract.
- (2) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish equipment, materials or services, including construction, and obligating the buyer to pay for them.
- (3) "Contractor" means any person, firm, partnership, corporation, association, or joint venture which has contracted with the State of North Carolina to perform construction work or repair.
- (4) "Designer" means any person, firm, partnership, or corporation, which has contracted with the State of North Carolina to perform architectural or engineering work.
- (5) "HUB Office" means the North Carolina Department of Administration Office for Historically Underutilized Businesses.

- (6) "Owner" means the State of North Carolina through the Agency/Institution named in the contract.
- (7) "Public Entity" means the State of North Carolina and all public subdivisions and local governmental units thereof.
- (8) "SCO" means the North Carolina Department of Administration State Construction Office.
- (9) "Subcontractor" means a firm under contract with the prime contractor or construction manager at risk for supplying materials, labor, or materials and labor.

Authority G.S. 143-128.3(e).

**01 NCAC 301 .0303 ADJUSTMENTS TO GOAL**

The Secretary shall use the preceding year's minority business participation and the availability of businesses in each category as indicated by the firms identified as minority businesses by the Department of Administration in identifying appropriate percentage goals as required by G.S. 143-128.2(a).

Authority G.S. 143-128.2(a); 143-128.3(e).

**01 NCAC 301 .0304 OFFICE FOR HISTORICALLY UNDERUTILIZED BUSINESSES RESPONSIBILITIES**

(a) Interested businesses may register as a minority business as defined in G.S. 143-128.2(g). The information provided by the minority business shall be used by the HUB Office to:

- (1) Identify those areas of work for which there are minority businesses, and assist those public entities who are in the process of developing a minority business outreach plan for a particular project.
- (2) Make available to interested parties a list of registered minority business contractors and subcontractors.
- (3) Maintain a current list of minority businesses based upon information provided by the minority businesses.

(b) The HUB Office shall also:

- (1) Provide training and technical assistance to minority businesses on how to identify and obtain contracting and subcontracting opportunities through the State Construction Office and other public entities.
- (2) Provide training and technical assistance to public entities on how to identify and obtain minority contractor and subcontractor participation on projects subject to the goal requirements of G.S. 143-128.2.
- (3) Develop positive relationships with North Carolina trade and professional organizations by providing periodic meetings, such as networking and information sessions, obtaining input and feedback regarding minority business issues, legislation and policies, to improve the ability of minority

businesses to participate in State construction projects.

- (4) Monitor public entity compliance with the goal requirements of G.S. 143-128.2.
- (5) Review and monitor corrective action plans for those public entities found to be out of compliance with G.S. 143-128.2.

Authority G.S. 143-128.2; 143-128.3(e).

**01 NCAC 301 .0305 STATE CONSTRUCTION OFFICE RESPONSIBILITIES**

The State Construction Office shall:

- (1) Attend scheduled prebid conference, if requested, to clarify requirements of the General Statutes regarding minority-business participation, including the bidders' responsibilities.
- (2) Review the apparent low bidders' statutory compliance with the requirements listed in the proposal, that must be complied with, if the bid is to be considered as responsive, prior to award of contracts. The State may reject any or all bids and waive informalities pursuant to G.S. 143-129.
- (3) Review of minority business requirements at Preconstruction conference.
- (4) Monitor contractors' compliance with minority business requirements in the contract documents during construction.
- (5) Resolve protests and disputes arising from implementation of the minority business participation outreach plan, in conjunction with the HUB Office.

Authority G.S. 143-128.3(e).

**01 NCAC 301 .0306 OWNER REQUIREMENTS**

(a) Before awarding a contract, an owner shall:

- (1) Develop and implement a minority business participation outreach plan to identify minority businesses that can perform public building projects and to implement outreach efforts to encourage minority business participation in these projects. The plan shall include education, recruitment, and interaction between minority businesses and non-minority businesses.
- (2) Attend the scheduled prebid conference and explain the minority goals and objectives of the State and specific to the owner.
- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses that have requested notices from the public entity for public construction or repair work and minority businesses that otherwise indicated to the Office for Historically Underutilized Businesses an interest in the type of work being bid or the

potential contracting opportunities listed in the proposal. The notification shall include:

- (A) A description of the work for which the bid is being solicited.
- (B) The date, time, and location where bids are to be submitted.
- (C) The name of the individual within the owner's organization who will be available to answer questions about the project.
- (D) Where bid documents may be reviewed.
- (E) Any special requirements that may exist.
- (4) Utilize media likely to inform potential minority businesses of the bid being sought.
- (5) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals.
- (6) Review, jointly with the designer, all requirements of G.S. 143-128.2(c) and G.S. 143-128.2(f) prior to recommendation of award to the State Construction Office.
- (7) Evaluate documentation to determine that a good faith effort has been achieved for minority business utilization prior to recommendation of award to State Construction Office.

(b) After a contract has been awarded an owner shall:

- (1) Review prime contractors' pay applications for compliance with minority business utilization commitments prior to payment.
- (2) Submit the report to the HUB Office as required by G.S. 143-128.3(a).
- (3) Forward documentation showing evidence of implementation of Owner's requirements, Subparagraphs (1) through (7) of Paragraph (a) of this Rule, to the State Construction Office and the HUB Office upon request.

(c) All public entities that contract with a construction manager at risk shall report to the Office for Historically Underutilized Businesses the items enumerated in G.S. 143-64.31(b). The report shall include:

- (1) The owner approved minority business outreach plan of the construction manager at risk selected, and
- (2) Documentation regarding the means by which minority businesses were contacted to solicit their participation in bid proposals if the 10% goal is not achieved.

*Authority G.S. 143-64.31(b); 143-128.2(e); 143-128.3(e).*

**01 NCAC 301 .0307 DESIGNER REQUIREMENTS**

Under the single-prime bidding, separate prime bidding, construction manager at risk, or alternative contracting method, the designer shall:

- (1) Attend the scheduled prebid conference to explain minority business requirements to the prospective bidders.
- (2) Assist the owner to identify and notify prospective minority business prime and subcontractors of potential contracting opportunities and provide documentation of this assistance for the owner's records.
- (3) Maintain documentation of any contacts, correspondence, or conversation with minority business firms made in an attempt to meet the goals and forward the documentation to the owner in support of meeting the requirements.
- (4) Review jointly with the owner, all requirements of G.S. 143-128.2(c) and G.S.143-128.2(f) prior to recommendation of award.
- (5) During construction phase of the project, review payment applications for compliance with minority business utilization commitments and submit documentation that identifies payments to minority businesses along with monthly pay applications to the owner and forward copies to the State Construction Office.
- (6) Forward documentation showing evidence of implementation of Designer's requirements Items (1) through (5) of this Rule to the owner, State Construction Office and HUB Office upon request.

*Authority G.S. 143-128.2; 143-128.3(e).*

**01 NCAC 301 .0308 CONTRACTOR REQUIREMENTS**

This Rule applies to all contractors utilizing single-prime bidding, separate-prime bidding, construction manager at risk and alternative contracting methods. These requirements apply to all contractors performing as contractors and first-tier subcontractors under construction manager at risk on state projects. The contractors shall:

- (1) Attend the scheduled prebid conference.
- (2) Identify or determine those work areas of a subcontract where minority businesses may have an interest in performing subcontract work.
- (3) At least 10 business days prior to the scheduled day of bid opening, notify minority businesses of potential subcontracting opportunities listed in the proposal. The notification shall include:
  - (a) A description of the work for which the bid is being solicited.
  - (b) The date, time and location where bids are to be submitted.
  - (c) The name of the individual within the company who shall be available to answer questions about the project.

- (d) Where bid documents may be reviewed.
- (e) Any special requirements that may exist, such as insurance, licenses, bonds and financial arrangements.

If there are more than three minority businesses within a 75 mile radius of the project who offer similar contracting or subcontracting services in the specific trade, the contractor(s) shall notify no less than three minority businesses within a 75 mile radius of the project.

- (4) During the bidding process, comply with the contractor(s) requirements listed in the owner's minority business participation outreach plan.
- (5) Identify on the bid, the minority businesses that will be utilized on the project with the corresponding total dollar value of the bid and an affidavit listing good faith efforts as required by G.S. 143-128.2(c) and G.S. 143-128.2(f).
- (6) Forward documentation showing evidence of implementation of Prime Contractor, Construction Manager-at-Risk and First-Tier Subcontractor requirements to the State Construction Office and HUB Office upon request.
- (7) Upon being named the apparent low bidder, the Bidder shall provide one of the following to the State Construction Office and the Office for Historically Underutilized Businesses:
  - (a) an affidavit that includes a description of the portion of work to be executed by minority businesses, expressed as a percentage of the total contract price, which is equal to or more than the applicable goal; or
  - (b) if the percentage is not equal to the applicable goal, then an affidavit of all good faith efforts taken to meet the goal.

Failure to comply with the requirements of this Item shall be grounds for rejection of the bid and award to the next lowest responsible responsive bidder.

- (8) During the construction of a project, at any time, if it becomes necessary to replace a minority business subcontractor, immediately advise the owner, the State Construction Office, and the Director of the HUB Office in writing, of the circumstances involved. The prime contractor shall make good faith efforts to replace a minority business subcontractor with another minority business subcontractor.
- (9) If during the construction of a project additional subcontracting opportunities become available, make good faith efforts to solicit bids from minority businesses.

*Authority G.S. 143-128.2(c); 143-128.3(e).*

**01 NCAC 301 .0309 MINORITY BUSINESS RESPONSIBILITIES**

(a) Minority businesses seeking to be counted toward the minority business participation goals of G.S.143-128.2 shall be certified or designated as Historically Underutilized Business by the Department of Administration HUB Office or a local government Minority/Women Business Enterprise Office.

(b) Minority and HUB contractors shall make a good faith effort to participate in construction projects as demonstrated by:

- (1) Attending the scheduled prebid conference.
- (2) Responding promptly whether or not they wish to submit a bid when contacted by owners or bidders.
- (3) Attending training and contractor outreach sessions given by owners, contractors and state agencies, when feasible.
- (4) Participating in Mentor/Protégé programs, training, or other business development programs offered by owners, contractors or state agencies.
- (5) Negotiating in good faith with owners or contractors.

*Authority G.S. 143-128.3(e).*

**01 NCAC 301 .0310 DISPUTE PROCEDURES**

Any business disputes arising under these Rules shall be resolved as set forth in G.S. 143-128(f1).

*Authority G.S. 143-128(f1); 143-128.3(e).*

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**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 amend the rule cited as 15A NCAC 02L .0115.*

**Proposed Effective Date:** *September 1, 2005*

**Public Hearing:**

**Date:** *Wednesday, June 22, 2005*

**Time:** *9:00 a.m. – 3:00 p.m.*

**Location:** *Archdale Building, Ground Floor Hearing Room, Room G19, 512 N. Salisbury St., Raleigh, NC*

**Reason for Proposed Action:** *The General Assembly of North Carolina produced in the 2003 session, an act (Session Law 2003-352, House bill 897) to authorize the Environmental Management Commission to adopt temporary and permanent rules to reduce certain testing requirements applicable to the leaking underground storage tank cleanup program to reduce costs.*

*“Section 11. In order to reduce costs associated with the assessment and cleanup of discharges and releases of petroleum from petroleum underground storage tanks, the Environmental Management Commission may adopt temporary and permanent*

rules to modify the testing requirements set out in 15A NCAC 2L.0115 (Risk-Based Assessment and Corrective Action for Petroleum Underground Storage Tanks). Reference to this section shall satisfy the requirement for a statement of finding of need for a temporary rule.”

This change affects 15A NCAC 2L .0115(c), (n) and (o). Part (c) is modified to only require the installation of 3 monitoring wells at registered tank facilities, meeting the high risk classification in 15A NCAC 2L .0115 (d)(1), where a release has caused the groundwater contamination in excess of the 2L standards by a factor of 10. Currently parts (n) and (o) require the referenced analyses to be conducted on each and every sample obtained and only allow the substitution of other methods in limited circumstances. The Section proposes to modify these parts to require these analyses of soil and groundwater samples for the samples used to achieve site closure. This will allow assessment and monitoring stages of remediation to use screening procedures. Screening procedures are generally cheaper and faster than laboratory procedures. The Section also expects to modify and reduce the number of constituent specific and MADEP analyses necessary to assess the release and to monitor the corrective action. Together these changes are expected to produce a more completely delineated contaminant plume at a reduced cost. This strategy will allow the Section to address more sites with the given amount of funding that is available.

**Procedure by which a person can object to the agency on a proposed rule:** A person may submit written objections concerning this rule change to the UST Section of the Division of Waste Management of the Department of Environment and Natural Resources. Such correspondence should be to the attention of: Linda L. Smith, NCDENR/DWM UST Section, 1637 Mail Service Center, Raleigh, NC 27699-1637, fax (919) 733-9413 or email Linda.L.Smith@ncmail.net.

**Written comments may be submitted to:** Linda L. Smith, NCDENR/DWM UST Section, 1637 Mail Service Center, Raleigh, NC 27699-1637, fax (919) 733-9413, email Linda.L.Smith@ncmail.net.

**Comment period ends:** July 15, 2005

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**CHAPTER 02 - ENVIRONMENTAL MANAGEMENT**

**SUBCHAPTER 02L - GROUNDWATER CLASSIFICATION AND STANDARDS**

**SECTION .0100 - GENERAL CONSIDERATIONS**

**15A NCAC 02L .0115 RISK-BASED ASSESSMENT AND CORRECTIVE ACTION FOR PETROLEUM UNDERGROUND STORAGE TANKS**

(a) The purpose of this Rule is to establish procedures for risk-based assessment and corrective action sufficient to:

- (1) protect human health and the environment;
- (2) abate and control contamination of the waters of the State as deemed necessary to protect human health and the environment;
- (3) permit management of the State's groundwaters to protect their designated current usage and potential future uses;
- (4) provide for anticipated future uses of the State's groundwater;
- (5) recognize the diversity of contaminants, the State's geology and the characteristics of each individual site; and
- (6) accomplish these goals in a cost-efficient manner to assure the best use of the limited resources available to address groundwater pollution within the State.

(b) This Rule applies to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A, which is reported on or after the effective date of this Rule. This Rule shall apply to any discharge or release from a "commercial underground storage tank" or a "noncommercial underground storage tank," as those terms are defined in G.S. 143-215.94A which is reported before the effective date of this Rule as provided in Paragraph (r) of this Rule. The requirements of this Rule shall apply to the owner and operator of the underground storage tank from which the discharge or release occurred, a landowner seeking reimbursement from the Commercial Leaking Underground Storage Tank Fund or the Noncommercial Leaking Underground Storage Tank Fund under G.S. 143-215.94E, and any other person responsible for the assessment or cleanup of a discharge or release from an underground storage tank, including any person who has conducted or controlled an activity which results in the discharge or release of petroleum or petroleum products as defined in G.S. 143-215.94A(10) to the groundwaters of the State, or in proximity thereto; these persons shall be collectively referred to for purposes of this Rule as the "responsible party." This Rule shall be applied in a manner consistent with the rules found in 15A NCAC 02N in order to assure that the State's requirements

regarding assessment and cleanup from underground storage tanks are no less stringent than Federal requirements.

(c) A responsible party shall:

- (1) take immediate action to prevent any further discharge or release of petroleum from the underground storage tank; identify and mitigate any fire, explosion or vapor hazard; remove any free product; and comply with the requirements of Rules .0601 through .0604 and .0701 through .0703 and .0705 of Subchapter 02N;
- (2) incorporate the requirements of 15A NCAC 02N .0704 into the submittal required under Subparagraph (3) of this Paragraph or the limited site assessment report required under Subparagraph (4) of this Paragraph, whichever is applicable. Such submittals shall constitute compliance with the reporting requirements of 15A NCAC 02N .0704(b);
- (3) submit within 90 days of the discovery of the discharge or release a soil contamination report containing information sufficient to show that remaining unsaturated soil in the side walls and at the base of the excavation does not contain contaminant levels which exceed either the "soil-to-groundwater" or the residential maximum soil contaminant concentrations established by the Department pursuant to Paragraph (m) of this Rule, whichever is lower. If such showing is made, the discharge or release shall be classified as low risk by the Department;
- (4) if the required showing cannot be made under Subparagraph (3) of this Paragraph, submit within 120 days of the discovery of the discharge or release, or within such other greater time limit approved by the Department, a report containing information needed by the Department to classify the level of risk to human health and the environment posed by a discharge or release under Paragraph (d) of this Rule. Such report shall include, at a minimum:
  - (A) a location map, based on a USGS topographic map, showing the radius of 1500 feet from the source area of a confirmed release or discharge and depicting all water supply wells and, surface waters and designated wellhead protection areas as defined in 42 U.S.C. 300h-7(e) within the 1500-foot radius. For purposes of this Rule, source area means point of release or discharge from the underground storage tank system;
  - (B) a determination of whether the source area of the discharge or release is within a designated wellhead

protection area as defined in 42 U.S.C. 300h-7(e);

- (C) if the discharge or release is in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, a determination of whether the source area of the discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer which is being used or may be used as a source of drinking water;
- (D) a determination of whether vapors from the discharge or release pose a threat of explosion due to the accumulation of vapors in a confined space or pose any other serious threat to public health, public safety or the environment;
- (E) scaled site map(s) showing the location of the following which are on or adjacent to the property where the source is located: site boundaries, roads, buildings, basements, floor and storm drains, subsurface utilities, septic tanks and leach fields, underground storage tank systems, monitoring wells, borings and the sampling points;
- (F) the results from a limited site assessment which shall include:
  - (i) the analytical results from soil samples collected during the construction of a monitoring well installed in the source area of each confirmed discharge or release from a noncommercial or commercial underground storage tank and either the analytical results of a groundwater sample collected from the well or, if free product is present in the well, the amount of free product in the well. The soil samples shall be collected every five feet in the unsaturated zone unless a water table is encountered at or greater than a depth of 25 feet from land surface in which case soil samples shall be collected every 10 feet in the unsaturated zone. The soil samples shall be

- collected from suspected worst-case locations exhibiting visible contamination or elevated levels of volatile organic compounds in the borehole;
- (ii) if any constituent in the groundwater sample from the source area monitoring well installed in accordance with Subpart (i) of this ~~Part~~ Part, for a site meeting the high risk classification in 15A NCAC 02L .0115(d)(1), exceeds the standards or interim standards established in 15A NCAC 02L .0202 by a factor of 10 and is a discharge or release from a commercial underground storage tank, the analytical results from a groundwater sample collected from each of ~~four~~ three additional monitoring wells or, if free product is present in any of the wells, the amount of free product in such well. The ~~four~~ three additional monitoring wells shall be installed as follows: as best as can be determined, one upgradient of the source of ~~contamination;~~ contamination and two downgradient of the source of contamination; and one vertical extent well immediately downgradient from the source but within the area of contamination. The monitoring wells installed upgradient and downgradient of the source of contamination must be located such that groundwater flow direction can be determined; and
- (iii) potentiometric data from all required wells;
- (G) the availability of public water supplies and the identification of properties served by the public water supplies within 1500 feet of the source area of a confirmed discharge or release;
- (H) the land use, including zoning if applicable, within 1500 feet of the
- source area of a confirmed discharge or release;
- (I) a discussion of site specific conditions or possible actions which could result in lowering the risk classification assigned to the release. Such discussion shall be based on information known or required to be obtained under this Paragraph; and
- (J) names and current addresses of all owners and operators of the underground storage tank systems for which a discharge or release is confirmed, the owner(s) of the land upon which such systems are located, and all potentially affected real property owners. When considering a request from a responsible party for additional time to submit the report, the Division shall consider the extent to which the request for additional time is due to factors outside of the control of the responsible party, the previous history of the person submitting the report in complying with deadlines established under the ~~Commission's~~ Commission's rules, the technical complications associated with assessing the extent of contamination at the site or identifying potential receptors, and the necessity for immediate action to eliminate an imminent threat to public health or the environment.
- (d) The Department shall classify the risk of each known discharge or release as high, intermediate or low risk unless the discharge or release has been classified under Subparagraph (c)(3) of this Rule. For purposes of this Rule:
- (1) "High risk" means that:
- (A) a water supply well, including one used for non-drinking purposes, has been contaminated by the release or discharge;
- (B) a water supply well used for drinking water is located within 1000 feet of the source area of a confirmed discharge or release;
- (C) a water supply well not used for drinking water is located within 250 feet of the source area of a confirmed discharge or release;
- (D) the groundwater within 500 feet of the source area of a confirmed discharge or release has the potential for future use in that there is no source of water supply other than the groundwater;
- (E) the vapors from the discharge or release pose a serious threat of

- explosion due to accumulation of the vapors in a confined space; or
  - (F) the discharge or release poses an imminent danger to public health, public safety, or the environment.
- (2) "Intermediate risk" means that:
- (A) surface water is located within 500 feet of the source area of a confirmed discharge or release and the maximum groundwater contaminant concentration exceeds the applicable surface water quality standards and criteria found in 15A NCAC 2B .0200 by a factor of 10;
  - (B) in the Coastal Plain physiographic region as designated on a map entitled "Geology of North Carolina" published by the Department in 1985, the source area of a confirmed discharge or release is located in an area in which there is recharge to an unconfined or semi-confined deeper aquifer which the Department determines is being used or may be used as a source of drinking water;
  - (C) the source area of a confirmed discharge or release is within a designated wellhead protection area, as defined in 42 U.S.C. 300h-7(e);
  - (D) the levels of groundwater contamination for any contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes exceed 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in 15A NCAC 02L .0202, whichever is lower; or
  - (E) the levels of groundwater contamination for ethylene dibromide and benzene exceed 1,000 times the federal drinking water standard set out in 40 CFR 141.
- (3) "Low risk" means that:
- (A) the risk posed does not fall within the high or intermediate risk categories; or
  - (B) based on review of site-specific information, limited assessment or interim corrective actions, the Department determines that the discharge or release poses no significant risk to human health or the environment.

If the criteria for more than one risk category applies, the discharge or release shall be classified at the highest Paragraph (e) of this Rule.

(e) The Department may reclassify the risk posed by a release if warranted by further information concerning the potential exposure of receptors to the discharge or release or upon receipt of new information concerning changed conditions at the site. After initial classification of the discharge or release, the Department may require limited assessment, interim corrective action, or other actions which the Department believes will result in a lower risk classification. It shall be a continuing obligation of each responsible party to notify the Department of any changes that might affect the level of risk assigned to a discharge or release by the Department if the change is known or should be known by the responsible party. Such changes shall include, but shall not be limited to, changes in zoning of real property, use of real property or the use of groundwater that has been contaminated or is expected to be contaminated by the discharge or release, if such change could cause the Department to reclassify the risk.

(f) If the risk posed by a discharge or release is determined by the Department to be high risk, the responsible party shall comply with the assessment and cleanup requirements of Rule .0106(c),(g) and (h) of this Subchapter and 15A NCAC 02N .0706 and .0707. The goal of any required corrective action for groundwater contamination shall be restoration to the level of the groundwater standards set forth in 15A NCAC 02L .0202, or as closely thereto as is economically and technologically feasible. In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent possible. If the responsible party demonstrates that natural attenuation prevents the further migration of the plume, the Department may approve a groundwater monitoring plan.

(g) If the risk posed by a discharge or release is determined by the Department to be an intermediate risk, the responsible party shall comply with the assessment requirements of 15A NCAC 02L .0106(c) and (g) and 15A NCAC 02N .0706. As part of the comprehensive site assessment, the responsible party shall evaluate, based on site specific conditions, whether the release poses a significant risk to human health or the environment. If the Department determines, based on the site-specific conditions, that the discharge or release does not pose a significant threat to human health or the environment, the site shall be reclassified as a low risk site. If the site is not reclassified, the responsible party shall, at the direction of the Department, submit a groundwater monitoring plan or a corrective action plan, or a combination thereof, meeting the cleanup standards of this Paragraph and containing the information required in 15A NCAC 02L .0106(h) and 15A NCAC 02N .0707. Discharges or releases which are classified as intermediate risk shall be remediated, at a minimum, to a cleanup level of 50 percent of the solubility of the contaminant at 25 degrees Celsius or 1,000 times the groundwater standard or interim standard established in 15A NCAC 02L .0202, whichever is lower for any groundwater contaminant except ethylene dibromide, benzene and alkane and aromatic carbon fraction classes. Ethylene dibromide and benzene shall be remediated to a cleanup level of 1,000 times the federal drinking water standard set out in 40 CFR 141. Additionally, if a corrective action plan or groundwater monitoring plan is required under this Paragraph, the responsible party shall demonstrate that the groundwater cleanup levels are sufficient to prevent a violation of:



- (1) the rules contained in 15A NCAC 02B;
- (2) the standards contained in 15A NCAC 02L .0202 in a deep aquifer as described in Part (d)(2)(B) of this Rule; and
- (3) the standards contained in 15A NCAC 02L .0202 at a location no closer than one year time of travel upgradient of a well within a designated wellhead protection area, based on travel time and the natural attenuation capacity of the subsurface materials or on a physical barrier to groundwater migration that exists or will be installed by the person making the request.

In any corrective action plan submitted pursuant to this Paragraph, natural attenuation shall be used to the maximum extent possible.

(h) If the risk posed by a discharge or release is determined by the Department to be a low risk, the Department shall notify the responsible party that no cleanup, no further cleanup or no further action will be required by the Department unless the Department later determines that the discharge or release poses an unacceptable risk or a potentially unacceptable risk to human health or the environment. No notification will be issued pursuant to this Paragraph, however, until the responsible party has completed soil remediation pursuant to Paragraph (i) of this Rule except as provided in Paragraph (r) of this Rule or as closely thereto as economically or technologically feasible. The issuance by the Department of a notification under this Paragraph shall not affect any private right of action by any party which may be affected by the contamination.

(i) Assessment and remediation of soil contamination shall be addressed as follows:

- (1) At the time that the Department determines the risk posed by the discharge or release, the Department shall also determine, based on site-specific information, whether the site is "residential" or "industrial/commercial." For purposes of this Rule, a site is presumed residential, but may be classified as industrial/commercial if the Department determines based on site-specific information that exposure to the soil contamination is limited in time due to the use of the site and does not involve exposure to children. For purposes of this Paragraph, "site@" means both the property upon which the discharge or release has occurred and any property upon which soil has been affected by the discharge or release.
- (2) The responsible party shall submit a report to the Department assessing the vertical and horizontal extent of soil contamination.
- (3) For a discharge or release classified by the Department as low risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to either the residential or industrial/commercial maximum soil contaminant concentration established by the Department pursuant to

Paragraph (m) of this Rule, whichever is applicable.

- (4) For a discharge or release classified by the Department as high or intermediate risk, the responsible party shall submit a report demonstrating that soil contamination has been remediated to the lowest of:

- (A) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has been established by the Department pursuant to Paragraph (m) of this Rule; or

- (B) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to Paragraph (m) of this Rule.

(j) A responsible party who submits a corrective action plan which proposes natural attenuation or to cleanup groundwater contamination to a standard other than a standard or interim standard established in 15A NCAC 02L .0202, or to cleanup soil other than to the standard for residential use or soil-to-groundwater contaminant concentration established pursuant to this Rule, whichever is lower, shall give notice to: the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within or contiguous to the area containing the contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate. Such notice shall describe the nature of the plan and the reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the corrective action plan. Approval of the corrective action plan by the Department shall be postponed for a period of 30 days following receipt of the request so that the Department may consider comments submitted by interested individuals. The responsible party shall, within a time frame determined by the Department, provide the Department with a copy of the notice and proof of receipt of each required notice, or of refusal by the addressee to accept delivery of a required notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting such notice prominently in a manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a copy of the posted notice and a description of the manner in which such posted notice was given.

(k) A responsible party who receives a notice pursuant to Paragraph (h) of this Rule for a discharge or release which has not been remediated to the groundwater standards or interim standards established in Rule .0202 of this Subchapter or to the lower of the residential or soil-to-groundwater contaminant concentrations established under Paragraph (m) of this Rule, shall, within 30 days of the receipt of such notice, provide a copy of the notice to: the local Health Director and the chief administrative officer of each political jurisdiction in which the contamination occurs; all property owners and occupants within

or contiguous to the area containing contamination; and all property owners and occupants within or contiguous to the area where the contamination is expected to migrate. Notification shall be made by certified mail. The responsible party shall, within a time frame determined by the Department, provide the Department with proof of receipt of the copy of the notice, or of refusal by the addressee to accept delivery of the copy of the notice. If notice by certified mail to occupants under this Paragraph is impractical, the responsible party may give notice by posting a copy of the notice prominently in a manner designed to give actual notice to the occupants. If notice is made to occupants by posting, the responsible party shall provide the Department with a description of the manner in which such posted notice was given.

(l) To the extent feasible, the Department shall maintain in each of the Department's regional offices a list of all petroleum underground storage tank discharges or releases discovered and reported to the Department within the region on or after the effective date of this Rule and all petroleum underground storage tank discharges or releases for which notification was issued under Paragraph (h) of this rule by the Department on or after the effective date of this Rule.

(m) The Department shall publish, and annually revise, maximum soil contaminant concentrations to be used as soil cleanup levels for contamination from petroleum underground storage tank systems. Maximum soil contaminant concentrations will be established for residential, industrial/commercial and soil-to-groundwater exposures.

(1) The following equations and references shall be used in establishing residential maximum soil contaminant concentrations. Equation 1 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2, C, D or E. Equation 2 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2 or C. The maximum soil contaminant concentration shall be the lowest of the concentrations derived from Equations 1 and 2.

(A) Equation 1: Non-cancer Risk-based Residential Ingestion Concentration  

$$\text{Soil mg/kg} = \frac{0.2 \times \text{oral chronic reference dose} \times \text{body weight, age 1 to 6} \times \text{averaging time noncarcinogens}}{[\text{exposure frequency} \times \text{exposure duration, age 1 to 6} \times (\text{soil ingestion rate, age 1 to 6} / 106 \text{ mg/kg})]}$$

(B) Equation 2: Cancer Risk-based Residential Ingestion Concentration  

$$\text{Soil mg/kg} = \frac{[\text{target cancer risk of } 10^{-6} \times \text{averaging time carcinogens}]}{[\text{exposure frequency} \times (\text{soil ingestion factor, age adjusted} / 106 \text{ mg/kg}) \times \text{oral cancer slope factor}]}$$
 The age adjusted soil ingestion factor shall be calculated by:  $[(\text{exposure duration, age 1 to 6} \times \text{soil ingestion rate, age 1$

$\text{to 6}) / (\text{body weight, age 1 to 6})] + [((\text{exposure duration, total} - \text{exposure duration, age 1 to 6}) \times \text{soil ingestion, adult}) / (\text{body weight, adult})]$ .

(C) The exposure factors selected in calculating the residential maximum soil contaminant concentrations shall be within the recommended ranges specified in the following references or the most recent version of these references:

- (i) EPA, 1990. Exposure Factors Handbook;
- (ii) EPA, 1991. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part B, Development of Risk Based Preliminary Remediation Goals);
- (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at: <http://www.epa.gov/reg3hwmd/index.html>; and
- (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments.

(D) The following references or the most recent version of these references, in order of preference, shall be used to obtain oral chronic reference doses and oral cancer slope factors:

- (i) EPA. Integrated Risk Information System (IRIS) Computer Database;
- (ii) EPA. Health Effects Assessment Summary Tables (HEAST);
- (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at: <http://www.epa.gov/reg3hwmd/index.html>;
- (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments; and
- (v) Other appropriate, published health risk assessment data,

- and scientifically valid peer-reviewed published toxicological data.
- (2) The following equations and references shall be used in establishing industrial/commercial maximum soil contaminant concentrations. Equation 1 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2, C, D or E. Equation 2 shall be used for each contaminant with an EPA carcinogenic classification of A, B1, B2 or C. The maximum soil contaminant concentration shall be the lowest of the concentrations derived from Equations 1 and 2.
- (A) Equation 1: Non-cancer Risk-based Industrial/Commercial Ingestion Concentration  

$$\text{Soil mg/kg} = \frac{0.2 \times \text{oral chronic reference dose} \times \text{body weight, adult} \times \text{averaging time noncarcinogens}}{[\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 106 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested}]}$$
- (B) Equation 2: Cancer Risk-based Industrial/Commercial Ingestion Concentration  

$$\text{Soil mg/kg} = \frac{\text{target cancer risk of } 10^{-6} \times \text{body weight, adult} \times \text{averaging time carcinogens}}{[\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 106 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested} \times \text{oral cancer slope factor}]}$$
- (C) The exposure factors selected in calculating the industrial/commercial maximum soil contaminant concentrations shall be within the recommended ranges specified in the following references or the most recent version of these references:
- (i) EPA, 1990. Exposure Factors Handbook;
  - (ii) EPA, 1991. Risk Assessment Guidance for Superfund: Volume I Human Health Evaluation Manual (Part B, Development of Risk Based Preliminary Remediation Goals);
  - (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at: <http://www.epa.gov/reg3hwm/index.html>; and
- (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments.
- (D) The following references or the most recent version of these references, in order of preference, shall be used to obtain oral chronic reference doses and oral cancer slope factors:
- (i) EPA. Integrated Risk Information System (IRIS) Computer Database;
  - (ii) EPA. Health Effects Assessment Summary Tables (HEAST);
  - (iii) EPA Region III. Risk-based Concentration Tables (RBC Tables). Office of RCRA, Technical and Program Support Branch. Available at <http://www.epa.gov/reg3hwm/index.html>;
  - (iv) EPA, 1995. Supplemental Guidance to RAGS: Region 4 Bulletins Human Health Risk Assessment, including future amendments; and
  - (v) Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data.
- (3) The following equations and references shall be used in establishing the soil-to-groundwater maximum contaminant concentrations:
- (A) Organic Constituents:  

$$\text{Soil mg/kg} = \text{groundwater standard or interim standard} \times [(.02 \times \text{soil organic carbon-water partition coefficient}) + 4 + (1.733 \times 41 \times \text{Henry's Law Constant (atm.-m}^3\text{/mole)})]$$
- (i) If no groundwater standard or interim standard has been established under Rule .0202 of this Subchapter, the practical quantitation limit shall be used in lieu of a standard to calculate the soil-to-groundwater maximum contaminant concentrations.
  - (ii) The following references or the most recent version of these references, in order of preference, shall be used to obtain soil organic carbon-water partition coefficients and Henry's Law Constants:

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|---|---|
| <p>(I) EPA, 1996. Soil Screening Guidance: Technical Background Document. (EPA/540/R95/128);</p> <p>(II) EPA, 1986. Superfund Public Health Evaluation Manual. Office of Emergency and Remedial Response (EPA/540/1-86/060);</p> <p>(III) Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical]." U.S. Public Health Service;</p> <p>(IV) Montgomery, J.H., 1996. Groundwater Chemicals Desk Reference. CRC Press, Inc;</p> <p>(V) Sims, R.C., J.L. Sims and S.G. Hansen, 1991. Soil Transport and Fate Database, Version 2.0. EPA Robert S. Kerr Environmental Laboratory; and</p> <p>(VI) Other appropriate, published, peer-reviewed and scientifically valid data.</p> <p>(B) Inorganic Constituents:<br/>Soil mg/kg = groundwater standard or interim standard x [(20 x soil-water partition coefficient for pH of 5.5) + 4 + (1.733 x 41 x Henry's Law Constant (atm.-m<sup>3</sup>/mole))].</p> <p>(i) If no groundwater standard or interim standard has been established under Rule .0202 of this Subchapter, the practical quantitation limit shall be used in lieu of a standard to calculate the soil-to-groundwater maximum contaminant concentrations.</p> | <p>(ii) The following references or the most recent version of these references, in order of preference, shall be used to obtain soil-water partition coefficients and Henry's Law Constants:</p> <p>(I) EPA, 1996. Soil Screening Guidance: Technical Background Document. (EPA/540/R95/128);</p> <p>;</p> <p>(II) Baes, C.F., III, R.D. Sharp, A.L. Sjoreen, and R.W. Shor, 1984. A Review and Analysis of Parameters for Assessing Transport of Environmentally Released Radionuclides Through Agriculture. Oak Ridge National Laboratory;</p> <p>(III) Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical]." U.S. Public Health Service;</p> <p>(IV) Sims, R.C., J.L. Sims and S.G. Hansen, 1991. Soil Transport and Fate Database, Version 2.0. EPA Robert S. Kerr Environmental Laboratory; and</p> <p>(V) Other appropriate, published, peer-reviewed and scientifically valid data.</p> <p>(n) Analytical procedures for soil samples required under this Rule, except as provided in Paragraph (s) of this <del>rule</del>, <u>Rule</u>, shall be <del>as follows:</del> <u>methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released. A sufficient number of soil samples collected, including the most</u></p> |
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contaminated sample, shall be analyzed as follows in order to determine the risks of the constituents of contamination:

- (1) soil samples collected from a discharge or release of low boiling point fuels, including, but not limited to gasoline, aviation gasoline and gasohol, shall be analyzed for volatile organic compounds and additives using EPA Method 8260, including isopropyl ether and methyl tertiary butyl ether;
- (2) soil samples collected from a discharge or release of high boiling point fuels, including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2, shall be analyzed for volatile organic compounds using EPA Method 8260 and semivolatile organic compounds using EPA Method 8270;
- (3) soil samples collected from a discharge or release of heavy fuels shall be analyzed for semivolatile organic compounds using EPA Method 8270;
- (4) soil samples collected from a discharge or release of used and waste oil shall be analyzed for volatile organic compounds using EPA Method 8260, semivolatile organic compounds using EPA Method 8270, polychlorinated biphenyls using EPA Method 8080, and chromium and lead, using procedures specified in Subparagraph (6) of this Paragraph;
- (5) soil samples collected from any discharge or release subject to this Rule shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under Rule 02H .0805(a)(1) of this Chapter;
- (6) analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph shall be performed as specified in the following references: Test Methods for Evaluating Solid Wastes:Physical/Chemical Methods, November 1990, U.S. Environmental Protection Agency publication number SW-846; or in accordance with other methods or procedures approved by the Director under 15A NCAC 02H.0805(a)(1);
- (7) other EPA-approved analytical methods may be used if the methods include the same constituents as the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph and meet the detection limits of the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph; and
- (8) metals and acid extractable organic compounds shall be eliminated from analyses of soil samples collected pursuant to this Rule, if these compounds are not detected in soil samples collected during the construction of

the source area monitoring well required under Subpart (c)(4)(F)(i) of this Rule.

(o) Analytical procedures for groundwater samples required under this Rule shall be as follows: methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released. A sufficient number of groundwater samples, including the most contaminated sample, shall be analyzed as follows in order to determine the risks of the constituents of contamination:

- (1) groundwater samples collected from a discharge or release of low boiling point fuels, including, but not limited to, gasoline, aviation gasoline and gasohol, shall be analyzed for volatile organic compounds using Standard Method 6210D or EPA Methods 601 and 602, including xylenes, isopropyl ether and methyl tertiary butyl ether. Samples shall also be analyzed for ethylene dibromide using EPA Method 504.1 and lead using Standard Method 3030C preparation. 3030C metals preparation, using a 0.45 micron filter, must be completed within 72 hours of sample collection;
- (2) groundwater samples collected from a discharge or release of high boiling point fuels, including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2, shall be analyzed for volatile organic compounds using EPA Method 602 and semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625;
- (3) groundwater samples collected from a discharge or release of heavy fuels shall be analyzed for semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625;
- (4) groundwater samples collected from a discharge or release of used or waste oil shall be analyzed for volatile organic compounds using Standard Method 6210D, semivolatile organic compounds plus the 10 largest non-target peaks identified using EPA Method 625, and chromium and lead using Standard Method 3030C preparation. 3030C metals preparation, using a 0.45 micron filter, must be completed within 72 hours of sample collection;
- (5) groundwater samples collected from any discharge or release subject to this Rule shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under Rule 02H .0805(a)(1) of this Chapter;
- (6) analytical methods specified in Subparagraphs (1), (2), (3) and (4) of this Paragraph shall be performed as specified in the following references: Test Procedures for the Analysis of Pollutants under the Clean Water Act, Federal

Register Vol. 49 No. 209, 40 CFR Part 136, October 26, 1984; Standard Methods for the Examination of Water and Wastewater, published jointly by American Public Health Association, American Water Works Association and Water Pollution Control Federation; Methods for Determination of Organic Compounds in Drinking Water, U.S. Environmental Protection Agency publication number EPA-600/4-79-020; or in accordance with other methods or procedures approved by the Director under 15A NCAC 02H .0805(a)(1);

- (7) other EPA-approved analytical methods may be used if the methods include the same constituents as the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph and meet the detection limits of the analytical methods specified in Subparagraphs (1), (2), (3), and (4) of this Paragraph; and
- (8) metals and acid extractable organic compounds shall be eliminated from analyses of groundwater samples collected pursuant to this Rule, if these compounds are not detected in the groundwater sample collected from the source area monitoring well installed pursuant to Subpart (c)(4)(F)(i) of this Rule.

(p) In accordance with 15A NCAC 02H .0804, laboratories are required to obtain North Carolina Division of Water Quality laboratory certification for parameters that are required to be reported to the State in compliance with the State's surface water, groundwater and pretreatment rules.

(q) This Rule shall not relieve any person responsible for assessment or cleanup of contamination from a source other than a commercial or noncommercial underground storage tank from its obligation to assess and clean up contamination resulting from such discharge or releases.

(r) If the risk posed by the discharge or release has been classified by the Department as Class AB under 1995 (Reg. Sess., 1996) c. 648, s. 1, the discharge or release is classified as high risk under this Rule unless and until the Department reclassifies the risk posed by the discharge or release. If the risk posed by the discharge or release has been classified by the Department as Class CDE under 1995 (Reg. Sess., 1996) c. 648, s. 1, the discharge or release is classified as low risk under this Rule unless and until the Department reclassifies the risk posed by the discharge or release. The responsible party shall notify the Department of any factors that might affect the level of risk assigned to Class AB or Class CDE discharges or releases by the Department. Responsible parties for Class AB discharges or releases for which a site assessment pursuant to Rule .0106 (c) and (g) of this Section has been submitted to the Department before the effective date of this Rule, shall continue to comply with notices previously received from the Department unless and until the Department determines that application of all or part of this Rule is necessary to protect human health or the environment or may result in a more cost effective assessment and cleanup of the discharge or release. If a site assessment

pursuant to Rule .0106 (c) and (g) of this Section has not been submitted to the Department for a Class AB or Class CDE discharge or release before the effective date of this Rule, the responsible party shall comply with Paragraph (c) of this Rule unless the Department has issued a closure notice for the discharge or release. For discharges or releases classified as low risk under this Paragraph and for which a site assessment pursuant to Rule .0106 (c) and (g) of this Section has been submitted to the Department prior to the effective date of this Rule, the Department may issue a notification under Paragraph (h) of this Rule if the responsible party demonstrates that soil contamination does not exceed contamination cleanup levels established (March 1997) in Paragraph (s) of this Rule.

(s) The Department may issue a notification under Paragraph (h) of this Rule for a discharge or release classified as low risk under Paragraph (r) of this Rule if a site assessment pursuant to Rule .0106(c) and (g) of this Section was submitted to the Department prior to the effective date of this Rule and the responsible party demonstrates that soil contamination from the discharge or release has been remediated to the final cleanup levels established under this Paragraph. If it has not already done so, a responsible party must submit all information necessary for the Department to establish a cleanup level under this Paragraph, including, but not limited to, the completed forms contained in Tables 1 and 2.

- (1) In establishing a cleanup level, the Department shall determine whether any of the following conditions apply to the discharge or release:
  - (A) groundwater is contaminated by the discharge or release;
  - (B) contaminated soil in the unsaturated zone is located less than five feet from the seasonal high water table, bedrock or transmissive indurated sedimentary units. Transmissive indurated sedimentary units shall include, but shall not be limited to shell limestone, fractured shale and sandstone; and
  - (C) vapors pose a serious threat of explosion or other public health concern due to the accumulation of the vapors in a confined space.
- (2) If any of the conditions specified in Subparagraph (1) of this Paragraph apply to the discharge or release, the final cleanup level for the discharge or release shall be:
  - (A) 10 mg/kg total petroleum hydrocarbons for discharges or releases of low boiling point fuels, including, but not limited to, gasoline, aviation gasoline, and gasohol;
  - (B) 40 mg/kg total petroleum hydrocarbons for discharges or releases of medium and high boiling point fuels, including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2; and

- (C) 250 mg/kg total petroleum hydrocarbons for discharges or releases of waste oil and heavy fuels, including, but not limited to fuel oil nos. 4, 5 and 6, motor oil and hydraulic fluid.
- (3) If the conditions specified in Subparagraph (1) of this Paragraph do not apply to the discharge or releases, the Department shall determine a final cleanup level in the following manner:
  - (A) the total site characteristics score shall be determined from Table 1 by recording and adding the five characteristic scores;
  - (B) the total site characteristics score shall be used to determine each applicable initial cleanup level on Table 2;
  - (C) using Table 3, the applicable Site Code shall be determined; and
  - (D) the final contamination cleanup level for the discharge or release shall be determined by multiplying each applicable initial cleanup level determined in Part (B) of this Subparagraph by 1 for Code A sites, 2 for Code B sites and 3 for Code C sites.
- (4) Any soil samples obtained to determine cleanup levels pursuant to this Paragraph shall be analyzed as follows:
  - (A) soil samples collected from a discharge or release of low boiling point fuels including, but not limited to, gasoline, aviation gasoline and gasohol, shall be analyzed using EPA Method modified 8015 (California Method) with EPA Method 5030 preparation;
  - (B) soil samples collected from a discharge or release of medium or high boiling point fuels including, but not limited to, kerosene, diesel, varsol, mineral spirits, naphtha, jet fuels and fuel oil no. 2, shall be analyzed using EPA Method modified 8015 (California Method) with EPA Method 3550 preparation; and
  - (C) soil samples collected from a discharge or release of waste oil and heavy fuels, including, but not limited to fuel oil nos. 4, 5 and 6, motor oil and hydraulic fluid, shall be analyzed using EPA Method 9071 or another equivalent EPA-approved method that meets the same detection limits.
- (5) Analytical methods for any soil samples obtained to determine cleanup levels pursuant to this Paragraph shall be performed as specified in the following references or the most recent version of these references: Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods, November 1990, U.S. Environmental Protection Agency Publication number SW-846 and Guidelines for Addressing Fuel Leaks, D.M. Eisenberg and others, 1985, California Regional Water Quality Control Board, San Francisco Bay Region.

**Table 1  
SITE CHARACTERISTICS EVALUATION**

<b>Characteristic</b>	<b>Condition</b>	<b>Rating</b>	<b>Score</b>
1) Predominant grain size as classified in accordance with the Unified Soil Classification System or the U.S. Department of Agriculture Soil Classification System	Gravel	150	
	Sand	100	
	Silt	50	
	Clay	0	
2) Are preferential pathways for contaminant movement such as quartz veins, coarse-grained sediments, fractures and weathered igneous intrusions present in or below the contaminated soil?	Present and intersecting seasonal high water table	10	
	Present but not intersecting seasonal high water table	5	
	None Present	0	
3) Distance between the contaminated/non-contaminated soil interference and the seasonal high water	5-10 feet	20	
	>10-40 feet	10	
	>40 feet	0	

**PROPOSED RULES**

table		
4) Is the top of bedrock or transmissive indurated sediments located above seasonal high water table?	Yes	20
	No	0
5) Are artificial conduits present within the zone of contamination?	Present and intersecting seasonal high water table	150
	Present but not intersecting seasonal high water table	10
	Not Present	150
Total Site Characteristics Score		

**Table 2  
CLEANUP LEVEL DETERMINATION**

Initial Cleanup Level

**FINAL CLEANUP LEVEL**

EPA Method 8015/5030 for Low Boiling Point Hydrocarbons  
such as Gasoline, Aviation Fuels, Gasohol

Total Site Characteristics Score	Initial Cleanup Level TPH (mg/kg)	Select Site Code*	Final Cleanup Level
>150	<10	Code A (Multiply initial cleanup level by 1)	1 x ____ = ____ mg/kg
121 - 150	20		
91 - 120	40		
61 - 90	60		
31 - 60	80	Code B (Multiply initial cleanup level by 2)	2 x ____ = ____ mg/kg
0 - 30	100	Code C (Multiply initial cleanup level by 3)	3 x ____ = ____ mg/kg

EPA Method 8015/3550 for Medium and High Boiling Point Hydrocarbons  
such as Kerosene, Diesel, Varsol, Mineral Spirits, Naptha

Total Site Characteristics Score	Initial Cleanup Level TPH (mg/kg)	Select Site Code*	Final Cleanup Level
>150	<40	Code A (Multiply initial cleanup level by 1)	1 x ____ = ____ mg/kg
121 - 150	80		
91 - 120	160		
61 - 90	240		
31 - 60	320	Code B (Multiply initial cleanup level by 2)	2 x ____ = ____ mg/kg
0 - 30	400	Code C	3 x ____ = ____ mg/kg



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(Multiply initial cleanup level by 3)

EPA Method 9071 for Heavy Fuels  
such as Fuel Oil (#4,#5,#6), Motor Oil, Hydraulic Fluid, Waste Oil

Total Site Characteristics Score	Initial Cleanup Level TPH (mg/kg)	Select Site Code*	Final Cleanup Level
>150	<250	Code A (Multiply initial cleanup level by 1)	1 x ____ = ____ mg/kg
121 - 150	400	Code B (Multiply initial cleanup level by 2)	2 x ____ = ____ mg/kg
91 - 120	550	Code C (Multiply initial cleanup level by 3)	3 x ____ = ____ mg/kg
61 - 90	700		
31 - 60	850		
0 - 30	1000		

See Site Code Description, Table 3  
TPH – Total Petroleum Hydrocarbons  
mg/kg – milligram per kilogram

**Table 3  
SITE CODE DESCRIPTIONS**

Code-A Site meets both of the following criteria:

1. Water supply well(s) are within 1500 feet of the release.
2. Public water supply is not available for connecting water supply well users.

Code-B Site meets both of the following criteria:

1. Water supply well(s) are within 1500 feet of the release.
2. Public water supply is available for connecting water supply well users, however, water supply wells are still being used.

Code-C Site meets the following criterion:

1. No known water supply well(s) are within 1500 feet of the release.

Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V.

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**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 18C .2007.

**Proposed Effective Date:** October 1, 2005

**Public Hearing:**

**Date:** June 2, 2005

**Time:** 2:00 p.m.

**Location:** Parker Lincoln Building, Conference Room 1A224, 2728 Capital Blvd., Raleigh, NC

**Reason for Proposed Action:** In order to meet the conditions of the primacy agreement with the US Environmental Protection

Agency, North Carolina must adopt rules that are no less stringent than the Federal Regulations as required in Section 1413 of the Safe Drinking Water Act. The National Primary Drinking Water Regulation: Long Term 1 Enhanced Surface Water Treatment Rule was promulgated on January 14, 2002. North Carolina will amend existing State rules to incorporate 40 CFR 141 Subpart T of the Federal Rule by reference. Additional amendments to this rule are proposed to meet the special primacy requirements specified in 40 CFR Part 142. The purpose of this rule is to improve control of microbial pathogens in drinking water (specifically the protozoan *Cryptosporidium*) and address risk trade-offs with disinfection byproducts. Systems will need to meet strengthened filtration requirements and calculate levels of microbial inactivation to ensure

protection of public health when treatment changes are made to comply with the requirements for disinfection of drinking water supplies. This rule applies to public water systems that serve fewer than 10,000 people. North Carolina has previously adopted similar Federal Regulations by reference for public water systems serving 10,000 or more people.

**Procedure by which a person can object to the agency on a proposed rule:** Objections on the proposed rule should be submitted to Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or by email at Linda.Raynor@ncmail.net.

**Written comments may be submitted to:** Linda F. Raynor, Public Water Supply Section, 1634 Mail Service Center, Raleigh, NC 27699-1634 or by email at Linda.Raynor@ncmail.net.

**Comment period ends:** August 1, 2005

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

- Fiscal Impact
- State
  - Local
  - Substantive (≥\$3,000,000)
  - None

**CHAPTER 18 - ENVIRONMENTAL HEALTH**

**SUBCHAPTER 18C - WATER SUPPLIES**

**SECTION .2000 - FILTRATION AND DISINFECTION**

**15A NCAC 18C .2007 ENHANCED FILTRATION AND DISINFECTION**

(a) Public water systems shall respond to the State in writing to significant deficiencies outlined in sanitary survey reports no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(b) Public water systems shall take necessary steps to address significant deficiencies identified in sanitary survey reports if such deficiencies are within the control of the public water system and its governing body.

(c) Sanitary survey means an onsite review by the State of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

~~(d) A Comprehensive Performance Evaluation (CPE) is a thorough review and analysis of a plant's performance based capabilities and associated administrative, operation, and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements.~~

~~(e)~~(d) A significant deficiency is a defect in a system's design, operation, or maintenance, as well as any failures or malfunctions of its treatment, storage, or distribution system, that is causing or has the potential to cause the introduction of contamination into water delivered to customers.

(e) When a public water system is required to conduct a comprehensive performance evaluation (CPE) pursuant to this Subchapter, the CPE shall include: assessment of water treatment plant performance, evaluation of major unit processes, identification and prioritization of performance limiting factors, assessment of the applicability of comprehensive technical assistance, and a written CPE report. The public water system shall participate in a comprehensive technical assistance (CTA) activity when the Department determines, based on the CPE results, there is a potential for improved water treatment performance and the public water system is able to receive and implement technical assistance. During the CTA phase, the public water system shall use the CPE results to identify and systematically address factors limiting performance of its water treatment plant; further, the public water system shall implement process control priority-setting techniques, and maintain long-term involvement in training staff and administrators.

(f) The provisions of 40 C.F.R. 141, Subpart P - Enhanced Filtration and ~~Disinfection~~ - (Systems Serving 10,000 or More People) and Subpart T - Enhanced Filtration and Disinfection - (Systems Serving Fewer than 10,000 People) are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the Environmental Protection Agency's (USEPA) Drinking Water Hotline at 1-800-426-4791 or from EPA's webpage at <http://www.epa.gov/ogwdw/regs.html>.

Authority G.S. 130A-315; P.L. 93-523; 40 C.F.R. 141.

**TITLE 21 – LICENSING BOARDS**

**CHAPTER 63 – SOCIAL WORK CERTIFICATION & LICENSURE BOARD**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Work Certification and Licensure Board intends to*

adopt the rule cited as 21 NCAC 63 .0405 and amend the rules cited as 21 NCAC 63 .0210-.0211, .0305, .0401, .0501.

**Proposed Effective Date:** September 1, 2005

**Public Hearing:**

**Date:** July 15, 2005

**Time:** 2:00 p.m.

**Location:** Office of the NC Social Work Certification & Licensure Board, 337 S. Cox Street, Asheboro, NC 27203

**Reason for Proposed Action:** Improvement of rules regarding licensure by the Board.

**Procedure by which a person can object to the agency on a proposed rule:** State the objection and reasons for the objection. Specify the text of the rule to which the objection pertains. Submit the objection in writing to the Rule-making Coordinator, Elizabeth L. Oxley, Assistant Attorney General, NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001.

**Written comments may be submitted to:** Elizabeth L. Oxley, Assistant Attorney General, NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001.

**Comment period ends:** July 15, 2005

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact**

- State
- Local
- Substantive (≥\$3,000,000)
- None

**SECTION .0200 - CERTIFICATION**

**21 NCAC 63 .0210 PROVISIONAL LICENSES**

- (a) The Board shall issue a provisional license to any person ~~meeting who meets~~ the requirements in G.S. 90B-7(f).
- (b) Applications and forms are to be obtained from and returned to the Board Office.

(c) ~~The Board shall assess~~ An application fee of one hundred dollars (\$100.00) ~~will be assessed~~ for processing each application.

~~(e)(d)~~ Prior to engaging in the practice of practicing clinical social work, applicants must demonstrate in writing ~~to the satisfaction of the Board that that, in the event of a clinical emergency~~ they have immediate access to a licensed mental health professional who has agreed to provide to them emergency clinical consultation ~~or supervision when such is needed~~ to assure that standards of clinical social work practice are maintained. Provisionally licensed clinical social workers shall immediately notify the Board in writing of any change in such access.

~~(d)(c)~~ All applicants for Each provisional licensee who have not met the requirements of two years of supervised clinical social work experience must be supervised as set forth in G.S. 90B-7(f), and, shall receive on-going appropriate supervision, as defined in Rule rule .0211(a)(2), of this Section until this requirement is satisfied the provisional licensee is licensed as a Licensed Clinical Social Worker.

(f) All provisional licensees shall submit reports of their clinical social work experience and supervision on the appropriate Board form(s) every six months for review and evaluation by the Board.

(g) To prevent a lapse in licensure, provisional licensees who desire to become Licensed Clinical Social Workers shall complete the application process for the Licensed Clinical Social Worker classification and submit the application fee of one hundred dollars (\$100.00) early enough to allow 30 days for administrative processing and Board action prior to the expiration of the provisional license.

Authority G.S. 90B-6; 90B-7.

**21 NCAC 63 .0211 WORK EXPERIENCE**

- (a) For the Licensed Clinical Social Worker credential:
  - (1) Two years of post-MSW clinical social work experience shall mean 3,000 clock hours of work or employment for a fee or salary while engaged in the practice of clinical social work. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six years, with no more than 1500 hours accumulated in any one year. Practicum or internship experience gained as part of any educational program shall not be included.
  - (2) Appropriate supervision shall mean supervision in person by an MSW who is also a licensed clinical social worker, as defined in 90B-3, a Licensed Clinical Social Worker of an applicant during the applicant's two years of post-MSW clinical social work experience. The Provisional Licensed Clinical Social Worker's (P-LCSW) clinical social work supervisor shall have an additional two years of clinical social work experience post LCSW licensure.
  - (3) Appropriate supervision shall be that which is provided on a regular basis throughout the

applicant's two years of experience with at least one hour of supervision during every 30 hours of experience. A minimum of 100 hours of ~~individual or group~~ supervision is ~~required~~required of which at least 75 of the 100 hours shall be individual supervision. Individual supervision is defined as one on one, in person, supervision by an MSW who is also an LCSW where the supervisor reviews and discusses clinical social work cases and provides evaluative comments and direction to the P-LCSW. Group supervision shall mean supervision provided by an MSW who is also an LCSW as defined in G.S. 90B-3 in a group setting, during which the supervisor reviews and discusses clinical social work cases and provides feedback and direction to each P-LCSW in the group. A maximum of 25 hours of group supervision may be applied toward meeting the supervision requirements for the LCSW.

(b) For the Certified Social Work Manager credential:

- (1) Two years of post social work degree experience shall mean 3,000 clock hours of employment for a salary while engaged in administrative social work duties including, but not limited to, policy and budgetary development and implementation, supervision and management, program evaluation, planning, and staff development. Such duties shall be carried out in an administrative setting where social work and/or other mental health services are delivered. The 3,000 hours shall be accumulated over a period of time not less than two years nor more than six years, with no more than 1500 hours accumulated in any one year. Practicum or internship experience gained as part of any educational program shall not be included.
- (2) Appropriate supervision shall mean supervision in person by a social work administrator certified by the Board on at least one level who has a minimum of five years of administrative experience in a social work or mental health setting. Appropriate supervision shall be that which is provided on a regular basis throughout the applicant's two years of administrative social work experience. A minimum of 100 hours of ~~individual or group~~ supervision is ~~required~~required of which at least 50 of the 100 hours shall be individual supervision. A maximum of 50 hours of group supervision may be applied toward meeting the supervision requirements for the CSWM.

*Authority G.S. 90B-6; 90B-7.*

**SECTION .0300-EXAMINATIONS**

**21 NCAC 63 .0305 REVIEW OF EXAMINATIONS BY UNSUCCESSFUL APPLICANTS**

(a) An applicant who has not successfully passed the certification or licensure exam may ~~request a review in accordance with the policies and procedures of the examining body~~his/her test booklet together with the appropriate answer sheet. ~~In order to do so, the applicant must:~~

- (1) ~~make a written request for review of his/her examination directly to the Board;~~
- (2) ~~review the exam in the Office of the Board and in the presence of a board member;~~
- (3) ~~not take notes, or photocopy any examination materials;~~
- (4) ~~sign a statement of confidentiality regarding the contents of the exam;~~

(b) ~~The Board has the responsibility of obtaining a copy of the examination together with the applicant's answer sheet and the scoring key. The Board shall maintain strict security of all testing materials.~~

(b)(e) An applicant's score ~~will~~shall not be changed by the Board, and any questions about the score ~~will~~shall be transmitted to the ~~national examination service~~examining body for review.

*Authority G.S. 90B-6.*

**SECTION .0400 – RENEWAL OF CERTIFICATION**

**21 NCAC 63 .0401 CONTINUING EDUCATION REQUIREMENTS**

(a) Continuing education for certification or licensure renewal is required to maintain professional knowledge and technical competency. Renewal of certification or licensure requires 40 hours of continuing education credits approved by the Board within each two year renewal cycle. However, if a certification or licensure is for less than a full two-year period, then 30 hours of continuing education credits are required. One unit of credit is equal to one contact hour. One academic course semester-hour of credit is equal to 15 clock hours. Credit for auditing an academic course shall be for actual clock hours attended during which instruction was ~~given~~given and shall not exceed the academic credit allowed. Continuing education activities may include:

- (1) academic social work courses taken for credit or audit;
- (2) ~~formal~~—agency-based staff development, seminars, institutes, workshops, mini courses or conferences oriented to social work practice, values, skills and knowledge;
- (3) cross-disciplinary offerings from medicine, law and the behavioral/social sciences or other disciplines, if such offerings are ~~clearly~~ related to social work practice, values, skills and knowledge;
- (4) self-directed learning projects with prior approval by the Board. Approval shall be based on the applicability of the learning project to the social worker's field of

specialization and shall have ~~clearly~~ stated learning objectives. The ~~maximal~~ maximum continuing education credit granted for such projects is 20 clock hours per renewal period. Credit shall not be granted for:

- (A) identical programs completed within the same renewal period;
  - (B) job orientation; ~~or~~
  - (C) on the job ~~training~~ training; or
  - (D) supervision and case consultation;
- (5) study groups focusing on social work practice if the following can be documented:
- (A) study topic;
  - (B) study material;
  - (C) facilitator; and
  - (D) date and hours of attendance.

(b) During each renewal period all certified and licensed social workers shall engage in a minimum of ~~two~~ four hours of continuing education focused on ~~ethics~~ ethics related to social work practice and ethical decision- making.

Authority G.S. 90B-6; 90B-9.

**21 NCAC 63 .0405 REQUIRED REPORTING BY LICENSEE OF CHANGES TO BOARD**

(a) Each licensee shall notify the Board in writing of the following changes within 30 days of the effective date of the changes:

- (1) Each change of the licensee's name, which shall be accompanied by documentation such as a certified marriage certificate or driver's license; and
- (2) Each change in the licensee's residence or business address, including street and mailing address; and
- (3) Each change in the licensee's residence or business telephone number.

(b) Within 30 days of the effective date of a disposition in a criminal matter in which the licensee is defendant, including

driving under the influence, each licensee shall send to the Board a certified copy of any plea of guilty, finding of guilty, plea of nolo contendere, or deferred judgment.

(c) The licensee's failure to report the foregoing criminal dispositions to the Board shall be considered a violation of the Ethical Guidelines, Section .0500.

Authority G.S. 90B-6; 90B-9.

**SECTION .0500 – ETHICAL GUIDELINES**

**21 NCAC 63 .0501 PURPOSE AND SCOPE**

(a) Ethical principles affecting the practice of social work are rooted in the basic values of society and the social work profession. The principal objective of the profession of social work is to enhance the dignity and well-being of each individual who seeks its services. It does so through the use of social work theory and intervention methods including case management, advocacy, community organization, administration, and psychotherapy.

(b) The primary goal of this code is to set forth principles to guide social workers' conduct in their profession. Violation of these standards may be considered gross unprofessional conduct and may constitute dishonest practice or incompetence in the practice of social work. Such violations may result in disciplinary action by the Board.

(c) ~~The following~~ These ethical principles serve as a standard for social workers in their various professional roles, relationships and responsibilities. Social workers shall consider all the principles in the code that bear upon any situation ~~on~~ in which ethical judgment is to be exercised, and ~~to shall~~ select a course of action consistent with ~~the spirit as well as the letter of~~ this code.

(d) Upon approval of certification or licensure, each applicant shall review these Ethical Guidelines and return a signed statement to the Board agreeing to abide by these standards.

Authority G.S. 90B-6; 90B-11.

**Note from the Codifier:** *The rules published in this Section of the NC Register are emergency rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code. The agency must subsequently publish a proposed temporary rule on the OAH website ([www.ncoah.com/rules](http://www.ncoah.com/rules)) and submit that adopted temporary rule to the Rules Review Commission within 60 days from publication of the emergency rule or the emergency rule will expire on the 60<sup>th</sup> day from publication. This section of the Register may also include, from time to time, a listing of emergency rules that have expired. See G.S. 150B-21.1A and 26 NCAC 02C .0600 for adoption and filing requirements.*

**TITLE 4 – DEPARTMENT OF COMMERCE**

**Rule-making Agency:** *Department of Commerce*

**Rule Citation:** *04 NCAC 01N .0101-.0107*

**Effective Date:** *April 25, 2005*

**Findings Reviewed and Approved by the Codifier:** *April 15, 2005*

**Reason for Action:** *Emergency rules are needed in order for the Department of Commerce to expedite distribution of disaster assistance funds to help meet immediate needs of businesses vital to the growth and development of communities throughout of State. The program to be implemented with these rules will provide vital assistance to businesses that suffered devastating losses from the 2004 hurricanes, by providing critical loans and interest rebates. To ask workers, families, and communities that depend on them to wait the normal notice and hearing period would put their and safety at risk.*

*Adherence to the normal time period for notice and hearing would significantly delay the Department of Commerce's ability to address pressing needs in counties impacted by the 2004 hurricanes. The legislative findings in S.L. NO. 2005-1, the Hurricane Recovery Act of 2005, document the effects of the six hurricanes that caused devastating damage in Western and Eastern North Carolina in 2004, and the need for immediate assistance due to the impact on the public health, safety, and welfare. These findings are incorporated herein by reference, and a copy attached. The destruction of businesses has damaged the civil, social, economic, and environmental well-being of the affected communities. Business closures have undermined the economic base of these communities, and associated revenue losses have affected the entire State. Through the loss of jobs and income, the ability of many to support their families is threatened, and may be lost completely without State assistance; many businesses were unable to qualify for and take on more debt through Federal disaster assistance loan programs, and are in acute need of assistance from the State.*

**CHAPTER 1 - DEPARTMENTAL RULES**

**SUBCHAPTER 01N – THE HURRICANE RECOVERY ACT OF 2005 BUSINESS RECOVERY PROGRAMS**

**SECTION .0100 - GENERAL INFORMATION**

**04 NCAC 01N .0101 SCOPE**

(a) The Department of Commerce shall operate a program of assistance to businesses in order to protect jobs in designated disaster-damaged counties of North Carolina.

(b) Interest rebates shall be available to business owners who received a disaster business loan from the U. S. Small Business Administration (SBA) for physical damage or economic injury to their business. sustained as a result of the hurricanes of 2004.

(c) Direct loans will be available to sustainable businesses for both physical damage and economic injury suffered as a result of the hurricanes of 2004.

(d) The applicant business must be located in one of the counties covered by Session Law 2005-1, more commonly known as the Hurricane Recovery Act of 2005.

(e) Applications will be accepted until July 29, 2005.

(f) Loan applicants must have submitted completed applications to a Business Recovery Assistance Center (BRAC) by the final deadline to be eligible for this program.

(g) BRACs are located at all of the regional offices of the Small Business and Technology Development Center (SBTDC).

*History Note: S.L. 2005-1; Emergency Adoption Eff. April 25, 2005.*

**04 NCAC 01N .0102 ELIGIBILITY**

(a) A business must have suffered damage, either physical loss or economic injury from the hurricanes of 2004. Said damage must be quantifiable and verifiable as to its cause.

(b) In order to receive an interest rebate, the business must show evidence of having received an approved disaster business loan from the SBA for physical damage or economic injury to the business. sustained as a result of the hurricanes of 2004, and evidence of disbursement of funds thereunder.

(c) In order to receive a loan, the business must be deemed to have been a going concern as of the date of the hurricane and as of the date of its application for assistance. The business shall submit proof of having been a legitimate business prior to the hurricane, and at the time of application, such as a valid business license, a business plan, and a commercial property lease. The business must also demonstrate the potential to recover from the disaster and remain a going concern with the infusion of the proposed loan funds.

*History Note: S.L. 2005-1; Emergency Adoption Eff. April 25, 2005.*

**04 NCAC 01N .0103 BENEFITS UNDER THE INTEREST REBATE PROGRAM**

The interest rebate program will offer rebates equal to the interest payments projected to be made by the successful SBA business borrower for the first three years on the finalized SBA

disaster business loan for damage sustained as a result of the hurricanes of 2004.

*History Note: S.L. 2005-1;  
Emergency Adoption Eff. April 25, 2005.*

**04 NCAC 01N .0104 BENEFITS UNDER THE BUSINESS RECOVERY LOAN PROGRAM**

(a) A loan will be for a period of eight years. All payments will be deferred for the first three years and the loan will accrue no interest during that period. The final five-year period will accrue interest at 3% and will amortize the principal balance through regular monthly payments of principal and interest. There will be no penalty for early repayment.

(b) Maximum funding under this program will be one hundred thousand dollars (\$100,000). The minimum loan amount shall be five thousand dollars (\$5,000). Regardless of the maximum funding for which the business might otherwise qualify, funding will not exceed the actual physical damage and economic injury sustained by the business from the hurricane(s).

(c) The Secretary of Commerce may approve exceptions to these minimum and maximum loan amounts on a case by case basis.

(d) Payments for economic losses shall be limited to documented business expenses necessary for the continued operation of the business.

*History Note: S.L. 2005-1;  
Emergency Adoption Eff. April 25, 2005.*

**04 NCAC 01N .0105 PROCEDURES FOR INTEREST REBATE FOR SBA BORROWERS**

(a) Applicants will apply for interest rebates through the BRAC administered by the SBTDC in cooperation with the Department of Commerce.

(b) The borrower will present to the BRAC counselor a copy of his SBA Loan Authorization and Agreement, a copy of his most recent disbursement letter showing the outstanding balance of the loan, and a duly signed application for the interest rebate.

(1) The BRAC counselor will perform a mathematical calculation to estimate the interest to be paid by the borrower over the ensuing three years.

(2) The borrower will affirm that he is entitled to this interest rebate, that the information provided to the SBA and the SBTDC is true and correct to the best of his knowledge and that the rebate will not be used to duplicate any benefits received under any Federal program.

(3) Upon completion of the request and supporting documents, the BRAC counselor will forward said application to the SBTDC central office for processing. Approved requests will be transmitted to the disbursing bank for payment.

(c) Upon receipt by the bank, the documents will be reviewed for completeness, and a check will be prepared and mailed to the borrower.

(d) The borrower will receive a notice with the rebate check informing the recipient that rebate proceeds are subject to Federal duplication of benefits limitations and that the State of North Carolina will inform the SBA that the borrower has received the rebate.

*History Note: S.L. 2005-1;  
Emergency Adoption Eff. April 25, 2005.*

**04 NCAC 01N .0106 PROCEDURES FOR THE BUSINESS RECOVERY LOAN PROGRAM**

(a) Applicants will apply for loans through the BRAC administered by the SBTDC in cooperation with the Department of Commerce.

(b) The SBTDC will work with applicants to assist them in preparing the needed documentation to apply for a disaster assistance loan.

(c) Loan applications will be accepted at all of the regional offices maintained by the SBTDC across North Carolina.

(d) A primary factor in the approval of the credit requested will be the sustainability of the business. It is the intent of this program to preserve jobs and investment in the disaster affected counties. Other factors to be considered in approving loans include the applicant's responsible credit history, review of copies of three years of NC business and personal tax returns, cash flow coverage of at least 80%, applicant's agreement to quarterly business counseling, appropriate documentation of loss, apparent ability to repay, and provision of appropriate loan guarantees from owners of the business for which the loan is sought.

(e) Upon receipt of a completed application, a loan decision will be made by the senior management team of the SBTDC within three business days. If approved, the decision will be transmitted to the disbursing bank. The loan disbursement will occur after the bank receives the properly executed note and loan package.

(f) Should the SBA approve a loan upon reconsideration, the borrower will repay the principal amount of the loan provided by the State of North Carolina pursuant to these Rules.

*History Note: S.L. 2005-1;  
Emergency Adoption Eff. April 25, 2005.*

**04 NCAC 01N .0107 APPEAL**

An applicant may appeal a funding decision under these programs to the Office of the Assistant Secretary for Business Development and Trade, NC Department of Commerce. The Assistant Secretary will convene a three-person committee to include himself, the Director of the Commerce Finance Division and the Director of Business Retention and Expansion. Upon a full and complete review of the facts in each case, the committee shall recommend a decision to the Secretary of Commerce. The decision of the Secretary shall be final.

*History Note: S.L. 2005-1;  
Emergency Adoption Eff. April 25, 2005.*

**& NATURAL RESOURCES**

**Rule-making Agency:** *Secretary of the Department of Environment & Natural Resources*

**Rule Citation:** *15A NCAC 01C .0412*

**Effective Date:** *April 25, 2005*

**Findings Reviewed and Approved by the Codifier:** *April 15, 2005*

**Reason for Action:** *The rule will establish minimum criteria for activities undertaken to correct and restore environmental damage caused by a series of six (6) hurricanes that struck North Carolina in 2004. The activities will be undertaken by local governments pursuant to emergency legislative appropriations from S.L. 2005-1, the Hurricane Recovery Act of 2005. In the absence of the minimum criteria being established by rule, some of the activities would trigger application of the State Environmental Policy Act. The rule separates activities for which existing environmental reviews are considered to be adequate from activities which would generally be viewed as more significant and as having more potential for adverse impacts. The corrective actions taken to correct and restore environmental damage from the hurricane will actually serve to improve environmental quality. See S.L. 2005-1; Sections 1, 2(e), 201(b) and 501(a) for additional support for the rule, which will improve matters of public health and safety in the affected regions of the State.*

*The notice and hearing requirements would cause a delay in the processing of permits for the covered activities, without any perceived benefit to the public. The corrective activities that need to be undertaken (e.g., stream bank restoration, remediation of high-risk storage tanks, and repairing sewer lines) must move forward. The public is well aware of the effects of these devastating hurricanes and of the recent action of the General Assembly to provide much needed funding for relief efforts. Additional delays for these activities to correct environmental damages, which do not provide a corresponding environmental benefit, are not warranted. The notice and hearing requirements for temporary and permanent rule adoption are more than adequate for this unique situation.*

**CHAPTER 1 - DEPARTMENTAL RULES****SUBCHAPTER 01C - CONFORMITY WITH NORTH CAROLINA ENVIRONMENTAL POLICY ACT****SECTION .0400 – OTHER REQUIREMENTS****15A NCAC 01C .0412 HURRICANE RELIEF ACTIVITY WITH MINIMUM POTENTIAL FOR ENVIRONMENTAL EFFECTS**

(a) Activities undertaken in response to the "Hurricane Recovery Act of 2005" and funded with public monies from the Disaster Relief Reserve Fund do not require the filing of environmental documents except as provided in Paragraphs (b) and (c) below. The activities might otherwise require preparation of an environmental document under the North Carolina Environmental Policy Act (NCEPA); however, these hurricane recovery activities are generally deemed to be sufficiently controlled by existing statutes, rules and permit requirements so that no additional environmental documentation is needed. To the extent there is any inconsistency, the minimum criteria set out herein will be applied in place of the minimum criteria in Rules .0406, .0407, .0408 and .0409 of this Section.

(b) Hurricane relief and recovery activities that involve one or more of the following require the preparation of an environmental document under NCEPA:

- (1) Construction or reconstruction of a building in the 100-year floodplain unless the building is raised above the 100-year flood elevation as recommended by FEMA;
- (2) Expansion of a wastewater treatment plant or potable water system in excess of the capacity that existed on September 1, 2004 unless the expansion would be covered by minimum criteria set out in Rule .0409 of this Section;
- (3) Groundwater withdrawals in excess of those described in Rule .0409 of this Section;
- (4) Land disturbing activity that affects more than five acres located within a High Quality Water or Outstanding Resource Water zone;
- (5) Reforestation of woodlands unless the reforestation is done in accordance with a National Forest Service or North Carolina Division of Forest Resources woodlands management plan.

(c) The Secretary may require that an environment document be prepared for any hurricane relief and recovery activity that would not otherwise require review, but is of such an unusual nature or has such widespread implications that a concern for its environmental effects has been identified by DENR.

*History Note: Authority G.S.113A-4; 113A-6; 113A-11; 143B-10 and S.L. 2005-1; Emergency Adoption Eff. April 25, 2005.*



**RULES REVIEW COMMISSION**

*This Section contains information for the meeting of the Rules Review Commission on Thursday May 19, 2005, 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 Monday, May 16, 2005 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**

- Jim R. Funderburke - 1st Vice Chair
- David Twiddy - 2nd Vice Chair
- Thomas Hilliard, III
- Robert Saunders
- Jeffrey P. Gray

**Appointed by House**

- Jennie J. Hayman - Chairman
- Graham Bell
- Lee Settle
- Dana E. Simpson
- Dr. John Tart

**RULES REVIEW COMMISSION MEETING DATES**

- May 19, 2005
- June 16, 2005
- August 18, 2005
- October 20, 2005
- December 15, 2005
- July 21, 2005
- September 15, 2005
- November 17, 2005

**AGENDA**

**RULES REVIEW COMMISSION  
May 19, 2005, 10:00 A.M.**

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Review of Rules (Log Report #221)
- IV. Review of Temporary Rules (if any)
- V. Commission Business
- VI. Next meeting: June 16, 2005

**Commission Review/Permanent Rules**

**Log of Filings**

**March 21, 2005 through April 20, 2005**

\* Approval Recommended, \*\* Objection Recommended, \*\*\* Other

**BUILDING COMMISSION**

Rules in Chapter 30 concern state construction.

The rules in Subchapter 30D cover the State Building Commission designer and consultant selection policy including general provisions (.0100); project information (.0200); and selection procedures (.0300).

Definitions	01	NCAC	30D	.0103
Amend/*				
Pre-Selection	01	NCAC	30D	.0302

Amend/\*

**MEDICAL CARE COMMISSION**

The rules in Chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.500); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

Classification of Medical Facilities 10A NCAC 13B .3103  
 Amend/\*

The rules in Subchapter 13F concern licensing of homes for the aged and infirm and include definitions (.0100); licensing (.0200); physical plant (.0300); staff qualification (.0400); staff orientation training, competency and continuing education (.0500); staffing (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medication (.1000); Resident's funds and refunds (.1100); policies; records and reports (.1200); special care units for alzheimer and related disorders (.1300); and special care units for mental health disorders (.1400).

Application of Physical Plant Requirements	10A NCAC 13F .0301
Adopt/*	
Construction	10A NCAC 13F .0302
Amend/*	
Location	10A NCAC 13F .0303
Amend/*	
Plans and Specifications	10A NCAC 13F .0304
Adopt/*	
Physical Environment	10A NCAC 13F .0305
Amend/*	
Housekeeping and Furnishings	10A NCAC 13F .0306
Amend/*	
Fire Alarm System	10A NCAC 13F .0307
Amend/*	
Plan for Evacuation	10A NCAC 13F .0309
Amend/*	
Electrical Outlets	10A NCAC 13F .0310
Amend/*	
Other Requirements	10A NCAC 13F .0311
Amend/*	
Building Code and Sanitation	10A NCAC 13F .0312
Repeal/*	
Qualifications of Medication Staff	10A NCAC 13F .0403
Amend/*	
Qualifications of Activity	10A NCAC 13F .0404
Amend/*	
Food Service Orientation	10A NCAC 13F .0509
Adopt/*	

Resident Contract Information on Home and Resident Register Adopt/*	10A NCAC 13F .0704
Activities Program Amend/*	10A NCAC 13F .0905
Respite Care Amend/*	10A NCAC 13F .0907
Resident Rights Adopt/*	10A NCAC 13F .0909
Resident Records Amend/*	10A NCAC 13F .1201
Record of Staff Qualifications Adopt/*	10A NCAC 13F .1210
Written Policies and Procedures Adopt/*	10A NCAC 13F .1211
Use of Physical Restraints and Alternatives Adopt/*	10A NCAC 13F .1501

The rules in Subchapter 13G concern licensing of family care homes including definitions (.0100); licensing (.0200); the building (.0300); staff qualifications (.0400); staffing orientation, training, competency and continuing education (.0500); staffing of the home (.0600); admission and discharge (.0700); resident assessment and care plan (.0800); resident care and services (.0900); medications (.1000); management and resident's funds and refunds (.1100); and policies, records and reports (.1200).

The License Amend/*	10A NCAC 13G .0202
Qualifications of Medication Staff Amend/*	10A NCAC 13G .0403
Qualifications of Activity Coordinator Amend/*	10A NCAC 13G .0404
Food Service Orientation Adopt/*	10A NCAC 13G .0509
Resident Register Amend/*	10A NCAC 13G .0703
Resident Contract and Information on Home Amend/*	10A NCAC 13G .0704
Activities Program Amend/*	10A NCAC 13G .0905
Respite Care Amend/*	10A NCAC 13G .0907
Resident Rights Adopt/*	10A NCAC 13G .0909
Resident Records Amend/*	10A NCAC 13G .1201
Written Policies and Procedures Adopt/*	10A NCAC 13G .1211
Record of Staff Qualifications Adopt/*	10A NCAC 13G .1212
Use of Physical Restraints and Alternatives Adopt/*	10A NCAC 13G .1301

**MANUFACTURED HOUSING BOARD**

The rules in Chapter 8 are the engineering and building codes including the State Building Code (.0200); approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); and home inspector continuing education (.1300).

Address Amend/*	11	NCAC	08	.0902
Rule-Making and Hearing Procedures Amend/*	11	NCAC	08	.0903
Complaint Handing and Inspection Procedure Amend/**	11	NCAC	08	.0910

### **CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9A cover the Commission organization and procedure (.0100) and enforcement of the rules (.0200).

Definitions Amend/*	12	NCAC	09A	.0103
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### **COASTAL RESOURCES COMMISSION**

The rules in Chapter 07 pertain to coastal management and are promulgated by the Division of Coastal Management or the Coastal Resources Commission.

The rules in Subchapter 07A deal with the organization and duties of the Division of Coastal Management.

Division of Coastal Management Amend/*	15A	NCAC	07A	.0101
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The rules in Subchapter 07H are the state guidelines for areas of environmental concern including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters, (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); boat ramps along estuarine shorelines and into estuarine and public trust waters (.1300); wooden groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); marsh enhancement breakwaters for shoreline protection in estuarine and public trust waters (.2100); general permits for construction of freestanding moorings in established waters and public trust areas (.2200); general permits for replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); and general permit for placement of riprap for wetland protection in estuarine and public trust waters (.2400).

Nomination and Designation Procedures Amend/*	15A	NCAC	07H	.0503
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The rules in Subchapter 07I contain the Secretary's grant criteria and procedures for local implementation and enforcement programs under the coastal area management act including the purposes (.0100); policy and standards (.0200); application procedures (.0300); general applicable standards (.0400); local implementation and enforcement plans (.0500); amendment of

local management plan (.0600); failure to enforce and administer plan (.0700).

Application Process 15A NCAC 07I .0302  
 Amend/\*

The rules in Subchapter 07J are the procedures for handling major development permits, variance requests, appeals from minor development permit decisions and declaratory rulings including definitions (.0100), application process (.0200), hearings (.0300), final approval and enforcement (.0400), general permits (.0500), declaratory rulings and petitions for rulemaking (.0600), expedited procedures for considering variance procedures (.0700).

Who is Entitled to a Contested Case 15A NCAC 07J .0301  
 Amend/\*  
 Petition for Contested Case 15A NCAC 07J .0302  
 Amend/\*  
 Project Maintenance Major Development Dredge and Fill 15A NCAC 07J .0407  
 Amend/\*  
 Procedure for Requesting Declaratory Rulings 15A NCAC 07J .0602  
 Amend/\*  
 Variance Petitions 15A NCAC 07J .0701  
 Amend/\*

**COSMETIC ART EXAMINERS, BOARD OF**

The rules in Subchapter 14J cover the cosmetology curriculum including the beginners' department (.0100); the advanced department (.0200); combined studies (.0300); the course of study (.0400); and credit for study outside of North Carolina (.0500).

Live Model/Mannequin Performance Requirement 21 NCAC 14J .0207  
 Amend/\*

**REAL ESTATE COMMISSION**

The rules in Chapter 58 are from the North Carolina Real Estate Commission.

The rules in Subchapter 58A are rules relating to real estate brokers and salesmen including rules dealing with general brokerage (.0100); application for license (.0300); examinations (.0400); licensing (.0500); real estate commission hearings (.0600); petitions for rules (.0700); rulemaking (.0800); declaratory rulings (.0900); real estate recovery fund (.1400); forms (.1500); discriminating practices prohibited (.1600); mandatory continuing education (.1700); and limited nonresident commercial licensing (.1800).

Proof of Licensure 21 NCAC 58A .0101  
 Amend/\*  
 Agency Agreements and Disclosure 21 NCAC 58A .0104  
 Amend/\*  
 Delivery of Instruments 21 NCAC 58A .0106  
 Amend/\*  
 Handling and Accounting of Funds 21 NCAC 58A .0107  
 Amend/\*  
 Brokerage Fees and Compensation 21 NCAC 58A .0109  
 Amend/\*  
 Broker-In-Charge 21 NCAC 58A .0110  
 Amend/\*  
 Business Entities 21 NCAC 58A .0502

Amend/*				
Active and Inactive License Status	21	NCAC	58A	.0504
Amend/*				
Salesperson to be Supervised by Broker	21	NCAC	58A	.0506
Amend/*				
Continuing Education Requirement	21	NCAC	58A	.1702
Amend/*				
Affiliation with Resident Broker	21	NCAC	58A	.1807
Amend/*				

The rules in Subchapter 58C deal with real estate prelicensing education schools including rules dealing with the licensing of all schools except private real estate schools (.0100); private real estate schools (.0200); prelicensing courses (.0300); and pre-licensing course instructors (.0600).

Additional Course Offerings	21	NCAC	58C	.0205
Amend/*				
Facilities and Equipment	21	NCAC	58C	.0207
Amend/*				
Application and Criteria for Original Approval	21	NCAC	58C	.0603
Amend/**				
Instructor Performance	21	NCAC	58C	.0604
Amend/**				
Expiration Renewal and Reinstatement of Approval	21	NCAC	58C	.0607
Amend/*				
Denial or Withdrawal of Approval	21	NCAC	58C	.0608
Amend/*				

The rules in Subchapter 58E are the real estate continuing education rules both update and elective course components including rules dealing with update courses (.0100); update course instructors (.0200); elective courses, sponsors, and instructors (.0300); general sponsor requirements (.0400); and course operational requirements (.0500).

Elective Course Component	21	NCAC	58E	.0302
Amend/*				
Distance Education Courses	21	NCAC	58E	.0310
Amend/*				
Course Completion Reporting	21	NCAC	58E	.0406
Amend/*				
Per Student Fee	21	NCAC	58E	.0407
Amend/*				

**RESPIRATORY CARE BOARD**

The rules in Chapter 61 are from the Respiratory Care Board and concern organization and general provisions (.0100); application for license (.0200); licensing (.0300); continuing education requirements for license holders (.0400); general (.0500); rules (.0600); and administrative hearing procedures (.0700).

Inactive Status	21	NCAC	61	.0305
Amend/*				
Continuing Duty to Report	21	NCAC	61	.0308
Amend/**				

**STATE PERSONNEL COMMISSION**

**NC BUILDING CODE COUNCIL**

Waterproofing Requirements Amend/*	040721	Item	B-1
Vapor Retarder Amend/*	040721	Item	B-2
Moisture Control Amend/*	040721	Item	B-3
Moisture Control Amend/*	040721	Item	B-4
Locks and Latches Amend/*	040914	Item	B-1
Specific Approval Amend/*	040914	Item	B-2
Restricted Occupancies Amend/*	040914	Item	B-3
Oil Tanks Amend/*	040914	Item	B-4
Elevator Lobby Amend/*	040914	Item	B-5

## 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 <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*

### RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND  
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ABC COMMISSION</u></b>				
ABC Commission v. Pantry, Inc. T/A Pantry 355	03 ABC 1094	Gray	09/01/04	
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Nichos, Inc., T/A Mexican Store	04 ABC 0626	Gray	10/15/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion	04 ABC 0695	Wade	07/20/04	
ABC Commission v. Fat Dragon, Inc. T/A Akumi	04 ABC 0868	Lassiter	02/10/05	
ABC Commission v. KOL, Inc, T/A Wards Grocery	04 ABC 0872	Wade	09/21/04	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	04 ABC 0938	Chess	10/19/04	
Alcoholic Beverage Control v. Faal Group International, LLC T/A Crown Central	04 ABC 1308	Elkins	03/24/05	
Sports Dimensions, INC d/b/a Club Deep Oros v. ABC Commission	04 ABC 2225	Gray	03/22/05	
<b><u>VICTIMS COMPENSATION</u></b>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Comp.	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services	04 CPS 0399	Chess	09/16/04	
Krista Chmiel v. Crime Victims Compensation Commission Case #CV-65-04-0020899	04 CPS 0992	Gray	09/31/04	
Christopher C. Searcy v. Crime Victims Compensation Commission	04 CPS 1305	Gray	01/21/05	
Jason Israel Chandler v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1368	Lassiter	01/10/05	
Regina Rose Hargrave v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1500	Lassiter	01/10/05	
Isaac Cornell Mitchell v. Victim and Justice Services	04 CPS 1529	Gray	01/13/05	
Scott Harshfield v. Crime Victims Compensation Commission	04 CPS 1559	Gray	03/14/05	
Belinda D. Clegg v. Crime Victims Compensation Commission	04 CPS 1637	Mann	02/07/05	
John Selden Clem v. State Highway Patrol, Trooper C.J. Owens	04 CPS 1705	Chess	11/17/04	
Ricky Nelson Allen v. Dept. Crime Control & Public Safety	04 CPS 1916	Lassiter	01/05/05	
Bennett Lee Sullivan v. Johnston County Sheriff's Dept.	04 CPS 2041	Wade	01/06/05	
Harold E Shaw v. Office of Administrative Hearings	04 CPS 2113	Conner	04/14/05	
Delphine Holder v. Crime Control & Public Safety, Victim Compensation	04 CPS 2135	Chess	01/05/05	



**CONTESTED CASE DECISIONS**

Services Division

Daniel A. Young, Sr v. Crime Victims Compensation Commission	05 CPS 0023	Wade	02/21/05
William F. Crain v. Victims Compensation Commission	05 CPS 0077	Gray	04/18/05
Christine Watts v. OAH	05 CPS 0128	Chess	03/17/05
Brenda Cox-Thomas v. Div. of Victim Compensation Services	05 CPS 0158	Morrison	04/20/05
Richard H Jones v. OAH – Administrative Law Judge	05 CPS 0225	Lassiter	04/13/05

**DEPARTMENT OF AGRICULTURE**

NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04
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**DEPARTMENT OF ADMINISTRATION**

Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04
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**HEALTH AND HUMAN SERVICES**

Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04
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Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04
Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04
Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of Medical Assistance	03 DHR 1113	Gray	10/15/04
Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04
Tomeeka K. Blount v. DHHS, Caswell Center	03 DHR 1728	Elkins	10/15/04
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
Willie S. Neely v. DHHS, Division of Facility Services	03 DHR 2151	Gray	02/17/05
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div. of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
Tony Worley v. DHHS, Div of Facility Services	03 DHR 2427	Mann	12/07/04
Mooreville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
Brenda Rena Hairston v. DHHS	04 DHR 0183	Wade	02/04/05
Chinedu Eucharia Akamelu v. DHHS, Division of Facility Services	04 DHR 0185	Elkins	11/23/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Evelyn Deloris Johnson v. DHHS	04 DHR 0261	Elkins	02/10/05
Terry T. Nixon v. DHHS, Division of Facility Services	04 DHR 0287	Lassiter	01/05/05
Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Beverly Manago v. DHHS, Division of Facility Services	04 DHR 0473	Chess	11/30/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Ralm, Inc v. DHHS, DFS, Mental Health Licensure	04 DHR 0482	Lassiter	02/15/05
Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
Bio-Medical Applications of NC, Inc., v. DHHS, Div. of Facility Services, S CON , Section, Health Systems Management, Inc. (Lessor) and Clayton Dialysis Center., Inc. (Lessee)	04 DHR 0516	Elkins	12/17/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Shirley Hines v. Black Mountain Center	04 DHR 0532	Conner	04/26/05
Ralm, Inc v. DHHS, DFS, Mental Health Licensure and Certification	04 DHR 0540	Lassiter	02/17/05
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04

**CONTESTED CASE DECISIONS**

Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
Shirly Thaggard v. DHHS, Div. of Facility Services	04 DHR 0588	Morrison	11/05/04
Maggie E. Clinding v. DHHS, Div. of Facility Services	04 DHR 0590	Conner	11/08/04
Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
Francho Peoples v. DHHS, Division of Medical Assistance	04 DHR 0596	Elkins	11/23/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
The Braxton Home, Alfred F. Braxton v. DHHS, Division of Facility Services	04 DHR 0633	Wade	02/01/05
Rush Street Food Mart, Ghassan Dahir v. DHHS, WIC, Div. of Public Health	04 DHR 0640	Elkins	09/24/04
Zack's Food Mart, Nidal Dahir v. DHHS, WIC, Div of Public Health	04 DHR 0641	Elkins	09/24/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Velma J. Thomas, Thomas Child Care v. Div of Child Development	04 DHR 0645	Conner	12/03/04
Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Christy Robinson v. DHHS	04 DHR 0704	Elkins	02/14/05
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Rudolph Lofton v. Medicaid Program	04 DHR 0788	Wade	11/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Michelle Cross v. DHHS	04 DHR 0811	Morrison	11/24/04
Tracy B Lovett, Lovett House Inc. v. DMH/DD/SAS Accountability Team Marvin Sanders/Jim Jarrard	04 DHR 0812	Wade	04/07/05
Progressive Child Care, Inc. Drake Groves/Director v. Div of Child Development c/o Forsyth County Department of Social Services	04 DHR 0844	Mann	09/22/04
Tanya H. Dey v. Medicaid	04 DHR 0864	Elkins	11/10/04
Judy W. Dickson v. DHHS, Div. of Facility Services	04 DHR 0865	Elkins	10/11/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Oyetoun M Oladipo v. Health Care Personnel Registry, DHHS	04 DHR 0887	Morrison	09/23/04
Ralph Robinson, Jr., Neuse Center for MH/DD/SAS	04 DHR 0897	Gray	01/31/05
Lisa Robinson v. Neuse Center for MH/DD/SAS	04 DHR 0898	Gray	01/31/05
Triad Imaging, Inc v. DHHS, DFS, CON Section and Diagnostic Radiology & Imaging, LLC	04 DHR 0908	Gray	02/17/05
Linda Brown v. DHHS, Div. of Medical Assistance	04 DHR 0919	Gray	01/19/05
K.E.C., Jr., by parent or guardian, E.D.C v. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	04 DHR 0967	Mann	12/10/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
Winfred Keene v. Health Care Personnel Registry Section	04 DHR 0976	Lassiter	10/18/04
Susan L Morris d/b/a Magnolia Place v. OAH	04 DHR 1059	Conner	04/14/05
James Phillip Chavis, Jr., DHHS, Div. of Medical Assistance	04 DHR 1071	Wade	02/04/05
Sandra Elaine Patrick v. DHHS, Div of Facility Services	04 DHR 1073	Conner	10/01/04
Roger Penland, Jr v. DHHS, Division of Facility Services	04 DHR 1096	Gray	11/29/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Roberta Bell v. DHHS, Div of Medical Assistance	04 DHR 1134	Wade	09/15/04
Phyllis Bryant Duren v. DHHS, DFS	04 DHR 1135	Conner	03/04/05
Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC	04 DHR 1136	Elkins	09/14/04
Grace A. Wright v. Wake County Human Services Program Integrity – Dedi H. Bateman	04 DHR 1152	Mann	09/23/04
Sandy Reichard v. Satana T. Deberry, DHHS	04 DHR 1162	Wade	02/17/05
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04
Charleese K. Garrison, as Mother of Jasmine C. Garrison v. DHHS, Div of Medical Assistance	04 DHR 1168	Gray	02/15/05
Wade Assisted Living, Inc., T/A Laurie Edwards	04 DHR 1174	Wade	11/08/04
Janet K. Faison v. DHHS, Div. of Facility Services	04 DHR 1181	Wade	02/01/05
Cynthia R. Hill, DHHS, Division of Facility Services	04 DHR 1183	Wade	02/01/05
Charlynn Keough v. Cherokee Co. DSS, BeBe McClure	04 DHR 1225	Wade	01/24/05
S.H., by his parent/guardian D.H. v. DHHS	04 DHR 1250	Creech	11/30/04
Alicia Colon v. DHHS, Division of Facility Services	04 DHR 1280	Mann	11/16/04
Monica Dockery v. DHHS	04 DHR 1281	Wade	12/02/04
Julia Matheson v. DHHS, Div. of Facility Services	04 DHR 1301	Wade	10/19/04
Faye Rice, CEO Rice & Rice Co., Inc v. Marvin Sanders DHHS, Div of MH Dev. Disabilities	04 DHR 1303	Wade	01/24/05
Renee Farrow v. OAH	04 DHR 1307	Gray	03/14/05
Martha Abare v. DHHS, Div. of Facility Services	04 DHR 1310	Wade	11/01/04
Lakresha McIver v. Health Care Registry	04 DHR 1330	Elkins	11/10/04
Vonzella Malone v. DHHS, Division of Facility Services	04 DHR 1331	Gray	11/23/04
Saint's Assisted Independent Living, Inc v. DHHS, Div. of Facility Services	04 DHR 1357	Conner	04/21/05
Renita M. Walton v. DHHS, Div of Facility Services	04 DHR 1359	Wade	10/14/04
Elizabeth D. Hedgepeth v. Dept. of Health Services	04 DHR 1364	Elkins	11/10/04
Cydra Pajiete Seegers v. DHHS, Div. of Facility Services	04 DHR 1366	Mann	11/09/04
Ghazaelleh Abdel-Kader v. DHHS, WIC, Division of Public Health	04 DHR 1373	Gray	12/15/04
Adib Abdullah v. DHHS	04 DHR 1380	Gray	10/22/04
Madeleine C. Pacheco v. DHHS, Div. of Facility Services	04 DHR 1381	Wade	10/14/04
Bio-Medical Applications of NC, Inc., DHHS, Div. of Facility Services, Div. of Medical Facilities Planning Section, Total Renal Care of NC, LLC and Renal Systems Management, LLC and Garner Dialysis Center, Inc	04 DHR 1384	Elkins	02/04/05
Craven Regional Medical Authority d/b/a Craven Regional Medical Center	04 DHR 1428	Chess	01/21/05
Robert Earl King Jr. v. DHHS	04 DHR 1430	Lassiter	03/07/05
Timothy and Karen Matchunis v. DHHS, Division of Medical Assistance	04 DHR 1434	Gray	04/15/05
DHHS, DFS, CON and Coastal Carolina Health Care, PA d/b/a Coastal	04 DHR 1443	Gray	01/21/05
Kim Haley, Cap/C, v. DHHS Carolina Imaging			
Red Sea Grocery, Weldegebriel Ucheab v. DHHS	04 DHR 1453	Elkins	01/04/05

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Dorothy Ragland v. DHHS, DFS	04 DHR 1468	Gray	02/09/05
Ivory Robinson v. DHHS, DFS	04 DHR 1469	Elkins	03/16/05
Charlenia Ferguson v. Child Care Division	04 DHR 1489	Mann	01/07/05
Tammy S. Edge v. NC Tax Administrator, Dept. of Revenue	04 DHR 1565	Lassiter	01/26/05
Jannaj J. Peters v. NC Nurse Aide I Program	04 DHR 1566	Gray	02/15/05
Kathleen Barker v. DHHS	04 DHR 1584	Gray	01/04/05
Anita Whitehurst v. MRNC	04 DHR 1620	Chess	12/08/04
Joyce Miller Moore v. DHHS	04 DHR 1621	Lassiter	01/26/05
Maude Gibbs v. Dare County Department of Social Services	04 DHR 1652	Gray	04/14/05
Tonya Brown v DHHS	04 DHR 1704	DeLuca	03/30/05
Ivola Banks, Executrix of the Estate of Laura B. Mercer v. DHHS, Div of Medical Assistance	04 DHR 1800	Gray	03/03/05
Olivera Leross Langston v. Cherry Hospital	04 DHR 1802	Chess	12/09/04
Rebecca Hamilton, Beck's Play & Learn v. DHHS, Div. of Child Dev.	04 DHR 1866	Lassiter	02/18/05
Virginia L Richmond v. John Umstead Hospital	04 DHR 1979	Elkins	03/30/05
Angela Maria Dozier v. Franklin County Dept. of Social Services	04 DHR 2050	Chess	02/16/05
Michael J. Graves v. DHHS	04 DHR 2098	Chess	03/17/05
Morgan M. Lambert v. DHHS, Div of Facility Services	04 DHR 2099	Morrison	02/17/05
Presbyterian Orthopaedic Hospital LLC v DHHS, Div. of Facility Svcs., CON Section and Union Medical Services LLC	04 DHR 2128	Chess	03/31/05
Richard D. Bullock v. DHHS, Div of Medical Assistance	04 DHR 2148	Elkins	02/10/05
El Mandado Supermercado Marco Roldan v DHHS, Div of Public Health, Women's & Children's Health Services	04 DHR 2157	Wade	04/07/05
Cherrys Family Care #2 v. Bertie Co. Department of Social Services	04 DHR 2177	Elkins	03/30/05
Beulah Mae Gaffney v. DHHS, Division of Facility Services	04 DHR 2187	Conner	04/12/05
Lawrence Wilson Brathwaite v. OAH	04 DHR 2188	Elkins	03/17/05
Rebecca Lynn Barner v. DHHS, Div of Facility Services	04 DHR 2221	Conner	04/26/05
Quashemia Leary v. DHHS, Division of Facility Services	04 DHR 2239	Chess	03/29/05
New Beginnings Childcare v. Div. of Childcare Dev. & Lee Co. DSS	04 DHR 2266	Wade	04/19/05
Geanetta A. Thompson v. DHHS	04 DHR 2297	DeLuca	03/11/05
Wendy Dawn Cooke, Dept. of Health and HR/State Board of CNAs	04 DHR 2301	Elkins	02/10/05
Laverne Luck v. Health Care Personnel Registry	04 DHR 2310	Lassiter	02/11/05
Kevin L. Peppers, PB Interventions, Inc v. DHHS, DFS	04 DHR 2311	Lassiter	02/24/05
Donnell B. Buckner, PB Interventions, Inc v. DHHS, DFS	04 DHR 2312	Lassiter	02/24/05
Kaitlyn Ashley Davis, Shawn Aileen Davis v DHHS, Women and Children's Health Section	04 DHR 2328	Gray	04/18/05
Rena Lawson v. DHHS, NA Register	04 DHR 2330	Elkins	02/16/05
Stephanie Tincher v. DHHS, DFS	05 DHR 0080	Gray	03/11/05
Louise Dowd v. NC Nurse Aid I and Health Care Personnel Registry	05 DHR 0090	Elkins	02/23/05
Tosha Laquan Jackson v. DHHS, DFS	05 DHR 0111	Gray	03/11/05
Restoration Church of God in Christ Internationa, D/B/A Joys of the Heart Child Care Center v. Bladen County Dept. of Social Services	05 DHR 0125	Elkins	03/29/05
Belinda A. Genwright & Jason W. Genwright v. Harnett County Dept. of Social Services	05 DHR 0177	Chess	03/09/05
Restoration Church of God in Christ International, D/B/A Joys of the Heart Child Care Center v. Bladen County Dept. of Social Services as local Purchasing agent and the DHHS, Div. of Child Development	05 DHR 0182	Elkins	03/30/05
Danny Massencupp v. DHHS, Division of Medical Assistance	05 DHR 0235	Elkins	03/30/05
Etta Doris Wilson v. Division of Child Development	05 DHR 0267	Lassiter	04/06/05
Jamie Deyton for Crystal Cooper v. DHHS, Div. of Medical Assistance	05 DHR 0272	Conner	04/21/05
Georgette T. Roberts v. DHHS, Div of Facility Services	05 DHR 0417	Gray	04/22/05

A list of Child Support Decisions may be obtained by accessing the OAH Website: [www.ncoah.com/decisions](http://www.ncoah.com/decisions).

**DEPARTMENT OF JUSTICE**

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Cindy L. Schumacher v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 2341	Chess	12/29/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission	03 DOJ 2355	Mann	07/19/04
Addie Joanne Foreman v. Private Protective Services Board	03 DOJ 2405	Elkins	08/26/04
Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm.	03 DOJ 2431	Conner	06/22/04
Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm.	04 DOJ 0062	Chess	08/23/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
Robert Alan Kilpatrick v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 0259 <sup>2</sup>	Wade	01/10/05
Linnell Davis, Jr. v. Private Protective Services Board	04 DOJ 0299	Elkins	08/26/04
Jason Oneil Rice v. Sheriffs' Education & Training Standards Comm.	04 DOJ 0318	Mann	06/24/04
Lisa Anne Weaver v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0490	Wade	11/01/04
Guy Wesley Prevette v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04
Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0514	Gray	07/15/04
Creo Melvin Mciver, II v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0567	Gray	10/15/04
Roger Wayne Alvarico v. Sheriffs' Education & Training Standards Comm	04 DOJ 0636	Gray	11/29/04
Charlie Ray Hunt v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0658	Gray	09/20/04
George Williams, Jr., v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0688	Wade	10/29/04
John Allen Hester, Jr. v. Private Protective Services Board	04 DOJ 0707	Gray	01/14/05

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Robert Dustin Bryant v. Private Protective Services Board	04 DOJ 0708	Gray	11/16/04
Joshua Adam Greene v. Sheriffs' Education & Training Standards Comm	04 DOJ 0730	Mann	10/08/04
Joel Patrick Holt v. Sheriffs' Education & Training Standards Comm	04 DOJ 0731	Wade	01/10/05
George Eugene White v. Sheriffs' Education & Training Standards Comm	04 DOJ 0732	Wade	10/04/04
Jerry Adrian Crawley v. Sheriffs' Education & Training Standards Comm	04 DOJ 0828	Gray	09/16/04
Maureen Cleary Williams v. Sheriffs' Education & Training Standards Comm	04 DOJ 0829	Mann	07/28/04
Tommy Dwight Hunt v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0830	Elkins	08/24/04
Michael Lee Millner v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0831	Gray	12/16/04
Anthony Harrington v. Criminal Justice Educ. & Training Stds. Comm.	04 DOJ 0884	Lassiter	04/13/05
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 0889 <sup>4</sup>	Gray	03/07/05
David R. Pacheco v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 0966	Gray	11/16/04
Murphy D. Riggan v. Criminal Justice Educ & Training Standards Comm	04 DOJ 0985	Gray	11/19/04
Lance Tyree Rice v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 1013	Morrison	10/29/04
Randall Douglas Hughes v. Criminal Justice Education & Training Standards Comm	04 DOJ 1078	Elkins	09/30/04
Melanie Bounds Allen v. Sheriffs' Education and Training Standards Comm	04 DOJ 1154	Mann	02/18/05
Ernest Alvin Gaddy v. Sheriffs' Education and Training Standards Comm	04 DOJ 1153	Wade	12/02/04
Kenneth R. Moore v. Dept of Justice, Company Police Program Comm	04 DOJ 1180	Gray	09/29/04
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 1203 <sup>4</sup>	Gray	03/07/05
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 1204 <sup>4</sup>	Gray	03/07/05
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 1205 <sup>4</sup>	Gray	03/07/05
Robert Wrenn Spencer, Jr., v. Sheriffs' Educ & Training Standards Comm	04 DOJ 1209	Mann	11/09/04
Kenneth James McClure v. Sheriffs' Educ. & Training Standards Comm	04 DOJ 1210	Morrison	12/30/04
Robert Alan Kilpatrick v. Criminal Justice Educ. & Training Stds Comm	04 DOJ 1215 <sup>2</sup>	Wade	01/10/05
Gordon Shane Smith v. Criminal Justice Education & Training Standards Comm	04 DOJ 1241	Gray	09/29/04
Lance Harviell Patterson v. Private Protective Services Board	04 DOJ 1242	Morrison	10/29/04
Marcus Fuller v. Private Protective Services Board	04 DOJ 1244	Morrison	11/12/04
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Umba M Bushiri v. Private Protective Services Board	04 DOJ 1269	Morrison	11/12/04
Alarm Licensing Board v. Brian Douglas Davis	04 DOJ 1296	Morrison	12/24/04
Jacquelyn M. McClaud v. DOJ, Company Police Program	04 DOJ 1398	Lassiter	10/18/04
Anthony Antwon Rouse v. Criminal Justice Educ. & Training Stds Comm	04 DOJ 1540	Morrison	03/15/05
Adam C. Lentz v. Sheriffs' Educ & Training Standards Comm	04 DOJ 1551	Morrison	11/19/04
John Wesley Campbell v. Criminal Justice Educ. & Training Stds Comm	04 DOJ 1581	Morrison	03/15/05
Bryant Wade Hicks v. Sheriffs' Educ & Training Standards Commission	04 DOJ 1588	Gray	04/22/05
Mark James Tucker v. Alarm Systems Licensing Board	04 DOJ 1594	Mann	11/09/04
Gerlie Poston, Jr., v. Sheriffs' Educ & Training Standards Comm	04 DOJ 1631	Elkins	03/24/05
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Idris Q. Strange v. Dept. of Justice, Company Police Program	04 DOJ 1978	Gray	03/28/05
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Corporate Carolina Special Police Dept., Jeremiah Gaither v. DOJ, Co. Police Program Commission	04 DOJ 2015	Wade	01/06/05
Nicholas Allen Epley v. Private Protective Services Board	04 DOJ 2017	Gray	01/14/05
Thomas Russell Heflin, Jr v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 2159	Conner	02/28/05
Violet Burch Coleman v. Sheriffs' Educ. & Training Standards Comm	04 DOJ 2160	Chess	02/07/05

**DEPARTMENT OF TRANSPORTATION**

Harrison Holdings, LLC d/b/a Ultimate Imports v. Dept. & Comm. Of Motor Vehicles	04 DOT 0452	Chess	09/13/04
Virginia Edwards Estate, Gerald Dee Edwards v. In the General Court of Justice Superior Court Division	04 DOT 1326	Morrison	12/17/04

**DEPARTMENT OF TREASURER**

Bryant Lee Deaton v. DOT, Retirement Service Division	02 DST 1029	Gray	09/03/04	19:11 NCR	983
Claudia L. Rapier, Gregory S. Rapier v. DOT, Retirement Systems Division	03 DST 2375	Wade	10/14/04		
Mary Pender v. DOT, Retirement Systems Division	04 DST 0027	Conner	07/23/04		
Helen F. Harris v. NC Retirement System	04 DST 1229	Mann	01/19/05		
Estate of Charles Michael Epley, by Joshua G Epley, Administrator v. The Board of Trustees of the Teachers' & State Employees Retirement System	04 DST 1396	Wade	02/17/05	19:19 NCR	1609

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Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker	02 EDC 2310	Lassiter	06/01/04	19:01 NCR	153
Emily H. Thompson v. Dept. of Public Instruction	03 EDC 1958	Chess	09/15/04		
Felder Wayne Poplin v. Dept. of Public Instruction	04 EDC 0824	Mann	10/28/04		
Jeffrey C. Smith v. Henderson County Public Schools, NC State Board of Ed	04 EDC 1229	Mann	12/09/04		
Knowledge Network Solutions v. Dept. of Public Instruction, Office of Information Technology Services	04 EDC 1634	Elkins	11/23/04		

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Beltex Corporation, a Debtor-in Possession v. DENR, Div of Air Quality	00 EHR 1706	Gray	06/18/04	
J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality	00 EHR 2116	Gray	06/04/04	
Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04	
Friends of the Green Swamp, et al, v. DENR, Div. of Water Quality and Riegel Ridge, LLC, and Waste Management of Carolinas, Inc	03 EHR 0058	Conner	08/26/04	
Norman R. Pippin v. DHHS, Div. of Air Quality	03 EHR 0703	Wade	01/06/05	
Ralph C. Luna v. DENR	03 EHR 0796	Wade	01/06/05	
Old Beau Golf Club v. DENR	03 EHR 1260	Conner	07/28/04	
Sandy Mush Properties, Inc v. DENR, Div of Air Quality	03 EHR 1411	Conner	06/28/04	
Ronald Frye v DENR	03 EHR 1636	Gray	06/23/04	
Alliance for Legal Action, Inc, Piedmont Quality of Life Coalition (an unincorporated association), Alberta Anderson, Cameron Anderson, Jean Black, Richard Black, Walter S. Druce, Ron Goga, Gil Happel, Carol Hoppe, Michael Hoppe, Patricia Nussbaum, Christine Peeler, Laura Pollak, Randall Schultz, Roch Smith, Jr., and Vassilia Smith v. Div of Water Quality of DENR And Piedmont Triad Airport Authority	03 EHR 1664	Gray	09/08/04	
Herbert B. Simmons, Sr., v. DENR	03 EHR 1773	Gray	10/21/04	
Wayne Sharpe v. DENR, Environmental Management Commission	03 EHR 1776	Lassiter	02/17/05	
Robert I. Swinson Sr. v. DENR, Div of Marine Fisheries	03 EHR 2248	Chess	06/10/04	
Winston N. Cahoon v. DENR	03 EHR 2305	Lassiter	07/01/04	
Jimmy Mathis, Mathis Pump & Well v. DENR	03 EHR 2336	Wade	05/25/04	
Nadine K. Cubakovic and Tom Cubakovic v. DENR	03 EHR 2385	Conner	03/07/05	
James D & Jane Lathan Ray; James D. & Brenda W Moser, Jr.; John G. & Sheila A Conner v. DENR, Div. of Coastal Resources and R. Carter Pate	04 EHR 0073 <sup>1</sup>	Wade	08/13/04	
R. Carter Pate v. DENR, Div. of Coastal Resources & Steve Bond	04 EHR 0150 <sup>1</sup>	Wade	08/13/04	
Coy Carter v. DENR, Div of Land Resources	04 EHR 0179	Morrison	10/22/04	
Joseph R. Dunn v. DENR, Division of Water Quality	04 EHR 0201	Conner	12/01/04	
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Dennis Graham v. DENR, Division of Water Quality	04 EHR 0402	Conner	12/14/04	
Joseph Glenn Henson v. DENR, Div. of Air Quality	04 EHR 0566	Conner	10/04/04	
Raymond Earl Dail, Sr., and wife, Linda M. Dail, v. DENR, Pamlico Co. Health Dept.	04 EHR 0508	Wade	12/02/04	
Sneads Ferry Marina, Jerry L. Hinnant & Jill L. Hinnant v. DENR, Coastal Resources Commission	04 EHR 0531	Wade	04/12/05	
Big Beaver Drilling Rig v. UST Trust Fund Section Final Agency Decision	04 EHR 0612	Wade	05/25/04	
Wellington by the Sea Homeowner's Association v. DENR, Div of Coastal Management	04 EHR 0674	Wade	12/02/04	
Doug's Auto Service v. DENR, Division of Air Quality	04 EHR 0775	Wade	01/06/05	
Samuel T. Wallace v. Brunswick County Health Dept	04 EHR 1072	Elkins	01/10/05	
Alma F Deason & Alma F Deason Family Ltd Partnership v. DENR, Div of Waste Mgmt, UST Section, Trust Fund Branch	04 EHR 1106	Lassiter	04/11/05	19:21 NCR 1749
Jeffrey D. Cline v. DENR, Division of Waste Management	04 EHR 1148	Morrison	10/29/04	
Durleen Odum & Bill Odum v. Brunswick Co. Health Department	04 EHR 1167	Morrison	04/13/05	
Brookside Montessori School, Inc v. DENR, Div. of Environmental Health	04 EHR 1219	Gray	08/27/04	
Joe Sugg v. DENR, Div. of Waste Management	04 EHR 1311	Gray	02/25/05	
R&K of Dare Co., Timothy Mike Morrison v. DENR	04 EHR 1385	Mann	04/15/05	19:22 NCR 1801
Brandywine Real Estate Management, Services Corporation & Northridge Partners v. DENR, Div. of Waste Management	04 EHR 1439	Gray	02/15/05	
Margaret D. Ryan Exectrix of the Estate of O.F. Dumas v. DENR, Div. Of Waste Management, UST Section Trust Fund	04 EHR 1475	Gray	12/22/04	
Joy Murray v. DENR, Division of Waste Management	04 EHR 1478	Gray	11/24/04	
Braxton George Goodwin, Claudia A. Goodwin v.(Carteret Co. Health Dept., DENR, Div. of Environmental Health	04 EHR 1541	Elkins	03/31/05	
R.T. Melvin v. DENR, Div of Air Quality	04 EHR 1770	Mann	02/07/05	
D&M Emeralds, Inc v. DENR	04 EHR 2217	Gray	02/24/05	
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Benjamin Cornwell Jr. v. Caldwell Co. Health Department	05 EHR 0113	Gray	04/18/05	
<b><u>DEPARTMENT OF INSURANCE</u></b>				
David Marshall, C.W. Sullivan III v. Teachers & State Employees' Comprehensive Major Medical Plan	03 INS 1216 <sup>5</sup>	Bryan	04/07/05	
David Marshall, C.W. Sullivan III v. Teachers & State Employees' Comprehensive Major Medical Plan	03 INS 1389 <sup>5</sup>	Bryan	04/07/05	
Speros J. Fleggas vs. DOI	04 INS 0251	Elkins	06/10/04	
Jessica Lunde v. NC State Health Plan	04 INS 1849	Elkins	02/22/05	
Carole Williamson v. Teachers' and State Employees' Comprehensive Major Medical Plan	04 INS 2067	Chess	02/15/05	
<b><u>LOCKSMITH LICENSING BOARD</u></b>				
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<b><u>MISCELLENOUS</u></b>				
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O'marr S. Reid v. Gaston Co. Judicial System and Defendants 1,2,3,4,5,6,7,8,9,10	04 MIS 0682	Elkins	06/22/04	
Russell Braxton v. City of Greensboro	04 MIS 0808	Elkins	02/03/05	
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0891	Morrison	07/27/04	
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0892	Morrison	07/27/04	
Larry Yancey v. Durham Housing Authority, City of Durham, State of NC	04 MIS 0893	Morrison	07/27/04	
Larry Yancey v. Independent Living Rehab Prog, Div of VRS State of NC	04 MIS 0894	Morrison	07/27/04	
Larry Yancey v. Durham Dept. of Social Services, State of NC	04 MIS 0895	Morrison	07/27/04	
Darrick Lamonte King v. Administrative Office of the Courts	04 MIS 1289	Mann	12/07/04	
Earl Hardy Jr. v. Brunswick County Dept of Social Services	04 MIS 1765	Morrison	12/10/04	
<b><u>OFFICE OF STATE PERSONNEL</u></b>				
Rhonda L. Mehrley v. Duplin-Sampson-Lenoir Area MH/DD/SAS	02 OSP 1387 <sup>3</sup>	Gray	01/04/05	
Diane Kemp v. Swannanoa Valley Youth Development Center	02 OSP 1552	Gray	12/16/04	
Kathy M Sledge v. DOC	02 OSP 2117	Conner	08/03/04	
Rhonda L. Mehrley v. Duplin-Sampson-Lenoir Area MH/DD/SAS	03 OSP 0108 <sup>3</sup>	Gray	01/04/05	
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Pearl A. Wilkins v. NCSU	03 OSP 0400	Gray	07/26/04	
Phillip Harris v. Dept. of Juvenile Justice & Delinquency Prevention	03 OSP 0836	Gray	09/17/04	
Jean Martin v. UNC	03 OSP 1534	Wade	02/21/05	
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Sandra Thomas v. DOC	03 OSP 1551	Conner	01/05/05	
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Romda Arnold v. Dept of Social Services, William Scarlett	03 OSP 2261	Wade	12/02/04	
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Chris Hendrix v. DOT	03 OSP 2370	Wade	01/06/05	
Phyllis Holt v. NCSU	03 OSP 2415	Conner	10/14/04	19:11 NCR 992
James A. Ray v. Mr. Don Shore, Human Resources, UNC Greensboro	03 OSP 2451	Elkins	06/01/04	
James A. Ray v. Sherry Stevens and Facility Services Management., UNC Greensboro	03 OSP 2452	Elkins	06/01/04	
James A. Ray v. Hoyte Phifer and Facility Services Management, UNC Greensboro	03 OSP 2453	Elkins	06/01/04	
Terry H. Mitchell v. Elizabeth City State University	04 OSP 0015	Conner	07/23/04	
Miracle L. Smith v. NC State Highway Patrol	04 OSP 0039	Gray	07/14/04	
Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs	04 OSP 0194	Mann	06/09/04	
Jerry William Wiley v. Div of Public Health and DHHS	04 OSP 0210	Elkins	06/23/04	
Arnold Foy v. DOC, Division of Community Corrections	04 OSP 0262	Elkins	01/10/05	
Donnie Gordon v. Southern Correctional Institution	04 OSP 0280	Wade	10/11/04	
James Sturdivant v. UNC Pembroke	04 OSP 0285	Conner	11/17/04	
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Jeff Nichols v. DOC	04 OSP 0419	Conner	06/29/04	
Adriel Williams v. UNC Chapel Hill	04 OSP 0435	Chess	09/20/04	
Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04	
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Mark A. Boyce v. Dept. of Commerce	04 OSP 0543	Gray	07/06/04	
Barbara H. Crisp v. Toe River Health District	04 OSP 0565	Conner	11/19/04	
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Bernadine Ralph v. O'Berry Center	04 OSP 0706	Lassiter	06/29/04	
Jesse D. Goodman v. NC A&T University	04 OSP 0719	Lassiter	09/23/04	
Eleana Smoot v. DOC	04 OSP 750	Gray	02/09/05	
James A. Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	07/14/04	
Gwendolyn Robertson Horton v. DHHS	04 OSP 0792	Morrison	07/26/04	
Glenda Lyn Durant v. NC A&T University	04 OSP 0832	Conner	02/14/05	
Melvin B. Jones v. Elizabeth City State University	04 OSP 0841	Wade	10/14/04	
Lekisha Branch Thorpe v. The Whitaker School	04 OSP 0923	Morrison	09/09/04	
Katrina Pittman v. Kenny Gibbs, Div of Vocational Rehab	04 OSP 0930	Lassiter	08/06/04	
Reginald B. ("RB") Johnson v OAH	04 OSP 0940	John	02/23/05	
Bonnie J. Winn, RN v. DOC	04 OSP 0955	Creech	12/20/04	
Veronica J. Johnson v. SOS	04 OSP 0961	Morrison	07/23/04	
Gregory Tabron v. John Umstead Hospital	04 OSP 1014	Lassiter	07/26/04	
Cheryl Brooks Webb v. Hoke Correctional Institution	04 OSP 1015	Wade	01/26/05	
James Clint Dixon Sr. v. Butner Public Safety, Crime Control/Public Safety	04 OSP 1104	Lassiter	10/08/04	
Delilah Perkins Warner v. DOC	04 OSP 1114	Conner	02/04/05	
Emily Deveaugh v. Pender Correctional Institution	04 OSP 1149	Elkins	10/20/04	
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Ronnetta Lynn Copeland v. Buncombe County Mental Health Center	04 OSP 1208	Wade	10/28/04	
Agnes Louise Mankes v. NCS Education Assistance Agency	04 OSP 1230	Conner	03/24/05	
John Lettieri v. DOC, Div of Prisons	04 OSP 1245	Lassiter	02/24/05	
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Sharon Carr v. DHHS, Div of Social Services, Human Resources Gwen Sanders	04 OSP 1270	Mann	09/24/04	
Patricia O'Neal v. Polk Youth Institution	04 OSP 1284	Mann	11/22/04	
Sharon Greco-Hammond v. DOA	04 OSP 1295	Wade	01/06/05	
Johnny J. Kincaid v. DOC	04 OSP 1298	Mann	01/13/05	
Andrea T. Hailey v. Dept. of Correction	04 OSP 1309	Conner	11/19/04	
Bruce DeBetham v. DOA and NC State Surplus	04 OSP 1346	Conner	04/12/05	
Gwendolyn Robertson Horton v. DHHS	04 OSP 1347	Conner	03/07/05	
Michael L. Hillis v. DHHS	04 OSP 1369	Mann	12/08/04	
Lucie J. Riggsbee v. DHHS – Div. of Public Health	04 OSP 1389	Wade	12/02/04	
Chris Taylor v. Robeson Co. Department of Social Services	04 OSP 1397	Morrison	04/14/05	19:21 NCR 1754
Krystal D. Wilson v. Robert Guy, DOC	04 OSP 1491	Chess	01/19/05	
Janice Spellman v. East Carolina University	04 OSP 1557	Conner	04/21/05	
Diane Barnes v. Dorthea Dix Hospital	04 OSP 1582	Gray	01/14/05	
Dayna Warren Pitts v. NC Highway Patrol	04 OSP 1589	Conner	02/14/05	
Dr. Jennifer L. Rounds-Bryant v. DOC	04 OSP 1590	Gray	01/21/05	
Frances Shabazz v. UNC	04 OSP 1615	Gray	12/03/04	
Sylvia Wooten v. Lumberton Institution	04 OSP 1653	Mann	02/07/05	
Melvin Riggs v. NCCU & Chancellor James H. Ammons & Bd. of Trustees	04 OSP 1666	Elkins	01/26/05	
Eric D Martin v. Department of Correction	04 OSP 1814	Gray	04/18/05	
Theresa Brackin v. SOS	04 OSP 1843	Elkins	01/27/05	
Plummer R. Foster v. DOT	04 OSP 1845	Elkins	01/07/05	
Terry Moses v. DOT, Division Engineer-Division One	04 OSP 1853	Gray	01/04/05	
Sheila Bizzell v. Cumberland County Dept. of Social Services	04 OSP 1867	Conner	03/11/05	
Deena Ward v. Columbus Co. Dept. of Social Services	04 OSP 2092	Lassiter	01/24/05	
Lawrence E Hinchee Jr. v. Department of Revenue	04 OSP 2123	Elkins	03/30/05	
Terry M Knotts v. Davie County Inspection	04 OSP 2124	Morrison	12/22/04	
Pamela Brady v. DHHS, Div of Mental Health, Developmental Disabilities And Substance Abuse Services, NC Special Care Center	04 OSP 2181	Elkins	03/24/05	
Paul E. Bailey, Jr v. N.C. DOT/DMV	04 OSP 2198	Chess	03/16/05	
Cindy Frederick Faison v. Robert Guy, Director, DOC/Div of Community Corrections	04 OSP 2224	Chess	02/15/05	
Sharon Speight-English v. Louis E. Latour and Wilson Co. Dept. of Health	04 OSP 2240	Chess	01/05/05	
Yvette Victoria Scott v. Dorothea Dix Hospital Hoke	04 OSP 2242	Wade	01/26/05	
Kandise Connor v. Winston-Salem State University	04 OSP 2285	Lassiter	02/24/05	
Barbara Payne v. Rockingham County Dept. of Social Services, Ben Neal	04 OSP 2290	Lassiter	02/15/05	
Jose Flores v. UNC Healthcare, UNC Hospital	05 OSP 0221 <sup>6</sup>	Lassiter	04/20/05	
Monica Orozco v. UNC Healthcare, UNC Hospital	05 OSP 0222 <sup>6</sup>	Lassiter	04/20/05	
Julian Alfaro v. UNC Healthcare, UNC Hospital	05 OSP 0223 <sup>6</sup>	Lassiter	04/20/05	
Mauricio Rosales v. UNC Healthcare, UNC Hospital	05 OSP 0224 <sup>6</sup>	Lassiter	04/20/05	
Gloria J Edmunds v. Disability Determination Services	05 OSP 0261	Lassiter	04/13/05	
<b><u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u></b>				
John (Jack) Lorden v. Substance Abuse Professional Certification Board	05 SAP 0259	Lassiter	03/31/05	
<b><u>SECRETARY OF STATE</u></b>				
Dawn J. Tyson v. Department of SOS	05 SOS 0086	Chess	03/24/05	
<b><u>UNC HOSPITALS</u></b>				
Laurie Calder-Green v UNC Hospitals	03 UNC 2183	Chess	01/19/05	
Carrie Ann Sykes v. Chapel Hill Hospital	04 UNC 0245	Elkins	06/25/04	
Loretta Boddie v. UNC Hospitals	04 UNC 0289	Gray	12/20/04	
Danielle Catoe v. UNC Hospitals	04 UNC 0291	Elkins	06/25/04	
Faye W. Beatty v. UNC Hospitals	04 UNC 0292	Elkins	01/26/05	
Rex A. Coughenour v. UNC Hospitals	04 UNC 0306	Elkins	06/22/04	
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04	
P. Nettles v. UNC Hospitals	04 UNC 0393	Morrison	07/23/04	
Garris Faison v. UNC Hospitals	04 UNC 0396	Conner	10/08/04	
Vanessa Bailey v. UNC Hospitals	04 UNC 0440	Conner	08/09/04	
Dennis McCuller v. UNC Hospitals	04 UNC 0458	Chess	08/02/04	
Joe Hatcher v. UNC Hospitals	04 UNC 0480	Morrison	07/23/04	
Cattrual Heggins v. UNC Hospitals	04 UNC 0496	Chess	08/09/04	
Tammy Bottoms v. UNC Hospitals	04 UNC 0502	Elkins	07/21/04	
Sandra Lee Petty v. UNC Hospitals	04 UNC 0522	Chess	07/23/04	
Michael F. Kamaka v. UNC Hospitals	04 UNC 0534	Gray	12/20/04	
Thomas Sherman Tate v. UNC Hospitals	04 UNC 0538	Chess	06/15/04	
Sherry Smith v. UNC Hospitals	04 UNC 0585	Wade	10/01/04	
Tracy Lane v. UNC Hospitals	04 UNC 0601	Gray	07/23/04	
Carl Graves, Jr. v. UNC Hospitals	04 UNC 0613	Wade	09/21/04	
Betty Tripp v. UNC Hospitals	04 UNC 0660	Wade	10/01/04	
Ellen Lamoureux v. UNC Hospitals	04 UNC 0677	Wade	10/01/04	
Martha W. Foust v. UNC Hospitals	04 UNC 0680	Morrison	11/18/04	
Holly M. Taylor v. UNC Hospitals	04 UNC 0743	Chess	10/04/04	
Chris Oduok v. UNC Hospitals	04 UNC 0760	Morrison	07/26/04	
Xiaoyan Luo v. UNC Hospitals	04 UNC 0761	Morrison	11/18/04	
Pamela L. Chevalier v. UNC Hospitals	04 UNC 0773	Morrison	07/26/04	
Ann M Taft v. UNC Hospitals	04 UNC 0781	Morrison	11/23/04	

**CONTESTED CASE DECISIONS**

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Elton R. Buffkin v. UNC Hospitals	04 UNC 0782	Conner	02/22/05
Kuiran Jiao, Zhenghong Fan v. UNC Hospitals	04 UNC 0847	Morrison	12/21/04
Nicole Bissell Curliss v. UNC Hospitals	04 UNC 0849	Morrison	11/18/04
June K. Foushee v. UNC Hospitals	04 UNC 0850	Morrison	11/23/04
Jill Weinstein v. UNC Hospitals	04 UNC 0918	Morrison	11/18/04
Trenda L. Smith v. UNC Hospitals	04 UNC 0951	Morrison	11/23/04
Lisa Stewart v. UNC Hospitals	04 UNC 0960	Morrison	12/10/04
Joyce Miller v. UNC Hospitals	04 UNC 0963	Morrison	11/23/04
Debra Mason v. UNC Hospitals	04 UNC 1189	Mann	12/09/04
Tashaia Williams v. UNC Hospitals	04 UNC 1285	Mann	12/09/04
James T. Stevens v. UNC Hospitals	04 UNC 1686	Elkins	03/24/05
Hattie J. Griffin v. UNC Hospitals	04 UNC 2131	Elkins	02/23/05

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- 1 Combined Cases
- 2 Combined Cases
- 3 Combined Cases
- 4 Combined Cases
- 5 Combined Cases
- 6 Combined Cases



**CONTESTED CASE DECISIONS**

NORTH CAROLINA  
COUNTY OF DARE

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
04 EHR 1385

R&K Of Dare County, and )  
Timothy Mike Morrison, )  
 )  
Petitioners, )  
 )  
v. )  
 )  
N.C. Department Of )  
Environment and Natural )  
Resources, )  
 )  
Respondent. )

**DECISION**

This contested case was heard on December 20 and 21, 2004 in the Dare County Justice Center in Manteo, North Carolina before Julian Mann, III, Chief Administrative Law Judge, on a Petition for Contested Case Hearing by Petitioners, R&K of Dare County and Timothy Mike Morrison.

**APPEARANCES**

For Petitioners: TC Morphis, Jr.  
The Brough Law Firm  
1829 E. Franklin St., Suite 800-A  
Chapel Hill, NC 27514

For Respondent: Christine A. Goebel  
Assistant Attorney  
North Carolina Department of Justice  
P.O. Box 629  
Raleigh, NC 27602-0629

**ISSUE**

Whether the Local Permitting Officer (LPO) for the Town of Kill Devil Hills (the Town), acting on behalf of the North Carolina Division of Coastal Management (DCM), incorrectly denied Petitioners' application for a replacement of an existing structure under 15A NCAC 07J .0210 or as a necessary repair to a structure from damage caused by Hurricane Isabelle, as exempted under G.S. 113A-103(5)(b)(5).

**TESTIFYING WITNESSES**

**Petitioners:**

Mr. Timothy Mike Morrison, Petitioner and developer of the Tanarama  
Mr. Richard Miller, building contractor for Petitioners  
Mr. Gregory Bourne, appraiser for Petitioners

**Respondent:**

Mr. Matthew Lowcher, Town of Kill Devil Hills Building Inspector  
Ms. Meredith Guns, Kill Devil Hills Assistant Planning Director and LPO

**EXHIBITS RECEIVED INTO EVIDENCE**

**Petitioners:**

- Pet. Ex. 1: 1997 Appraisal of the Tanarama Motel, by Mr. Greg Bourne.  
Pet. Ex. 2: 2002 Appraisal of the Tanarama Motel, by Mr. Greg Bourne.  
Pet. Ex. 3: 2004 Appraisal of the Tanarama Motel, by Mr. Greg Bourne.  
Pet. Ex. 4: Insurance Report (Generated by Petitioner Morrison's Insurer for the Claim Made Regarding Roof Damage to the Tanarama.).  
Pet. Ex. 6: Chart entitled "Detailed Estimate of Structure's Actual Cash Value."  
Pet. Ex. 7: Chart entitled "Oceanfront Building Value based on 2004 Appraisal."  
Pet. Ex. 8: Chart entitled "Summary of Tanarama Appraisals."  
Pet. Ex. 10: Excerpt from "Answers to Questions About Substantially Damaged Buildings," a Document Produced by the National Flood Insurance Program

**Respondent:**

- Res. Ex. 1A: Photograph of the Tanarama, January 15, 2004.  
Res. Ex. 1B: Photograph of the Tanarama, January 15, 2004.  
Res. Ex. 2A: Photograph of the Tanarama, March 18, 2004.  
Res. Ex. 2B: Photograph of the Tanarama, March 18, 2004.  
Res. Ex. 3A: Aerial photograph of the Tanarama, April 7, 2004.  
Res. Ex. 3B: Aerial photograph of the Tanarama, April 7, 2004.  
Res. Ex. 5: Town of Kill Devil Hills Technical One Review Notes Regarding the Proposed Sunrise Cay Condominiums.  
Res. Ex. 6: Asbestos Report for the Tanarama Motel (Generated by the N.C. Dept. of Health and Human Services).

**Stipulated Exhibits:**

- Stip. Ex. 1: Denial letter from Ms. Meredith Guns to Petitioner Morrison, August 19, 2004.  
Stip. Ex. 2: Deed to the Tanarama Property Filed in Dare County Registry.  
Stip. Ex. 3: Dare County Tax Assessment Sheet for Oceanward Parcel of the Tanarama, 1997.  
Stip. Ex. 4: First Evaluation dated July 1, 2004, with Attachments, by Mr. Greg Bourne.  
Stip. Ex. 5: Second Evaluation Letter dated August 2, 2004, by Mr. Greg Bourne.  
Stip. Ex. 6: DCM's Substantial Damage Field Guide  
Stip. Ex. 7: Affidavit of Michael Ted Tyndall.  
Stip. Ex. 8: Affidavit of Roy Dudley Brownlow.  
Stip. Ex. 9: Application for Determination of Substantial Damage, with Attachments, filed by Petitioners.  
Stip. Ex. 10: Letter submitted on Petitioners' Behalf by Cahoon & Kasten Architects, June 18, 2004.  
Stip. Ex. 11: Letter Submitted on Petitioners' Behalf by K.A. Bukantas, Accountant, June, 2004.  
Stip. Ex. 12: Letter submitted on Petitioners' Behalf by the White Design Group, Inc., June 21, 2004.  
Stip. Ex. 13: Three Estimates of Tanarama Reconstruction Costs from Jernigan Enterprises, JL Firestone Construction, and Miller Construction, all June, 2004.  
Stip. Ex. 14: Memorandum from Mr. Ted Tyndall to the I&S Committee of the CRC, July, 8 2002.  
Stip. Ex. 15: 1994 Survey of the Tanarama by Quibble and Associates.

Based upon the preponderance of the admissible evidence, the undersigned makes the following:

**FINDINGS OF FACT**

**Pre-Hurricane Isabelle**

**Background**

1. The property at issue is the Tanarama Motel (the Tanarama) and is located at 2055 Virginia Dare Trail (N.C. Highway 12), Dare County in Kill Devil Hills, North Carolina. (Stip. Fact 1)
2. While the property consists of two tax parcels and four buildings located on both sides of N.C. Highway 12, only the building known as building “E,” as shown on a 1994 survey by Quibble and Associates, is at issue in this case. (Stip. Fact 1; Stip. Ex. 15) Unless otherwise noted, references to the Tanarama hereafter refer to only building “E.”
3. Building E was built in 1955 and is a two-story wood frame structure with twenty-four rooms. (Stip. Fact 2)
4. Petitioner, R&K of Dare County (R&K), owns the Tanarama. R&K is primarily controlled by Mr. Narain “Nick” Mathani. (Stip. Fact 5)
5. T. Mike Morrison (Petitioner Morrison) first became involved with R & K of Dare Co, Inc. when Mr. Mathani approached him to list the property on the market, in his capacity as a real estate broker. (T p. 17) After receiving one offer, they discussed changing the ownership to condominiums, remodeling the 24 motel units to 12 units, and selling them. (T p. 19, Stip. Fact 2)
6. Sometime in 2002 or 2003, R&K contracted with Petitioner Morrison to market and sell the Tanarama. (T. p. 44) The two later entered into a joint venture agreement to convert the structure from a motel use to condominiums, with the new condominiums being known as the Sunrise Cay Condominiums. (T. pp. 19-21; Stip. Fact 5; Res. Ex. 5, Town staff comments referring to Sunrise Cay Condominiums). The remodeling construction costs of Sunrise Cay Condominiums was estimated to be \$176 per square foot. The price reflects the unforeseen and difficult problems dealing with the age and type of construction of the building. (T. p. 35; stipulated Exhibit #13)
7. As a part of the condominium conversion project, Petitioner Morrison hired Mr. Greg Bourne, an MAI certified appraiser, to appraise the value of the entire Tanarama (including all buildings on both parcels) at its highest and best use. (T. pp. 21-22, 94)
8. During the hearing, Mr. Bourne was tendered and admitted as an expert in real estate appraisal. (T. p. 96)
9. Mr. Bourne’s 2004 appraisal valued the entire Tanarama (including all buildings on both parcels) at \$7,120,00.00. (T. p. 123; Pet. Ex. 3, intro p. 2) This appraisal determined that the highest and best use of the property would be as condominiums. (Pet. Ex. 3, p. 45)
10. In his 2004 appraisal, Mr. Bourne identified the Tanarama as a legally nonconforming use under the CAMA regulations. “Given the limited depth from the street to first line of stable vegetation (i.e. 125 ± feet), the oceanfront parcel would be unbuildable without the exclusion and at best, the site could only be developed into four (4) residential dwellings with a typically small building pads (35 feet of depth and 30 feet of width).” (Pet. Ex. 3, p. 33)
11. Based on Mr. Bourne’s 2004 appraisal, Petitioner Morrison secured a \$1,200,000.00 loan to finance the condominium conversion project. (T. p. 23)
12. After consulting with officials at the Town of Kill Devil Hills, Petitioners believed that the conversion of the hotel into condominiums could be accomplished without substantial permitting from the town, as this would be a change of ownership. This was a conclusion reached prior to Hurricane Isabelle striking the Town of Kill Devil Hills. (T. p. 21)
13. Petitioners were told in a meeting with town code officials that they did not need a major development permit to convert the hotel units to condominium units if they were not to change the site plan, and the building was to remain the same, but would have to apply for permits to repair it as a hotel and then the conversion could be completed after it was repaired as a hotel/motel. This would be a repair to the hotel and to be put back as a hotel. Permits were issued on that basis to repair or replace the roof, to do the necessary demolition and to replace the decks. (T. pp. 27-28)
14. The town’s major concern at that point was to insure that with the replacement of roof there was not an increase in the square footage. This would permit replacement of the roof and the deck system with the necessary demolition that was needed to make the repairs. (T. p. 29)
15. After completion of the work under these permits, Petitioners would still need the necessary permits for mechanical, plumbing and HVAC permits. (T. p. 29)

**Hurricane Isabelle**

16. On September 18, 2003, Hurricane Isabelle struck the North Carolina coast, including the Town of Kill Devil Hills. (Stip. Fact 13)
17. The Tanarama suffered damage during the storm, including damage to the roof. (Stip. Fact 14) Petitioner Morrison visited the Tanarama after the hurricane, and said “there was damage- wind and water damage.” (T p. 25) About one-quarter of the roof was off and there was wind and water damage. (T p. 45) He stated, “Besides the roof and some water damage, it was still in good condition.” (T p. 27)
18. As a part of their job duties, Ms. Guns, Mr. Lowcher, and other members of the planning and inspections department toured the hurricane damage in the days after the storm (T. pp. 170, 172, 228, Stip. Fact 15). As a result of the hurricane, approximately twenty-five percent of the roof on building E was ripped off. (T. p. 45) Building E also suffered damage to the carpets, electrical systems, wallboards, and some asbestos siding was exposed. (Stip. Fact 13; T. pp. 45-6, 196)
19. After Hurricane Isabelle struck the area within the town limits of Kill Devil Hills, Petitioners again consulted with town officials who informed them that the project could continue as not a change in usage but ownership. After walking through the project with representatives from the town, Petitioners were informed that the roof on the non-conforming structure could be replaced or repaired but there could be no increase in the square footage of the living area. (T. pp. 24-25)
20. Some time after the hurricane struck, Petitioner Morrison filed an insurance claim for the damages to the Tanarama. (T. pp. 26-7; Pet. Ex. 4)
21. After Hurricane Isabelle struck the Town of Kill Devil Hills a representative from the insurance company covering the hotel structure reviewed and adjusted for the damages for loss claims. (T. Vol. 1, p 58)
22. The claim that was payable by the insurance company for damage from Hurricane Isabelle to all structures was \$150,515.22. (T. p. 63, Pet. Exh. 4)

**Roof Repair Issue**

23. In either late 2003 or early 2004, Petitioner Morrison applied to the Town for permits to repair the Tanarama. (T. pp. 25-26, 28-29, 172, 176, 230-1) On February 10, 2004, the Town issued Petitioner Morrison a permit to do demolition work, install ruck trusses and decks on the Tanarama. (T. p. 234)
24. No CAMA permit was required for the proposed demolition and roof truss work. (T. pp. 231-2)
25. When Mr. Morrison approached the town about the roof, he initially wanted to add a third floor to increase the value. The town informed him that because the structure was non-conforming, he could not increase the square footage of the living area. (T pp. 25, 231) Mr. Morrison recalls that this was the first time he learned of the 50% rule. (T p. 52) However, in order to replace the roof from a flat room to a peaked room it was necessary to move interior structures to support the new roof system. (T. p. 47)
26. Some time after the demolition and roof truss permit was issued, Petitioners’ contractor, Mr. Richard Miller, began repair work on the Tanarama. (T. p. 73)
27. Petitioner Morrison discussed the roof damage with Ted Sampson of the Division of Coastal Management in Elizabeth City, who determined, based on a site visit, the roof damage was less than 50%, and the roof repair did not require a CAMA permit under N.C.G.S. § 113A-103(5)(b)(5). (T p. 25, 47)
28. Mr. Lowcher stated that when the demolition and roof repair permit was issued, the 50% rule was not an issue to him. (T p. 176) Ms. Guns stated that the roof, “didn’t even scratch the surface of fifty percent...it was a simple roof replacement, and that is allowed by both zoning and CAMA.” (T p. 232) If the Petitioners had just repaired the roof without all of the other work, there would have been “no problem with CAMA.” (T pp. 307-308)
29. The work under these permits by Richard Miller began in February when he and Petitioners came to an agreement on price, and work on the roof began. (T p. 73) Mr. Miller was hired by Mr. Morrison to “renovate the Tanarama.” (T p. 74)

**Condominium Conversion Process**

30. Petitioners first approached the Town of Kill Devil Hills with its proposal to convert the motel to condominium units prior to Hurricane Isabelle. Petitioners believed condominiums to be the highest and best use of the property because the sale of condominiums would produce more money than revenue received as the motel. (T pp. 65, 132) The value comes from the private ownership of condominiums. (T p. 65)

31. The price for the remodeling construction at Sunrise Cay Condominiums was \$175.00 per square foot. (T. p. 72, Stipulated Exhibit #13)

32. Simply changing the legal ownership of the Tanarama from a motel to condominiums, with no remodeling or other construction of the building, would not require any development permits from the town. (T pp. 21, 50-51, 237)

33. Petitioners were informed by town code officials that if they put the building back as a hotel then other major development permits were not going to be required. Thereafter, the conversion could be made to condominium ownership. (T. p. 50)

34. On February 17, 2004, after receiving the demolition and roof repair permits, Petitioners submitted their condominium conversion plans to the town for the site plan review process. The process requires the plans to be submitted to all town departments for comment. At this time, Ms. Guns understood “the permit for roof replacement had already been issued and that was off the table. This was purely a commercial site plan to convert...” (T p. 235)

35. The next step of the site plan review was the “Tech One Review” meeting on February 25, 2004, between Petitioners and town staff. Written comments were given to Petitioners by Town Planner Greg Loy and Matt Lowcher, highlighting the 50% rule problems they may have. (T p. 53-54, 65, 168 and R’s ex. 5)

36. On or around February 25, 2005, the Town staff held its first meeting to discuss the proposed condominium site plan. (T. p. 237) The discussion of the site plan was separate from the earlier issuance of the demolition and roof truss permits. (T. pp. 230-1) Referred to as the Technical One Review (also known as the tech one review), members of the Town staff from the various Town departments used this review to voice their initial concerns about all aspects of the proposed project. (T. pp. 235-7)

37. Aside from the permits that were issued, Petitioners believed that the building inspector also would have to issue permits for the HVAC, plumbing and electrical work. (T. p. 73)

38. Under Item # 26, Page 1, of Respondent’s Exhibit No. 5, the following is quoted:

“Developer needs to be aware of the 50 percent ‘substantial improvement’ permit requirements. Please contact Building Inspector.”

(T. pp. 52-53; Resp. Exh. 5)

Under Page 3 of Respondent’s Exhibit 5, the following is quoted:

After reviewing the above mentioned site plan I have the following comments:

- 1) The change of use will trigger NCBC upgrades to current code requirements of the structure for the specified new residential occupancy type. An architect sealed set of plans will be required, as well as any engineer sealed drawings as required by Planning Department.
- 2) Appendix B Building Code Summary Form from the NCBC Vol. I-A, will be required to be completed and submitted with a full set of plans for the structure.
- 3) CAMA & Dare County Health Department approval of the project will be required prior to issuance of a building permit.
- 4) CAMA concerns may exist if the work proposed is greater than 50% of the current tax value of the structure. Verification of proposed cost versus tax value of the structure will be required.

(Resp. Exh. 5)

39. When Petitioner Morrison first approached the town with the condominium project, he was advised about the 50% rule for purposes of Building Code, Zoning Code, FEMA and CAMA. (T p. 168, 242)

40. The Town staff's Tech One Review Comments to Mr. Morrison were entered into evidence as Respondent's Exhibit 5. Among these comments, Ms. Donna Elliott, acting in the capacity of both the Town zoning administrator and one of two Town CAMA LPOs, said that no CAMA permit was required "at that time," that is for the proposed condominium conversion. (Res. Ex. 5, memorandum from Donna Elliott)

41. Mr. Miller believed that because of the conversation from hotel units to condominiums there would have to be certain fire walls and other protections completed in the conversion. (T. p. 76)

**Work on the Tanarama from Mid-February until June 11, 2004**

42. From mid-February until June 11, 2004, Petitioners only had one permit allowing demolition, roof and deck repair. (T p. 56-57) They did not have a building permit. (T pp. 29, 57) The demolition of the building had been done based on the demolition permit. (T p. 49)

43. Petitioner Morrison stated that they had to gut the building in order to support the new roof. (T p. 48) Mr. Miller stated that "we had to replace walls in order to support the trusses that were brought to the job." (T p. 80)

44. Between February and June 11<sup>th</sup>, Mr. Miller removed the siding, removed the roof, removed the old decks that were on the front that were damaged, installed new decks, installed a new roof system, removed sheetrock from the inside of the building because of the mold, some wiring out and started the framing. (T pp. 59, 80)

45. As work on the Tanarama progressed, one of the Town's building inspectors, Mr. Alvin Rountree, visited the site at least once per month until a stopwork order was issued in June, 2004 (T. pp. 31, 76-7)

46. Some time in February, 2004 and after work had begun on the Tanarama, Ms. Val Murphy, an inspector with the North Carolina Department of Health and Human Services, visited the Tanarama site to investigate a complaint regarding exposed asbestos. (T. p. 74; Res. Ex. 6, pp. 3 and 12-3) Subsequently, a permit was issued by the State to Mr. Miller to remove asbestos siding from the Tanarama. (T. p. 74; Res. Ex. 6, p. 9)

47. Mr. Miller contracted with East Coast Abatement to remove the asbestos siding, and soon after the removal permit was issued the abatement company did so. (T. p. 74)

48. Within a week to ten days after the time Mr. Miller was issued the asbestos removal permit, another state staff person called Mr. Miller and informed him that the Tanarama had mold that needed to be treated. (T. pp. 31-2, 74-5) No permit was need for this work. (T. pp. 32, 75)

49. Mr. Miller's company then proceeded to rip out the interior paneling of the Tanarama so that they could access and then treat the areas of the motel that had been affected by mold. (T. p. 75)

50. On March 18, 2004, Ms. Guns visited the site with Mr. Sampson of the Division of Coastal Management because Ms. Guns had concerns that Petitioners were doing substantial demolition. They were concerned that there would be a problem with CAMA. (T p. 238) Ms. Guns and Mr. Sampson both agreed the 50% rule for CAMA was now an issue. (T p. 240) This concern was communicated to Petitioners, a 50% evaluation was requested, and a copy of the "DCM field guide" for 50% determinations was given to Mr. Miller. (T pp. 239-240, 306) Photos from this site visit illustrate the testimony as to the state of Building E at this time. (R's ex. 2) Ms. Guns believed the damage to the building in March was not from the storm. (T p. 229, and photos at R's ex. 1-3)

51. According to Mr. Richard Miller's testimony, Petitioners' contractor, his job was to bring the building back to the way it was, restoring the building to the state it was before the storm, converting it back to a motel and then to condominiums. With the building completed as condominium units, the number of units previously as hotel units was reduced in half to permit two-story condominium units instead of single story hotel units. (T. pp 83-84)

52. Mr. Miller testified that there were interior changes made to accommodate the number of units. This involved interior framing to change the number of units. The interior changes were primarily to the second floor in order to support the trusses that were designed for it. Changes were made in the first floor with the addition of a wall and a stair. (T. p. 84)

53. Richard Miller's statement of cost was not the cost of repair but the cost to renovate the structure. (T. Vol. 2, p 251)

54. Petitioners' contract with its general contractor for the work to be performed was for a total estimate of \$797,500. (T. p. 86, Stipulated Exhibit 9)

55. According to Mr. Miller's testimony, the concept of the conversion of the hotel to the condominium units was to keep the same interior walls and make a stack unit. (T. p. 88)

56. Mr. Lowcher stated that he asked Mr. Miller on several occasions if they "had gotten any documentation with regards to an appraisal on the structure so that it could be determined whether they had exceeded the fifty percent value of the structure with regards to the repair work that was going to need to be done." (T pp. 168-169)

57. Petitioners did not provided any 50% information until the stop-work order was issued on June 11, 2004. (T. p. 241)

**Stop Work Order Issued on June 11, 2004**

58. Work continued on the Tanarama until June 11, 2004. On June 11, 2004, Mr. Lowcher, issued a stop work order for the Tanarama. (T p. 172 ) He did this based on a site visit where he saw that framing had been done. This framing of the structure could not be done without a building permit, which Petitioners did not have. (T pp.172, 203, 243 )

59. Initially, the Town told Petitioner Morrison that he would have to demonstrate that the Tanarama had been damaged or demolished by less than fifty percent of the physical value of the structure before it would issue him a building permit to continue working. (T. pp. 32-3, 172, 243)

60. The roof replacement did not exceed the CAMA threshold. The removal of everything in the interior was what triggered the 50 percent CAMA calculation. (T. p. 300)

61. The siding window doors, plumbing, electrical, air conditioners, roof, interior wallboards, insulation, floors and decks were all removed. The only thing that was standing was the exterior walls and some framed interior walls. All of this was asserted to be accomplished under the demolition permit. (T. p. 306)

62. A CAMA permit would not be required if the footprint of the non-conforming building did not change unless the interior renovations exceeded the 50 percent requirement. (T. Vol. 2, p 307)

63. Meredith Guns testified as follows:

The contractor could have phased the project fairly easily, replace the roof, and then go in and replace the siding, and then go in and do interior renovations. It could have easily been phased in in such a way that you would not have hit any of the thresholds because CAMA is not their – the only problem. (T. p. 309)

64. Meredith Guns testified as follows:

I believe they could have done the roof and dried in the building and gotten storm – the carpet – the wet carpets and things out that create mold typically. Keeping a building that's not dried – if the weather goes through, it causes some mold problems in just general experience from mold. I think they could have gotten the building dried in, gone through the site plan process, and phased the project in in such a way that at no point would have – would the work have exceeded fifty percent of the physical value of the structure. It may not have gone as quickly as they had hoped, but I do believe in all four aspects of the fifty percent rule that it could have been done and could have accomplished a condominium on that site. (T. pp. 311-312)

65. Under the Town Zoning Ordinance, the Town Building Inspection Office can issue a building permit for repairs to a nonconforming structure, such as the Tanarama, so long as the damage and demolition of the structure is less than fifty percent of the physical value of the structure. (T. pp. 243-6, 303-4, ) In this case, Petitioner Morrison was asked to submit a physical value estimate for the Tanarama as it stood prior to Hurricane Isabelle. (T. pp. 245-6)

66. At this time, Mr. Lowcher and other planning officials were concerned that the demolition that was taking place was in excess of 50%. The town again requested a 50% study from Petitioners to ensure additional work would not be in excess of one-half the structure's value. (T pp. 174-175) The town faxed another copy of the "DCM field guide" (Stip Ex. 6) to Petitioners in order to assist them with the CAMA 50% study. (T. p.38)

**CAMA Exemption Request**

67. For both the initial fifty percent rule determination for the building permit application and then later for the CAMA fifty percent rule determination, the Town staff concluded that damage from Hurricane Isabelle might have caused the asbestos siding to be exposed and might have caused the mold problems. (T. pp. 196, 198)
68. Accordingly, on July 1, 2004, Mr. Bourne submitted an estimate of the physical value of the Tanarama. (Stip. Exh. 4)
69. In his July 1, 2004 letter, Mr. Bourne indicated that it would cost \$797,500.00 to repair the Tanarama. (Stip. Exh. 4) This number was based on an estimate given by Mr. Miller (Stip. Exh. 9).
70. One method of determining value is to have local contractors estimate what it's going to cost to build a building. Petitioners appraisal requested of Petitioner to obtain three estimates from building contractors of what it would cost to build the building. Petitioners' appraisal determined the total reproduction cost of the building included fees other than its replacement costs, such as direct costs, indirect costs and entrepreneur profit, and his estimate was \$2,085,715. This figure was rounded to a figure of \$2,085,000. (T. pp. 102-103)  
In the July 1, 2004 letter, Mr. Bourne, using the three reproduction cost estimates identified in Stipulated Exhibit 13 and also estimated indirect costs, concluded that the total undepreciated reproduction cost of the Tanarama as of September 17, 2003 was \$2,085,000.00. (Stip. Exh. 4)
71. Mr. Bourne then depreciated the value of the Tanarama reproduction costs by twenty percent, so that the final "depreciated building value, as of September 17, 2003, was estimated at \$1,668,000.00 (\$2,085,500.00 - \$417,00.00)." (Stip. Exh. 4) This depreciated reproduction cost was Mr. Bourne's evaluation of the physical value of the Tanarama.
72. Based on Mr. Bourne's estimate, the cost to repair the Tanarama was 47.81 percent of the physical value of the Tanarama as it stood on September 17, 2003, the day before Hurricane Isabelle. (Stip. Exh. 4)
73. For the purposes of the building permit fifty-percent rule determination, the Town refused to accept Mr. Bourne's July 1, 2004 estimate. (T. p. 179) The Town rejected the estimate saying that it would only use a certified appraisal or a county tax assessment value to make a physical value determination; Mr. Bourne's estimate was neither. (T. p. 179, 245)
74. For building permit purposes, the Town similarly rejected the documents entered into evidence as Stipulated Exhibit 10, 11 and 12 saying that none of them could be considered because they were neither certified appraisals nor county tax assessment values. (T. pp. 184, 213, 247)
75. Mr. Lowcher stated that in his opinion, the demolition work exceeded 50% by, "Just looking at it. I mean the plumbing was gone. The electrical was gone. The HVAC systems were gone. The roof was gone. The windows and doors had been removed. There was no interior finish. There was no insulation. There wasn't much there." (T pp. 176-177)
76. Ms. Guns stated: "The demolition took the structure past that threshold in the Planning Inspection Department's opinion. The actual work being done on the structure - they took all the siding off. They took all the windows, all the doors, all the plumbing, all the electrical, all the air conditioners, the roof, the interior wallboards, the insulation, the floors, and the decks. So the only thing that was standing was the exterior walls and some framed interior walls..." (T p. 306)

**The Town's Consideration of Petitioner's submission**

77. After the stop work order was issued, Petitioners began to submit information, and speak with several town staff about this issue. The communication became confusing, and so once Petitioners hired counsel, all communication was to go through the town attorney and Petitioner's attorney. (T pp. 248-249) Discussions between staff, and both attorneys resulted in the agreement that of FEMA, CAMA, building code and zoning code issues, the biggest hurdle was CAMA, and to deal with the CAMA 50% determination first. (T p. 249) Ms. Guns faxed another copy of the field guide to Petitioners on July 20, 2004. (T p. 250)
78. The original estimate submitted by Petitioners to the Town of Kill Devil Hills as to the repair estimates were not acceptable for issuing building permits. (T. Vol. 1, pp 35, 36)
79. Ms. Guns had a problem with Mr. Bourne's method of depreciation. She ran into a problem on the second page of his evaluation, with his "use of use". (T pp. 256, 259-260) "Mr. Bourne gave a depreciation bonus for its nonconforming use and oceanfront location, and CAMA rules are very specific that it can only be the structure value. And in my opinion, the use of the structure is not the structure's value, and its oceanfront location is not the structure's value. They are intangible bonuses that makes



that property or that building more valuable, but I needed to know what the cost of the structure was.” (T p. 256) Ms. Guns relied on the “DCM field guide” that advised, “Any value resulting from the location of the property should be attributed to the value of the land, not the building.” (T pp. 280-281, Stip. Ex. 6)

80. Ms. Guns was unable to accept the methodology of Mr. Bourne’s estimate, and Petitioners said they would get some more information. (T p. 257) Petitioners submitted no other information for value, and so Mr. Lowcher and Ms. Guns used the only method available to them for the structure’s pre-storm value, the Dare County tax valuation. (T pp. 188, 273-274) Mr. Lowcher and Ms. Guns didn’t pick their own value because they are not qualified. They felt they could not “pick and choose to make numbers work for someone. We don’t have that kind of expertise, and we can’t do it for some and not for others.” (T pp. 275-276) They didn’t make an actual calculation because Mr. Miller’s repair cost estimate was much more than the tax value for all 3 oceanfront buildings. (T p. 308) Mr. Lowcher and Ms. Guns felt: “We made a determination. That’s why we’re here today, I think.” (T p. 209, 254)

**Permit Denial and Petition Filing**

81. In a letter dated August 10, 2004, Ms. Guns denied Petitioner’s application for a CAMA permit exemption. The letter indicated that the replacement would be inconsistent with 15A N.C.A.C. 07J.0210, which requires that because the cost of the proposed work exceeds 50% of the pre-damage physical value of the structure, the work is considered replacement, and will need a CAMA permit. While no permit application was submitted, the denial of the permit exemption is a “permit decision” for the purposes of this contested case. This letter is the document consisting of the agency’s action, and is a stipulated exhibit. (Stip. Fact 16)

82. For building permit purposes, the Town accepted the documents in Stipulated Exhibit 13 to the extent that they were used to determine the cost to repair. (T. p. 206)

83. By July, 2004, the Town had determined the damage to and/or demolition of the Tanarama was great enough that a fifty percent rule determination would have to be made for the purposes of CAMA permitting (hereafter also referred to as “the CAMA fifty percent rule”). (T. pp. 248-9)

84. On July 20, 2004, Mr. Miller, on behalf of Petitioners, submitted an Application for Determination of Substantial Damage, which is the form the Town requires be used to apply for a CAMA fifty percent rule determination. (T. pp. 75-6; Stip. Ex. 9) Around the same time, Petitioner Morrison also resubmitted Mr. Bourne’s July 1, 2004 letter. (T. p. 247)

85. Mr. Lowcher acknowledged Mr. Bourne’s qualifications as an appraiser. (T. pp. 206, 284)

86. In making its CAMA fifty-percent determination, the Town did not use the documents submitted as Stipulated Exhibits 10, 11, and 13. (T. pp. 211-2) When asked why he did not use them for the CAMA determination, Mr. Lowcher responded, “[b]ecause we are using a tax value or a certified appraisal of which those documents were neither.” (T. pp. 212)

87. To the question, “Could [Stipulated Exhibits 10, 11, 12 and 13] have counted as qualified estimates [for the purposes of the CAMA determination]?” Mr. Lowcher responded, “I haven’t really – didn’t really research that because it wasn’t a determining factor. It wasn’t one of the things we were using as criteria.” (T. pp. 212-3)

88. To the question of whether the architect’s letter (Stip. Ex. 10) would have been useful in making the CAMA fifty-percent determination, Mr. Lowcher responded that, “It might help corroborate Mr. Bourne’s number; however, it was not a tool which we could use to determine the fifty percent question.” (T. p. 213)

89. Mr. Lowcher testified that with regard to the CAMA fifty-percent determination the problem for the Petitioners was that “they [demolished] well in excess of fifty percent.

90. For CAMA fifty-percent rule purposes, the only value that the Town used to determine the physical value of the Tanarama was the 1997 Dare County Tax Assessment value for the Tanarama, which was entered into evidence as Stipulated Exhibit 3. (T. pp. 187-8, 202) That assessment valued all three buildings on the Tanarama parcel oceanward of N.C. Highway 12 at \$446,600.00. (Stip. Ex. 3)

91. Using the 1997 tax assessment as the physical value estimate and Mr. Miller’s \$797,500.00 figure as the cost to repair estimate, the cost to repair the Tanarama greatly exceeds fifty percent of the physical value of the structure.

92. During the hearing, Mr. Lowcher stated that for the purposes of determining physical value under the CAMA fifty-percent rule he thought “physical value and market value are different because the market value can change with supply and demand. And physical value is the cost that it would take to put something up somewhere, so to [me] they’re different.” (T. p. 200)

93. Ms. Guns, in her capacity as one the Town's LPOs, issued a letter dated August 10, 2004 to Petitioner Morrison denying the application for an exemption under the CAMA fifty-percent rule. (Stip. Exh. 1)

**Interpreting The CAMA Fifty Percent Rule**

94. In an affidavit entered into evidence as Stipulated Exhibit 7, Mr. Michael Ted Tyndall, DCM Assistant Director for Permits and Enforcement, explained that he has been involved "with developing memos and [DCM] policy concerning the [CAMA] '50%' rule." (¶ 3)

95. "In July 2002," Mr. Tyndall,

drafted a memo and made a presentation to the Implementation and Standards Committee (I&S) of the Coastal Resources Commission (CRC) describing DCM's protocol in dealing with the repair of a damaged structure versus the replacement of the structure. . . The 2002 memo described various methods that can be used to determine the physical value of a structure when the building inspector is unwilling or unable to make a physical value determination. . . The memo stated that following the described protocol would ensure a uniform application of the rule and eliminate individual subjectivity. After some discussion, the I&S Committee instructed staff to continue to use the protocol as presented.

(Stip. Ex. 7, ¶ 3)

96. Mr. Roy Dudley Brownlow, the DCM Compliance and Enforcement Coordinator, drafted the field guide in 2003. (Stip. Ex. 8, ¶ 1 and 3) In an affidavit filed with the Court as Stipulated Exhibit 8, Mr. Brownlow had the following to say about the field guide:

The purpose of the guide is to assist DCM regulatory staff and the local building inspection offices . . . in making the difficult repair or replacement estimates (estimates between 40% and 60%) to damaged structures in the aftermath of hurricanes. This was primarily in response to Hurricane Isabelle which hit North Carolina in September of 2003 and the resulting high number of 50% calls that were being decided. The material in the guide is closely modeled after the National Flood Insurance Program (NFIP) criteria to provide practical guidance on estimating both the cost of improvement/repairs and market/physical value, and in verifying that estimates submitted on permit application are reasonably accurate. . . Mr. Jones [the then-Assistant Director of DCM] approved the use of the final field guide on October 27, 2003. . . The NFIP guidelines clearly articulate how to regulate major additions, improvements to structures and how to regulate reconstruction and repairs to structures that have been significantly damaged to assure that construction estimates are reasonably accurate.

(Id., ¶ 3-5)

97. At the August 2004, CRC meeting, Mr. Tyndall presented the field guide to the I&S Committee of the CRC. "The Committee was pleased to see such standardized requirements and encouraged the continued use of the field guide." (Stip. Ex. 7, ¶ 4)

98. At trial, Mr. Lowcher acknowledged that the NFIP guidelines were used as a model for the field guide and could be used to interpret the field guide. (T. pp. 193-4)

99. The field guide explains that determinations under the CAMA fifty percent rule are made using the following formula: "A project is a Replacement and not Repair and Maintenance if: Cost to repair the structure [divided by the] Physical value of the structure > 50%." (Stip. Ex. 6)

100. The field guide offers the following guidance for making CAMA fifty-percent determinations:

In common parlance, "physical value" reflects the structure's subsequent improvements, physical age of building components and current condition and original quality. For the purposes of determining substantial improvement, the physical value pertains only to the structure in question. It does not pertain to the land, landscaping, or detached accessory structures on the property . . . Any value resulting from the location of the property should be attributed to the value of the land, not the building.

Acceptable estimates of physical value can be obtained from these sources:

- An independent appraisal by a professional appraiser . . .

- Detailed estimates of the structure's actual cash value – the replacement cost for a structure, minus depreciation percentage based on age and condition. For most situations the structure's actual cash value should approximate its market value. . .
- Property appraisals used for tax assessment purposes with an adjustment recommended by the tax appraiser to reflect the adjusted assessed value.
- *The value of structures taken from insurance claims (usually the actual cash value).* (Emphasis added)
- Qualified estimates based on the sound professional judgment made by the staff of the local building inspection office or tax assessor's office.

(Stip. Ex. 6)

101. Entered into evidence as Petitioner's Exhibit 10 is an excerpt from a document entitled "Answers to Questions About Substantially Damaged Buildings," a document published by the National Flood Insurance Program in 1991. The relevant portions of the document read as follows:

The criteria for determining substantial damage is the ratio of the cost of repairing the structure to its before damaged condition to the market value of the structure prior to damage. . . For the purposes of determining substantial improvement, market value pertains only to the structure in question. It does not pertain to the land, landscaping or detached accessory structures on the property. For determining substantial improvement, the value of the land must always be subtracted.

Acceptable estimates of market value can be obtained from the following sources:

- 1) Independent appraisals by a professional appraiser.
- 2) Detailed estimates of the structure's Actual Cash Value (used as a substitute for market value based on the preference of the community).
- 3) Property appraisals used for tax assessment purposes (Adjusted Assessed Value: used as a screening tool. . .).
- 4) The value of buildings taken from NFIP claims data (used as a screening tool).
- 5) "Qualified estimates" based on sound professional judgement made by staff of the local building department or local or State tax assessor's office.

As indicated above, some market value estimates should only be used as screening tools to identify those structures where the substantial improvement ratios are obviously less than or greater than 50% (e.g., less than 40% or greater than 60%). For structures that fall between the 40% and 60% range, more precise market value estimates should be used. . .

FEMA promotes the use of adjusted assessed value as a screening technique for separating out structures that are obviously less than or greater than 50% damaged. This screening technique is applicable for cases where the ratio of cost of repair to market value (adjusted assessed value) is significantly less or greater than 50%. However, in post-disaster situations where no other market value estimates are available or where permit applications are overwhelming, adjusted assessed values may have to suffice as the definitive estimate of market value.

The use of assessed value has some limitations that, if not considered and accounted for, can produce erroneous estimates of market value. These limitations are:

- 1) Appraisal Cycle: How often are the appraisals done and when was the date of the last appraisal? Market value estimates can be grossly outdated if the cycle is long and the community happens to be in the latter stage of its cycle and has not been appraised for many years. . .

Replacement cost may be used to estimate market value if the value of the depreciation of the structure is subtracted to determine the structure's actual cash value.

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

## CONCLUSIONS OF LAW

1. The North Carolina Office of Administrative Hearings has jurisdiction to hear this case pursuant to N.C.G.S. § 113A-121.1 and N.C.G.S. § 150B-23. (Stip. Fact 8)

2. The relevant statutes governing this case is N.C.G.S. § 113A, Article 7, “Coastal Area Management” (CAMA). The relevant administrative regulations are those promulgated by the North Carolina Coastal Resources Commission and codified at 15A N.C.A.C. 07 *et seq.*

3. All parties have been correctly designated and are properly before the Office of Administrative Hearings. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter. (Stip. Fact 4)

4. Petitioners timely filed a Petition for a Contested Case Hearing challenging the August 10, 2004 denial of Petitioner Morrison’s application for a CAMA permit exemption. (Stip. Fact 17)

5. Although Petitioner Morrison did not apply for a CAMA permit, the denial of the permit exemption constitutes a “permit decision” within the meaning of N.C.G.S. § 113A-121.1(a) and 15A N.C.A.C. 07J .0301(a) and for the purposes of pursuing a contested case hearing under N.C.G.S. § 150B-23. (Stip Fact 16)

6. Under N.C.G.S.S. 150B-23(a), the administrative law judge in a contested case hearing is to determine whether the Petitioners’ have met their burden of showing that the agency substantially prejudiced their rights, and that the agency also acted outside its authority, acted erroneously, acted arbitrarily and capriciously, used improper procedure, or failed to act as required by law or rule. Id.

7. The Tanarama is located within the Ocean Hazard Area of Environmental Concern (AEC), as that term is used and governed by CAMA and primarily under 15A N.N.A.C. 07H .0300 *et seq.* (Stip. Fact 3)

8. Under CAMA, all development in an area of environmental concern (AEC) requires a CAMA permit. N.C.G.S. § 113A-118; Stip. Fact 10.

9. Under N.C.G.S. § 113A-103(5)(a) the construction activities proposed for and undertaken with regard to the Tanarama are “development,” as defined by that statute, and absent an exemption, they require a CAMA minor permit.

10. G.S. 113A-103(5) b. The following activities including the normal and incidental operations associated therewith shall not be deemed to be development under this section:

5. Maintenance or repairs (excluding replacement) necessary to repair damage to structures caused by the elements or to prevent damage to eminently threatened structures by the creations of protective sand dunes.

11. N.C.G.S. § 113A-103(5)(b)(5) excepts from the definition of development “maintenance or repairs (*excluding replacement*) necessary to repair damage to structures caused by the elements or to prevent damage to imminently threatened structures by the creation of protective sand dunes.” (Emphasis added). Prior to Hurricane Isabelle, Petitioners’ approached town officials concerning the proposed conversion of the Tanarama from hotel units to condominium units. Town officials were encouraging in that positive improvements were to be made to the Tanarama. Because of its non-conforming use and a proposed continuation of its non-conforming use under a similar but not identical use, initial discussions indicated that such a conversion was conceptually possible without CAMA permits because the conversion would take place under interior renovations within the existing footprint. Hurricane Isabelle was an intervening and superceding event. The hotel was damaged and in need of repair. The principal exterior damage to this hotel from Hurricane Isabelle was to the roof. The evidence establishes that all parties agreed that the roof replacement could be permitted and accomplished without a CAMA permit. Petitioners’ requested an exemption to replace the roof and decks and the exemption was allowed under the statutory exemption as cited above. It appeared that the structure was being prepared and framed for conversion to condominiums under the statutory section’s “repair” exemption by way of permits issued for only deck and roof restoration. Petitioners completely gutted the hotel’s interior. The demolition work exceeded what was “necessary” to repair damage to structures caused by elements. Thus, the excessive demolition could not be characterized as necessary “repairs.” Before a determination could be made for a continuation of a non-conforming use as a condominium conversion project, Petitioners had to first comply with the plain language of N.C.G.S. § 113A-103(5)(b)(5) by making the “necessary” repairs to the structure caused by the elements; that is, to replace the flat roof with the proposed peaked roof, replace the decks, and repair the incidental storm damage to the Tanarama as the structure existed. After observing the extensive demolition, the Town Building Code Officials issued a stop work order. Thereafter, Petitioners began to submit data to request an extension under 15A NCAC 07J .0201, cited below.

**12. 15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES**

Replacement of existing structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and will require CAMA Permits. The proposed work will be considered replacement if the cost of the proposed work exceeds 50 percent of the physical value of the structure at the time of damage. The physical value of the structure shall be determined by the local building inspection office. Replacement of structures can be allowed if they are found to be consistent with current CRC rules.

In tandem with the issuance of permits to repair the storm damage the Petitioners also submitted information to begin “The Tech One Review,” entitled, “Site Plan Review Sunrise Cay Condominiums-Tanarama Motel Renovation located at 2055 North Virginia Dare Trail – Site Plan for Proposed Renovation and conversion of the existing (33) unit Tanarama Motel into (17) two-bedroom condominium units.” Petitioners thereby complied with the notification requirements of 15A NCAC 7K .0103(c), cited below. For the first time, Petitioners and Respondent could see and review the scope and detail of the proposed conversion. This initial step in the proposed renovation and conversion tract was to lead to review and determination of the prerequisites necessary to issue building permits. Petitioners were formally notified of the CAMA 50% requirement as part of the prerequisites. The “Tech One Review” was never completed. The conflict between the parties arose with the extent of the demolition that occurred incidental to the permitted roof replacement. Respondent contended that the demolition was more than was necessary to replace the roof. Petitioners claimed it was necessary to abate mold and asbestos problems and to support the peaked roof. However, the combination of extensive demolition of the existing hotel structure, and the erection of framing made in support of the conversion to condominium units required a building permit and a CAMA exemption determination to further proceed. The Petitioners, by way of an expert appraisal’s analysis, attempted to move from roof and deck repair permits to a condominium conversion by seeking approval under 15A NCAC 7J.0210. This is not a statute but a regulation that interprets N.C.G.S. § 113A-103(5)(b)(5).

**13. 15A NCAC 07K .0103 MAINTENANCE AND REPAIR**

(a) Maintenance and repairs are specifically excluded from the definition of development under the conditions and in the circumstances set out in G.S. 113A-103(5)(b)(5). Individuals required to take such measures within an ACE shall contact the local CAMA representative for consultation and advice before beginning work.

(c) Individual proposing other such activities must consult with the local permit officer to determine whether the proposed activity qualifies for the exclusion under G.S. 113A-103(5)(b)(5) and the beginning of interior framing.

14. Petitioners bear the burden of proof on the issues. (Per stipulation in Prehearing Order and T. p. 15) The Petitioners have failed to carry their burden of proof under G.S. 113A-103(5)(b)(5) and 15A NCAC 7J .0201, that the conversion project could be accomplished as a “necessary repair” instead of a “replacement.”

15. Petitioners have failed to show that the agency substantially prejudiced petitioner’s rights because petitioners have not shown that the work they propose is “repair” and does not need a CAMA minor development permit. As a non-conforming structure, Petitioners can not replace the structure at its current location without meeting current CAMA rules. At this time, it is not possible to meet CAMA oceanfront setback requirements without a continuation of a non-conforming use. Although the statute clearly excludes replacement, the statute also clearly allows necessary repairs. Interpretative guidance is provided in 15A NCAC 07J .0210 to distinguish a necessary repair from replacement. It creates a formula based upon construction costs divided by the physical value of the structure with the resulting percentage exceeding or not exceeding 50%. A repair is less than 50% and a replacement is greater than 50%. Further guidance is provided in Stipulated Exhibit 6, “The Substantial Damage Field Guide,” but it does not carry the same weight of law as a statute or a regulation. Stipulated Exhibit 6 provides assistance to the regulated community but it is a non-binding interpretative statement. [See G.S. 150B-(8-a)(c)]. The undersigned must give due regard to the demonstrated knowledge and expertise of the agency and this expertise is demonstrated in Respondent’s Exhibits 6, 7, and 8. However, the most controlling law must be found in the statutory authority, followed by regulatory authority and then the agency’s demonstrated knowledge and expertise as found in Stipulated Exhibit 6 *et. al.* Respondent concluded that Petitioners reached a point that legally required a CAMA Minor Development Permit.

16. Petitioner’s Exhibit 4 details the total insurance claim estimate to restore the Tanarama Hotel, all structures, from Hurricane Isabelle as of September 18, 2003 at \$180,118.77. These are repair estimates deemed necessary to restore the Tanarama to its original use as a hotel/motel under any method of calculating physical value. These repairs by all calculations fall below the CAMA 50% rule. Stipulated Exhibit 9 calculates the cost of reconstruction of the Tanarama at \$797,500. This figure exceeds the insurance estimate for all damage by \$617,382.00. Stipulated Exhibit 9 is not an estimate of “repairs” but an estimate of the cost to “repairs/reconstruction, rehabilitation, and/or remodeling.” This figure is so far above the insurance claim estimate necessary to repair the storm damage to the structure that it leads to a conclusion that the excess amounts are improvements. [See Stipulated Exhibit #11 for formula (sic)]. These additional costs appear to be attributed to the conversion of the hotel to condominiums. “Repairs” are only

one component of Stipulated Exhibit 9. "Reconstruction, rehabilitation and remodeling" are also included. Petitioners are entitled to restore the Tanarama to its pre-Hurricane Isabelle condition under the statutory exemption. Whatever Petitioners were legally capable of doing by way of a condominium conversion, as it relates back to the pre-storm status of September 2003 under a non-conforming use, should be permitted or not permitted after the completion of the necessary repairs from the storm. However, damage caused by Hurricane Isabelle should not be a factor so long as the Tanarama could be repaired to its original condition, calculated as below the 50% rule which all the evidence seems to agree was possible initially. What Petitioners cannot do is fully complete the conversion under a statutory exemption that permits only necessary repairs after storm damage. The scope of the conversion is illustrated as an attachment to Petitioners' Exhibit 4, entitled, "Construction Drawings," which details the exterior and interior design. This design is not a simple conversion of hotel rooms to condominium rooms. To characterize such a design as a necessary repair is a strained statutory interpretation. However, Petitioners can and should be restored to the status that they were in before Hurricane Isabelle under this statutory exemption. The problem is that Petitioners have demolished so much of the structure that they are faced with restoring a great deal of the structure that was not originally damaged. However, Petitioners should not be penalized for the costs attributed to mold and asbestos abatement and some of the interior framing that was necessary to support the new roof. Petitioners should also be allowed to offset the costs attributed to the insurance claim itemization of repairs as found in Petitioners' Exhibit #4. The evidence of the present condition of the premises is not in the record sufficient to determine what can be now repaired in the structure. Nevertheless, Petitioners are entitled to some extent repair Tanarama to the condition the hotel was in prior to Hurricane Isabelle without a CAMA minor development permit as provided for in G.S. 113A-103(5)(b)5 and the controlling limitation in 15A NCAC 7J .0210.

17. Plaintiffs have not shown that the agency acted outside of its authority. Under its CAMA LPO program, the Town of Kill Devil Hills has the authority and the responsibility to issue or deny CAMA minor permits and to determine whether proposed projects qualify as "maintenance and repair" under N.C.G.S. § 113A-103(b)(5)(b) and 15A N.C.A.C. 07J .0210. N.C.G.S. § 113A-117; 15A N.C.A.C. 07I *et seq.*; Stip. Fact 7. Respondent acted in accordance with this authority.

18. The Petitioners have not demonstrated that the Town acted arbitrarily and capriciously.

19. By denying the permit, Respondent did not act erroneously, did not fail to use proper procedure, did not act arbitrarily or capriciously and did not fail to act as required by law or rule.

20. By denying the permit, Ms. Guns, did not fail to act as required by law or rule, where 15A NCAC 7J0210 states: "The physical value of the structure shall be determined by the local Building Inspection Office." She and Mr. Lowcher, members of the local Building Inspection Office, made the physical value determination based on the Dare County tax valuation for the building. This method was an acceptable method for them to use. Petitioners did not submit information about the structure's pre-storm value that did not include the "depreciation bonus" for the site's location to the oceanfront and its non-conforming status, which they rejected within their discretion granted to the "local building inspection office." Page 33 of Petitioners' Exhibit #3 outlines contingencies of the continuation of the non-conforming use. One of the assumptions of the appraiser's highest and best use as a condominium conversion (p.vii) is the ability to convert the subject property from motel units to condominium units under the current non-conforming status of the hotel. One of the assumptions of this increased attributed value, is that the use would be permitted by CAMA regulation after Hurricane Isabelle when the Tanarama clearly does not meet the current CAMA setback requirement from the oceanfront. Ms. Guns used the tax value information, and when compared to Mr. Miller's costs of reconstruction, it did not meet the 50% limit, and so the work was "replacement" which is included in CAMA's definition of "development" and not "repair" under the Commission's rules. (N.C.G.S. § 113A-103(5)(b)(5)). "Physical value" is not a statutory term. Petitioners provided expert interpretative analysis, but ultimately, the determination of the exemption rests with the "local building inspection office." These officials, in their discretion granted to them by rule, utilized the existing tax valuation. Petitioners have relied upon this rule to assert that their project can go forward under their calculation of the exemption and now cannot complain about another part of the rule granting valuation discretion to the local building inspector. They must take "the bitter with the sweet." \*This rule defines replacement versus repair and ultimately its determination rests with the local officials. I conclude that a good faith effort to make that determination was undertaken, and Respondent did not abuse its discretion. Petitioners provided its input by way of an appraisal analysis which was not accepted. The appraisals in the record were submitted to Petitioners for their use. However, the following disclaimer or similar language appears in each: "It (i.e. the appraisal) may not be used or relied upon by any other party." (Stip. Exh. 4, p.iv).

## DECISION

Based on the foregoing findings of fact and conclusions of law, the Town of Kill Devil Hill's decision to deny Petitioners' application for an exemption from the CAMA permitting requirements should be **UPHELD**, but that Petitioners should be allowed to complete the repair work to the extent allowed by statute and rule in order to complete the repair of the Tanarama Hotel to its condition prior to Hurricane Isabelle, if Petitioners so elect.

**ORDER**

It is hereby ordered that the agency serve a copy of its final agency decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6712, in accordance with N.C.G.S. § 150B-36(b)(3).

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\* After calculating the present cost to repair Tanarama to its pre-Hurricane Isabelle state, the appropriate physical value arguably should be based upon the latest tax value adjusted to September 2003. An adjusted assessment to September of 2003, based upon the latest tax appraisals, should provide an accurate representation of physical value of the structure in question, under the tax valuation method that was selected.

**NOTICE**

The agency making the final decision in this contested case is the North Carolina Division of Coastal Management through the North Carolina Coastal Resources Commission. The Commission is required to give each party an opportunity to file exceptions to this decision and to present written arguments to those in the agency who will make the final decision.  
N.C.G.S. § 150B-36(a)

The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorneys of record and to the Office of Administrative Hearings.

This the 15<sup>th</sup> day of April, 2005.

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Julian Mann, III  
Chief Administrative Law Judge