

NORTH CAROLINA

REGISTER



Volume 20, Issue 13
Pages 1014 – 1169

January 3, 2006

This issue contains documents officially filed through December 8, 2005.

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

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Dana Sholes, Publication Coordinator
Julie Brincefield, Editorial Assistant
Lisa Johnson, RRC Administrative Assistant

IN THIS ISSUE

I. EXECUTIVE ORDERS

Executive Order No. 92	1014
Executive Order No. 93	1015
Executive Order No. 94	1016

II. IN ADDITION

Brownfields Property – Liberty Land	1021
Building Code Council	1022
Health Services, Commission for.....	1017
Labor.....	1020
Narrow Therapeutic Index Drugs	1019
Voting Rights Letter	1018

III. PROPOSED RULES

Environment and Natural Resources

Commission for Health Services	1041 - 1074
Environmental Management	1029 - 1038
Parks and Recreation Authority.....	1038 - 1041

Health and Human Services

Social Services Commission	1023 - 1027
----------------------------------	-------------

Justice

Private Protective Services Board	1027 – 1028
---	-------------

Labor

Labor/Elevator and Amusement Device Bureau	1028 - 1029
--	-------------

Licensing Boards

Auctioneer Licensing Board.....	1074 – 1082
Plumbing, Heating, and Fire Sprinkler	1082 - 1086
Contractors, Board of	

IV. APPROVED RULES

V. RULES REVIEW COMMISSION.....

VI. CONTESTED CASE DECISIONS

Index to ALJ Decisions.....	1164 - 1169
-----------------------------	-------------

For the CUMULATIVE INDEX to the NC Register go to:

<http://reports.oah.state.nc.us/cumulativeIndex.pl>

North Carolina Register is published semi-monthly for \$195 per year by the Office of Administrative Hearings, 424 North Blount Street, Raleigh, NC 27601. *North Carolina Register* (ISSN 15200604) to mail at Periodicals Rates is paid at Raleigh, NC. POSTMASTER: Send Address changes to the *North Carolina Register*, 6714 Mail Service Center, Raleigh, NC 27699-6714.

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.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
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	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
19A	TRANSPORTATION	26 Landscape Architects	
20	TREASURER	28 Landscape Contractors	
21*	OCCUPATIONAL LICENSING BOARDS	29 Locksmith Licensing	
22	ADMINISTRATIVE PROCEDURES (REPEALED)	30 Massage & Bodywork Therapy	
23	COMMUNITY COLLEGES	31 Marital and Family Therapy	
24*	INDEPENDENT AGENCIES	32 Medical Examiners	
25	STATE PERSONNEL	33 Midwifery Joint Committee	
26	ADMINISTRATIVE HEARINGS	34 Funeral Service	
27	NC STATE BAR	36 Nursing	
28	JUVENILE JUSTICE AND DELINQUENCY PREVENTION	37 Nursing Home Administrators	
		38 Occupational Therapists	
		40 Opticians	
		42 Optometry	
		44 Osteopathic Examination (Repealed)	
		45 Pastoral Counselors, Fee-Based Practicing	
		46 Pharmacy	
		48 Physical Therapy Examiners	
		50 Plumbing, Heating & Fire Sprinkler Contractors	
		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

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 2006 – December 2006

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 th day from publication in the Register
20:13	01/03/06	12/08/05	01/18/06	03/06/06	03/20/06	05/01/06	05/09/06	09/30/06
20:14	01/17/06	12/21/05	02/01/06	03/20/06	04/20/06	06/01/06	01/07	10/14/06
20:15	02/01/06	01/10/06	02/16/06	04/03/06	04/20/06	06/01/06	01/07	10/29/06
20:16	02/15/06	01/25/06	03/02/06	04/17/06	04/20/06	06/01/06	01/07	11/12/06
20:17	03/01/06	02/08/06	03/16/06	05/01/06	05/22/06	07/01/06	01/07	11/26/06
20:18	03/15/06	02/22/06	03/30/06	05/15/06	05/22/06	07/01/06	01/07	12/10/06
20:19	04/03/06	03/13/06	04/18/06	06/02/06	06/20/06	08/01/06	01/07	12/29/06
20:20	04/17/06	03/24/06	05/02/06	06/16/06	06/20/06	08/01/06	01/07	01/12/07
20:21	05/01/06	04/07/06	05/16/06	06/30/06	07/20/06	09/01/06	01/07	01/26/07
20:22	05/15/06	04/24/06	05/30/06	07/14/06	07/20/06	09/01/06	01/07	02/09/07
20:23	06/01/06	05/10/06	06/16/06	07/31/06	08/21/06	10/01/06	01/07	02/26/07
20:24	06/15/06	05/24/06	06/30/06	08/14/06	08/21/06	10/01/06	01/07	03/12/07
21:01	07/03/06	06/12/06	07/18/06	09/01/06	09/20/06	11/01/06	01/07	03/30/07
21:02	07/17/06	06/23/06	08/01/06	09/15/06	09/20/06	11/01/06	01/07	04/13/07
21:03	08/01/06	07/11/06	08/16/06	10/02/06	10/20/06	12/01/06	01/07	04/28/07
21:04	08/15/06	07/25/06	08/30/06	10/16/06	10/20/06	12/01/06	01/07	05/12/07
21:05	09/01/06	08/11/06	09/16/06	10/31/06	11/20/06	01/01/07	01/07	05/29/07
21:06	09/15/06	08/24/06	09/30/06	11/14/06	11/20/06	01/01/07	01/07	06/12/07
21:07	10/02/06	09/11/06	10/17/06	12/01/06	12/20/06	02/01/07	05/08	06/29/07
21:08	10/16/06	09/25/06	10/31/06	12/15/06	12/20/06	02/01/07	05/08	07/13/07
21:09	11/01/06	10/11/06	11/16/06	01/01/07	01/22/07	03/01/07	05/08	07/29/07
21:10	11/15/06	10/24/06	11/30/06	01/15/07	01/22/07	03/01/07	05/08	08/12/07
21:11	12/01/06	11/07/06	12/16/06	01/30/07	02/20/07	04/01/07	05/08	08/28/07
21:12	12/15/06	11/22/06	12/30/06	02/13/07	02/20/07	04/01/07	05/08	09/11/07

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.

EXECUTIVE ORDER NO. 92

EXTENDING EXECUTIVE ORDER NOS. 48, 12, and 58

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

Executive Order No. 48, Concerning the State Commission on National and Community Service (now known as the "North Carolina Commission on Volunteerism and Community Service"), as previously extended and as previously amended by Executive Order No. 174 issued by Governor James B. Hunt, Jr. on November 8, 2000, extended by Executive Order No. 12 issued on October 9, 2001, and extended by Executive Order No. 58 issued on May 30, 2005, is hereby extended until December 31, 2007.

This order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 21st day of November 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXECUTIVE ORDER NO. 93

AMENDING EXECUTIVE ORDER NO. 85

GOVERNOR'S ADVISORY COUNCIL ON HISPANIC/LATINO AFFAIRS

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

Section 1 of Executive Order No. 85 issued by Michael F. Easley on September 7, 2005, is hereby amended as follows:

Section 1. Membership Composition.

The Governor's Advisory Council on Hispanic/Latino Affairs is hereby established. It shall be composed of 15 voting members who shall serve at the pleasure of the Governor. In addition to the 15 appointed members, the following or their designees shall serve as ex-officio, non-voting members:

- a. The Secretary of the Department of Administration
- b. The Secretary of the Department of Commerce
- c. The Secretary of the Department of Health and Human Services;
- d. The Secretary of the Department of Crime Control and Public Safety;
- e. The Secretary of the Department of Revenue;
- f. The Governor's Legal Counsel;
- g. The Commissioner of the Division of Motor Vehicles; and
- h. The Chairman of the Employment Security Commission.

The following individuals, or their designees, are invited to serve as ex-officio, non-voting members of the Advisory Council:

- a. The Commissioner of the North Carolina Department of Agriculture and Consumer Services;
- b. The Commissioner of Labor;
- c. The Attorney General,
- d. The Superintendent of Public Instruction; and
- e. The Honorary Consul of Mexico.

Except as amended herein, all provisions of Executive Order No. 85 shall remain in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 23rd day of November 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

EXECUTIVE ORDER NO. 94

**PROCLAMATION OF CONTINUING STATE OF EMERGENCY
DUE TO HURRICANES KATRINA AND OPHELIA**

WHEREAS, on September 3, 2005, I declared that a State of Emergency existed in the State of North Carolina because of the devastation brought about by Hurricane Katrina; and

WHEREAS, on September 10, 2005, I declared that a State of Emergency existed in the State of North Carolina because of the devastation brought about by Hurricane Ophelia; and

WHEREAS, because of the disruptions of the U.S. fuel supply and distribution system brought about by Hurricanes Katrina and Ophelia, heating and home weatherization costs for all North Carolina consumers are projected to be unusually high this winter, resulting in thousands of low-income North Carolina families having insufficient funds to adequately heat their homes.

NOW THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina and as provided in Chapter 166A of the North Carolina General Statutes and N.C.G.S. §14-288.1, I have determined that a State of Emergency continues to exist in North Carolina because thousands of North Carolina low-income families will be unable to adequately heat their homes this winter due to the expected unusually higher costs of fuel.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of this State of North Carolina at the Capitol in Raleigh this 28th day of November 2005.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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

From the Codifier

Notice of Text submitted and published in the N.C. Register on December 15, 2005, Volume 20, Issue 12, contained typographical errors.

Notice of Text for rules proposed by the **Commission for Health Services** cited as 10A NCAC 41F .0101-.0103 found on page 986, should reflect correctly the public hearing in January and the mailing address for submitting objections as 1931 MSC, Raleigh, NC 27699-1931 as:

“Public Hearing:

Date: *January 19, 2006*

Time: *1:00 p.m.*

Location: *Cardinal Room, 5605 Six Forks Road, Raleigh, NC”*

“Procedure by which a person can object to the agency on a proposed rule: *All interested parties may submit comments to Chris Hoke, Division of Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. All comments should be submitted within 60 days after publication of text in the NC Register.”*

Please contact the Rulemaking Coordinator for the Commission for Health Services with any comments or questions: Chris G. Hoke, JD, 1931 MSC, Raleigh, NC 27699-1931, email chris.hoke@ncmail.net, phone (919)707-5006, fax (919)870-4829.

U.S. Department of Justice

Civil Rights Division

JKT:MSR:ANS:tgf:maf
DJ 166-012-3
2005-3660

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

November 30, 2005

Robert V. Shaver, Jr., Esq.
County Attorney
P.O. Box 98
Yanceyville, NC 27379

Dear Mr. Shaver:

This refers to the consolidation of voting precincts and polling places for the Town of Yanceyville in Caswell County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 6, 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. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

John Tanner
Chief, Voting Section

**NARROW THERAPEUTIC INDEX DRUGS DESIGNATED BY THE NORTH
CAROLINA SECRETARY OF HUMAN RESOURCES**

Pursuant to N.C.G.S. §90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board:

Carbamazepine: all oral dosage forms
Cyclosporine: all oral dosage forms
Digoxin: all oral dosage forms
Ethosuximide
Levothyroxine sodium tablets
Lithium (including all salts): all oral dosage forms
Phenytoin (including all salts): all oral dosage forms
Procainamide
Theophylline (including all salts): all oral dosage forms
Warfarin sodium tablets

**NOTICE OF REQUEST FOR PERMANENT VARIANCE
FROM OCCUPATIONAL SAFETY AND HEALTH STANDARD**

BY

NORTH CAROLINA DEPARTMENT OF LABOR

Statement of the Subject Matter: The Commissioner of Labor hereby gives notice that she is considering, in accordance with N.C. Gen. Stat. § 95-132(b), an application for a permanent variance from Saba Holding Company dba Reman Technologies ("Reman").

Reason for Proposed Action: On October 11, 2005, Reman filed an application for a permanent variance with the Occupational Safety and Health Division of the North Carolina Department of Labor. If granted, the variance will allow Reman to use a forklift designated as type LPS inside of a spray booth. Unless the variance is granted, the usage of this forklift would be prohibited by Occupational Safety and Health General Industry Standard, 29 CFR 1910.178, Powered Industrial Trucks, which was adopted by reference by the North Carolina Division of Occupational Safety and Health.

Authority for Proposed Action: N.C. Gen. Stat. § 95-132(b); 13 NCAC 7A.0700.

Comment and Hearing Procedures: Requests for hearing, written comments, or objections regarding the proposed permanent variance may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Requests for hearing, written comments, or objections shall include a reference to the specific variance request, the nature of the request, and the complete name(s) and contact information for the individual(s) submitting the request for hearing, comment, or objection. Requests for hearing, comments, or objections must be received by 5:00 p.m. on January 19, 2006.

**SUMMARY OF NOTICE OF
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY
Liberty Land, LLC**

Pursuant to N.C.G.S. § 130A-310.34, Liberty Land, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Gastonia Township, Gaston County, North Carolina. The Property, which is known as the former MTE Hydraulics site, consists of approximately 9.76 acres and is located at 108 Chickasaw Road, at the intersection of Pearson's Turnpike. Environmental contamination exists on the Property in soil and groundwater. Liberty Land, LLC has committed itself to redevelopment of the Property for no uses other than commercial and industrial purposes. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Liberty Land, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Gaston County Public Library, 1555 E. Garrison Boulevard, Gastonia, NC 28054 by contacting Anne Gometz, Reference Services, at (704) 868-2164 ext. 2; or at NC Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if Liberty Land, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on January 4, 2006. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: NC Administrative Code.

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

Reason for Proposed Action: To incorporate changes in the NC Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.

Public Hearing: March 13, 2006, 1:00PM, Shell Island, 2700 North Lumina Avenue, Wrightsville Beach, NC 28480.

Comment Procedures: Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, c/o NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on March 6, 2006.

Statement of Subject Matter:

1. Request by the NC Building Code Council to adopt the following amendment to the 2005 NC Electrical Code, Articles 10.10 Approval and 100 Equipment, definition:

10.10 Approval. The Authority Having Jurisdiction shall base his approval or disapproval of industrial equipment or industrial machinery by one of the following methods:

(1) Evaluation by a Registered Design Professional registered or licensed in the State of North Carolina. Said Registered Design Professional shall submit a report detailing compliance with applicable national standards (such as ANSI, NEMA, NFPA 79, UL) and the NC Electrical Code.

(2) Listing or Labeling by a Third Party Testing Agency approved pursuant to GS 66-25. Said Third Party Testing Agency shall submit a report detailing compliance with applicable national standards (such as ANSI, NEMA, NFPA 79, UL) and the NC Electrical Code.

(3) Evaluation by a qualified and certified Electrical Code Enforcement Official. Said Code Enforcement Official shall submit a report detailing compliance with applicable national standards (such as ANSI, NEMA, NFPA 79, UL) and the NC Electrical Code.

Article 100

Equipment. A general term including material, fittings, devices, appliances, luminaires (fixtures), apparatus, industrial equipment, industrial machinery, and the like used as a part of, or in connection with, an electrical installation.

This code change is proposed for life-safety of employees and other building occupants.

The Effective Date for the Emergency Rule was October 26, 2005.

The motion to Grant the Petition for Permanent Rule was passed on December 13, 2005.

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Social Services Commission intends to adopt the rule cited as 10A NCAC 70A .0114 and amend the rules cited as 10A NCAC 70A .0101-.0102, .0104, .0107, .0110, .0112.

Proposed Effective Date: May 1, 2006

Public Hearing:

Date: March 8, 2006

Time: 10:00 a.m.

Location: Room 616, Albemarle Building, 325 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action: *The General Assembly passed legislation in 2005 requiring a process for expunction of names on a newly required Responsible Individuals List. The proposed new rule will provide county DSS's with procedures for expunction of these names.*

Also, in 2003, revisions were made to the proposed amendments above as a result of re-codification of the NC General Statutes from Chapter 7A to Chapter 7B. Some technical changes were inadvertently left out. The proposed amendments correct the citation and bring the Administrative Rule citation in line with the statutory citations.

Procedure by which a person can object to the agency on a proposed rule:

Contact Susan Dail, NC Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)733-3055, email susan.dail@ncmail.net.

Comments may be submitted to: Susan Dail, NC Division of Social Services, 325 N. Salisbury Street, 2401 Mail Service Center, Raleigh, NC 27699-2401, phone (919)733-3055, email susan.dail@ncmail.net.

Comment period ends: March 8, 2006

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 (\geq \$3,000,000)
- None

CHAPTER 70 – CHILDREN'S SERVICES

SUBCHAPTER 70A - PROTECTIVE SERVICES

SECTION .0100 - GENERAL

10A NCAC 70A .0101 PURPOSE

Rules in this Subchapter govern the provision of protective services for children with funds administered by the Division of Social Services. Included are requirements for the management of the central registry of neglect, abuse, and dependency cases, and requirements which must be met by county departments of social services in carrying out their responsibilities for the protection of children under Chapter ~~7A~~ 7B of the General Statutes.

Authority G.S. 7B-101; 71B-301-307; 7B-311; 143B-153, 143B-154; 143B-155; 143B-156.

10A NCAC 70A .0102 CONFIDENTIALITY: CENTRAL REGISTRY: RESPONSIBLE INDIVIDUALS LIST: ABUSE AND NEGLECT CASES

(a) Information submitted by county departments of social services to the central registry and Responsible Individuals List of abuse and neglect cases is confidential. Non-identifying statistical information and general information about the scope, nature and extent of the child abuse and neglect problem in North Carolina is not subject to this Rule of confidentiality.

(b) Access to the central registry of child abuse and neglect cases is restricted to:

- (1) staff of the Division of Social Services and staff of the Office of the Secretary of the Department of ~~Human Resources~~ Health and Human Services who require access in the course of performing duties pertinent to management, maintenance and evaluation of the central registry and evaluation of and

research into abuse and neglect cases reported in accordance with ~~G.S. Chapter 7A, Article 44- Chapter 7B, Article 3.~~ Management of the central registry includes the provision of information on a case by division staff to a North Carolina county department of social services or to an out-of-state social services agency to assure that protective services will be made available to such child and the child's family as quickly as possible to the end that such child will be protected and that further abuse or neglect will be prevented.

- (2) individuals who may receive approval to conduct studies of cases in the central registry. Such approval must be requested in writing to the ~~Director, Director of the Division of Social Services.~~ The written request ~~will~~ shall specify and be approved on the basis of:
- (A) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of child abuse and neglect;
 - (B) a description of how the study will be conducted and how the findings will be used;
 - (C) a presentation of the individual's credentials in the area of critical investigation; and
 - (D) a description of how the individual will safeguard information.

Access ~~will~~ shall be denied when in the judgment of the Director the study will have minimal impact on either knowledge or practice.

- (3) the county director in order to identify whether a child who is the subject of an abuse, neglect or dependency investigation has been previously reported as abused or neglected, or whether a child is a member of a family in which a child fatality due to suspected abuse or neglect ~~during the CPS investigative period~~ has occurred in any county in the state. Information from the central registry shall be shared with law enforcement or licensed physicians or licensed physician extenders when needed to assist the county director in facilitating the provision of child protective services to assure that the child and the child's family ~~will~~ shall receive protective services as quickly as possible so that such child can be protected and further abuse, neglect or dependency prevented. Information shared from the central registry for child abuse and neglect ~~will~~ shall be limited to:

- (A) the child's name, date of birth, sex, race;

- (B) the county that investigated the report;
- (C) the type of maltreatment that was reported;
- (D) the case decision;
- (E) the date of the case decision;
- (F) the type of maltreatment found; and
- (G) the relationship of the perpetrator to the victim child.

- (4) the Chief Medical Examiner's office and law enforcement in the event of a child fatality and there is a need to determine if their investigation or evaluation should consider child abuse, neglect or dependency as a factor in the death. Information will be limited to that outlined in Subparagraphs (b)~~(2)~~(3)(A) - ~~(G)~~ (G) of this Rule.

(c) The Responsible Individuals List identifies parents, guardians, caretakers or custodians that have been identified as perpetrators in substantiated cases of abuse or neglect determined to be serious by the Director or his designee. Information from this list shall be used exclusively for the purpose of determining current or prospective employability.

(d) Requests for information from the Responsible Individuals List shall be in writing and shall include a last name, first name, middle initial, date of birth, gender and social security number.

(e) Authorized users must inform responsible individuals if the reason they are being denied a service is due to information obtained from the Responsible Individuals List.

Authority G.S. 7B-302; 71B-311; 7B-2901; 3000; 143B-153, 143B-154; 143B-155; 143B-156.

10A NCAC 70A .0104 DEFINITIONS

(a) Definitions relating to child abuse, neglect and dependency ~~may be~~ are found in G.S. 7B-101.

(b) Unless otherwise noted, the following definitions have the following meaning:

(1) "Authorized persons" means persons authorized to receive data from the Responsible Individuals List. Individuals authorized to receive information from the Responsible Individuals List include:

- (A) individuals as identified by the Director of the North Carolina Division of Social Services;
- (B) individuals as identified by the Directors of county Departments of Social Services;
- (C) individuals as identified by the Director of the Division of Child Development for child caring institutions;
- (D) any Executive Director or program administrator of a child placing agency licensed by the State of North Carolina or another state or that state's agency;

- (E) individuals as identified by the Director of the Division of Facility Services for group home facilities;
 - (F) any Executive Director or program administrator of other providers of foster care, child care and adoption services determined by the Department of Health and Human Services;
 - (G) the Administrator for the State Guardian Ad Litem program; and
 - (H) any Executive Director or program administrator of other private or non-profit agencies that care for children.
- (2) "Personal written notice" means delivery in person of the case decision to the responsible individual by the social worker.
- (3) "Serious neglect" means conduct, behavior, or inaction that evidences a disregard of consequences of such magnitude as to constitute an unequivocal danger to a child's health, welfare or safety.

Authority G.S. 7B-101; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70A .0107 WHEN ABUSE, NEGLECT OR DEPENDENCY IS FOUND

(a) When an investigation reveals the presence of abuse, neglect, or dependency, the county director shall notify the following persons or ~~agencies; agencies of the case finding;~~

- (1) any parent or caretaker responsible individual who was alleged to have abused or neglected the child or children;
- (2) any parent or other individual with whom the child or children resided at the time the county director initiated the investigation; and
- (3) any agency with whom the court has vested legal custody.

~~Notification shall be in writing, and within five working days of the case decision. If the county director is unable to contact a parent, caretaker, or perpetrator, documentation of reasonable efforts to locate that person must be included in the case record.~~

(b) Delivery of the case decision may be made by a social worker other than the social worker who conducted the assessment under G.S. 7B-302(a), if the social worker who conducted the assessment is unavailable. If the county Director of Social Services is unable to contact the responsible individual, there shall be documentation of efforts made to locate the responsible individual in the case record. In addition to G.S. 7B-312(b):

- (1) a statement informing the responsible individual that employers may access the Responsible Individuals List to determine suitability for employment; and
- (2) a statement informing the responsible individual that the timeframes to request an expunction from the District Attorney or the

District Court still apply, even if no notice is received from the Director after the Director has been requested to expunge.

~~(b)~~(c) The county director shall complete structured decision making assessments of every family in which an investigation of abuse, neglect or dependency is conducted. The assessment findings shall be used to evaluate the need for services and to develop a case plan.

~~(e)~~(d) In all cases in which abuse, neglect, or dependency is found, the county director shall determine whether protective services are needed and, if so, shall develop, implement, and oversee an intervention plan to ensure that there is adequate care for the victim child or children. The case plan shall:

- (1) be based on the findings of the structured decision making assessments;
- (2) contain goals representing the desired outcome toward which all case activities shall be directed; ~~and~~
- (3) contain objectives that:
 - (A) describe specific desired ~~outcomes;~~ outcomes;
 - (B) are ~~measurable;~~ measurable;
 - (C) identify necessary behavior ~~changes;~~ changes;
 - (D) are based on an assessment of the specific needs of the child or children and ~~family;~~ family;
 - (E) are ~~time-limited;~~ time-limited; ~~and~~
 - (F) are mutually accepted by the county director and the ~~client;~~ client.
- (4) specify all the activities needed to achieve each stated objective;
- (5) have stated consequences that will result from either successfully following the plan or not meeting the goals and objectives specified in the plan; and
- (6) shall include petitioning for the removal of the child or children from the home and placing the child or children in appropriate care when protection cannot be initiated or continued in the child's or children's own home.

~~(d)~~(e) When an investigation leads a county director to find evidence that a child may have been abused or may have been physically harmed in violation of a criminal statute by a person other than the child's parent, guardian, custodian, or caretaker, the county director shall follow all procedures outlined in G.S. 7B-307 ~~G.S. 7-7B-307~~ in making reports to the prosecutor and appropriate law enforcement agencies. The report shall include:

- (1) the name and address of the child, of the parents or caretakers with whom the child lives, and of the alleged perpetrator;
- (2) whether the abuse was physical, sexual or emotional;
- (3) the dates that the investigation was initiated and that the evidence of abuse was found;
- (4) whether law enforcement has been notified and the date of the notification;

- (5) what evidence of abuse was found; and
- (6) what plan to protect the child has been developed and what is being done to implement it.

~~(e)~~(f) When an investigation reveals the presence of abuse, neglect, or dependency in an institution, the county director shall complete the following steps:

- (1) the child's or children's legal custodian shall be informed;
- (2) an intervention plan for the care and protection of the child or children shall be developed in cooperation with the institution and the legal custodian; and
- (3) when abuse is found, a written report shall be made to the prosecutor in the county where the institution is located.

Authority G.S. 7B-302, 7B-307; 7B-311; 7B-312; 143B-153; 143B-154, 143B-155; 143B-156.

10A NCAC 70A .0110 ASSUMING TEMPORARY CUSTODY OF A CHILD

(a) A county department of social services worker may take a child into temporary custody without a court order and provide personal care and supervision for up to 12 hours, provided:

- (1) ~~The~~ the county director concludes that there are reasonable grounds for believing the child is abused, neglected, or dependent and that he would be injured or could not be taken into custody if it were first necessary to obtain a court order. The county director shall document in the protective services case record as soon as possible the following:
 - (A) the reasonable grounds upon which the decision was made to take temporary custody without a court order; and
 - (B) information specific to successful or unsuccessful attempts to notify the child's parents, guardian or custodian that the child has been taken into temporary custody and that the parent, guardian or custodian has a right to be present with the child pending a determination of the need for non-secure custody. ~~eustody; and provided~~
- (2) the county director files a petition for an immediate non-secure custody order unless he decides that temporary custody is no longer necessary and releases the child to his parents, guardian or custodian. To preserve a parent, guardian or custodian's right to due process, the county director shall not make an assessment case decision until after the court has adjudicated the petition.

(b) A county director of social services shall file all petitions which allege that a child is abused, neglected or dependent except those petitions resulting from review by the prosecutor.

Authority G.S. 7B-311, 7B-403, 7B-404, 7B-500; 7B-501; 143B-153; 143B-154; 143B-155; 143B-156.

10A NCAC 70A .0112 CASE RECORDS FOR PROTECTIVE SERVICES

(a) The county director shall maintain a separate case record or a separate section in a case record on a child for whom protective services are initiated or who is placed in the custody of the county department of social services by the court. The case record documentation shall be kept ~~confidential in~~ accordance with G.S. 7B-302(a).

(b) The protective services case record shall document the investigation. In addition, when applicable, the protective services case record shall ~~include: include, but not be limited to:~~

- (1) ~~Summary~~ summary documentation of the results of the check of the Central Registry of abused, neglected, and dependent children whenever a report is accepted for investigation unless the agency has conducted such a check in the 60 days prior to the new report, or the agency is providing ongoing children's ~~childrens'~~ services to the family-family;
- (2) ~~Copies~~ copies of all comprehensive family assessments, including safety assessments, risk assessments, assessments of family strengths and needs, re-assessments of family strengths and needs and assessments of the child's and family's progress or lack of progress in completing the items documented in the Family Services Case ~~Plan.~~ Plan;
- (3) ~~Documentation~~ documentation of any safety response plan that was developed to ensure the child's safety during the course of the ~~investigation.~~ investigation;
- (4) ~~Documentation~~ documentation of the case decision, the basis for the case decision, and the names of those participating in the ~~decision.~~ decision;
- (5) ~~Documentation~~ documentation of notifications to parents, caretakers, the alleged perpetrator, or others specified in Rules .0107, .0108, .0109 and .0114 .0306 and .0308 of this Section regarding the case ~~decision.~~ decision;
- (6) ~~Documentation~~ documentation of contacts with and services provided to the family, current within seven days of service delivery. Documentation may be taped for transcription, typed or legibly handwritten, and shall include ~~understandable, significant~~ information about the family's response to and use of services, as well as any change in the assessment of safety or risk to the ~~children.~~ children;

- (7) ~~The~~ the Family Services Case Plan developed at the beginning of the treatment phase, with any subsequent revisions to the ~~plan~~ plan;
- (8) ~~Documentation~~ documentation of reviews of the Family Services Case Plan, current within three months, which reflect an assessment of the plan's effectiveness, the family's use of services, and the need for continued agency ~~involvement~~ involvement;
- (9) ~~Copies~~ copies of the following:
- (A) Intake/Screening Form ~~specified in policy, or its equivalent, provided by the Division~~ for all reports concerning the family whether these reports have been received while a case was active or while a case was closed;
- (B) ~~Notices~~ notices to the reporter;
- (C) ~~Requests~~ requests made of other county departments of social services for information relating to prior contacts by that agency with the family, when applicable; and
- (D) DSS 5104, Application/Report to the Central Registry.
- (10) ~~Copies~~ copies of the following reports or documents, when applicable:
- (A) ~~Petitions~~ petitions relating to the legal or physical custody of children while receiving child protective services;
- (B) ~~Reports~~ reports to the court;
- (C) ~~Reports~~ reports or notifications to prosecutors;
- (D) ~~Reports~~ reports to law enforcement agencies;
- (E) Child Medical Evaluations and Child Mental Health Evaluation requests, consents, and reports;
- (F) ~~Any~~ any other medical, psychological, or psychiatric reports;
- (G) ~~Notifications~~ notifications to licensing agencies; and
- (H) ~~Any~~ any other reports, notifications, or documents related to the provision of child protective services.
- (11) ~~Summaries~~ summaries of the following information, when not otherwise documented in the case record:
- (A) ~~At~~ at the time treatment services begin, a summary of the reasons services are being provided;
- (B) ~~When~~ when filing a petition for custody, the reasons custody is being sought; and
- (C) ~~At~~ at the time treatment services are terminated, a summary of the basis for the decision.

Authority G.S. 7B-302, 7B-306, 7B-312, 7B-313, 7B-314; 7B-315; 7B-2901; 143B-153, 143B-154, 143B-155; 143B-156.

10A NCAC 70A .0114 EXPUNCTION PROCESS

- (a) Expunction shall be in accordance with G.S. 7B, Article 3A.
- (b) During the expunction process, the county Department of Social Services shall continue to provide services to ensure the safety of the children identified as abused or seriously neglected. If the county Department of Social Services is unable to ensure safety, a juvenile petition shall be filed and legal intervention shall be sought. Once the jurisdiction of the court has been invoked, the expunction process shall be stayed.
- (c) Once an expunction request by the Director, the District Attorney or the Court has been completed, the Director shall make written notice to the Department of Health and Human Services, directing the Department of Health and Human Services to modify or expunge the Responsible Individuals List, no later than five working days after the decision was made.

Authority G.S. 7B-101; 7B-200; 7B-311; 7B-312; 7B-313; 7B-314; 7B-316; 143B-153, 143B-154, 143B-155; 143B-156.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Private Protective Services Board intends to amend the rule cited as 12 NCAC 07D .0707.

Proposed Effective Date: *May 1, 2006*

Public Hearing:

Date: *January 23, 2006*

Time: *2:00 p.m.*

Location: *Conference Room, 1631 Midtown Place, Suite 104, Raleigh, NC 27609*

Reason for Proposed Action: *The Board has implemented new training procedures for unarmed security officers and G.S. 74C-11 has been amended. The Board finds that it is in the interest of the public health, safety, and welfare to require all temporary and regular unarmed security guards to complete a basic four hour course prior to being placed on active duty.*

Procedure by which a person can object to the agency on a proposed rule: *Comments and objections to the proposed rule will be accepted through March 6, 2006. Comments and objections must be mailed to W. Wayne Woodard, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609.*

Comments may be submitted to: *W. Wayne Woodard, Director, Private Protective Services Board, 1631 Midtown Place, Suite 104, Raleigh, NC 27609*

Comment period ends: *March 6, 2006*

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.

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

CHAPTER 07 - PRIVATE PROTECTIVE SERVICES

SUBCHAPTER 07D - PRIVATE PROTECTIVE SERVICES BOARD

SECTION .0700 - SECURITY GUARD REGISTRATION (UNARMED)

12 NCAC 07D .0707 TRAINING REQUIREMENTS FOR UNARMED SECURITY GUARDS

(a) Applicants for an unarmed security guard registration shall complete a basic training course for unarmed security guards within 30 days from hire. The course shall consist of a minimum of 16 hours of classroom instruction including:

- (1) The Security Officer in North Carolina -- (minimum of one hour);
- (2) Legal Issues for Security Officers -- (minimum of three hours);
- (3) Emergency Response -- (minimum of three hours);
- (4) Communications -- (minimum of two hours);
- (5) Patrol Procedures -- (minimum of three hours);
- (6) Note Taking and Report Writing -- (minimum of three hours);
- (7) Department -- (minimum of one hour).

A minimum of 4 hours of classroom instruction shall be completed prior to a probationary or regular security guard being placed on a duty station. These four hours shall include The Security Officer in North Carolina and Legal Issues for Security Officers.

(b) Licensees shall submit the name and resume for a proposed certified unarmed security guard trainer to the Director for Board Approval.

(c) Training shall be conducted by a Board certified unarmed security guard trainer. A Board approved lesson plan covering the training requirements in 12 NCAC 7D .0707(a) shall be made available to each trainer. The Board shall approve other

media training materials that deliver the training requirements of 12 NCAC 7D .0707(a).

- (d) ~~These provisions shall not apply to:~~
 - (1) ~~temporary unarmed security guards as defined by G.S. 74C-11(f); and~~
 - (2) ~~any unarmed security guard registered with the Board on January 1, 1990.~~

Authority G.S. 74C-5; 74C-11; 74C-13.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor/Elevator and Amusement Device Bureau intends to adopt the rule cited as 13 NCAC 15 .0705.

Proposed Effective Date: May 1, 2006

Public Hearing:

Date: January 18, 2006

Time: 10:00 a.m.

Location: Room 249, 4 West Edenton St., Raleigh, NC

Reason for Proposed Action: *To set fees for Passenger Tramway devices pursuant to G.S. 95-120(9) which became effective on September 7, 2005. The Elevator and Amusement Device Bureau is one- hundred (100%) receipt supported and does not receive any revenue from taxpayers. The establishment of fees for inspections of Passenger Tramway devices, in addition to the fees already charged for Elevator and Amusement device inspections, are imperative for the effective support of the Elevator and Amusement Device Bureau including, but not limited to, salaries and administrative costs. Failure to approve a permanent rule will result in a significant revenue shortfall to the Elevator and Amusement Device Bureau and negate the General Assembly's intent in delegating fee-setting authority to the Commissioner of Labor.*

Procedure by which a person can object to the agency on a proposed rule: *Objections to the proposed rule may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, NC 27699-1101; or via facsimile at (919) 733-4235. Objections may also be submitted during the public hearing conducted on this rule. Objections shall include the specific rule citation for the objectionable rule, the nature of the objection, and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received no later than 5:00 p.m. on March 6, 2006.*

Comments may be submitted to: *Erin T. Gould, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, NC 27699-1101, phone (919) 733-0368, fax (919) 733-4235, email erin.gould@nclabor.com.*

Comment period ends: March 6, 2006

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.

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

CHAPTER 15 - ELEVATOR AND AMUSEMENT DEVICE DIVISION

SECTION .0700 – FEES

13 NCAC 15 .0705 PASSENGER TRAMWAY INSPECTION FEE SCHEDULE

Inspection fees for passenger tramway devices shall be as follows:

Equipment	Unit Fee
(1) Gondolas, Chairlifts, and Inclined Railroads	\$137
(2) J- or T-Bars and Conveyors	\$62
(3) Rope Tows	\$31

Authority G.S. 95-120(9).

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 02B .0315.

Proposed Effective Date: May 1, 2006

Public Hearing:

Date: February 2, 2006

Time: 7:00 p.m.

Location: 1st floor Hearing Room, Archdale Building, 512 North Salisbury St., Raleigh, NC

Reason for Proposed Action: A segment of the upper Neuse River, Richland Creek and associated unnamed tributaries (Wake County, Neuse River Basin) are proposed to be

reclassified from Class WS-IV and WS-IV CA to WS-V. A request for this reclassification was submitted by the City of Raleigh (“City”) although these waters were recently reclassified to WS-IV and WS-IV CA per the request of the Town of Wake Forest (“Town”). The waters proposed for reclassification are the Neuse River from Falls Lake Dam downstream to the intake location that the Town had proposed according to the recent reclassification, Richland Creek from the Wake-Franklin County line to the Neuse River, and all unnamed tributaries flowing to these waterbodies in the watershed. The entire area proposed for reclassification encompasses approximately 10,141 acres within Wake County as well as the City and Town. The Town does not object to this reclassification. The reason for this reclassification is that the Town decided to merge water systems with the City after the WS-IV recent reclassification, and neither municipality have used, currently use, or intend to use the waters as a public water supply source. No water quality study was required for this proposed reclassification as the waters were formerly used as water supplies. The proposed classification is WS-V, and WS-V waters are waters protected as water supplies which are generally upstream and draining to Class WS-IV waters, waters previously used for drinking water supply purposes, or waters used by industry to supply their employees with raw drinking water supply sources. If reclassified, nonpoint source and stormwater pollution control requirements associated with the WS-IV classification will no longer be required by the State. The local governments with jurisdiction in the proposed reclassification area would not be required to revise their water supply watershed protection ordinances as a result of the proposed reclassification to WS-V. However, wastewater discharge permit requirements associated with Water Supply classifications will apply, as in-stream water supply water quality standards remain applicable. In addition, please note that buffer, stormwater, wastewater discharge, and other restrictions associated with the existing supplemental classification of Nutrient Sensitive Waters (NSW) will remain in effect as the NSW classification is not being removed as part of this reclassification process.

Procedure by which a person can object to the agency on a proposed rule: You may attend the public hearing and make relevant verbal comments, and /or submit written comments, data or other relevant information by March 6, 2006. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. The EMC is very interested in all comments pertaining to the proposed reclassification. All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed reclassification. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see G.S. 150B-21.2(g)). Written comments may be submitted to Elizabeth Kountis of the Water Quality Planning Section at the postal address, email address, or fax number listed in this notice.

Comments may be submitted to: *Elizabeth Kountis, DENR/Division of Water Quality, Planning Section, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919) 733-5083, ext. 369, fax (919) 715-5637, email elizabeth.kountis@ncmail.net.*

Comment period ends: *March 6, 2006*

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.

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

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0315 NEUSE RIVER BASIN

(a) The schedule may be inspected at the following places:

- (1) Clerk of Court:
 Beaufort County
 Carteret County
 Craven County
 Durham County
 Franklin County
 Granville County
 Greene County
 Johnston County
 Jones County
 Lenoir County
 Nash County
 Orange County
 Pamlico County
 Person County
 Pitt County
 Wake County
 Wayne County
 Wilson County

- (2) North Carolina Department of Environment and Natural Resources:
 - (A) Raleigh Regional Office
 3800 Barrett Drive
 Raleigh, North Carolina
 - (B) Washington Regional Office
 943 Washington Square Mall
 Washington, North Carolina
 - (C) Wilmington Regional Office
 127 Cardinal Drive
 Wilmington, North Carolina.

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;
- (5) January 1, 1982;
- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1988;
- (12) July 1, 1988;
- (13) October 1, 1988;
- (14) January 1, 1990;
- (15) August 1, 1990;
- (16) December 1, 1990;
- (17) July 1, 1991;
- (18) August 3, 1992;
- (19) April 1, 1994;
- (20) July 1, 1996;
- (21) September 1, 1996;
- (22) April 1, 1997;
- (23) August 1, 1998;
- (24) August 1, 2002;
- (25) July 1, ~~2004-2004~~;
- (26) May 1, 2006.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were

reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

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

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV&B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(n) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River

[portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

(o) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 2004 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21, 27-21-1] from the dam at Falls Lake to a point 0.5 mile upstream of the Town of Wake Forest Water Supply Intake (former water supply intake for Burlington Mills Wake Finishing Plant) from Class C NSW to Class WS-IV NSW and from a point 0.5 mile upstream of the Town of Wake Forest proposed water supply intake to Town of Wake Forest proposed water supply intake [Index No. 27-(20.1)] from Class C NSW to Class WS-IV NSW CA. Fantasy Lake [Index No. 27 -57-3-1-1], a former rock quarry within a WS-II NSW water supply watershed, was reclassified from Class WS-II NSW to Class WS-II NSW CA.

(p) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective May 1, 2006 with the reclassification of the Neuse River (including tributaries in Wake County) [Index Nos. 27-(20.7), 27-21-(1.5)] from the dam at Falls Lake to a point 0.5 mile upstream of the former water supply intake for Burlington Mills Wake Finishing Plant from Class WS-IV NSW to Class WS-V NSW and from a point 0.5 mile upstream of the former water supply intake for Burlington Mills Wake Finishing Plant to the former water supply intake for Burlington Mills Wake Finishing Plant [Index No. 27-(22)] from Class WS-IV NSW CA to Class WS-V NSW.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02E .0601-.0615.

Proposed Effective Date: May 1, 2006

Public Hearings:

Date: January 19, 2006

Time: 6:00 p.m.

Location: Davidson County Farm Bureau, 229 North Talbert Blvd., Lexington, NC 27293

Date: January 24, 2006

Time: 5:00 p.m.

Location: Wayne Community College, 3000 Wayne Memorial Dr., Goldsboro, NC 27530

Date: January 31, 2006

Time: 6:00 p.m.

Location: City of Asheville Public Works Facility, 161 South Charlotte St., Asheville, NC 28801

Reason for Proposed Action: Action is required by HB1215 (Session Law 2002-167), it authorized the Environmental Management Commission to develop and implement rules governing water conservation and water reuse during drought and water emergency situations.

Procedure by which a person can object to the agency on a proposed rule: Written comments can be submitted to: North Carolina Division of Water Resources, Attn. Linwood Peele, 1611 Mail Service Center, Raleigh, NC 27699-1611.

Comments may be submitted to: Linwood Peele, 1611 Mail Service Center, Raleigh, NC 27699-1611, phone (919) 715-5455, fax (919) 733-3558, email linwood.peele@ncmail.net

Comment period ends: March 6, 2006

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: A copy of the fiscal note can be obtained from the agency.

- State
- Local 15A NCAC 02E .0604
- Substantive (≥\$3,000,000)
- None 15A NCAC 02E .0601-.0603, .0605-.0615

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02E - WATER USE REGISTRATION AND ALLOCATION

SECTION .0600 – WATER USE DURING DROUGHTS AND WATER SUPPLY EMERGENCIES

15A NCAC 02E .0601 SCOPE

The purpose of this Section is to minimize harmful impacts of drought and water supply emergencies on public health and safety, environmental quality, and the economy by establishing minimum standards and practices for water shortage response planning, water use reporting, water conservation, and water reuse during droughts and water supply emergencies.

Authority G.S. 143-354(a)(1); 143-354(a)(8); S.L. 2002-167.

15A NCAC 02E .0602 DEFINITIONS

The following definitions shall apply for the purposes of this Section:

- (1) "Water" means any waters of the State located on or below the land surface as well as water contained within a water treatment and distribution system.
- (2) "Person" means any individual, corporation, company, association, partnership, unit of local government or other legal entity.
- (3) "Water delivery system" means any open or closed conveyance system used to move water for potable or non-potable purposes from its point of origin to a point of use, including but not limited to: municipal water systems; residential, commercial, industrial, and commercial plumbing systems; irrigation systems; water using equipment; flexible hoses; etc.
- (4) "Essential water use" means the use of water necessary for fire fighting, health and safety purposes; water needed to sustain human and animal life; and water necessary to satisfy federal, state and/or local public health, safety or environmental protection requirements.
- (5) "Non-essential water use" means categories of water use, other than essential water use, that may be curtailed during droughts and water emergencies.
- (6) "State agencies" includes all agencies of the executive branch of the government of North Carolina, the General Assembly, the General Court of Justice, and the University of North Carolina.
- (7) "Unit of local government" means a county, city, consolidated city-county, sanitary district or other local political subdivision or authority or agency of local government.
- (8) "Department" means the North Carolina Department of Environment and Natural Resources (DENR).
- (9) "Council" means the North Carolina Drought Management Advisory Council (NCDMAC).
- (10) "Drought Advisory" means a warning issued by the North Carolina Drought Management Advisory Council (NCDMAC) that indicates a moisture deficit significant enough to have social, environmental or economic effects and are designated by the NCDMAC summary map which identifies general drought areas in North Carolina, labeling droughts by intensity, with D0 (Abnormally Dry) being the least intense and D4 (Exceptional Drought) being the most intense.

Authority G.S. 143-354(a)(8); S.L. 2002-167.

15A NCAC 02E .0603 GENERAL INFORMATION

(a) The provisions of this Section apply to the following classes of water users:

- (1) Publicly owned and privately owned water supply systems;
- (2) State agencies;
- (3) Units of local government;
- (4) Business and industrial water users; and
- (5) Agricultural and horticultural water users.

(b) This Section does not prevent owners and/or operators of a water delivery system or other persons from developing, implementing or requiring water use measures in response to droughts or emergency water shortages that are more restrictive than the specified response measures in Rules .0612-.0614.

(c) Water shortage response planning shall take into account water users who have made improvements to maximize water use efficiency in their daily operations prior to the issuance of a drought advisory. Water users that have already taken measures for the efficient use of water in their daily operations may face disproportionate hardships and difficulty to make further reductions. Water shortage response planning and regulations shall avoid restricting efficient water users in ways that would serve as a disincentive for all water users to continue seeking improvements in water use efficiency and shall acknowledge certification programs that recognize efficient water users who meet specific industry standards of water use efficiency and water conservation.

(d) All established or new uses of reclaimed water, consistent with the provisions governing the use of reclaimed water shall not be restricted by the requirements set forth in this Section.

Authority S.L. 2002-167.

15A NCAC 02E .0604 ANNUAL ELECTRONIC REPORTING OF WATER USE DATA

In order to improve the availability of data for the management of water resources during drought and water supply emergencies, the following electronic data reporting requirements have been established.

- (1) Water systems that are required to prepare a Local Water Supply Plan under G.S. 143-355(l) shall, irrespective of the issuance of a drought advisory, annually report to the Department the following information:
 - (a) Water system identification information;
 - (b) Annual average daily water use for the system, in million gallons per day (MGD);
 - (c) The monthly average water use for each month of the prior calendar year, in million gallons per day (MGD);
 - (d) The number of connections for residential, industrial, commercial and institutional water use, as of December 31st of the reporting year;
 - (e) The annual average daily water use for residential, industrial,

- commercial, institutional water uses and sales to other systems, in million gallons per day (MGD);
- (f) Water use for each of the highest three consecutive days for the period of June 30 to October 1, in million gallons per day (MGD); and
- (g) Water used by the system, in addition to the amount delivered to customers, to meet water treatment and distribution requirements, in million gallons per day (MGD).
- (2) All persons that are required to register water withdrawals and transfers under G.S. 143-215.22H, who are not included in Rule .0604(1), shall annually report monthly average water use in million gallons per day (MGD) for each month of the prior calendar year to the Department. The following data shall be reported:
- (a) Owner and/or operator and facility identification information;
- (b) Sources of water withdrawn;
- (c) Number of days water was withdrawn for each month;
- (d) Average daily withdrawal for the actual number of days water was withdrawn each month, in million gallons per day (MGD); and
- (e) Water use for each of the highest three consecutive days for the period of June 30 to October 1, in million gallons per day (MGD).
- (3) Data shall be submitted electronically to the Department by January 31st of each year for the period of January 1st to December 31st of the prior year.

Authority G.S. 143-355(k); 143-355(l); S.L. 2002-167.

15A NCAC 02E .0605 WATER USE REDUCTION REPORTING, NEW WATER WITHDRAWAL REPORTING AND REGIONAL COORDINATION DURING DROUGHTS

In order to promote regional cooperation for the equitable use of water resources during a drought or other water supply emergency, publicly and privately owned community water systems and units of local government shall observe the following reporting and coordination procedures.

- (1) Publicly and privately owned community water systems and units of local government shall report the implementation of mandatory water conservation measures to the Department within 72 hours of their initial enactment.
- (a) Based on an assessment of drought severity and regional water supply conditions, the Department may

- contact water systems within the affected region to arrange a consultation meeting between identified water systems and relevant state and local agencies.
- (b) The Department will moderate these consultations and provide technical assistance.
- (2) All persons that intend to make a new water withdrawal, which has never previously been reported according to water withdrawal regulations under G.S. 143-215.22H, of 100,000 gallons or more in an area designated by the Council as suffering from Extreme or Exceptional Drought at the time of the water withdrawal, shall report to the Department at least seven days prior to the withdrawal. The following information shall be reported:
- (a) Contact information for the person making the water withdrawal;
- (b) Source(s) of water to be withdrawn;
- (c) Number of days water is anticipated to be withdrawn;
- (d) Average daily anticipated withdrawal for the actual number of days water is to be withdrawn, in million gallons per day (MGD); and
- (e) Total volume of water anticipated to be withdrawn, in million gallons (MG).
- (3) All persons that withdraw water shall stay informed on drought and water supply conditions and shall participate, as appropriate, in regional coordination for the management of water resources, evaluation of the cumulative effects of water withdrawals on regional water resources and the development of alternative water supply sources.

Authority G.S. 143-354(a)(8); 143-355(k); S.L. 2002-167.

15A NCAC 02E .0606 WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS

All classes of water users shall prepare a Water Shortage Response Plan according to the following water shortage response planning provisions in Rules .0607-.0611 for their appropriate class of water use. The purpose of these Water Shortage Response Plans is to plan for the most effective course of action to minimize harmful impacts of drought and water supply emergencies on public health and safety, environmental quality, and the economy. Water Shortage Response Plans shall take into account the specific characteristics of the water source and the water use(s) for which the plan is prepared.

Authority G.S. 143-354(a)(1); 143-355(l); S.L. 2002-167.

15A NCAC 02E .0607 PUBLICLY AND PRIVATELY OWNED WATER SYSTEM WATER SHORTAGE

RESPONSE PLANNING REQUIREMENTS

(a) Publicly and privately owned water systems that are required to prepare a Local Water Supply Plan under G.S. 143-355(1) shall include the following information in their local Water Shortage Response Plans:

- (1) The designation of a position or organizational unit responsible for the implementation of their Water Shortage Response Plan;
- (2) Notification procedures that will be used to inform employees and water users about the implementation of the plan and water conservation response measures;
- (3) Tiered levels of response actions to be taken to reduce water use based on the severity of water shortage conditions;
- (4) Specific measurements of available water supply, water demand and system conditions that will be used to determine the severity of water shortages, and shall be used for the purpose of triggering the initiation of water use reduction measures and to trigger the movement between the various tiered levels of response;
- (5) Procedures that will be used to regulate compliance with the provisions of the plan;
- (6) Procedures for affected parties to review and comment on the plan prior to final adoption;
- (7) Procedures to receive and review applications for variances from specific requirements of the plan and the criteria that will be considered in the determination to issue a variance;
- (8) An evaluation method to determine the actual water savings accomplished and the effectiveness of the Water Shortage Response Plan when implemented; and
- (9) Procedures for revising and updating Water Shortage Response Plans to correct plan deficiencies and adapt to new circumstances.

(b) Publicly and privately owned water systems that are required to prepare a Local Water Supply Plan shall submit a copy of their Water Shortage Response Plan and any subsequent revisions of the plan to the Department, as required by G.S. 143-355(1).

(c) Publicly and privately owned water systems not required to prepare a Local Water Supply Plan shall:

- (1) Assess their vulnerability to drought and water shortage emergencies; and
- (2) Prepare a written plan for responding to water shortage emergencies and drought using the provisions of Rule .0607(a) as a guideline.

(d) Water systems that depend on the water storage of a private or public impoundment that they do not own and/or are under contract issued by the owner of an impoundment for the withdrawal of water shall, at a minimum, prepare a written plan for responding to water shortages that is consistent with the provisions of the contract and/or any Water Shortage Response Plan established by the owner of the impoundment.

(e) Water Shortage Response Plans shall take into account that water users who have made improvements to maximize water use efficiency in their daily operations prior to the issuance of a drought advisory have already reduced their water use and will face disproportionate hardships in making further reductions. Water Shortage Response Plans shall avoid restricting efficient water users in a way that would undermine incentives for all water users to seek continued improvements in water use efficiency and shall acknowledge certification programs that recognize efficient water users who meet specific industry standards of water use efficiency and water conservation.

(f) When the NCDMAC issues a drought advisory designating an area of the state as currently suffering from drought, publicly and privately owned water systems that depend on water from the designated area shall:

- (1) Implement the provisions of their Water Shortage Response Plan when water supply and demand factors in the plan indicate;
- (2) Increase monitoring and document water supply conditions;
- (3) Educate customers and employees on the need to conserve water and how to prepare for potential drought conditions;
- (4) Inspect water delivery system components and ensure that existing equipment is operating as efficiently as possible; and
- (5) Stay informed on drought and/or water shortage emergency conditions and participate, as appropriate, in regional coordination for the management of water resources.

Authority G.S. 143-354(a)(1); 143-355(l); S.L. 2002-167.

15A NCAC 02E .0608 STATE AGENCY WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS

(a) State agencies that supply their own water shall prepare a written plan, accessible to all personnel, for responding to water shortages using the provisions of Rule .0607(a)(1)-(a)(9) as a guideline.

(b) State agencies that are supplied water by a publicly or privately owned water system shall:

- (1) Review normal operating procedures and water use;
- (2) Identify options to reduce water use during water supply emergencies, including changes to normal operating procedures;
- (3) Provide information to their water purveyor upon request to support development of the purveyor's Water Shortage Response Plan, including the agency's ability to reduce water use and limitations to reducing water use during droughts and water emergencies;
- (4) Develop methods for informing employees of drought designations and water emergency declarations and response measures; and
- (5) Evaluate the feasibility of incorporating water reuse, reclamation and/or recycling into daily operations.

Authority G.S. 143-354(a)(1); S.L. 2002-167.

15A NCAC 02E .0609 LOCAL GOVERNMENT WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS

(a) Units of local government that provide water to the public shall meet the requirements of Rule .0607(a)(1)-(a)(9).

(b) Units of local government that do not provide water to the public shall:

(1) Review normal water use for the types and number of facilities operated;

(2) Identify options to reduce water use by local government operations during water shortage emergencies, including possible changes to normal operating procedures;

(3) Cooperate with local water purveyor(s) on the development of their Water Shortage Response Plan;

(4) Establish a notification process for informing citizens of drought designations, recommended conservation activities and mandatory response measures to reduce water use during droughts and water shortage emergencies;

(5) Evaluate the potential effect of local water shortage response policies and ordinances and include policy variances where applicable to meet public health and safety standards;

(6) Take into consideration the potential for disproportionate hardships water shortage response policies and ordinances may cause water users who have made improvements to maximize water use efficiency in their daily operations; and

(7) Evaluate the feasibility of incorporating water reuse, reclamation and/or recycling into daily operations.

Authority G.S. 143-354(a)(1); S.L. 2002-167.

15A NCAC 02E .0610 BUSINESS AND INDUSTRIAL WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS

(a) Business and industrial water users that supply their own water shall prepare a written plan, accessible to all personnel, for responding to water shortages consistent with industry and operation specific water efficiency and drought response guidelines that incorporate the relevant provisions of Rule .0607(a)(1)-(a)(9) as a guideline.

(b) Business and industrial water users that withdraw water from a privately or publicly owned impoundment and/or withdraw water under a contract issued by the owner of an impoundment shall, at a minimum, have a written plan for responding to water shortages that is consistent with the provisions of the contract and/or any Water Shortage Response Plan established by the owner of the impoundment.

(c) Business and industrial water users that are supplied water by a publicly or privately owned water system shall establish a procedure for responding to water shortages that is complementary to their water purveyors' Water Shortage Response Plan, including:

(1) Review normal operating procedures and water use;

(2) Identify options to reduce water use during water supply emergencies, including changes to normal operating procedures and reuse;

(3) Provide information to their water purveyor(s) to support the development of the purveyor's Water Shortage Response Plan, including the ability to reduce water use and limitations to reducing water use during droughts and water emergencies; and

(4) Develop notification procedures for informing employees of drought designations, recommended conservation activities and mandatory response measures to reduce water use during droughts and water emergencies.

Authority G.S. 143-354(a)(1); S.L. 2002-167.

15A NCAC 02E .0611 AGRICULTURAL AND HORTICULTURAL WATER SHORTAGE RESPONSE PLANNING REQUIREMENTS

(a) Agricultural and horticultural water users shall develop a written plan that is accessible to all personnel for responding to water shortages that is consistent with guidelines provided by the Natural Resource Conservation Service and/or appropriate industry trade organizations for the efficient use of water in agricultural and horticultural operations.

(b) When a region of the state is designated as suffering from Severe Drought, Extreme Drought or Exceptional Drought by a NCDMAC drought advisory, agricultural and horticultural water users shall reexamine and maintain water delivery systems to minimize water loss and maximize water use efficiency.

(c) Agricultural and horticultural water users that withdraw water from a privately or publicly owned impoundment and/or withdraw water under a contract issued by the owner of an impoundment shall have a written plan for responding to water shortages that is consistent with the provisions of the contract and/or any Water Shortage Response Plan established by the owner of the impoundment.

Authority S.L. 2002-167.

15A NCAC 02E .0612 DEFAULT WATER SHORTAGE RESPONSE PLANNING MEASURES

Publicly or privately owned water systems that are required to prepare a Local Water Supply Plan under G.S. 143-355(1) that do not have a written Water Shortage Response Plan, as outlined in Rule .0607, shall implement the default water use reduction measures of Rules .0613 or .0614 of this Section when their water system or water source is located in an area(s) designated as suffering from Extreme or Exceptional Drought by the Council.

Authority S.L. 2002-167.

15A NCAC 02E .0613 DEFAULT WATER USE REDUCTION MEASURES DURING NCDMAC EXTREME DROUGHT DESIGNATIONS

When the NCDMAC (Council) designates a region of the state as suffering from Extreme Drought, the following minimum water use reduction standards shall apply to water users in the designated area, as indicated in Rule .0612.

(1) Water users shall reduce water use by at least 10 percent below the amount used in the

- month prior to the first NCDMAC Extreme Drought designation in the affected area.
- (2) All water users shall minimize non-essential use of water.
- (3) Outdoor irrigation is prohibited, except for:
- (a) Watering lawns less than one inch of water per week, between the hours of 8:00 PM and 8:00 AM;
- (b) Maintaining newly seeded or sodded erosion control projects that were started prior to the issuance of an extreme drought advisory, not to exceed the minimum rate necessary on the day of installation and for 28 days following installation, by means designed and operated to assure effective water conservation, and supervised at all times to prevent run-off or excessive watering;
- (c) Using spray irrigation by wastewater effluent treatment systems from the designated area(s) according to permit conditions;
- (d) Maintaining athletic fields with a maximum application of one inch of water per week;
- (e) Maintaining personal food gardens;
- (f) Maintaining existing landscape plantings at the minimum rate necessary, using a hand held container or hose with an automatic shutoff or using drip irrigation; and
- (g) Watering golf course tees and greens between the hours of 8:00 PM and 8:00 AM with a maximum application of one inch of water per week.
- (4) The use of water for washing or cleaning of mobile equipment including automobiles, trucks, boats and fleet vehicles is prohibited, except for:
- (a) Operating commercial car washes that recycle at least 40 percent of their wash water and have reduced total consumption by 10 percent;
- (b) Washing with a hand-held hose with an automatic shutoff device using less than five gallons per vehicle;
- (c) Cleaning new and used vehicles to prepare for display in a dealer's show room, upon receipt from the manufacturer or prior owner, and following a sale prior to delivery to the purchaser; and
- (d) Cleaning of construction, emergency, transport or public transportation vehicles if necessary to preserve the proper functioning and safe operation of the vehicle.
- (5) The use of water for washing impervious and paved surfaces is prohibited, except for:
- (a) Prewashing in preparation for recoating or sealing;
- (b) Applying at the minimum rate necessary to maintain effective dust control during the construction of roads and highways initiated prior to the declaration of an Extreme Drought by the NCDMAC; and
- (c) Applying at the minimum rate necessary for sanitation or public health purposes, such as eating and drinking areas.
- (6) The use of water for ornamental fountains, artificial waterfalls, misting machines, reflecting pools, etc. is prohibited.
- (7) The use of water for power washing of buildings and other structures is prohibited except when deemed necessary to meet federal, state and/or local public health and safety requirements.
- (8) The use of water for flushing sewer lines is prohibited except when deemed necessary by state, county or municipal health departments to meet public health and safety standards.
- (9) The use of water from fire hydrants is prohibited, except for:
- (a) Fighting fire and fire protection purposes;
- (b) Testing or training if it is deemed necessary to protect public safety and has been approved by the municipal governing board and the applicable water purveyor; and
- (c) Flushing of potable water lines to protect the public health.
- (10) The filling of family, public or private swimming pools, including hot tubs, spas and whirlpool tubs, is prohibited, except:
- (a) For health and rehabilitative purposes as prescribed by a medical doctor and/or administered by a medical facility; and
- (b) For the minimal amount of make-up water necessary to maintain a pool's structural integrity and filtration system.

Authority S.L. 2002-167.

15A NCAC 02E .0614 DEFAULT WATER USE REDUCTION MEASURES DURING NCDMAC EXCEPTIONAL DROUGHT DESIGNATIONS

When the NCDMAC designates a region of the state as suffering from Exceptional Drought, the following minimum water use

reduction standards shall apply to water users in the designated area, as indicated in Rule .0612.

- (1) Water users shall reduce water use by at least 20 percent below the amount used in the month prior to the first NCDMAC Extreme Drought designation in the affected area.
- (2) Non-essential water use shall be minimized by the maximum extent possible.
- (3) Outdoor irrigation is prohibited, except for:
 - (a) Using spray irrigation by wastewater effluent treatment systems in designated areas according to permit conditions;
 - (b) Watering personal food gardens by hand with a container or hand held hose with an automatic shutoff device;
 - (c) Maintaining existing landscape plantings at the minimum rate necessary, using a hand held container or hose with an automatic shutoff or using drip irrigation; and
 - (d) Watering golf course tees and greens, athletic fields and lawns between the hours of 10:00 PM and 6:00 AM with a maximum application of one half inch of water per week.
- (4) The use of water for washing or cleaning mobile equipment including automobiles, trucks, boats and fleet vehicles is prohibited, except for:
 - (a) Operating commercial car washes that recycle at least 40 percent of their wash water and have reduced total consumption by 20 percent;
 - (b) Cleaning of new and used vehicles in preparation for display in a dealer's show room, using less than five gallons per vehicle; and
 - (c) Using the minimum amount of water necessary to clean construction, emergency, transport or public transportation vehicles, if required to preserve the proper functioning and safe operation of the vehicle as required by law.
- (5) The use of water for washing impervious and paved surfaces is prohibited except for using the minimum amount of water necessary for sanitation or public health purposes, such as eating and drinking areas.
- (6) The use of water for power washing of buildings and other structures is prohibited.
- (7) The use of water for flushing sewer lines is prohibited except when deemed necessary by state, county or municipal health departments to meet public health and safety standards.

- (8) The use of water from fire hydrants is prohibited, except for:
 - (a) Fighting fire and fire protection purposes
 - (b) Flushing of drinking water lines to protect public health and safety.
- (9) The filling of family, public or private swimming pools, including hot tubs, spas and whirlpool tubs, is prohibited except for health and rehabilitative purposes as prescribed by a medical doctor and/or administered by a medical facility.

Authority S.L. 2002-167.

15A NCAC 02E .0615 WATER REUSE DURING DROUGHTS AND WATER EMERGENCIES

Water users are encouraged to use reclaimed wastewater to the maximum extent possible during droughts and other water emergencies to reduce withdrawals of surface water and ground water and to extend available water supplies.

Authority S.L. 2002-167.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Parks and Recreation Authority intends to amend the rules cited as 15A NCAC 12K .0105-.0106, .0108.

Proposed Effective Date: May 1, 2006

Public Hearing:

Date: February 16, 2006

Time: 2:00 p.m.

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

Reason for Proposed Action:

15A NCAC 12K .0105 – The rule change clarifies which evaluation criteria that a grant applicant shall address in an application.

15A NCAC 12K .0106 – After a local government receives a PARTF grant, it signs a grant agreement with the Department of Environment and Natural Resources (DENR) that identifies the beginning and ending dates of the contract; the dates that define the project period. The local government cannot be reimbursed for expenditures that occur outside of the project period unless the Parks and Recreation Authority has approved a waiver to acquire land before the contract has been signed. A waiver is in effect for 12 months. This rule change increases the length of time that a waiver is in effect from 12 months to 18 months.

15A NCAC 12K .0108 – The rule change clarifies the types of expenses that a PARTF grant recipient may be reimbursed for; such as appraisals, architectural fees, and construction management.

Procedure by which a person can object to the agency on a proposed rule: Comments and objections will be accepted through March 6, 2006. Letters must be legible and signed. Please include a phone number. Send comments and objections to Mr. Bayard Alcorn, NC Division of Parks and Recreation, MSC 1615, Raleigh, NC 27699-1615, or by email bayard.alcorn@ncmail.net.

Comments may be submitted to: Mr. Bayard Alcorn, NC Division of Parks and Recreation, MSC 1615, Raleigh, NC 27699-1615

Comment period ends: March 6, 2006

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.

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

CHAPTER 12 - PARKS AND RECREATION AREA RULES

SUBCHAPTER 12K - PARKS AND RECREATION TRUST FUND GRANTS FOR LOCAL GOVERNMENT

SECTION .0100 - GENERAL PROVISIONS

15A NCAC 12K .0105 EVALUATION OF APPLICATIONS

- (a) Each completed application shall be evaluated by the Department or its designee on the information provided in the application and in accordance with the PARTF criteria described in Paragraph (d) of this Rule.
- (b) The Authority shall review the project evaluations and other relevant data prepared by the applicant and by Department staff. The Authority shall approve projects for funding.
- (c) ~~All~~ If applicable to the project, the general criteria in Paragraph (d) of this Rule shall be addressed by the applicant. The Department or its designee shall review all applications for completeness. Incomplete applications shall be returned to the applicant.
- (d) The following general criteria shall be used to evaluate projects.

- (1) New public recreation facilities provided by the project;
- (2) The degree of local recreational planning for the project and how the specific elements in the project conform to the plan(s);
- (3) The acquisition or the conservation of unique natural, cultural, recreational, or scenic resources;
- (4) The level of public involvement in developing and supporting the project;
- (5) The applicant's commitment to operating and maintaining the project; and
- (6) The suitability of the site for the proposed project development. ~~development; and~~
- ~~(7) The level of compliance with prior grant agreements. ; and~~
- ~~(8) Other factors, such as the geographic distribution of projects, the presence or absence of other funding sources, the population of the applicant, the amount of funds available, and the amount of funds requested.~~

(e) The Authority shall also consider the following factors to evaluate projects: the geographic distribution of projects, the presence or absence of other funding sources, the population of the applicant, the level of compliance with prior grant agreements, the amount of funds available, and the amount of funds requested.

Authority G.S. 113-44.15.

15A NCAC 12K .0106 GRANT AGREEMENT

- (a) Upon Authority approval, a written agreement shall be executed between the grant recipient(s) ~~and the Authority on behalf of the Department.~~
- (b) The agreement shall define the Department's and grant recipient's responsibilities and obligations, the project period, project scope and the amount of grant assistance.
- (c) The approved application and support documentation shall become a part of the grant agreement.
- (d) State Clearinghouse environmental review comments made as a result of application review shall be addressed by the applicant prior to execution of the project agreement. Projects judged to have a significant environmental impact shall submit an environmental assessment.
- (e) The grant agreement may be amended upon mutual consent and approval by the Department ~~on behalf of the Authority~~ and the grant recipient(s). The grant recipient(s) shall submit in writing to the Department a formal amendment request for approval. The Department shall approve the amendment if local circumstances justify the amendment request.
- (f) Projects may not begin until ~~the Authority on behalf of the Department and grant recipient(s) sign the agreement unless a waiver has been requested by the applicant in writing and approved by the Authority or its executive committee.~~ Waivers may only be granted for land acquisition projects requiring action prior to the anticipated signing of the agreement. A waiver shall be in effect for ~~one year~~ 18 months from the date of

approval. A project receiving a waiver shall not receive preferential treatment in funding decisions.

(g) Following execution of the grant agreement, the Department shall reimburse the grant recipient for expenditures related to the project scope. All reimbursements shall be approved by the Department and shall total an amount that is less than or equal to the grant amount. The Department shall approve reimbursement requests for expenditures that are related to the project scope and occur during the project period. This provision is effective after the 2002-03 grant cycle.

(h) Complete accounting records including a certified project data sheet and performance report verifying eligible costs shall be submitted by the grant recipient(s) to the Department for approval prior to or at the time of the close-out inspection. The Department shall approve the accounting when the records are consistent with the project agreement and budget.

Authority G.S. 113-44.15.

15A NCAC 12K .0108 ELIGIBLE PROJECTS AND COSTS

(a) PARTF grants are awarded to grantees for projects that are for the sole purpose of providing local park and recreation opportunities to the public. Grantees may receive funds for the following types of projects:

- (1) Acquisition. Fee simple acquisition of real property for future recreational development and to protect areas with natural or scenic resources.
 - (A) Grantees acquiring property for recreation development have up to five years from when the Authority and the applicant sign the grant agreement to begin developing recreation facilities.
 - (B) Grantees acquiring property to protect areas with natural or scenic resources must open these areas to the general public to the extent that the resources will not be impaired.
- (2) Development. Projects for the construction, expansion, and renovation/repair of the following:
 - (A) Primary facilities including outdoor and indoor recreation facilities. Examples include camping facilities, picnic facilities, sports and playfields, trails, swimming facilities, boating/fishing facilities, spectator facilities, and gymnasiums.
 - (B) Support facilities and improvements such as roads, parking areas, accessibility features, utilities, landscaping, and other infrastructure projects, that would have little or no recreational value without the primary recreation facilities.

(b) Other criteria for determining eligible projects and costs include:

- (1) Only development on or acquisition of a single project site is eligible for PARTF assistance.
- (2) Utility lines developed with PARTF assistance shall be placed underground.
- (3) ~~Incidental project costs shall be eligible for PARTF assistance including appraisals, architectural and engineering fees, pre-agreement planning costs and contingencies as follows: The following costs are eligible within the limits that are identified.~~
 - (A) ~~Pre agreement costs such as site planning, preliminary designs, preparation of cost estimates, construction drawings and specifications may not exceed 15 percent of the total development costs and must be incurred within one year of the application submission date.~~ Land acquisition costs such as appraisals, surveys, title work, and attorney fees.
 - (B) ~~Incidental appraisal costs such as appraisals, title work, surveys and attorney fees may not exceed five percent of the appraised fair market value of the property. Construction costs such as site planning, design drawings, construction drawings, preparing cost estimates, architectural and engineering fees, permits, construction management, and project inspection.~~
 - (C) ~~Architectural and engineering fees may not exceed 10 percent of the total development cost of the proposed project. The cost of preparing an application.~~
 - (D) ~~A contingency amount may be included in the development cost estimates, but may not exceed five percent of total development costs. The costs in Parts (A) through (C) of this Subparagraph shall not exceed 20 percent of the total cost of the project. These costs may be incurred within one year of the application deadline as well as during the project period.~~
 - (E) ~~A contingency may be included in the development cost estimates, but shall not exceed five percent of total development costs.~~
- (4) PARTF-assisted facilities on school property shall not be recreational facilities generally provided by the school for the use of their students.

Authority G.S. 113-44.15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 18A .1970 and amend the rules cited as 15A NCAC 18A .1935, .1957, .1969.

Proposed Effective Date: May 1, 2006

Public Hearing:

Date: January 27, 2006

Time: 10:00 a.m.

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

Reason for Proposed Action: Proposed rules to comply with S1152 (Session Law 2004-161).

Procedure by which a person can object to the agency on a proposed rule: Public comments will be accepted in writing, by email and/or public hearing to Connie J. Pixley, OSWW Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, email connie.pixley@ncmail.net.

Comments may be submitted to: Connie J. Pixley, DEH OSWW Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, email connie.pixley@ncmail.net

Comment period ends: March 6, 2006

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.

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

CHAPTER 18 - ENVIRONMENTAL HEALTH
SUBCHAPTER 18A - SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1935 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Alluvial Soils" means stratified soils without distinct horizons, deposited by flood waters.
(2) "Alternative System" means any approved ground absorption sewage treatment and disposal system other than an approved privy or an approved septic tank system.
(3) "Approved" means that which has been considered acceptable to the State or local health department.
(4) "Approved Privy" means a fly-tight structure consisting of a pit, floor slab, and seat riser constructed in accordance with Rule .1959 of this Section.
(5) "Approved Public or Community Sewage System" means a single system of sewage collection, treatment, and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality, or a public utility, constructed and operated in compliance with applicable requirements of the Division of Environmental Management.
(6) "Areas subject to frequent flooding" means those areas inundated at a 10-year or less frequency and includes alluvial soils and areas subject to tidal or storm overwash.
(7) "Collection sewer" means gravity flow pipelines, force mains, effluent supply lines, and appliances appurtenant thereto, used for conducting wastes from building drains to a treatment system or to a ground absorption sewage treatment and disposal system.
(8) "Designated wetland" means an area on the land surface established under the provisions of the Coastal Area Management Act or the Federal Clean Water Act.
(9) "Design unit" means one or more dwelling units, places of business, or places of public assembly on:
(a) a single lot or tract of land;
(b) multiple lots or tracts of land served by a common ground absorption sewage treatment and disposal system; or
(c) a single lot or tract of land or multiple lots or tracts of land where the dwelling units, places of business or places of public assembly are under multiple ownership (e.g. condominiums) and are served by a ground absorption system or multiple ground absorption systems which are

- under common or joint ownership or control.
- (10) "Dwelling unit" means any room or group of rooms located within a structure and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, bathing, toilet usage, cooking, and eating.
- (11) "Effluent" means the liquid discharge of a septic tank or other sewage treatment device.
- (12) "Estimated saturated hydraulic conductivity" - means a saturated hydraulic conductivity value based upon the soil profile evaluation and description of the soil texture, soil structure, soil consistency, soil pores, and roots following the procedures in Field Book for Describing and Sampling of Soils, NRCS, USDA and comparison to soil profile saturated hydraulic conductivity data for soil input files for similar soils. The Field Book is hereby incorporated by reference, including any subsequent amendments and editions, in accordance with G.S. 150B-21.6. Copies of the Field Book may be inspected at the Division of Environmental Health Raleigh Office, 2728 Capital Boulevard, Raleigh, 27604, and copies may be downloaded at no cost from the internet at http://soils.usda.gov/procedures/field_bk/main.htm#intro, or obtained from the National Soil Survey Center, MS 34, Room 152,100 Centennial Mall North, Lincoln, NE 68508-3866.
- (13) "Ground absorption sewage treatment and disposal system" means a system that utilizes the soil for the subsurface disposal of partially treated or treated sewage effluent.
- (14) "Horizon" means a layer of soil, approximately parallel to the surface, that has distinct characteristics produced by soil forming processes.
- (15) "Horizon subdivision" - means a portion of a horizon, approximately parallel to the surface that has distinct characteristics produced by soil forming processes.
- (16) "Lateral water movement" - means the movement of water down slope on sites of at least a four percent slope and above a less permeable horizon, and as observed periodically in bore holes, excavations, or monitoring wells.
- (17) "Local health department" means any county, district, or other health department authorized to be organized under the General Statutes of North Carolina.
- (18) "Matrix" - means a volume equivalent to 50 percent or greater of the total volume of a horizon or horizon subdivision.
- (19) "Mean high water mark" means, for coastal waters having six inches or more lunar tidal influence, the average height of the high water over a 19 year period as may be ascertained from National Ocean Survey or U.S. Army Corps of Engineers tide stations data or as otherwise determined under the provisions of the Coastal Area Management Act.
- (20) "Mottle" - means a feature(s) which occupies less than 50 percent of the total volume of a horizon or horizon subdivision.
- (21) "Naturally occurring soil" means soil formed in place due to natural weathering processes and being unaltered by filling, removal, or other man-induced changes other than tillage.
- (22) "Nitrification field" means the area in which the nitrification lines are located.
- (23) "Nitrification lines" means approved pipe, specially designed porous blocks, or other approved materials which receive partially treated sewage effluent for distribution and absorption into the soil beneath the ground surface.
- (24) "Nitrification trench", also referred to as a sewage absorption trench, means a ditch into which a single nitrification line is laid and covered by soil.
- (25) "Non-ground absorption sewage treatment system" means a facility for waste treatment designed not to discharge to the soil, land surface, or surface waters, including but not limited to, approved vault privies, incinerating toilets, mechanical toilets, composting toilets, chemical toilets, and recycling systems.
- (26) "Organic soils" means those organic mucks and peats consisting of more than 20 percent organic matter (by dry weight) and 18 inches or greater in thickness.
- (27) "Parent material" means the mineral matter that is in its present position through deposition by water, wind, gravity or by decomposition of rock and exposed at the land surface or overlain by soil or saprolite.
- (28) "Ped" means a unit of soil structure, such as an aggregate, crumb, prism, block, or granule formed by natural processes.
- (29) "Perched water table" means a saturated soil horizon or horizon subdivision, with a free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be as identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.
- (30) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, or unit of local government.

- (31) "Place of business" means any store, warehouse, manufacturing establishment, place of amusement or recreation, service station, foodhandling establishment, or any other place where people work or are served.
- (32) "Place of public assembly" means any fairground, auditorium, stadium, church, campground, theater, school, or any other place where people gather or congregate.
- (33) "Privy building" means and includes any and all buildings which are used for privacy in the acts of urination and defecation which are constructed over pit privies and are not connected to a ground absorption sewage treatment and disposal system or a public or community sewage system.
- (34) "Public management entity" means a city (G.S. 160A, Article 16), county (G.S. 153A, Article 15), interlocal contract (G.S. 153A, Article 16), joint management agency (G.S. 160A-461-462), county service district (G.S. 153A, Article 16), county water and sewer district (G.S. 162A, Article 6), sanitary district (G.S. 130A, Article 2), water and sewer authority (G.S. 162A, Article 1), metropolitan water district (G.S. 162A, Article 4), metropolitan sewerage district (G.S. 162A, Article 5), public utility [G.S. 62-3(23)], county or district health department (G.S. 130A, Article 2), or other public entity legally authorized to operate and maintain on-site sewage systems.
- (35) "Redoximorphic features" - means a color pattern of a horizon or horizon subdivision due to a loss (depletion) or gain (concentration) of pigment compared to the matrix color, formed by oxidation/reduction of Fe and/or Mn coupled with their removal, translocation, or accrual; or a soil matrix color controlled by the presence of Fe+2 (see Field Book for Describing and Sampling of Soils, NRCS, USDA which is hereby incorporated by reference, including any subsequent amendments and editions, in accordance with G.S. 150B-21.6.
- (36) "Relocation" means the displacement of a residence, place of business, or place of public assembly from one location to another.
- (37) "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with these Rules, which is reserved for the installation of additional nitrification fields and is not covered with structures or impervious materials.
- (38) "Residence" means any home, hotel, motel, summer camp, labor work camp, mobile home, dwelling unit in a multiple-family structure, or any other place where people reside.
- (39) "Restrictive horizon" means a soil horizon that is capable of perching ground water or sewage effluent and that is brittle and strongly compacted or strongly cemented with iron, aluminum, silica, organic matter, or other compounds. Restrictive horizons may occur as fragipans, iron pans or organic pans, and are recognized by their resistance in excavation or in using a soil auger.
- (40) "Rock" means the body of consolidated or partially consolidated material composed of minerals at or below the land surface. Rock includes bedrock and partially weathered rock that is relatively hard and cannot be dug with hand tools. The upper boundary of rock is "saprolite", "soil", or the land surface.
- (41) "Sanitary system of sewage treatment and disposal" means a complete system of sewage collection, treatment and disposal, including approved privies, septic tank systems, connection to public or community sewage systems, incinerators, mechanical toilets, composting toilets, recycling toilets, mechanical aeration systems, or other such systems.
- (42) "Saprolite" means the body of porous material formed in place by weathering of igneous or metamorphic rocks. Saprolite has a massive, rock-controlled structure, and retains the fabric (arrangement of minerals) of its parent rock in at least 50 percent of its volume. Saprolite can be dug with hand tools. The lower limit of saprolite is "rock" and its upper limit is "soil" or the land surface. The term "saprolite" does not include sedimentary parent materials.
- (43) "Saturated soils" - means a horizon or horizon subdivision with a free water surface at the corresponding depth and observed in a bore hole or monitoring well.
- (44) "Septic tank" means a water-tight, covered receptacle designed for primary treatment of sewage and constructed to:
- (a) receive the discharge of sewage from a building;
 - (b) separate settleable and floating solids from the liquid;
 - (c) digest organic matter by anaerobic bacterial action;
 - (d) store digested solids through a period of detention; and
 - (e) allow clarified liquids to discharge for additional treatment and final disposal.
- (45) "Septic tank system" means a subsurface sanitary sewage system consisting of a septic tank and a subsurface disposal field.
- (46) "Sewage" means the liquid and solid human waste and liquid waste generated by

- water-using fixtures and appliances, including those associated with food handling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (47) "Site" means the area in which the sewage treatment and disposal system is to be located and the area required to accommodate repairs and replacement of nitrification field and permit proper functioning of the system.
- (48) "Soil" means the naturally occurring body of porous mineral and organic materials on the land surface. Soil is composed of sand-, silt-, and clay-sized particles that are mixed with varying amounts of larger fragments and some organic material. Soil contains less than 50 percent of its volume as rock, saprolite, or coarse-earth fraction (mineral particles greater than 2.0 millimeters). The upper limit of the soil is the land surface, and its lower limit is "rock", "saprolite", or other parent materials.
- (49) "Soil series" - means an official series name established by NRCS, USDA and confirmed to be present on the site by detailed on-site soil profile descriptions and taxonomic classification, and not necessarily the soil series mapped on the county soil survey.
- (50) "Soil structure" means the arrangement of primary soil particles into compound particles, peds, or clusters that are separated by natural planes of weakness from adjoining aggregates.
- (51) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 - 0.05 mm in size), silt (less than 0.05 mm - 0.002 mm or greater in size), and clay (less than 0.002 mm in size) particles. The specific textural classes are defined as follows and as shown in Soil Taxonomy, Appendix I, which is hereby adopted by reference in accordance with G.S. 150B-14(c):
- (a) "Sand" means soil material that contains 85 percent or more of sand; the percentage of silt plus 1.5 times the percentage of clay shall not exceed 15.
- (b) "Loamy sand" means soil material that contains at the upper limit 85 to 90 percent sand, and the percentage silt plus 1.5 times the percentage of clay is not less than 15; at the lower limit it contains not less than 70 to 85 percent sand, and the percentage of silt plus twice the percentage of clay does not exceed 30.
- (c) "Sandy loam" means soil material that contains either 20 percent clay or less, and the percentage of silt plus twice the percentage of clay exceeds 30, and contains 52 percent or more sand; or less than seven percent clay, less than 50 percent silt, and between 43 and 52 percent sand.
- (d) "Loam" means soil material that contains seven to 27 percent clay, 28 to 50 percent silt, and less than 52 percent sand.
- (e) "Silt loam" means soil material that contains 50 percent or more silt and 12 to 27 percent clay; or contains 50 to 80 percent silt and less than 12 percent clay.
- (f) "Silt" means soil material that contains 80 percent or more silt and less than 12 percent clay.
- (g) "Sandy clay loam" means soil material that contains 20 to 35 percent clay, less than 28 percent silt, and 45 percent or more sand.
- (h) "Clay loam" means soil material that contains 27 to 40 percent clay and 20 to 45 percent sand.
- (i) "Silty clay loam" means soil material that contains 27 to 40 percent clay and less than 20 percent sand.
- (j) "Sandy clay" means soil material that contains 35 percent or more clay and 45 percent or more sand.
- (k) "Silty clay" means soil material that contains 40 percent or more clay and 40 percent or more silt.
- (l) "Clay" means soil material that contains 40 percent or more clay, less than 45 percent sand, and less than 40 percent silt.
- (52) "State" means the Department of Environment and Natural Resources, Division of Environmental Health.
- (53) "Stream" means a natural or manmade channel, including groundwater lowering ditches and devices, in which water flows or stands most of the year.
- (54) "Subsurface disposal" means the application of sewage effluent beneath the surface of the ground by distribution through approved nitrification lines.
- (55) "Third-Party" means a person or body that is independent of the parties involved which does not gain financially or otherwise benefit from the outcome of the testing, and which has a knowledge of the subject area based upon relevant training and experience.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18A .1957 CRITERIA FOR DESIGN OF ALTERNATIVE SEWAGE SYSTEMS

(a) **LOW-PRESSURE PIPE SYSTEMS:** Low-pressure pipe (LPP) systems with a two to five-foot pressure head may be utilized on sites which are **SUITABLE** or **PROVISIONALLY SUITABLE** for conventional or modified systems and on sites where soil and site conditions prohibit the installation of a conventional or modified septic tank system if the requirements of this Paragraph are met.

- (1) The LPP system shall consist of the following basic components:
 - (A) a network of small-diameter (one to two inches) perforated PVC 160 psi pipe or equivalent placed in naturally occurring soil at shallow depths (generally 12 to 18 inches) in narrow trenches not less than eight inches in width and spaced not less than five feet on center. Trenches shall include at least five inches of washed stone or washed gravel below the pipe and two inches above the pipe; and four inches of soil cover.
 - (B) a properly designed, two-compartment septic tank or other approved pretreatment system, and a pumping or dosing tank;
 - (C) a watertight supply manifold pipe, of Schedule 40 PVC or equivalent, for conveying effluent from the dosing chamber to the low-pressure network.
- (2) The soil and site criteria for LPP systems shall meet the following minimum requirements:
 - (A) LPP nitrification fields shall not be installed on slopes in excess of ten percent unless special design procedures to assure proper

distribution of effluent over the nitrification field are approved. Landscaping of the LPP distribution field shall be constructed to shed rainwater or runoff. All other requirements of Rule .1940 of this Section shall be met.

- (B) Site suitability for an LPP system shall be based on the first 24 inches of soil beneath the naturally occurring soil surface. This 24 inches shall consist of **SUITABLE** or **PROVISIONALLY SUITABLE** soil as determined in accordance with Rules .1941 through .1944 and .1956 of this Section.
 - (C) Location of the septic tank, other approved pretreatment unit, pumping or dosing chamber, and nitrification field shall be in accordance with Rule .1950 of this Section. Horizontal distances from the nitrification field shall be measured from a margin two and one-half feet beyond the lateral and manifold pipes.
 - (D) There shall be no soil disturbance of the site or repair area for an LPP system except the minimum required for installation.
 - (E) The available space requirements of Rule .1945 of this Section shall apply.
- (3) Table IV shall be used in determining the long-term acceptance rate for LPP systems. The long-term acceptance rate shall be based on the most hydraulically limiting, naturally occurring soil horizon within two feet of the ground surface or to a depth of one foot below the trench bottom, whichever is deeper.

TABLE IV

SOIL GROUP	SOIL TEXTURAL CLASSES (USDA CLASSIFICATION)		LONG-TERM ACCEPTANCE RATE gpd/ft ²
I	Sands (With S or PS structure and clay mineralogy)	Sand Loamy Sand	0.6 - 0.4
II	Coarse Loams (With S or PS structure and clay mineralogy)	Sandy Loam Loam	0.4 - 0.3
III	Fine Loams (With S or PS	Sandy Clay Loam Silt Loam	0.3 - 0.15

IV	structure and clay mineralogy)	Clay Loam Silty Clay Loam Silt	0.2 - 0.05
	Clays (with S or PS structure and clay mineralogy)	Sandy Clay Silty Clay Clay	

The long-term acceptance rate shall not exceed the mean rate for the applicable soil group for food service facilities, meat markets, and other places of business where accumulation of grease can cause premature failure of a soil absorption system. Long-term acceptance rates up to the maximum for the applicable soil group may be permitted for facilities where data from comparable facilities indicates that the grease and oil content of the effluent will be less than 30 mg/l and the chemical oxygen demand (COD) will be less than 500 mg/l.

- (4) In calculating the number of square feet for the nitrification field, the design sewage flow shall be divided by the long-term acceptance rate from Table IV. In calculating the minimum length of trenches in the LPP system, the total square footage of the nitrification field shall be divided by five feet.
- (5) Low-pressure systems shall be designed for uniform distribution of effluent. The trenches shall be level and parallel to the ground elevation contours.
 - (A) The maximum lateral length shall yield no more than a ten-percent difference in discharge rate between the first and last hole along the lateral.
 - (B) Minimum hole size shall be 5/32-inch for at least two-thirds of the field lateral lines. Smaller holes (no less than 1/8-inch) may be used in no more than one-third of the lateral lines where necessary to balance flow distribution on sloping sites. However, for systems serving restaurants, foodstands, meat markets and other establishments where effluent is expected to have a high clogging potential, the minimum hole size shall be 5/32-inch.
 - (C) Maximum hole spacing shall be as follows: Soil Group I, five feet; Soil Group II, six feet; Soil Group III, eight feet; and Soil Group IV, ten feet.
 - (D) The following design provisions are required for sloping sites:
 - (i) Separately valved manifolds are required for all subfield

- segments where the elevation difference between the highest and lowest laterals exceeds three feet.
- (ii) The hole spacing, hole size or both shall be adjusted to compensate for relative head differences between laterals branching off a common supply manifold and to compensate for the bottom lines receiving more effluent at the beginning and end of a dosing cycle. The lateral network shall be designed to achieve a ten to 30 percent higher steady state (pipe full) flow rate into the upper lines, relative to the lower lines, depending on the amount of elevation difference.
- (iii) Maximum elevation difference between the highest and lowest laterals in a field shall not exceed ten feet unless the flow is hydraulically split between subfield segments without requiring simultaneous adjustment of multiple valves.
- (E) Turn-ups shall be provided at the ends of each lateral, constructed of Schedule 40 PVC pipe or equivalent, and protected with sleeves of larger diameter pipe (six inches or greater). Turn-ups and sleeves shall be cut off and capped at or above the ground surface, designed to be protected from damage, and easily accessible.
- (F) The supply manifold shall be sized large enough relative to the size and number of laterals served so that friction losses and differential entry losses along the manifold do not result in more than a 15 percent variation in discharge rate between the first and last laterals.

- (i) The ratio of the supply manifold inside cross sectional area to the sum of the inside cross sectional areas of the laterals served shall exceed 0.7:1.
 - (ii) The reduction between the manifold and connecting laterals shall be made directly off the manifold using reducing tees.
 - (iii) Cleanouts to the ground surface shall be installed at the ends of the supply manifold.
 - (G) Gate valves shall be provided for pressure adjustment at the fields whenever the supply line exceeds 100 feet in length. Valves shall be readily accessible from the ground surface and adequately protected in valve boxes.
 - (6) Septic tanks, pump tanks, pump dosing systems, siphons, and siphon dosing tanks shall be provided in accordance with Rule .1952 of this Section.
 - (A) Design flow rate shall be based upon delivering two feet to five feet of static pressure head at the distal end of all lateral lines.
 - (B) Dose volume shall be between five and ten times the liquid capacity of the lateral pipe dosed, plus the liquid capacity of the portions of manifold and supply lines which drain between doses.
- (b) **FILL SYSTEM:** A fill system (including new and existing fill) is a system in which all or part of the nitrification trench(es) is installed in fill material. A fill system, including an existing fill site, may be approved where soil and site conditions prohibit the installation of a conventional or modified septic tank system if the requirements of this Paragraph are met.
- (1) Fill systems may be installed on sites where at least the first 18 inches below the naturally occurring soil surface consists of soil that is suitable or provisionally suitable with respect to soil structure and clay mineralogy, and where organic soils, restrictive horizons, saprolite or rock are not encountered. Further, no soil wetness condition shall exist within the first 12 inches below the naturally occurring soil surface and a groundwater lowering system shall not be used to meet this requirement. Fill systems shall not be utilized on designated wetlands unless the proposed use is specifically approved in writing by the designating agency. The following requirements shall also be met:
 - (A) Nitrification trenches shall be installed with at least 24 inches separating the trench bottom and any soil horizon unsuitable as to soil structure, clay mineralogy, organic soil, rock or saprolite. However, if a low pressure pipe system is used, the minimum separation distance shall be 18 inches.
 - (B) Nitrification trenches shall be installed with at least 18 inches separating the trench bottom and any soil wetness condition. This separation requirement for soil wetness conditions may be met with the use of a groundwater lowering system only in Soil Groups I and II, with suitable structure and clay mineralogy. However, if a low pressure pipe system is used, the minimum separation distance shall be 12 inches.
 - (C) Systems shall be installed only on sites with uniform slopes less than 15 percent. Storm water diversions and subsurface interceptor drains or swales may be required upslope of the system.
 - (D) The long-term acceptance rate shall be based on the most hydraulically limiting soil horizon within 18 inches of the naturally occurring soil surface or to a depth one foot below the trench bottom, whichever is deeper. The lowest long-term acceptance rate for the applicable soil group shall be used for systems installed pursuant to this Rule. However, the long-term acceptance rate shall not exceed 1.0 gallons per day per square foot for gravity distribution or 0.5 gallons per day per square foot for low-pressure pipe systems installed on sites with at least 18 inches of Group I soils below the naturally occurring soil surface or to a depth of one foot below the trench bottom, whichever is deeper.
 - (E) If the fill system uses low-pressure pipe distribution, all the requirements of Paragraph (a) of this Rule, except Paragraph (a)(2)(B), shall apply. Systems with a design daily flow greater than 480 gallons per day shall use low-pressure pipe distribution.
 - (F) Fill material shall have such soil texture to be classified as sand or loamy sand (Soil Group I) up to the top of the nitrification trenches. The

final six inches of fill used to cover the system shall have a finer texture (such as Group II, III) for the establishment of a vegetative cover. Existing fill material shall have no more than ten percent by volume of fibrous organics, building rubble, or other debris and shall not have discreet layers containing greater than 35 percent of shell fragments.

- (G) Where fill material is added, the fill material and the existing soil shall be mixed to a depth of six inches below the interface. Heavy vegetative cover or organic litter shall be removed before the additional fill material is incorporated.
- (H) The fill system shall be constructed as an elongated berm with the long axis parallel to the ground elevation contours of the slope.
- (I) The side slope of the fill shall not exceed a rise to run ratio of 1:4. However, if the first 18 inches below the naturally occurring soil surface is Group I soil, the side slope of the fill shall not exceed a rise to run ratio of 1:3.
- (J) The outside edge of the nitrification trench shall be located at least five feet horizontally from the top of the side slope.
- (K) The fill system shall be shaped to shed surface water and shall be stabilized with a vegetative cover against erosion.
- (L) The setback requirements shall be measured from the projected toe of the slope. However, if this setback cannot be met, the setback requirements shall be measured from a point five feet from the nearest edge of the nitrification trench if the following conditions are met:
 - (i) Slope of the site shall not exceed two percent;
 - (ii) The first 18 inches of soil beneath the naturally occurring soil surface shall consist of Group I soils;
 - (iii) The lot or tract of land was recorded on or before December 31, 1989; and
 - (iv) A condition is placed upon the Improvement Permit to require connection to a public or community sewage system within 90 days after

such system is available for connection and after it is determined that 300 feet or less of sewer line is required for connection.

- (M) The available space requirements of Rule .1945 of this Section shall apply.
- (2) An existing fill site that does not meet the requirements of Paragraph (b)(1) of this Rule may be utilized for a sanitary sewage system if the following requirements are met:
 - (A) Substantiating data are provided by the lot owner (if not readily available to the local health department) indicating that the fill material was placed on the site prior to July 1, 1977.
 - (B) The fill material placed on the site prior to July 1, 1977 shall have such soil texture to be classified as sand or loamy sand (Group I) for a depth of at least 24 inches below the existing ground surface. This fill material shall have no more than ten percent by volume of fibrous organics, building rubble, or other debris. This fill shall not have discreet layers containing greater than 35 percent of shell fragments. However, if at least 24 inches of Group I fill material was in place prior to July 1, 1977, additional fill with soil texture classified as Group I may be added to meet the separation requirements of Paragraph (b)(2)(D) of this Rule.
 - (C) Soil wetness conditions, as determined by Rule .1942(a) in this Section, are 18 inches or greater below the ground surface of the fill placed on the lot prior to July 1, 1977. This requirement shall be met without the use of a groundwater lowering system.
 - (D) Low-pressure pipe distribution shall be used and shall meet all the requirements of Paragraph (a) of this Rule, except (a)(2)(B). The long-term acceptance rate shall not exceed 0.5 gallons per day per square foot. However, for existing fill sites with 48 inches of Group I soils, conventional nitrification trenches utilizing a maximum long-term acceptance rate of 1.0 gallons per day per square foot may be installed in lieu of low-pressure pipe systems. The minimum separation distance between the trench bottom and any

soil wetness condition or any soil horizon unsuitable as to soil structure, clay mineralogy, organic soil, rock, or saprolite shall be 24 inches for low pressure pipe systems and 48 inches for conventional systems. This separation requirement may be met by adding additional Group I soil, but shall not be met with the use of a groundwater lowering system. Where fill is to be added, the requirements of Paragraphs (b)(1)(C), (F), (G), (H), (J), (K), of this Rule and the following requirements shall be met:

- (i) The side slope of the fill shall not exceed a side slope ratio of 1:3, and;
- (ii) The setback requirements shall be measured from the projected toe of the slope. However, if this setback cannot be met, the setback requirements shall be measured from a point five feet from the nearest edge of the nitrification trench if the following conditions are met:
 - (I) Slope of the site shall not exceed two percent;
 - (II) The lot or tract of land was recorded on or before December 31, 1989; and
 - (III) A condition is placed upon the Improvement Permit to require connection to a public or community sewage system within 90 days after such system is available for connection and after it is determined that 300 feet or less of sewer line is required for connection.
- (E) The available space requirements of Rule .1945 of this Section shall apply.
- (F) The design flow shall not exceed 480 gallons per day.

- (3) Other fill systems may be approved by the local health department on a site-specific basis in accordance with Rule .1948(d) of this Section.

~~(c) Individual aerobic sewage treatment units (ATUs) Residential Wastewater Treatment Systems (RTWS) that comply with the National Sanitation Foundation (NSF) Standard 40 for Class I residential wastewater treatment systems shall be sited, designed, designed and constructed and operated installed in accordance with this Rule to serve a design unit facility with a design daily flow rate of up to 1500 gallons per day, as determined in Rule .1949(a) or .1949(b) of this Section. ATUs RWTS shall not be used, however, where wastes contain high amounts of fats, grease and oil (30 mg/l or more), including restaurants and food service facilities, facilities, and The the strength of the influent wastewater shall be similar to domestic sewage wastewater with raw influent Biological Oxygen Demand (BOD) and suspended solids not to exceed 300 350 parts per million. RWTS performance, siting, sizing, installation, operation, monitoring, maintenance and reporting requirements shall comply with G.S. 130A-342 and 15A NCAC 18A .1970. ATUs shall comply with the requirements of the National Sanitation Foundation (NSF) Standard 40 for Individual Aerobic Wastewater Treatment Plants and shall be classified as meeting Class I effluent quality. NSF Standard 40 for Individual Aerobic Wastewater Treatment Plants Class I residential wastewater treatment systems is hereby incorporated by reference including any subsequent amendments and editions. Copies of the standards may be inspected in and copies obtained from the Division of Environmental Health, P.O. Box 27687, Raleigh, N.C. 27611-7687 at no cost at the On-Site Wastewater Section Central Office, located at 2728 Capital Blvd., Raleigh, NC in the Parker Lincoln Building, and copies may be obtained on-line at <http://www.techstreet.com/nsgate.html> at a cost of ninety-five dollars (\$95.00), or by mail from Techstreet, 777 East Eisenhower Parkway, Ann Arbor, MI 48108 at a cost of ninety-five dollars (\$95.00) plus shipping and handling. ATUsRWTS shall bear the NSF mark and the NSF listed model number or shall bear the certification mark and listed model number of a third party certification program accredited by the American National Standards Institute (ANSI), pursuant to ANSI Policy and Procedures for Accreditation of Certification Programs to certify ATUs residential wastewater treatment systems in accordance with NSF Standard Number 40. The ANSI Policy and Procedures for Accreditation of Certification Programs is hereby incorporated by reference including any subsequent amendments and editions. Copies of the standard may be inspected in and copies obtained from the Division of Environmental Health, P.O. Box 27687, Raleigh, N.C. 27611-7687 at no cost. ATUs shall only be permitted where the unit is to be operated and maintained by a certified wastewater treatment facility operator employed by or under contract to the county in which the unit is located, and in accordance with this Rule.~~

- (1) ~~ATUs shall be constructed and installed in accordance with the plans which have been approved by the Division of Environmental Health and shall comply with all requirements~~

of this Rule. Procedures for plan review and approval shall be in accordance with Rule .1953 of this Section. An application shall be submitted in writing to the State for an RWTS, which shall include the following, as applicable:

- (A) manufacturer's name, address, phone number, plant location(s), and contact information for manufacturer's licensed distributors in North Carolina and their current service areas;
 - (B) verification of current approval and listing of a NSF Standard 40 Class I system by the National Sanitation Foundation or other ANSI-accredited third party certification program;
 - (C) manufacturer's identifying name or logo, listed model number(s) and liquid or working capacity to be imprinted on unit;
 - (D) three legible copies of plans and specifications, and information required to evaluate any tanks as required pursuant to 15A NCAC 18A .1953; and
 - (E) fee payment as required by G.S. 130A-343(6), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Wastewater System Account or NC OSWW System Account, and mailed to the On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or hand delivered to Rm. 1A-245, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC.
- (2) The rated capacity of ~~ATUs~~ RWTS listed as complying with NSF Standard 40 shall not be less than the design daily flow as determined by Rule .1949(a) or .1949(b) of this Section.
- (3) The following are minimum standards of design and construction of ~~ATUs~~ RWTS:
- (A) ~~Blockouts in concrete ATU inlet openings shall leave a concrete thickness not less than one inch in the plant wall. Inlet and outlet blockouts shall be made for a minimum of four inch pipe and a maximum of six inch pipe. No blockouts or openings shall be permitted below the liquid level of the ATU.~~ RWTS.
 - (B) ~~The inlet into the ATU shall be a straight pipe. RWTS shall be resilient, watertight, corrosion resistant structures, with all components needing to be routinely~~

maintained easily accessible to the system operator. Access openings shall be provided in the RWTS top. Access shall be provided for:

- (i) Cleaning or rodding out the inlet pipe;
 - (ii) Cleaning or clearing the air or gas passage space above the partition;
 - (iii) Pumping of each compartment required to be pumped;
 - (iv) Sampling the effluent; and
 - (v) Repairing any system components or maintaining system component requiring repair or maintenance.
- (C) ~~The invert of the outlet shall be at least two inches lower in elevation than the invert of the inlet. Precast reinforced concrete tanks used in RWTS designed to hold sewage or effluent shall comply with the same design and construction requirements as precast reinforced concrete septic tanks and pump tanks pursuant to 15A NCAC 18A .1954, as applicable.~~
- (D) ~~Interior baffle walls in concrete units shall be reinforced by the placing of six inch by six inch No. 10 gauge welded reinforcing wire. The reinforcing wire shall be bent to form an angle of 90 degrees on the ends in order to form a leg not less than four inches long. When the wire is placed in the mold, the four inch legs shall lay parallel with the side wall wire and adjacent to it.~~
- (E) ~~Access openings shall be provided in the ATU top. Access shall be provided for cleaning or rodding out the inlet pipe, for cleaning or clearing air or gas passage spaces, as an entrance for inserting the suction hose in compartments that are required to be pumped out, to allow for sampling the effluent, and for access to repair or maintain any system components requiring repair and maintenance. All access openings shall have risers sealed to the top of the ATU and extended at least to six inches above finished grade and designed and maintained to prevent surface water inflow. Rule .1950(i) of this Section shall also be met.~~
- (F) ~~Concrete ATUs shall be constructed in accordance with Rule .1954(a)(9),~~

(10), (11) and (12) and .1954(b)(4) of this Section.

~~(G)(D)~~ Fiberglass reinforced plastic ATUs tanks used in RWTS designed to hold sewage or effluent shall be constructed with materials capable of resisting corrosion from sewage and sewage gases, and the active and passive loads on the unit walls. Except as required herein, fiberglass tanks shall comply with IAPMO PS 1-2004, Standard for Prefabrication Septic Tanks, and CSA International B66-05, Standard for Design, Material, and Manufacturing Requirements for Prefabricated Septic Tanks and Sewage Holding Tanks, as applicable. IAPMO PS 1-2004 and CSA International B66-05 are hereby incorporated by reference including any subsequent amendments and editions. Copies of these standards may be inspected at the On-Site Wastewater Section Central Office, located at 2728 Capital Blvd., Raleigh, NC in the Parker-Lincoln Building, and copies may be obtained from the ANSI On-Line Store at <http://webstore.ansi.org/ansidocstore> at a cost of forty-nine dollars, ninety-five cents (\$49.95), and from the Canadian Standards Association, at 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6 Canada at a cost of one hundred dollars (\$100.00) plus shipping and handling, respectively. Documentation shall be provided that at least one of each size tank in each model meets specified physical properties.

~~(i)~~ ATUs shall have the following minimum physical properties:

Ultimate tensile strength: _____ 12,000 psi
 Flexural strength: _____ 19,000 psi
 Flexural modulus of elasticity: _____ 800,000 psi

~~(ii)~~ A-At least one of each size of fiberglass reinforced plastic tank used in an RWTS shall be subjected to a vacuum test shall be performed on at least one ATU of each model number by an independent testing laboratory, in accordance with ASTM D 4021, Standard Specification for Glass Fiber Reinforced

~~Polyester — Underground Petroleum Storage Tanks, which is hereby incorporated by reference including any subsequent amendments and editions. Copies of the standards may be inspected in and copies obtained from the Division of Environmental Health, P.O. Box 27687, Raleigh, N.C. 27611 7687 at no cost laboratory. Test Unit unit must withstand negative pressure of 2.5 pounds per square inch (69.3 inches of water) without leakage or failure. Test results shall be included with the specifications that are provided to the state for approval.~~

~~(iii)~~ Composition of the finished unit shall be at least 30 percent fiberglass reinforcement by weight. Minimum wall thickness shall be one fourth inch. However, a wall thickness of not less than three sixteenth inch may be allowed in small, isolated areas of the ATU.

~~(iv)~~ Interior and exterior surfaces shall have no exposed fibers or projections, no blisters larger than one fourth inch in diameter, and no pores or indentations deeper than one sixteenth inch. The tank shall be watertight.

~~(H)(E)~~ Prefabricated tanks used in ATUs RWTS other than precast reinforced concrete or fiberglass reinforced plastic units shall be approved on an individual basis based on information furnished by the designer which indicates the unit will provide effectiveness equivalent to reinforced concrete or fiberglass reinforced plastic units.

~~(H)(F)~~ ATUs RWTS shall bear an imprint identifying the manufacturer, the RWTS serial number assigned to the manufacturer's plans and specifications model approved by the Division of Environmental Health, State, and the liquid or working

capacity of the unit. The imprint shall be located to the right of the ~~blockout or opening made for the outlet pipe on the outside of the unit. outlet opening pipe penetration point.~~ ATUs shall also be permanently marked with the date of manufacture adjacent to the unit imprint or on the top of the unit directly above the imprint.

~~(J)~~(G) The design, construction, and operation of ~~ATUs~~ RWTS shall prevent bypass of wastewater.

~~(K)~~(H) Electrical circuits to the ~~ATU~~ RWTS shall be provided with manual circuit disconnects within a watertight, corrosion-resistant, outside enclosure (NEMA 4X or equivalent) adjacent to the ~~ATU~~ RWTS securely mounted at least 12 inches above the finished grade. Control panels provided by the manufacturer shall be installed in a watertight, corrosion-resistant enclosure (NEMA 4X or equivalent) mounted at least 12 inches above finished grade and located adjacent to the unit RWTS or in view of the RWTS on the side of the facility readily visible from the unit and accessible by maintenance personnel. The control panel shall not be located more than 50 feet from the RWTS components controlled by the panel. The control panel shall remain accessible at all times to the system operator (ORC). Conductors shall be conveyed to the disconnect enclosure and control panel through waterproof, gasproof, and corrosion-resistant conduits. Splices and wire junctions, if needed, shall be made outside the ~~ATU~~ RWTS in a watertight, corrosion-resistant enclosure (NEMA 4X or equivalent) securely mounted adjacent to the unit at least 12 inches above the finished grade. Wire grips, duct seal, or other suitable material shall be used to seal around wire and wire conduit openings inside the ~~ATU~~ RWTS and disconnect enclosure. The ~~ATU~~ RWTS shall have an alarm device or devices to warn the user or operator of a unit malfunction or a high water condition. The alarm shall be audible and visible by system users and securely mounted adjacent to the ~~ATU~~ RWTS, at least 12 inches

above finished grade or in view of the RWTS on the side of the facility in clear view of the unit, or inside the finished occupied space of the facility. The alarm shall not be located more than 50 feet from the RWTS component triggering the alarm condition. The alarm shall remain accessible at all times to the system operator (ORC). If mounted outside, the ~~The~~ alarm shall meet NEMA 4X standards or equivalent. to otherwise be equivalently watertight and corrosion resistant. The alarm circuit or circuits shall be supplied ahead of any ATU RWTS electrical control circuit overload and short circuit protective devices. Blower location shall be shown on plans and plans and specifications shall detail proposed corrosion-resistant blower enclosure, if applicable.

(4) A settling tank shall be required prior to ~~an ATU~~ or as an integral part of the design of the RWTS serving a design unit with a design daily flow greater than 500 gallons, as determined in Rule .1949(a) or .1949(b) of this Section. The liquid capacity of the settling tank shall be at least equal to half of the design daily flow as determined in Rule .1949(a) or (b) of this Section. of the RWTS, or as otherwise specified by the manufacturer, whichever is larger. The settling tank may either be an integral chamber of the RWTS tank, an approved prefabricated septic tank or another tank specially designed for a specific individual ~~aerobic sewage treatment plant system~~ and approved by the Division of Environmental Health ~~State~~ as a part of the plans for the ~~plant~~ RWTS.

~~(5)~~ Ground absorption systems receiving effluent from approved ATUs may be used on sites classified as suitable or provisionally suitable for conventional, modified, or alternative systems in accordance with this Section. The following modifications to siting and design criteria shall be acceptable:

- (A) The minimum horizontal setback requirements of Rule .1950(a) of this Section shall be met, except as follows:
 - (i) Any private water supply source, except any uncased well or spring 50 feet.
 - (ii) Streams classified as ~~WS-I~~

- ~~(iii) Waters classified as SA _____ 70 feet.~~
- ~~(iv) Other coastal waters not classified as SA _____ 70 feet.~~
- ~~(v) Any other stream, canal, marsh, or other surface waters _____ 35 feet.~~
- ~~(vi) Any Class I or Class II reservoir _____ 70 feet, from normal pool elevation.~~
- ~~(vii) Any permanent storm water retention pond _____ 35 feet, from flood pool elevation.~~
- ~~(viii) Any other lake or pond _____ 35 feet, from normal pool elevation.~~
- (B) The requirements of Rules .1955(m), .1956(1), .1956(2), .1956(6), .1957(b)(1), and .1957(b)(2) of this Section shall be met, except as follows:
 - (i) A low pressure pipe system shall not be required where the separation between the bottom of the nitrification trench and any soil wetness condition is at least 12 inches, but less than 18 inches, and more than six inches of this separation consists of Group I soils.
 - (ii) The restriction in Rule .1956(6)(a)(v) of this Section that saprolite be overlain by at least one foot of suitable or provisionally suitable naturally occurring soil shall not apply.
 - (iii) For new fill systems, a low pressure pipe system shall not be required in order for the minimum separation distance between the trench bottom and any unsuitable soil horizon, rock, or saprolite to be reduced to 18 inches.
- (C) For existing fill systems, the minimum separation requirements of Rule .1957(b)(2)(D) of this Section shall be reduced from 48 to 36 inches for conventional systems and from 24 to 18 inches for low pressure pipe system.
- (6) The maximum long term acceptance rate shall be increased by 25 percent for any ground absorption system in soils which are Groups I or II with suitable structure and clay mineralogy. No other reductions in linear footage of nitrification trench or system area shall be applied, except where based on an adjusted design daily sewage flow rate granted in accordance with Rule .1949(c) of this Section.
- (7) Prior to issuance of an Operation Permit for an ATU, the manufacturer or his licensed representative shall certify that the unit has been properly installed and a contract for operation and maintenance shall have been executed between the unit owner and the county in accordance with Rule .1961(b) of this Section. It shall be a condition of the Operation Permit that subsequent owners of an ATU execute such a contract.

The contract shall include the specific requirements for maintenance and operation, responsibilities for maintenance and operation, responsibilities of the owner and system operator, provisions that the contract shall be in effect for as long as the system is in use, and other requirements for the continued proper performance of the ATU.

A condition of the Operation Permit shall be that the unit continue to perform in accordance with Class I effluent quality requirements of the National Sanitation Foundation (NSF) Standard Number 40 effective on the date the improvement permit was issued.

 - (A) During each inspection, the operator shall confirm proper mechanical performance, conduct a visual check for unusual color, clogging, oily film, odors, foam, measure settleable aeration chamber solids, and ascertain the need for removing solids, backwash and cleaning of filters, and other maintenance activities. The ground absorption system shall also be inspected and an evaluation of performance shall be made. The

- operator shall take the necessary steps to assure that needed maintenance is carried out.
- ~~(B)~~ Semi-annually, samples shall be collected by the system operator and analyzed by a state approved wastewater testing laboratory of the effluent for Five Day Biological Oxygen Demand, Suspended Solids, and pH. The aeration tank shall be sampled for mixed liquor suspended solids.
 - ~~(C)~~ Performance monitoring results shall be reported to the local health department and the state quarterly.
 - ~~(D)~~ Remedial action and additional sampling shall be required if monitoring results or inspection indicate that Class I effluent standards are not met.
- (5) A manufacturer of an RWTS who desires consideration for approval as an Experimental, Controlled Demonstration, Innovative or Accepted system shall apply separately pursuant to 15A NCAC 18A .1969 of this Section.
- (c) summary of pertinent literature, published research, and previous experience and performance with the system;
 - (d) results of any available testing, research or monitoring of pilot systems or full-scale operational systems and identify whether the testing, research or monitoring provided was conducted by a third party research or testing organization;
 - (e) evaluation protocols shall be specified as either an approved and listed protocol by the State or the applicant shall submit an alternative protocol for the evaluation of the performance of the manufacturer's system; system. National Sanitation Foundation (NSF) Standard 40 is an approved evaluation protocol pursuant to G.S. 130A-343(d);
 - ~~(f)~~ verification that a system being submitted for approval has been tested and certified in accordance with NSF Standard 40 or another approved evaluation protocol, if applicable. For systems with no prior approval pursuant to this Rule, the manufacturer shall provide an affidavit certifying that the product submitted for approval is the same as the certified or listed product or identify any modifications made to the submitted product;
 - ~~(g)~~ identity and qualifications of any proposed research or testing organization and the principal investigators, and an affidavit certifying that the organization and principal investigators have no conflict of interest and do not stand to gain financially from the sale of the E & I system;
 - ~~(h)~~ objectives, methodology, and duration of any proposed research or testing;
 - ~~(i)~~ specification of the number of systems proposed to be installed, the criteria for site selection, and system monitoring and reporting procedures;
 - ~~(j)~~ operation and maintenance procedures, system classification, proposed management entity and system operator;
 - ~~(k)~~ procedure to address system malfunction and replacement or premature termination of any proposed research or testing;

Authority G.S. 130A-335(e),(f); 130A-342.

15A NCAC 18A .1969 APPROVAL AND PERMITTING OF ON-SITE SUBSURFACE WASTEWATER SYSTEMS, TECHNOLOGIES, COMPONENTS, OR DEVICES

Experimental, controlled demonstration, and innovative wastewater systems (hereinafter referred to as E & I systems) are any wastewater systems, system components, or devices that are not specifically described in Rules .1955, .1956, .1957, or .1958 of this Section, including any system for which reductions are proposed in the minimum horizontal or vertical separation requirements or increases are proposed to the maximum long-term acceptance rates of this Section; or any E & I systems as defined by G.S. 130A-343(a) and approved pursuant to applicable laws and this Rule. Accepted systems are as defined by G.S. 130A-343(a). This Rule shall provide for the approval and permitting of E & I and accepted systems.

- (1) APPLICATION: An application shall be submitted in writing to the State for an E & I system. The application shall include the information required by G.S. 130A-343(d),(e),(f), and (g), and the following, as applicable:
- (a) specification of the type of approval requested as either innovative, controlled demonstration, experimental, or a combination;
 - (b) description of the system, including materials used in construction, and its proposed use;

- ~~(k)~~(l) notification of any proprietary or trade secret information, system, component, or device;
 - ~~(h)~~(m) a request for innovative system approval intended by the applicant to be reclassified from an innovative to an accepted system shall include monitoring, reporting and evaluation protocols to be followed by the manufacturer, the results of which shall be submitted in its future petition for accepted status; and
 - ~~(m)~~(n) fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Wastewater System Account or NC OSWW System Account, and mailed to the On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or hand delivered to Rm. 1A-245, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC.
- (2) REVIEW: The State shall review all applications submitted and evaluate ~~at least~~ the following:
- (a) the completeness of the application, and whether additional information is needed to continue the review; the applicant shall be informed of the acceptance or rejection of the application, or of any additional information needed to continue the review, within 30 days. When an application is rejected, the State shall inform the applicant in writing of the reasons for rejection and whether additional information is required for the application to be reconsidered. Acceptance of the application does not constitute a qualitative review of the information provided, nor the approval or denial of the proposed system designation. Additional requested information for the application to be considered complete shall be received within 180 days, or the application file shall be closed. Notwithstanding a prior rejection or denial, an applicant may reapply pursuant to Item (1) of this Rule; and
 - (b) whether the system meets the standards of an experimental or controlled demonstration system under G.S. 130A-343(e) or (f) and Item (3) of this Rule, or whether the system meets the standards of an innovative system under G.S. 130A-343(a)(5), G.S. 130A-343(g), and Item ~~(3)~~(4) of this Rule, or whether the system meets the standards of an experimental or controlled demonstration system under G.S. 130A-343(e) or (f) and Item (4) of this Rule, as applicable.
- (3) EXPERIMENTAL AND CONTROLLED DEMONSTRATION SYSTEMS: A system may be approved for use as an experimental or controlled demonstration system as part of a research or testing program which has been approved by the State. The research or testing program shall be conducted by a third party research or testing organization which has knowledge and experience relevant to the proposed research or testing and has no conflict of interest and does not stand to gain financially from the sale of the proposed system.
- (a) To be approved by the State, the proposed research or testing program shall:
 - (i) Be designed such that, if the objectives were met, the system would satisfy the standards for approval as an innovative system under Item (4) of this Rule; and
 - (ii) Be designed and include testing methodology that shall have a reasonable likelihood of meeting the objectives, and
 - (iii) Applications for a controlled demonstration shall be approved or denied within 60 days from the acceptance of a complete application when the application includes TS-I or TS-II compliant certification data collected under NSF Standard 40 or another prior-approved certification protocol, and all other available field verification data provided under Sub-item (1)(d) of this Rule are consistent with TS-I or TS-II performance standards. TS-I and TS-II performance standards are as specified in 15A NCAC 18A .1970.
 - (b) The State shall notify the applicant and the applicable local health departments when the proposed

research or testing program has been approved for an experimental or controlled demonstration system. Such notice shall include conditions for permitting, siting, operation, monitoring and maintenance, and number of systems which can be installed.

(c) A local health department shall issue an Improvement Permit and Construction Authorization for an experimental or controlled demonstration system when the following conditions are met:

(i) There is an application for an Improvement Permit in accordance with 15A NCAC 18A .1937(c), with the proposed use of an experimental system specified;

(ii) The proposed site is included as part of an approved research or testing program and any conditions specified for use of the system have been met;

(iii) When an experimental or controlled demonstration system is proposed to serve a residence, place of business or place of public assembly, there shall be a repair system in accordance with the provisions of 15A NCAC 18A .1945(b) or an innovative or accepted system of this Rule, except:

(A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system;
or

(B) When the experimental or controlled demonstration system is used as a repair to an existing malfunctioning system when there

are no other approved or accepted repair options; or

(C) As provided in G.S. 130A-343(f) for Controlled Demonstration Systems;

When an experimental or controlled demonstration system is proposed which shall not serve a residence, place of business, or place of public assembly, a repair area or backup system shall not be required.

(iv) The application for an experimental system shall include statements that the property owner is aware of its experimental nature, that the local health department and State do not guarantee or warrant that these systems will function in a satisfactory manner for any period of time, and that use of the system may need to be discontinued if the system research or testing program is prematurely terminated. Such statements shall be signed by the owner;

(v) The owner of the site on which an experimental system is proposed shall execute an easement granting rights of access to the system at reasonable hours for monitoring and evaluation to the research or testing organization. This easement shall specify that it is granted for the purposes of researching and testing an experimental wastewater system and shall remain valid as long as the system is to be part of the proposed research or testing program. The easement shall be recorded with the county register of deeds;

(vi) Provisions shall be made for operation and maintenance of the system;

- (vii) Any special conditions required for the installation of the experimental or controlled demonstration system shall be specified in the Improvement Permit and the Construction Authorization. Use of an experimental or controlled demonstration system and any conditions shall be described on the Improvement Permit, Construction Authorization and any subsequent operation permits, with provisions for a repair area and backup system specified. A condition of the Improvement Permit and Construction Authorization shall be that the installation be under the direct field supervision of the research or testing organization; and
- (viii) The proposed Improvement Permit, Construction Authorization and any subsequent operation permits for experimental or controlled demonstration systems shall be reviewed by the State and found to be consistent with the approved research or testing program prior to issuance by the local health department.
- (d) Upon completion of the installation and prior to use, an Experimental or Controlled Demonstration System Operation Permit (ESOP or CDSOP) shall be issued by the local health department. The ESOP or CDSOP shall be valid for a specified period of time based upon the projected duration of the research and testing program, not to exceed five years. Maintenance, monitoring and testing requirements shall be specified as permit conditions, in accordance with the approved research or testing program. Failure to carry out these conditions shall be grounds for permit suspension or revocation.
- (e) Prior to expiration of the ESOP (CDSOP) and based upon satisfactory system performance as determined during the research or testing program, the local health department shall issue an Operation Permit. Premature termination of the research or testing program shall be grounds for ESOP (CDSOP) suspension or revocation.
- (f) Upon completion of monitoring, research and testing, the research or testing organization shall prepare a final report including recommendations on future use of the system. If the State determines that the results indicate that the standards of Item (4) of this Rule are met, the State shall approve the use as an innovative system.
- (3)(4) INNOVATIVE SYSTEMS: Innovative systems, technologies, components, or devices shall be reviewed and approved by the State, and the local health department shall permit innovative systems in accordance with the following:
- (a) The State shall approve the system as an innovative system if the following standards have been met;
- (i) The system, shall have been demonstrated to perform equal or superior to a system, which is described in Rules .1955, .1956, .1957, or .1958, of this Section, based upon controlled pilot-scale research studies or statistically-valid monitoring of full-scale operational systems.
- (ii) Materials used in construction shall be equal or superior in physical properties and chemical durability, compared to materials used for similar proposed systems, specifically described in Rules .1955, .1956, .1957, or .1958 of this Section.
- (iii) Applications shall be approved or denied within 120 days from the acceptance of a complete application when the application includes TS-I or TS-II compliant evaluation data collected under NSF Standard 40 or another prior approved certification protocol; and statistically valid third-party field

- verification data which include at least 50 data points from a minimum of 15 sites, with a minimum of two data points per site, collected over at least a 12-month period, and with no data excluded from the field sampling sites.
- (b) When a system is approved as innovative by the State, the applicant shall be notified in writing. Such notice shall include any conditions for permitting, siting, installation, use, monitoring, and operation. Approved innovative systems shall be assigned a unique code for tracking purposes. Prior to making a request for reclassification of a system from innovative to accepted, the manufacturer shall have a system in place to keep track of the number and location of new system installations, and of any system installations it becomes aware of which were required to be repaired, and to provide this information to the State upon request and in any subsequent petition for accepted status.
- (c) A local health department shall issue an Improvement Permit and a Construction Authorization for any innovative system approved by the State upon a finding that the provisions of this Section including any conditions of the approval are met. Use of an innovative system and any conditions shall be described on the Improvement Permit, Construction Authorization, or Operation Permit.
- (d) Manufacturers of proprietary innovative systems which include an advanced pretreatment component may choose to comply with the performance audit requirements as stipulated in Sub-item (5)(g) of this Rule, in lieu of routine effluent sampling for each system on an annual basis as may otherwise be required, and shall comply with those performance audit requirements prior to being granted accepted system status. The approved audit procedure shall be carried out annually until receipt of Accepted System approval by the Commission (CHS).
- ~~(4) EXPERIMENTAL AND CONTROLLED DEMONSTRATION SYSTEMS: A system may be approved for use as an experimental or controlled demonstration system as part of a research or testing program which has been approved by the State. The research or testing program shall be conducted by a third party research or testing organization which has knowledge and experience relevant to the proposed research or testing and has no conflict of interest and does not stand to gain financially from the sale of the proposed system.~~
- ~~(a) To be approved by the State, the proposed research or testing program shall include the following:~~
- ~~(i) The research program shall be designed such that, if the objectives were met, the system would satisfy the standards for approval as an innovative system under Item (3) of this Rule.~~
- ~~(ii) Research design and testing methodology shall have a reasonable likelihood of meeting the objectives.~~
- ~~(b) The State shall notify the applicant and the applicable local health departments when the proposed research or testing program has been approved for an experimental or controlled demonstration system. Such notice shall include, but not be limited to, conditions for permitting, siting, operation, monitoring and maintenance, and number of systems which can be installed.~~
- ~~(c) A local health department shall issue an Improvement Permit and Construction Authorization for an experimental or controlled demonstration system when the following conditions are met:~~
- ~~(i) There is an application for an Improvement Permit in accordance with Rule .1937(e) of this Section, with the proposed use of an experimental system specified.~~
- ~~(ii) The proposed site is included as part of an approved research or testing program and any conditions specified for use of the system have been met.~~

- (iii) ~~When an experimental or controlled demonstration system is proposed to serve a residence, place of business or place of public assembly, there shall be a repair system in accordance with the provisions of Rule 1945(b) or an innovative or accepted system of this Rule, except:~~
 - (A) ~~When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system;~~
 - (B) ~~When the experimental or controlled demonstration system is used as a repair to an existing malfunctioning system when there are no other approved or accepted repair options; or~~
 - (C) ~~As provided in G.S. 130A-343(f) for Controlled Demonstration Systems.~~
- (iv) ~~When an experimental or controlled demonstration system is proposed which shall not serve a residence, place of business, or place of public assembly, a repair area or backup system shall not be required.~~
- (v) ~~The application for an experimental system shall include statements that the property owner is aware of its experimental nature, that the local health department and State do not guarantee or warrant that these systems will function in a satisfactory manner for any period of time, and that use of the system may need to be discontinued if the system research or testing program is prematurely terminated. Such statements shall be signed by the owner.~~
- (vi) ~~The owner of the site on which an experimental system is proposed shall execute an easement granting rights of access to the system at reasonable hours for monitoring and evaluation to the research or testing organization. This easement shall specify that it is granted for the purposes of researching and testing an experimental wastewater system and shall remain valid as long as the system is to be part of the proposed research or testing program. The easement shall be recorded with the county register of deeds.~~
- (vii) ~~Provisions shall be made for operation and maintenance of the system.~~
- (viii) ~~Any special conditions required for the installation of the experimental or controlled demonstration system shall be specified in the Improvement Permit and the Construction Authorization. Use of an experimental or controlled demonstration system and any conditions shall be described on the Improvement Permit, Construction Authorization and any subsequent operation permits, with provisions for a repair area and backup system specified. A condition of the Improvement Permit and Construction Authorization shall be that the installation be under the direct field supervision of the research or testing organization.~~
- (ix) ~~The proposed Improvement Permit, Construction Authorization and any subsequent operation~~

~~permits for experimental or controlled demonstration systems shall be reviewed by the State and found to be consistent with the approved research or testing program prior to issuance by the local health department.~~

- ~~(d) Upon completion of the installation and prior to use, an Experimental or Controlled Demonstration System Operation Permit (ESOP or CDSOP) shall be issued by the local health department. The ESOP (CDSOP) shall be valid for a specified period of time not to exceed five years. Special maintenance, monitoring and testing requirements shall be specified as permit conditions, in accordance with the approved research or testing program. Failure to carry out these conditions shall be grounds for permit suspension or revocation.~~
 - ~~(e) Prior to expiration of the ESOP (CDSOP) and based upon satisfactory system performance as determined during the research or testing program, the local health department shall issue an Operation Permit. Premature termination of the research or testing program shall be grounds for ESOP (CDSOP) suspension or revocation.~~
 - ~~(f) Upon completion of monitoring, research and testing, the research or testing organization shall prepare a final report including recommendations on future use of the system. If the State determines that the results indicate that the standards of Item (3) of this Rule are met, the State shall approve the use as an innovative system.~~
- (5) ACCEPTED SYSTEMS: A petition to the CHS for reclassification of a proprietary innovative system to an accepted system shall be submitted by the manufacturer for review to the State, accompanied by the fee payment as required by G.S. 130A-343(k) and as stipulated in Item (1) of this Rule. The State shall review all petitions submitted and evaluate the following: the completeness of the petition, and whether additional information is needed to continue the review; and whether the system meets the standards of an accepted system under G.S. 130A-343(a)(1), G.S. 130A-343(h), and this Section. The State shall inform the petitioner of the acceptance or

rejection of the petition, or of any additional information needed to continue the review, within 30 days. When a petition is rejected as incomplete, the petitioner shall be informed in writing of the reasons for rejection and whether additional information is required for the petition to be reconsidered. Acceptance of the petition does not constitute a qualitative review of the information provided, nor the approval or denial of the proposed system designation. Additional requested information for the petition to be considered complete shall be received within 180 days, or the petition file shall be closed. The State may also initiate a review of a nonproprietary innovative system pursuant to G.S. 130A-343(i)(2). The State shall submit to the CHS findings and recommendations based upon its review for final Commission-CHS action on system designation. The State's findings and recommendations for a proprietary innovative system shall be presented to the CHS within 120 days of receipt of a complete petition. The Commission-CHS shall designate a wastewater system technology, component or device as an accepted system when it finds that the standards set forth by G.S. 130A-343(a)(1) and G.S. 130A-343(h) have been met. The following factors shall be considered prior to granting accepted system status:

- ~~(a) documentation provided that there are~~ have been at least 300 systems installed statewide and the system has been in use as an approved innovative system for more than five years;
- ~~(b) data and findings of all prior evaluations of the system performance shall be as provided by the manufacturer;~~
- ~~(c) results of prior performance surveys of innovative systems in use in North Carolina for at least the five year period immediately preceding the petition;~~ petition, including any review(s) provided by the manufacturer of the accuracy and validity of performance surveys not completed under their control;
- ~~(d) review(s) of records on system use and performance reported by local health departments and other information documenting the experiences with performance of the system in North Carolina, including information collected and reported pursuant to Sub-item (3)(4)(b) and Item (12) of this Rule;~~ Rule. Upon request of the manufacturer, the State

and manufacturer shall meet to discuss the accuracy and validity of performance data and surveys to be considered for inclusion in the review;

(e) for proprietary nitrification trench systems, a statistically valid survey of system performance shall be performed.

(i) The manufacturer shall provide a proposed survey plan ~~pursuant to Subitems (5)(e)(i) or (5)(e)(ii) of this Rule~~ for State concurrence prior to carrying out the survey. This plan shall specify the number of systems to be evaluated, period of evaluation, method to randomly select systems to be evaluated, methods of field and data evaluation, and proposed survey team members, including proposed cooperative arrangements to be made with State and local health department on-site wastewater program staff. The State shall facilitate local health department participation with any performance review or survey. The State shall utilize the Division of Public Health's State Center for Health Statistics for assistance in evaluating the statistical validity of proposed evaluation protocols.

~~(i)(ii)~~ (ii) The survey shall include the field evaluation of at least 250 randomly selected innovative systems compared with 250 comparably-aged randomly selected conventional systems, with at least 100 of each type of surveyed system currently in use and in operation for at least five years. Systems surveyed shall be distributed throughout the three physiographic regions of the state (Mountains, Piedmont and Coast) in approximate

proportion to the relative usage in the three regions. The survey shall determine comparative system failure rates, with field evaluations completed during a typical wet-weather season (February through early April), with matched innovative and conventional systems sampled during similar time periods in each region. The petitioner shall provide a statistical analysis of the survey results showing a "one-sided" test where, if the failure rate in the sample of 250 innovative systems is at least five percentage points higher than the failure rate in the sample of 250 conventional systems, there is only a five percent chance that a difference this large would occur by chance (95% confidence level). If a statistically significant higher failure rate in the innovative system is not detected, the ~~Commission~~ CHS shall find that the innovative system performs the same as or better than the conventional system.

~~(ii) Other surveys, including evaluations of different numbers of innovative and conventional systems, designed to verify equal or superior performance of the innovative system compared to a conventional system under actual field conditions in North Carolina may be proposed by the manufacturer for approval by the state when they are demonstrated to have comparable statistical validity as described in Subitem (5)(e)(i).~~

(f) ~~The Commission may~~ CHS shall grant accepted status to an innovative system based upon a showing by the manufacturer that there have been at least 10,000 operational systems installed in the state, in more than one

county of the state, over at least an eight year period with a total reported failure rate statewide based on records provided by the manufacturer and local health departments of less than one percent. However, the granting of accepted status based upon this criteria shall be conditioned on the manufacturer successfully completing an approved field survey pursuant to Sub-items (5)(e)(i) or (5)(e)(ii) of this Rule within no more than 24 months of being granted accepted status;

(g) For proprietary innovative systems which include an advanced pretreatment component designed to achieve specific effluent quality standards, ~~the field survey shall be designed to verify effluent is in compliance with these established performance standards. Data evaluated shall be from sites where influent wastewater characteristics and flow meet design parameters. Compliance shall be achieved for all parameters by the arithmetic mean of all samples (geometric mean for fecal coliforms, where applicable). The percent of all samples failing to meet performance standards shall not exceed 20% for any parameter. The percent of sites in violation of performance standards for one or more parameters shall not exceed 40%. the following criteria shall be met to initially receive and continue to maintain accepted status:~~

(i) Certification under NSF Standard 40 or another prior approved evaluation protocol when covered in the scope of the evaluation protocol. A certified system which has been modified pursuant to Item (6) of this Rule or as otherwise necessary to be approved for use in North Carolina shall still be considered in compliance with this certification requirement. For approved innovative systems in general use in North Carolina for more than five years prior to January 1, 2006, which only lack NSF certification but

meet all other requirements for Accepted System status, the CHS shall grant conditional accepted status provided NSF certification is obtained within 24 months from the date this conditional status is granted; and

(ii) Prior to Accepted System approval by the CHS:

(A) a performance audit shall be run for a minimum of three consecutive years or until data have been collected from at least 30 separate operational North Carolina systems;

(B) the performance audit shall consist of third-party random sampling of a minimum of 10 separate operational North Carolina sites by an approved field evaluation protocol. The manufacturer shall propose the third-party, and the state shall concur with the proposed third-party. The third-party shall submit a plan for system evaluation to include the number of systems to be sampled, the method for randomly selecting the sites to be sampled, and details of the procedure for sample collection and analysis, which shall be prior-approved by the State. Samples shall be collected by 24-hour composite sampling (grab sampling for fecal coliform) and

- analyzed by a certified wastewater laboratory certified by the Division of Water Quality for all applicable performance parameters. All systems to be included in the performance audit shall be found by the third-party to be in compliance with the design requirements of the Innovative Approval;
- (C) the mean values of all sites together in each sampling year shall meet applicable effluent quality standards for each parameter;
- (D) no more than 20 percent of these randomly sampled sites during each sampling year shall exceed the designated effluent quality standards pursuant to 15A NCAC 18A .1970 for any parameter;
- (E) the sampled systems for the purposes of evaluation for Accepted System status shall be operational for at least three years, with at least 10 systems in operation for at least five years, and no more than 20 percent of these sampled systems over five years old shall exceed the designated effluent quality standards pursuant to 15A NCAC 18A .1970 for any parameter;
- furthermore, no such data shall be considered as part of the audit that is collected before April 1, 2006;
- (F) Operation, maintenance or sampling activities that have taken place or are proposed by the third-party at the audited sites, including Operator reports, maintenance logs and projected sample collection days and laboratory reports for samples analyzed, shall be provided to the local health department and the State;
- (G) If the performance criteria in Sub-items (5)(g)(ii)(C) and (D) of this Rule are not met in any sampling year, the sites from which substandard samples are obtained shall be resampled for any non-compliant parameter. If the performance criteria in Sub-items (5)(g)(ii)(C) and (D) of this Rule are still not met using the results from the resampled data, at least 20 new sites or twice as many as were initially sampled, not to exceed 30, shall be sampled for all applicable performance parameters. If this second set of sample results does not meet

performance criteria stipulated in Sub-items (5)(g)(ii)(C) and (D) of this Rule, the accepted system status shall be denied.

- (iii) Provisions shall be in place for the manufacturer of an accepted system to remain certified and listed under NSF Standard 40 or another prior approved evaluation, certification and listing protocol that includes routine audits of the system manufacturing facilities and of the performance of operational systems that verifies ongoing conformity with the approved protocol.
- (h) Other criteria for determining whether the proposed system has been in general use, and other surveys, including evaluations of different numbers of innovative and conventional systems, designed to verify equal or superior performance of the innovative system compared to the conventional system under actual field conditions in North Carolina may be proposed by the manufacturer for approval by the state when they are demonstrated to have comparable statistical validity as described in Sub-items (5)(e)(ii) or (5)(g)(ii) of this Rule, as applicable.
- ~~(h)~~(i) When a petition or recommendation for an accepted wastewater system designation is approved by the CHS, the State shall notify local health departments and publish a listing of accepted systems. The CHS shall impose any use, design, installation, operation, maintenance, monitoring, and management conditions pursuant to G.S. 130A-343.
- ~~(h)~~(j) The local health department shall permit systems designated as accepted nitrification trench systems that meet the requirements of this Section, laws, and conditions of its accepted system approval in an equivalent manner as a conventional system. The Owner may choose to substitute an accepted system for a conventional system or another

accepted system without prior approval of the health department as long as no changes are necessary in the location of each nitrification line, trench depth, or effluent distribution method. The type of system installed shall be indicated on the Operation Permit, including designation of the manufacturer and model or unique code.

- (6) MODIFICATION OF APPROVED SYSTEMS: Where a manufacturer of an approved E & I or accepted system seeks to modify such system or its conditions of approval (including siting or sizing criteria) and retain its approved status, the manufacturer shall submit to the State a request for approval of the proposed modification. If the manufacturer demonstrates that the modified system will perform in a manner equal or superior to the approved system in terms of structural integrity, chemical durability, hydraulic performance and wastewater treatment, the state shall approve the modified system with the same status as the previously approved system. In the case of modifications to accepted systems, the demonstration required by this Item shall be made by clear, convincing, and cogent evidence. Approvals of proposed modifications to E & I systems pursuant to this subsection shall be made by the State. Approvals of proposed modifications to accepted systems pursuant to this Item shall be made by the ~~Commission~~ CHS. In order to confirm the satisfactory performance of an approved modified accepted system, the manufacturer shall conduct a survey or audit of installed modified systems in accordance with Sub-item (5)(e) or Sub-item (5)(g) of this Rule—Rule, as applicable, within one year of the fifth anniversary of the State's approval of the modified system and shall submit the results of the survey to the State. The State may modify, suspend, or revoke its approval of the modified system based on the survey results or any other information that supports a finding that the modified system does not perform in a manner equal or superior to the previously approved system.
- (7) The State may modify, suspend or revoke the approval of a system as provided for in G.S. 130A-343(c).
 - (a) The system approval shall be modified as necessary to comply with subsequent changes in laws or rules which affect their approval.

- (b) The approval of a system may be modified, suspended or revoked upon a finding as follows:
 - (i) subsequent experience with the system results in altered conclusions about system performance, reliability, or design;
 - (ii) the system or component fails to perform in compliance with performance standards established for the system; or
 - (iii) the system or component or the system applicant fails to comply with wastewater system laws, rules or conditions of the approval.
- (c) The State shall notify the CHS of any action required for CHS approval of any modifications to the status of an accepted system. The CHS may require the manufacturer or the State to complete a follow-up survey of a proprietary nitrification trench system or a performance audit of an advanced pretreatment system such as described in this Rule if the CHS determines further information is necessary prior to rendering a final decision on modification of the status of an accepted system.
- (8) Modification, suspension or revocation of a system approval shall not affect systems previously installed pursuant to the approval.
- (9) Reductions in total nitrification trench length allowed for systems, as compared to the system sizing requirements delineated in Rule .1955 of this Section for conventional systems based upon excavated trench width, apply only to drainfields receiving septic tank effluent of domestic strength or better quality. The system may be used for facilities producing non-domestic strength wastewater with nitrification trench length and trench bottom area determined based upon excavated trench width equal to what is required by Rule .1955 of this Section for a conventional gravel trench system, with no reduction or application of an equivalency factor. However, reductions up to 25 percent when allowed for approved innovative or accepted system models may be applied for facilities producing higher strength wastewater following a specifically approved pretreatment system designed to assure effluent strength equal to or better than domestic septic tank effluent, with a ~~BOD—five-day~~ Biochemical Oxygen Demand (BOD) less than 150 ~~mg/L~~, milligrams per liter (mg/L), TSS total suspended solids (TSS) less than 100 mg/l and FOG—fats, oil and grease (FOG) less than 30 mg/l.
- (10) A Performance Warranty shall be provided by the manufacturer of any approved innovative or accepted wastewater system handling untreated septic tank effluent which allows for a reduction in the total nitrification trench length of more than 25% as compared to the total nitrification trench length required for a 36-inch wide conventional wastewater system, pursuant to G.S. 130A-343(j). The Department shall approve the warranty when found in compliance with the applicable laws and these Rules. When a wastewater system warranted according to G.S. 130A-343(j) (warranty system) is proposed to serve a residence, place of business, or place of public assembly, the site shall include a repair or replacement area in accordance with Rule .1945(b) of this Section or an innovative or accepted system approved under this Rule with no more than a 25 percent reduction in excavated trench bottom area.
 - (a) The Manufacturer shall provide the approved Performance Warranty in effect on the date of the Operation Permit issuance to the owner or purchaser of the system. The warranty shall be valid for a minimum of five-years from the date the warranty system is placed into operation.
 - (b) The Manufacturer shall issue the Performance Warranty to the property owner through its authorized installer who shall sign the Performance Warranty indicating the system has been installed in accordance with the manufacturer's specifications, any conditions of the system approval granted by the Department, and all conditions of the Authorization to Construct a Wastewater System by the local health department. The installer or contractor shall return a copy of the signed Performance Warranty to the Manufacturer within 10 days indicating the physical address or location of the facility served by the warranty system, date the system was installed or placed into use, and type and model of system installed.
 - (c) The Performance Warranty shall provide that the manufacturer shall

furnish all materials and labor necessary to repair or replace a malfunctioning warranty system as defined in Rule .1961(a) of this Section or a warranty system that failed to meet any performance conditions of the approval. The system shall be repaired or replaced with a fully functional wastewater system at no cost to the Owner, in accordance with this Section and applicable laws.

- (d) Performance Warranty repairs such as full replacement of the nitrification system, extension of the nitrification system or other repairs shall be completed pursuant to a repair Authorization to Construct that is issued by the local health department in accordance with this Section.
 - (e) The Performance Warranty shall be attached to the Operation Permit issued by the Health Department for the wastewater system. The Performance Warranty shall remain in effect, notwithstanding change in ownership, to the end of the five-year warranty period.
- (11) Manufacturers of proprietary systems approved under this Rule shall provide a list of manufacturer's authorized installers to the Department and applicable local health

departments, and update this list whenever there are additions or deletions. No Operation Permit shall be issued for a proprietary system installed by a person not authorized by the Manufacturer, unless the Manufacturer of the proprietary system specifically approves the installation in writing.

- (12) The local health department shall include in its monthly activity report submitted to the State the number of new system Operation Permits issued for E & I and accepted systems. Additionally, the number of Operation Permits issued for repairs of E & I and accepted systems, and repair system type shall be reported to the State as part of the monthly activity report. The State shall accumulate and store this installation data for future reference and surveys, including site locations.

Authority G.S. 130A-335(e),(f); 130A-343.

15A NCAC 18A .1970 ADVANCED WASTEWATER PRETREATMENT SYSTEM

(a) ADVANCED PRE-TREATMENT SYSTEM PERFORMANCE STANDARDS: Wastewater systems with a design flow of up to 3000 gallons per day approved pursuant to 15A NCAC 18A .1957(c) or .1969 that include an advanced pretreatment component shall be specifically designed to meet one of the effluent quality standards specified in Table VI prior to dispersal of the effluent to the soil and shall comply with the requirements of this Rule.

Table VI

<u>Parameter</u>	<u>NSF-40</u>	<u>TS-1</u>	<u>TS-2</u>
<u>CBOD</u>	<u><25 (mg/l)</u>	<u><15 (mg/l)</u>	<u><10 (mg/l)</u>
<u>TSS</u>	<u><30 (mg/l)</u>	<u><15 (mg/l)</u>	<u><10 (mg/l)</u>
<u>NH4-N</u>		<u><10 (mg/l)</u>	<u><10 (mg/l)</u>
<u>Total Nitrogen</u>			<u><20 or >60% removal</u>
<u>Fecal Coliform</u>		<u><10,000 (colonies/100 ml)</u>	<u><1,000 (colonies/100 ml)</u>

(b) Design influent quality shall not exceed the criteria specified in Table VII, unless the system is designed and approved to handle higher strength wastewater on a case-by-case basis.

Table VII

<u>Parameter</u>	<u>Influent Not to Exceed (mg/l)*</u>
<u>BOD</u>	<u>350</u>
<u>TSS</u>	<u>200</u>
<u>TKN</u>	<u>100</u>
<u>Fats, Grease and Oil (FOG)</u>	<u>30</u>

*Maximum influent characteristics based upon septic tank pretreatment. The Product Approval may include alternate or additional influent limitations, such as for system designed to handle untreated wastewater and special limitations for TS-I and II systems to achieve the proper amount of nitrification.

(c) The site shall be initially evaluated and classified in accordance with 15A NCAC 18A .1900 or as otherwise specified in a system-specific approval issued pursuant to 15A NCAC 18A .1969. Ground absorption systems receiving

effluent from an advanced wastewater pretreatment system may be used on sites classified as suitable or provisionally suitable for conventional, modified, alternative, or E & I or accepted systems in accordance with this Section. Modifications to siting and system design criteria pursuant to Paragraphs (d), (e) and (f) of this Rule shall be acceptable, as applicable.

(d) NSF-40 SYSTEMS: For systems approved to achieve at least NSF-40 standards and designed for no more that 1500

gallons per day, all of the following siting and sizing factors as shown below may be modified, from as specified elsewhere in this Section, when designing the soil absorption system:

- (1) Trench bottom separation distances may be reduced in the following circumstances:
 - (A) A low-pressure pipe system shall not be required where the separation between the bottom of the nitrification trench and any soil wetness condition is at least 12 inches, but less than 18 inches, and more than six inches of this separation consists of Group I soils.
 - (B) For new fill systems, a low pressure pipe system shall not be required in order for the minimum separation distance between the trench bottom and any unsuitable soil horizon, characteristic or material to be reduced to 18 inches.
 - (C) For existing fill systems, the minimum separation requirements of 15A NCAC 18A .1957(b)(2)(D) shall be reduced from 48 to 36 inches for conventional systems

and from 24 to 18 inches for low-pressure pipe systems.

- (2) In soils which are Groups I or II with suitable structure and clay mineralogy, a maximum reduction of 25 percent in total nitrification trench length shall be taken, as compared to the system sizing requirements delineated in 15A NCAC 18A .1955 for conventional trench systems and 15A NCAC 18A .1957(a) for low-pressure pipe systems. No other reductions in linear footage of nitrification trench, square footage of trench bottom area or system area shall be applied, except where based on an adjusted design daily flow rate granted in accordance with 15A NCAC 18A .1949(c). Bed systems shall be reduced in bottom area size by 25 percent as compared to the system sizing requirements delineated in 15A NCAC 18A .1955 and remain restricted to a design flow of 600 gallons per day or less; and
- (3) The minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956(6)(g), as applicable, shall be met, except as follows:

Table VIII

<u>Minimum horizontal setbacks for ground absorption systems Where NSF-40 Pretreatment System are used</u>	
<u>Land Feature or Component</u>	<u>NSF-40</u>
<u>Streams classified as WS-I</u>	<u>70</u>
<u>Waters classified as S.A.</u>	<u>70</u>
<u>Other coastal waters not classified as S.A.</u>	<u>35</u>
<u>Any other stream, canal, marsh or other surface waters</u>	<u>35</u>
<u>Any Class I or Class II reservoir from normal pool elevation</u>	<u>70</u>
<u>Any permanent storm water retention pond from flood pool elevation</u>	<u>35</u>
<u>Any other lake or pond from normal pool or mean high water elevation</u>	<u>35</u>

The Provisions of Subparagraphs (1), (2) and (3) of this Paragraph are also applicable to systems approved as meeting TS-I or TS-II standards pursuant 15A NCAC 18A .1969, unless otherwise restricted elsewhere in this Rule.

(e) TS-I or TS-II SYSTEMS: When trenches are used for the drainfield in conjunction with an advanced pretreatment system meeting TS-I and TS-II standards, one and only one of the following siting, sizing or system factors as shown below may be modified, from as specified elsewhere in these Rules, when designing the ground absorption component of the system. With the exception of LTAR/sizing adjustments, the following modifications shall only apply to systems when the design flow is no greater than 1000 gallons per day. When one of the following modifications is made, the provisions of Paragraph (d) of this Rule do not apply.

- (1) Trench bottom separation distance to an unsuitable condition may be reduced by up to 25 percent to between 12 and 9 inches of naturally occurring soil for gravity dosed drainfields, and by up to 50 percent to between

12 and 6 inches of naturally occurring soil for pressure dosed drainfields (LPP or Drip Dispersal) when the following conditions are also met:

- (A) The site must have at least 12 inches of suitable or provisionally suitable soil beneath the naturally occurring soil surface;
- (B) The trench bottom vertical separation distance shall not be reduced to less than 12 inches to rock or tidal water;
- (C) A TS-II system shall be used when the reduction to any other soil wetness condition is between 25 and 50 percent (between 9 down and 6 inches); and

PROPOSED RULES

- (D) The site shall be evaluated by a Licensed Soil Scientist, if required by G.S. 89F (see Section 12, below); or
- (2) The long term acceptance rate (LTAR) may be increased up to a factor of two when all of the following conditions are met:
 - (A) The site must be evaluated by a licensed Soil Scientist, if required by G.S. 89F when Group III or IV soils or saprolite occur within three feet of the trench bottom or the site requires drainage of Group II or III soils;
 - (B) No further reductions in linear footage of nitrification trench or system area shall be applied when a PPBPS or innovative trenches or systems are used for the absorption field;
- (C) For systems to be installed in fill, a pressure dosed drainfield (LPP or DRIP distribution) shall be utilized;
- (D) For systems with a design flow in excess of 1000 gallons per day, a 25-foot horizontal separation shall be maintained to the property line, unless a site-specific nitrogen migration analysis indicates that a nitrate concentration at the property line will not exceed 10 mg/l, or TS-II effluent is produced by the approved system; or
- (3) The minimum horizontal setback requirements of 15A NCAC 18A .1950, .1951 and .1956(6)(g), as applicable, shall be met, except as follows:

Table IX

<u>Minimum horizontal setbacks for ground absorption systems</u> <u>When TS-I and TS-II systems are used</u>		
<u>Land Feature or Component</u>	<u>TS-I</u>	<u>TS-II</u>
<u>Any public water supply</u>	<u>100</u>	<u>100</u>
<u>Streams classified as WS-I, except for saprolite</u>	<u>70</u>	<u>50</u>
<u>Waters classified as S-A, from mean high water mark</u>	<u>70</u>	<u>50</u>
<u>Other coastal waters, from mean high water mark</u>	<u>35</u>	<u>25</u>
<u>Any other stream, canal, marsh or other surface waters, from mean high water elevation</u>	<u>35</u>	<u>25</u>
<u>Any Class I or Class II reservoir, from normal pool elevation</u>	<u>70</u>	<u>50</u>
<u>Any permanent storm water retention pond, from flood pool elevation</u>	<u>35</u>	<u>25</u>
<u>Any other lake or pond, from normal pool or mean high water elevation</u>	<u>35</u>	<u>25</u>
<u>Any building foundation</u>	<u>5</u>	<u>5</u>
<u>Any basement</u>	<u>15</u>	<u>15</u>
<u>Any property line</u>	<u>10</u>	<u>10</u>
<u>Top of slope of embankments or cuts of 2 feet or more vertical height</u>	<u>15</u>	<u>15</u>
<u>Any water line</u>	<u>10</u>	<u>10</u>
<u>Upslope interceptor/foundation drains/diversions</u>	<u>7</u>	<u>7</u>
<u>Sideslope interceptor/foundation drains/diversions</u>	<u>10</u>	<u>10</u>
<u>Downslope interceptor/foundation drains/diversions</u>	<u>20</u>	<u>15</u>
<u>Groundwater lowering ditch</u>	<u>20</u>	<u>15</u>
<u>Any swimming pool</u>	<u>15</u>	<u>15</u>
<u>Any other nitrification field (except the system repair area)</u>	<u>10</u>	<u>10</u>

- or
- (4) Artificial drainage systems may be used, provided the site is evaluated by a licensed soil scientist if required by G.S. 89F and the drainage system is designed by a person with knowledge of drainage systems pursuant to 15A NCAC 18A .1938(c); when
 - (A) The soil has Group III texture and a groundwater lowering system is utilized to meet the soil wetness requirement, provided all other site factors are Suitable or Provisionally Suitable; or
 - (B) A groundwater lowering system is proposed to meet the requirements for a fill system, provided all other site factors are met pursuant to 15A NCAC 18A .1957(b); or
- (5) A saprolite system may be used in the following conditions:

- (A) The saprolite may have sandy clay loam texture;
- (B) Trenches may be installed up to five feet deep;
- (C) The maximum LTAR for gravity trenches shall be 0.2 gallons per day per square foot and 0.10 gallons per day per square foot for LPP systems; and
- (D) The site shall be evaluated by a licensed Soil Scientist or professional Geologist if required by G.S. 89E and 89F.

(f) BED GROUND ABSORPTION SYSTEMS may be used in conjunction with a TS-I or TS-II system as specified in the system approval on sites with a design flow not to exceed 3000 gallons per day under the following circumstances:

- (1) For a system on an existing fill site which meets the requirements of 15A NCAC 18A .1957(b)(2)(A), (B) and (C), but only when the design flow shall not exceed 480 gallons per day;
- (2) For systems with a design flow not exceeding 1000 gallons per day, when the following site conditions are met:
 - (A) The site is classified as Suitable or Provisionally Suitable and where the soil is classified based on texture as Soil Group I or II, and the site has Soil Group I or II texture to a depth of at least 24 inches beneath the gravel bed bottom; or
 - (B) The site has Soil Group I (sand or loamy sand) in the first 36 inches of naturally occurring soil, and no soil wetness condition exists within the first 12 inches below the naturally occurring soil surface.
 - (C) This requirement for 36 inches of Soil Group I in Part (B) of this Subparagraph may be reduced to 18 inches when hydraulic analysis by a licensed soil scientist if required by G.S. 89F demonstrates that effluent will not come to the ground surface and the required separation to soil wetness from the bed bottom can be maintained;
 - (D) The site shall have a uniform slope not exceeding two percent, unless hydraulic analysis by a licensed soil scientist if required by G.S. 89F demonstrates that effluent will not come to the ground surface and the required separation to soil wetness can be maintained. In no case shall slope exceed 10 percent; and

- (E) Fill material, if needed to construct this system, shall be sand or loamy sand, containing not more than 10-percent debris;
- (3) For systems with a design flow exceeding 1000 gallons per day and up to 1500 gallons per day (not applicable to existing fill sites), when the following site and system conditions are met:
 - (A) The site is limited to Group I soils for at least 54-inches below the naturally occurring soil surface, no soil wetness condition exists within the first 24 inches below the naturally occurring soil surface, and a vertical separation of 24 inches to any soil wetness condition shall be maintained, unless a site specific groundwater mounding analysis is performed and demonstrates a 12-inch separation (18-inch minimum for a fill system) shall be maintained;
 - (B) Two or more equally sized bed systems shall be utilized, with effluent distributed equally between each bed. When two beds are used, the minimum separation between beds shall be 20 feet, and when three or more beds are used, the minimum separation between beds shall be 10 feet; and
 - (C) A 25-foot horizontal separation shall be maintained to the property line, unless a site-specific nitrogen migration analysis indicates that the nitrate concentration at the property line will not exceed 10 mg/l, or TS-II effluent is produced by the approved system.
- (4) For systems with a design flow exceeding 1500 gallons per day and up to 3000 gallons per day, when the following site and system conditions are met, in addition to conditions in Parts (A) and (B) of Subparagraph (3) of this Paragraph:
 - (A) The site shall be evaluated by a licensed soil scientist if required by G.S. 89F;
 - (B) A pressure distribution system shall be utilized to distribute flow uniformly throughout the bed area, and a timer controller is used to distribute flow evenly over a 24-hour period; and
 - (C) The system is designed and approved to achieve TS-II performance standards; and

- (5) Horizontal separation distances specified in 15A NCAC 18A .1950(a) or .1951, as applicable, shall not be reduced.
- (6) All applicable vertical separation requirements shall be met except that the gravel bed bottom may have a minimum separation distance of only 12 inches from any soil wetness condition for systems installed on sites which meet Subparagraph (2) of this Paragraph, 18 inches for systems installed on sites which meet Subparagraph (1) of this Paragraph, and 24 inches for systems installed which meet requirements of Subparagraphs (3) or (4) of this Paragraph (unless groundwater mounding analysis substantiates a lesser separation). The vertical separation requirement may be met by adding additional Group I soil, but shall not be met with the use of a groundwater lowering system. The system shall be considered to be a fill system only if the gravel bed bottom is installed less than six inches below the naturally occurring soil surface. For fill systems, the requirements in 15A NCAC 18A .1957(b) for the side slope of the fill shall be met, as determined beginning at a point six-inches above the top edge of the gravel bed.
- (7) The minimum number of square feet of bottom area shall be determined by dividing the design daily sewage flow by the LTAR. When the bed is installed in fill material, the LTAR shall not exceed 1.0 gallons per day per square foot. The minimum bed size may be reduced by multiplying by a reduction factor as follows:
- (A) The minimum bed size may be reduced by multiplying by a factor of 0.75, unless the bed is installed in existing fill, in which case the bed area shall remain equal to the design flow divided by the LTAR and no reduction multiplier shall be used; or
- (B) For sites and systems which meet Part (B) of Subparagraph (2), or Subparagraphs (3) or (4) of this Paragraph, the minimum bed size may be reduced by multiplying a factor of 0.60, a pressure distribution system is utilized to distribute flow uniformly throughout the bed area; a timer controller is used to distribute flow evenly over a 24-hour period; and the system is designed and approved to meet TS-II performance standards. Furthermore, the repair area exemption in 15A NCAC 18A .1945(c) does not apply.

(g) DESIGN:

- (1) Special system design requirements shall be as prescribed in the product approval.
- (2) Provisions shall be made to allow for the influent to and effluent from the system to be sampled while the system is operational, and
- (3) The system design shall include a means to measure and record daily wastewater flows. The recording device shall provide a means for determining at least the last 30 days of wastewater flow to the system

(h) INSTALLATION: Pre-treatment systems shall be installed according to the manufacturer's installation specifications and system-specific installation conditions proscribed in the product approval by a manufacturer-authorized installer. Installation and construction specifications for the ground absorption system shall be in accordance with this Section and site-specific conditions as specified in the Authorization to Construct.

(i) OPERATION AND MAINTENANCE: Maintenance, as specified in the product approval, shall be performed by the certified operator pursuant to 15A NCAC 18A .1961 and as specified in the product approval.

- (1) For systems installed after July 1, 2006, the manufacturer of a proprietary advanced pretreatment system shall provide for the ongoing operation and maintenance of its systems. The manufacturer shall make available to the owner an operation and maintenance contract that meets the management entity requirements for the system pursuant to 15A NCAC 18A .1961. The contract shall be renewable and the contract term shall be for a minimum of one year.
- (2) For systems installed prior to July 1, 2006, the manufacturer shall provide an optional renewable yearly operation and maintenance contract with the owner that fulfills the management entity requirements for the system pursuant to 15A NCAC 18A .1961.
- (3) Prior to the issuance or re-issuance of an Operation Permit for a proprietary advanced pretreatment system after July 1, 2006, the owner shall provide to the health department documentation that a contract for operation and maintenance of the system is in place with either the manufacturer, manufacturer's representative, or with a certified operator authorized in writing by the manufacturer or manufacturer's representative to operate the system.
- (4) The manufacturer shall notify the local health department and the State when the owner chooses to not renew an operation and maintenance contract executed pursuant to Subparagraphs (1) or (2) of this Paragraph.

(j) SYSTEM PERFORMANCE: The performance of each system shall be monitored by the certified wastewater treatment facility operator (ORC). A performance report shall be

submitted annually to the local health department by the ORC. Type of monitoring and monitoring frequency shall vary by type of approval, the designated performance standard, system design flow, and history of system performance as follows:

- (1) Each system shall be visually inspected at least annually using a procedure recommended by the manufacturer and approved by the state as part of the product approval.
- (2) The 7-day and 30-day influent wastewater flow from the facility to the system prior to a monitoring visit shall be measured by the ORC using the recording device delineated in Subparagraph (g)(2) of this Rule, or by an alternate approved means. For systems in resort communities, this visit shall be scheduled during the seasonal high use period and shall be coincident with any required water quality sampling. For existing systems where it is not feasible to directly obtain the past 7-day and 30-day influent wastewater flow data, wastewater usage during the 7 to 30 day period prior to the monitoring visit shall be estimated by using either elapsed time clock readings when an effluent pump is present, water meter readings, or as otherwise specified in the product or site-specific system approval.
- (3) Effluent from an approved Controlled Demonstration, RWTS and Innovative System shall be sampled prior to disposal in the absorption field as follows:
 - (A) A Controlled Demonstration system shall be sampled quarterly for all applicable performance parameters until the system receives Innovative approval, unless the product specific approval includes an alternate monitoring schedule proposed by the manufacturer and approved by the State;
 - (B) Sites with an approved RWTS or Innovative system shall be grab or composite sampled annually for all applicable performance parameters (semi-annually when the design flow is 1500 to 3000 gallons per day). After two years of data have been collected from at least 50 separate sites, the State may allow the number of parameters sampled to be reduced by 50 percent based upon compliant system performance. Consideration shall also be given to further reducing sample frequency by the local health department or the State at individual sites with a proven history of compliant performance. An alternative monitoring schedule may

be proposed by the manufacturer and approved by the State; or

- (C) Sites with a design flow up to 1500 gallons per day, which are being managed under an on-going maintenance and operation contract between the owner and the system manufacturer or ORC authorized by the manufacturer, can alternatively be sampled randomly if the manufacturer chooses to comply with the performance audit requirements as stipulated in 15A NCAC 18A .1969(5)(g), when there are at least 10 operational systems covered under such contracts. The manufacturer may also choose to include other existing sites in the performance audit required prior to obtaining accepted system status. Notwithstanding this provision for random sampling, sampling at any other site not being sampled during the audit may be determined to be necessary during the visual inspection of the system pursuant to Subparagraph (1) of this Paragraph.

An influent sample to the pre-treatment system (e.g., septic tank effluent) shall be taken concurrently whenever the system effluent is sampled and analyzed for at least BOD and TKN. Effluent shall be re-sampled within 15 days when laboratory results indicate non-compliance with Part (k)(1)(C) of this Rule and analyzed at least for the non-compliant parameter(s), unless an alternate re-sampling schedule is required for a site included in a performance audit. When re-sampling, an influent sample shall be collected concurrently and analyzed for the corresponding parameter.

- (4) An Accepted System with a design flow up to 1500 gallons per day shall comply with Subparagraphs (j)(1) and (j)(2) of this Rule and 15A NCAC 18A .1969(5)(g)(iii). Routine sampling of individual sites shall no longer be carried out, unless determined to be necessary during the visual inspection of the system pursuant to Subparagraph (j)(1) of this Rule or if required as part of an enforcement action by the local health department or the State. An alternative monitoring schedule may be proposed by the manufacturer or the State and approved by the Commission when the system is granted accepted Status.
- (5) All samples shall be collected, preserved, transported and analyzed in compliance with 40 CFR 136. The manufacturer shall demonstrate that the system can be sampled in

compliance with 40 CFR 136 and that the method for system sampling accurately monitors system performance. Samples shall be analyzed by a state certified laboratory. Samples shall be analyzed for the applicable parameters. The sample collector shall maintain a complete chain of custody from sample collection to analysis for each sample collected. The results of all analyses for each sample shall be reported by the certified wastewater laboratory directly to the ORC and simultaneously to the health department and the state. Repeat sampling at any site shall be performed as required in the system approval, approved performance audit, this Rule, or as otherwise directed by the health department or state as part of an enforcement action. The owner or manufacturer or manufacturer's representative may also re-sample a system to verify or refute sample results, as long as the results of all samples collected are similarly reported.

(k) SITE AND SYSTEM COMPLIANCE: Compliance with the performance standards shall be determined as follows:

- (1) An individual advanced pretreatment system at a single site shall be considered to be in compliance when:
 - (A) The annual visual inspection indicates compliant conditions as specified in the approved visual inspection procedure; and
 - (B) The 7-day inflow does not exceed 1.3 times the design daily flow and the 30-day inflow does not exceed the design daily flow; and
 - (C) Influent wastewater to the system does not exceed the requirements in Table VII, at sites where influent sampling is required; and
 - (D) When annual effluent sampling is required, sample value is no more than two times (2.5 for fecal coliform) the designated standard for one or more parameters in Table V, even after re-sampling; or
 - (E) If four or more effluent samples are collected on different operating days over a one year period, the arithmetic mean (geometric mean for fecal coliform) of the data does not exceed the designated standard for one or more parameters in Table V, even when excluding from the mean a statistical outlier or an instance of non-compliance that has been remedied by corrective maintenance.
- (2) An approved system shall be considered in compliance when:

- (A) The arithmetic mean (geometric mean for fecal coliform) of all data collected from all sites during a given one-year period, or from a representative sampling of sites in the state (excluding statistical outliers) does not exceed the designated standard.
- (B) No more than 20 percent of the sites from which the data were collected in Part (2)(A) of Paragraph (k) of this Rule shall exceed the designated standard for one or more parameters (an individual non-compliant site shall be reclassified "compliant" if found to meet the designated standard upon re-sampling within 30 days).
- (C) No more than 10 percent of samples collected from all sites during a given one-year period or from a representative sampling of sites in the state shall exceed two times the designated standard for one or more parameters (with the exception of fecal coliform, for which a 2.5 multiplication factor shall be used).

When determining compliance with system performance standards set forth in Parts (A), (B) and (C) of this Subparagraph, data shall be excluded from individual advanced pretreatment systems at single sites found to be out of compliance pursuant to Parts (1)(B) and (1)(C) of this Paragraph and from individual sites that have otherwise been documented to have been subjected to significant abuse.

- (3) When a site or system is found to be out of compliance the following actions shall occur:
 - (A) The Operator (ORC) shall inform the owner and the local health department of an individual system at a single site found to be out of compliance, including wastewater flow is greater than the system design flow rate; influent wastewater quality exceeds the standards set forth in Table VI; or maintenance/repairs are found to be needed as identified during system inspection. This notice shall identify non-compliant condition(s), explain potential impacts, and suggest methods to bring the system or use back into compliance.
 - (B) The local health department shall issue a notice of violation to the owner of an individual system at a single site found to be out of compliance when, the system is found

to be malfunctioning as determined during the visual inspection specified in Part (1)(A) of Paragraph (j) of this Rule; wastewater flow exceeds wastewater flow standards in Part (1)(B) of this Paragraph or; the effluent sample results are out of compliance as specified in Parts (1)(D) or (1)(E) of this Paragraph, even upon re-sampling. The notice shall identify the violations and steps necessary to remedy the problems, including modification of the system, establish time frame to achieve compliance, and other follow-up requirements and set forth further enforcement possibilities if compliance is not achieved.

(C) The state shall issue a notice of violation to the manufacturer of a system found to be out of compliance as specified in Subparagraph (2) of this Paragraph. The notice shall identify the violations and steps necessary to remedy the problems, including modification of the system, establish time frame to achieve compliance, and other follow-up requirements and set forth further enforcement possibilities if compliance is not achieved, which may include action on the system's approval status pursuant to applicable Laws and Rules.

(D) The local health department shall issue the manufacturer or manufacturer's representative an intent to suspend issuance of construction authorizations for new systems of a particular manufacturer that has installed and has in operation at least 10 systems in the county if more the 10 percent of the manufacturer's systems installed in the county are found to be malfunctioning during the visual inspection specified in Subparagraph (j)(1) of this Rule, or in violation of effluent performance standards as specified in Parts (1)(D) or (1)(E) of this Paragraph in any single year, excluding single sites found to be out of compliance pursuant to Parts (1)(B) or (1)(C) of this Paragraph and individual sites that have otherwise been documented to have been subjected to significant abuse; and

(E) The local health department shall issue the manufacturer or manufacturer's representative an intent to suspend issuance of construction authorizations for new systems of a particular manufacturer that has installed and has in operation at least 10 systems in the county if more than five percent of the manufacturer's systems installed in the county that are being managed under an ongoing maintenance and operation contract between the owner and the system manufacturer or ORC authorized by the manufacturer have required operation and maintenance activities under the control of the manufacturer that have not been completed for the last reported year.

(F) All individual system compliance data and all operations and maintenance records shall be submitted to the local health department. The local health department shall convey information on individual system compliance to the State on at least an annual basis. Action by a local health department on approval of a system in a county does not preclude action by the State on the system's approval status, pursuant to applicable Laws and Rules.

(G) Notwithstanding the activities delineated for dealing with non-compliance elsewhere in Subparagraph (3) of this Paragraph, nothing shall preclude the local health department or State from using any available remedy when an imminent health hazard is determined to exist, in accordance with applicable Laws and Rules.

(I) RESPONSIBILITIES AND PERMITTING PROCEDURES: Special responsibilities and permitting procedures for pre-treatment systems shall be as proscribed in the system approval and applicable Rules of this Section.

(1) Prior to the issuance of the Improvement Permit at a site where the drainfield is to be preceded by an advanced pre-treatment system, an evaluation shall be performed by a licensed soil scientist if required by G.S. 89F or by a professional geologist if required by G.S. 89E when the following conditions are applicable:

(A) the initial vertical separation siting criteria or vertical separation distances for trench bottoms are

- proposed to be reduced in accordance with Subparagraph (e)(1) of this Rule.
- (B) drainage is proposed for Group III soils or a groundwater lowering system is proposed to be used in conjunction with a fill system in accordance with Subparagraph (e)(4) of this Rule.
- (C) sandy clay loam texture saprolite is proposed to be used in accordance with Subparagraph (e)(5) of this Rule.
- (D) the LTAR is proposed to be increased on sites with Group III or IV soils within three feet of the proposed trench bottom or on sites where drainage of Group II or III soils is proposed, in accordance with Part (e)(2)(A) of this Rule, or
- (E) for bed systems with flows exceeding 1000 gallons per day when a groundwater mounding analysis or nitrogen migration analysis is needed or whenever the flow exceeds 1500 gallons per day, in accordance with Subparagraphs (f)(3) or (f)(4) of this Rule, as applicable, or if required for other bed systems in accordance with Part (f)(2)(A) of this Rule.

(2) Where required pursuant to this Rule and G.S. 89F or 89E, the licensed Soil Scientist or professional Geologist, where applicable, shall conduct a detailed assessment of the site conditions and provide to the local health department a written, sealed report that includes:

- (A) detailed descriptions of landscape position and soil morphological conditions to a depth of at least three feet below the proposed trench bottom in the initial system area and repair area;
- (B) field estimates of the depth and thickness of each of the soil horizons;
- (C) recommended depth for placement of the trench bottoms and the recommended LTAR;
- (D) hydraulic assessment, based on site-specific information, substantiating the projected effectiveness of system performance. This shall include documentation that indicates the treated effluent at the proposed LTAR will not discharge to the surface of the ground after the system is installed and operated within design parameters; that all required vertical separation distances shall be

- maintained; and justification for any proposed drainage systems; and
- (E) other site-specific requirements for system design, installation, site preparation, modifications, final landscaping and vegetative cover required by the evaluator.

Authority G.S. 130A-334; 130A-335; 130A-336; 130A-337; 130A-340; 130A-342; 130A-343.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 4 - COMMISSION FOR AUCTIONEERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Auctioneer Licensing Board intends to adopt the rules cited as 21 NCAC 04B .0606, .0607 and amend the rules cited as 21 NCAC 04B .0103, .0201-.0202, .0301, .0401, .0502, .0602, .0604-.0605, .0806, .0819.

Proposed Effective Date: *May 1, 2006*

Public Hearing:

Date: *January 21, 2006*

Time: *2:00 p.m.*

Location: *Embassy Suites Hotel, Greensboro, NC*

Reason for Proposed Action: *The Auctioneer Licensing Board proposes this action will address both the Legislation enacted in the last General Assembly session and needed technical changes.*

Procedure by which a person can object to the agency on a proposed rule: *Interested persons may present oral or written comments at the Rule-Making Hearing. In addition, the record will be open for receipt of written comments from January 3, 2006 to March 6, 2006. Written comments not presented at the hearing should be directed to Robert Hamilton. The proposed rules are available for public inspection and copies may be obtained at the Board's office at: 602 Stellata Drive, Fuquay Varina, NC 27526.*

Comments may be submitted to: *Robert Hamilton, 602 Stellata Drive, Fuquay Varina, NC 27526, phone (919)567-2844, fax (919)567-2865.*

Comment period ends: *March 6, 2006*

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

SUBCHAPTER 4B - AUCTIONEER LICENSING BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

21 NCAC 04B .0103 DEFINITIONS

Whenever used in this Chapter:

- (1) "Auctioneers Law" or "licensing law" shall refer to G.S. 85B;
- (2) ~~"Auctioneering" or "conduct of auction" or "conduct of business" shall mean, in addition to the actual calling of bids, any of the following:~~
 - ~~(a) contracting for an auction or auctions,~~
 - ~~(b) accepting consignments of items for sale at auction,~~
 - ~~(c) advertising an auction,~~
 - ~~(d) offering items for sale at auction,~~
 - ~~(e) accepting payment and disbursing monies for items sold at auction, or~~
 - ~~(f) otherwise soliciting, arranging, sponsoring, or managing an auction or auctions or holding oneself out as an auctioneer;~~
- (2) "Buyer's Premium" shall mean any additional charge owed by a buyer to the auctioneer, auction firm, or directly to the seller above and beyond the highest accepted bid amount;
- (3) "Board" shall mean the North Carolina Auctioneers Commission;
- (4) "Minimum Bid" as used in auctions shall mean minimum opening bids;
- (5) "Principal(s)" as it pertains to auction firms shall mean director(s), officer(s) and ~~partner(s)-partner(s);~~
- (6) "Non-Auction Firm Business" shall mean a sole licensed auctioneer whose business is not defined as an "Auction Firm" as set forth in G.S. 85B-1(6);
- (7) "Auction house", "auction barn", or "auction gallery" shall mean an auction business that conducts auctions at a single location and where consignments are brought to the location by either the auctioneer/auction firm or the public to be sold at auction.

Authority G.S. 85B-1; 85B-3.1; 85B-4.

SECTION .0200 - APPLICATION FOR LICENSE

21 NCAC 04B .0201 APPLICATION FORMS

(a) Auctioneer. Each applicant for an auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one recent passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official in other states) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (4) a copy of the applicant's high school diploma or proof of equivalency;
- (5) the proper fees, as required by 21 NCAC 4B .0202;
- (6) documentation of required auctioneer schooling or auctioneer experience, as follows:
 - (A) Applicants who base their application upon their successful completion of an approved school of auctioneering shall submit a photostatic copy of their diploma or certificate of successful completion. An applicant shall have successfully completed this school within the five years preceding the date of application or if the applicant has successfully completed this school more than the five years preceding the date of their application, shall submit documentation verifying the applicant's active lawful participation in auctions within the two years preceding the date of application. The above referenced participation in auctions is defined as "Auctioneering" as set forth in ~~21 NCAC 4B .0103(2)-G.S. 85B-1(8).~~
 - (B) Applicants who base their application upon their successful completion of an apprenticeship shall submit a log which was maintained and completed during the apprenticeship period which details the exact hours and dates on which they obtained apprenticeship experience, with each

entry being verified and signed by their supervising auctioneer. A minimum of 100 hours of experience during the apprenticeship two-year period shall be obtained. Not less than 25 of the total hours accumulated must be attributable to bid calling and not less than 50 hours shall be attributable to working as a ring person, drafting and negotiating contracts, appraising merchandise, advertising, clerking and cashiering, with not less than five hours of accumulated experience documented for each category. An apprentice who applies for an auctioneer license under this Part shall submit his application and supporting documentation and obtain a passing score on the auctioneer exam prior to the expiration of his apprentice auctioneer license; and

- (7) Non-resident applicants shall also submit a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(b) Non-Resident Reciprocal Auctioneer. Each non-resident applicant for auctioneer license, who applies for a North Carolina license pursuant to G.S. 85B-5 shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one recent passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (4) a copy of the applicant's high school diploma or proof of equivalency;
- (5) the proper fees, as required by 21 NCAC 4B .0202;
- (6) a statement of good standing from the licensing board or Commission of each and every jurisdiction where the applicant holds an auctioneer, apprentice auctioneer or auction firm license; and
- (7) a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(c) Apprentice Auctioneer. Each applicant for an apprentice auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one recent passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (4) a copy of the applicant's high school diploma or proof of equivalency;
- (5) the proper fees, as required by 21 NCAC 4B .0202;
- (6) the signature, as designated on the applicant form, of the licensed auctioneer who will be supervising the apprentice auctioneer;
- (7) a written statement of the proposed supervisor's background and experience in the auction profession to include the number and types of auctions conducted or participated in annually; and
- (8) if applicant is a non-resident, a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(d) Auction Firms. An applicant for an auction firm shall be a principal within the firm. Each applicant for an auction firm license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where any principal and designated person of the auction firm has resided and maintained a business within the immediate preceding 60 months (five years);
- (2) each of the principal's and designated person's of the auction firm completed fingerprint cards provided by the Board and the form signed by each consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (3) a copy of each principal's and designated person's high school diploma or proof of equivalency;
- (4) the proper fees, as required by 21 NCAC 4B .0202;
- (5) a certified copy of any applicable ~~Articles of Incorporation, Partnership Agreement, and~~

- | | |
|--|--|
| <p>(6) Assumed Name Certificate; Articles of Incorporation or Partnership Agreement;
a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant firm and any principal and designated person of such firm holds an auctioneer license of any type; and</p> <p>(7) if applicant firm is a non-resident, a properly completed "Designation of Agent for Service</p> | <p>of Process Form" (one each for the auction firm and for each principal and designated person of the firm) with notarized signature and notarial seal affixed and, if a corporation, the corporate seal and corporate secretary's signature affixed.</p> <p><i>Authority G.S. 85B-1; 85B-3.1; 85B-4(d); 85B-5.</i></p> |
|--|--|

21 NCAC 04B .0202 FILING AND FEES

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

(b) License fees are as follows:

- | | |
|--|---|
| <p>(1) New auctioneer license for an applicant who did not serve an apprenticeship
This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.</p> <p>(2) New auctioneer license for an apprentice auctioneer
This includes a \$150.00 annual license fee; and \$50.00 examination fee.</p> <p>(3) Renewal of auctioneer license</p> <p>(4) New apprentice auctioneer license
This includes a \$100.00 license fee and a \$50.00 application fee.</p> <p>(5) Renewal of apprentice auctioneer license</p> <p>(6) New auction firm license (no examination)
This includes a \$150.00 annual license fee; and \$50.00 application fee.</p> <p>(7) New auction firm license (examination)
This includes a \$150.00 annual license fee; \$50.00 application fee; and \$50.00 examination fee.</p> <p>(8) Renewal of an auction firm license</p> <p>(9) Application and processing fee for conversion of non-resident reciprocal license to in state license</p> <p>(10) Reinstatement of lapsed license or late fee</p> <p>(11) Resident fingerprint card background check fee
Applicants who have been continuous residents of North Carolina for the five years preceding the date of application shall only be required to have a State background check.</p> <p>(12) Non-resident fingerprint card background check fee
Applicants who have not been continuous residents of North Carolina for the five years preceding the date of application shall be required to have both a State and Federal background check.</p> | <p>\$250.00</p> <p>\$200.00</p> <p>\$150.00</p> <p>\$150.00</p> <p>\$100.00</p> <p>\$200.00</p> <p>\$250.00</p> <p>\$150.00</p> <p>\$ 50.00</p> <p>\$ 50.00</p> <p>\$ 14.00</p> <p>\$ 38.00</p> |
|--|---|

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

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

Authority G.S. 85B-3.2; 85B-4.1; 85B-6.

SECTION .0300 - EXAMINATIONS

21 NCAC 04B .0301 SUBJECT MATTER

(a) The auctioneer license examination shall test the applicant's knowledge of the following required subjects:

- (1) a practical and working knowledge of the auction business including fundamentals of auctioneering, contract ~~drawing, drafting,~~ bid calling, basic mathematical computations and percentages, advertising, ~~and~~ settlement statements; statements, and laws, regulations, and rules that relate to the auctioneering profession;
- (2) the provisions of the licensing law; and
- (3) the Rules of the Board.

(b) The auction firm license examinations shall test the applicants knowledge of the following;

- (1) the provisions of the licensing law; and
- (2) the Rules of the Board.

Authority G.S. 85B-4(d)(g).

SECTION .0400 – LICENSING

21 NCAC 04B .0401 LICENSE NUMBER: DISPLAY OF LICENSE AND POCKET CARD

(a) When being licensed each individual or firm shall be issued a license number which remains solely his. Should that number be retired for any reason (such as death, failure to continue in the auction business, failure to renew his license, or any other reason) that number will not be reissued back to the individual or the firm or to any other individual or firm.

(b) A pocket card will be issued by the Executive Director giving the auctioneer, apprentice auctioneer or auction firm's name, license number and date of expiration. The pocket card must be carried by the licensee, and in the case of auction firms each of the designated person(s), at all times when auctioneering activities are being conducted and shall be available for inspection by the Executive Director or designated agent of the Board. An auction firm shall display its license in a prominent place upon its premises, so as to be visible for inspection by patrons of the firm.

Authority G.S. 85B-3.1; 85B-4.

SECTION .0500 - SCHOOLS OF AUCTIONEERING

21 NCAC 04B .0502 REQUIREMENTS FOR APPROVAL/MINIMUM STANDARDS

(a) In order to be accepted as an approved school, and in order to remain approved, the course curriculum must contain classroom instruction in the following subjects for the minimum number of hours shown:

- (1) Essential Core Curriculum (minimum 50 hours);
 - 16 Hours - Bid Calling, Voice Control, Proper Breathing Techniques, and Use and Sequence of Numbers;
 - 4 Hours - Advertising;
 - 8 Hours - Auctioneers Law and Rules and Regulations;
 - 2 Hours - Uniform Commercial Code and Bulk Transfers;
 - 2 Hours - Drafting and Negotiating Contracts;
 - 2 Hours - Closing Statements and Settlements;
 - 8 Hours - Accounting and Mathematics;
 - 1 Hour - Auctioneering Ethics;
 - 2 Hours - Handling Sale Proceeds and Escrow Accounts;
 - 2 Hours - Auction Preparation and Setup;
 - 3 Hours - Review and Testing (End of Course).
- (2) Supplemental Instruction Areas (min. 30 hours):

<ul style="list-style-type: none"> Antiques Real Estate Tobacco Technology Environmental Issues Computers Firearms Foreclosure & Bankruptcy Sales Art, Rugs, Jewelry Body Language Farm Machinery 	<ul style="list-style-type: none"> Heavy Equipment Automobiles Cattle and Livestock Public Speaking Estate Sales Appraising Sales Tax Requirements Hygiene & Personal Appearance Ring Work Consignment Auctions
--	---

Minimum hours are not required in individual supplemental subjects, however, all topics must be addressed in the school.
- (3) Courses that include students that will become North Carolina applicants must provide a minimum of 2 hours of instruction on the North Carolina Auctioneers Law and Rules, G.S. 85B and 21 NCAC 4B. This instruction shall be included within the minimum required 8 hours instruction of Auctioneers Law and Rules and Regulations.

(b) Students attending an approved course must attend and successfully complete a minimum of 80 hours of classroom instruction according to the list of subjects and minimum hours of instruction in each subject specified in Paragraph (a) of this Rule. An hour of creditable instruction is defined as 50 minutes of classroom instruction or practical exercise accompanied by a 10 minute break.

(c) Each course offered must include instruction by a minimum of five different instructors, at least two of whom must be professional auctioneers. Regardless of the total number of hours taught by any given instructor, no more than 20 hours of an individual's instruction may be counted to satisfy the requirements of Paragraph (a) of this Rule.

(d) The school shall establish standards for all persons who instruct in an approved school with minimum training or experience, or a combination thereof, in the particular field in which they are instructing.

(e) The school shall provide or make available suitable facilities, equipment, materials and supplies necessary for the course, specifically including:

- (1) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all students; and
- (2) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training.

Authority G.S. 85B-3.1; 85B-4(d).

SECTION .0600 - GENERAL AUCTIONEERING

21 NCAC 04B .0602 ADVERTISING

(a) In all advertisements relating to an auction, the auctioneer's, apprentice auctioneer's or auction firm's name and license number shall be clearly given. If an auctioneer is working for or in conjunction with an auction firm, such relationships shall be disclosed and both license numbers shall be clearly given. A general advertisement which does not concern a specific sale(s) and which does not list sale dates, times or locations, generally referred to as trolling or holding advertisements, shall not be subject to any identification requirement. A licensee may advertise under a name, assumed name, trade name, or combination of names, only if written notice has been previously filed with the Board. ~~The licensee shall also notify the Board of all certificates filed with any county register of deeds in compliance with G.S. 66-68.~~

(b) Any licensee who advertises an "Estate Sale" shall specifically disclose, in all advertisement materials, whether it is the estate of a living or deceased person. Before conducting an auction as an "estate sale", the majority of items in the sale shall come from the estate of the living or deceased person(s). Other items not related to or in an estate may be sold with an estate if specifically disclosed at or before the time of the auction.

(c) It shall be a violation of these Rules to advertise a "Bankruptcy Sale" unless the item(s) offered for sale, whether real or personal, are from an active bankruptcy action. Before conducting an auction as a "bankruptcy sale", the majority of the items in the sale shall come from the bankruptcy of one or more parties. Other items not related to or from a bankruptcy action may be sold with items from a bankruptcy action if specifically disclosed at or before the time of the auction.

(d) It shall be a violation of these Rules to advertise an item, either real or personal, as "Absolute" or "Without Reserve" if the item is subject to confirmation, minimum bid, or any other condition of sale. Before advertising an auction as absolute or without reserve, the majority of items in the sale shall be offered for sale absolute or without reserve. Items that are not absolute may be included in the auction provided they are specifically designated as such in all announcements or advertisements.

(e) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Urgent", "Emergency",

"Distress" or any other word which connotes liquidation of assets or that the buyers will, for some extraordinary reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the reason that the sale is "urgent", the nature of the "emergency" or the cause of the "distress", etc.

(f) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Seized", "Confiscated", "Forfeited" or any other word which connotes a governmental action whereby items are seized or taken by a government department, agency or commission and released or sold or that the buyers will, for some governmental reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the exact nature of the government action.

(g) It shall be a violation of these Rules to advertise any items as being from an "estate" or a "bankruptcy", or from an "urgent", "emergency", "distress", "seized", "confiscated", "forfeited" or similar sale, unless the consignor of the item(s) to be sold is the original owner of the item(s), the designated representative of the owner, or a federal, state or local department, agency or commission charged with disposing of the item(s), and consigned the item(s) directly to the advertised sale.

(h) It shall be a violation of these Rules to:

- (1) Reference the U.C.C. or any other uniform act or federal or state law in any advertisement unless such act or law is required, by law, to be referenced;
- (2) Reference or mention any federal, state or local department, agency or commission in any advertisement unless specifically required by law to do so or unless prior written approval is received from such department, agency or commission; or
- (3) Otherwise connote in any advertisement that the auction is under the auspices of, at the direction of or required by federal or state law or act or a federal, state or local agency or commission and that the buyers will, for some legal or governmental reason, be in a position to reap some unusual bargain.

(i) It shall be a violation of these Rules to advertise for sale items which the auctioneer/firm does not intend to offer for sale at the advertised auction.

(j) It shall be a violation of these Rules for an auctioneer or auction firm to permit its name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and Rules.

(k) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Contents", "Stock", "Inventory", "Liquidation" or any other word which connotes that the items to be auctioned are present on the premises of a residence, business, building or establishment unless the items were physically present continuously for thirty (30) days prior to the signing of the contract or written agreement. Before conducting an auction using any of the descriptive words, the majority of the items in the sale shall be from the premises.

Other items not related to or from the contents of the residence or business may be included in the auction provided they are specifically designated as such in all advertisements previous to the sale. The thirty (30) day requirement shall not apply to items used in direct conjunction with the residence or business and brought to the site solely for the purpose of sale at auction.

(l) At all auctions that include a buyer's premium, the amount of the buyer's premium shall be announced at the beginning of the auction and a written notice of this information shall be conspicuously displayed or distributed to the public at the auction site.

Authority G.S. 85B-1; 85B-3.1; 85B-8(a)(4).

21 NCAC 04B .0604 CONTRACTS, CONSIGNMENT RECORDS, SALES RECORDS, AND BIDDER REGISTRATION RECORDS

~~All written agreements for auctions and registration, sales and accounting records will be maintained at the site during the conduct of the auction and, upon request, will be made available to the Commission or its designated agent.~~

(a) All written agreements for auctions and registration, sales and accounting records shall be maintained at the site during the conduct of the auction and, upon request, shall be made available to the Commission or its designated agent.

(b) An auction house, auction barn, or auction gallery business may enter into a written agreement with regular dealers or sellers for an extended period of time, not to exceed one year.

(c) The consignment records shall contain the name and address of the person who employed the licensee and the name and address of the owner of the goods to be sold and include a list of the real or personal property consigned with a description of consigned items sufficient to distinguish each item from other and like items. The list shall be signed by the owner, seller or consignor. If the list is not a complete list of the property to be sold, the owner, seller or consignor shall waive the complete consignment list requirement.

(d) The consignment records shall be kept by the licensee for a period of two years from the date of the auction.

(e) At an auction house, auction barn, or auction gallery, when consignments are brought to the location by the public during the auction sale, the sales records and the consignment records may be same.

(f) The sales records shall be kept by the licensee for a period of two years from the date of the auction.

(g) The bidder registration records shall contain the bidders' names, addresses, and when possible, telephone numbers. The bidder registration records shall be kept by the licensee for a period of two years from the date of the auction.

(h) All required records shall be open for inspection by the Commission or its designated agent at reasonable times, or copies of the same shall be provided to the Commission or its designated agent upon written request.

Authority G.S. 85B-1; 85B-7.

21 NCAC 04B .0605 BIDDING

~~No auctioneer/firm shall bid on items in a sale he is conducting or procure such a bid without the intent to purchase the item. However, in a sale with reserve, the auctioneer/firm may bid on the reserve item up to, and including, the amount of the reserve price without the intent to purchase the item. In any auction where the auctioneer/firm bids on an item in a sale being conducted by such auctioneer/firm or such auctioneer/firm procures such a bid, the auctioneer shall announce such bidding in advance of the auction.~~

(a) No auctioneer/auction firm shall bid on items in a sale he is conducting or procure such a bid without the intent to purchase the item. However, in a sale with reserve, the auctioneer/auction firm may bid on the reserve item up to, and including, the amount of the reserve price without the intent to purchase the item. In any auction where the auctioneer/auction firm bids or such auctioneer/auction firm procures such a bid, the auctioneer shall announce such bidding in advance of the auction.

(b) A minimum opening bid shall not be required in an absolute auction. Following an opening bid, the auctioneer may set reasonable minimum bid increments. Such a policy should be clearly stated and, if possible, posted or included in the auctioneer's/auction firm's written terms and conditions of the sale. In this paragraph "reasonable minimum bid increments" are determined by the type and value of the property being offered at an auction.

Authority G.S. 25-2-328(4); 85B-1; 85B-3.1.

21 NCAC 04B .0606 AUCTION FIRMS

(a) All licensed auction firms shall have at least one Board approved designated person. If a licensed auction firm does not have at least one designated person in good standing, the status of the auction firm license shall be changed to invalid.

(b) Only designated person(s) for an auction firm have the authority to transact business under the firm license. This includes arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction.

(c) At least one designated person shall be on the premises of an auction firm's auction sale location while the auction sale is conducted.

(d) Any auctioneer licensed under G.S. 85B may call bids for a licensed auction firm without being a designated person.

(e) Any apprentice auctioneer licensed under G.S. 85B and supervised by the sponsor auctioneer may call bids for a licensed auction firm without being a designated person.

(f) Individuals that hold a currently valid real estate broker license are exempt from the auction firm examination if their authority to transact business under the auction firm license is only related to real estate sales at auction.

Authority G.S. 85B-1; 85B-3.1; 85B-4.

21 NCAC 04B .0607 NON-AUCTION FIRM BUSINESSES

(a) A licensed auctioneer who owns and operates a non-auction firm business has the sole responsibility for arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction.

(b) A licensed auctioneer or an apprentice auctioneer who is employed or contracted by another licensed auctioneer who owns and operates a non-auction firm business can only be responsible for calling bids and performing duties that a non-auctioneer is allowed to perform.

(c) A licensed auctioneer who owns and operates a non-auction firm business shall be on the premises of his businesses' auction sale location while the auction sale is conducted.

Authority G.S. 85B-1; 85B-3.1.

SECTION .0800 - CONTINUING EDUCATION

21 NCAC 04B .0806 COURSE COMPLETION REPORTING

(a) Course sponsors must prepare and submit to the Board reports verifying completion of each continuing education course conducted. Sponsors must submit these reports to the Board in a manner that will assure receipt by the Board within thirty calendar days following the course, but in no case later than May 15 for courses conducted prior to that date. Reports should include the following:

- (1) Official course name;
- (2) Sponsor or coordinator name, mailing address, and telephone number;
- (3) Coordinator signature certifying that the information is correct;
- (4) Name, address, and North Carolina license number, and social security number of each licensee who satisfactorily completes the course and who desires continuing education credit for the course;
- (5) Physical location where course was conducted;
- (6) Date(s), starting and ending times of course; and
- (7) Number of credit hours.

(b) At the request of the Board, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of the course upon completion of the course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course a course completion certificate. Sponsors must provide the certificates to licensees within thirty calendar days following the course, but in no case later than May 15 for any course completed prior to that date. The certificate is to be retained by the licensee as secondary proof of having completed the course. Course completion certificates should include the following:

- (1) Official course name;

- (2) Name of licensee who satisfactorily completes the course;
- (3) Date(s) of attendance;
- (4) Number of credit hours; and
- (5) Coordinator signature certifying that the information is correct.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Board of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

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

21 NCAC 04B .0819 ALTERNATIVE COMPLIANCE

(a) An auctioneer, apprentice auctioneer, or designated person of an auction firm who is unable, for good cause shown, to attend a Board-approved course and obtain the requisite hours of instruction established by the Board may apply to the Board for alternative compliance.

~~(b) An application for alternative compliance shall be on a form provided by the Board. A written request for alternative compliance shall be received by the Board by May 15 of the year in which the requisite hours of instruction are to be completed.~~

~~(c) An application for alternative compliance shall be received by the Board by May 15 of the year in which the requisite hours of instruction are to be completed.~~ If approved, the course of instruction shall be completed prior to license renewal and shall be exempt from the late fee.

(d) Alternative compliance shall include, but shall not be limited to:

- (1) Academic courses at a community college, junior college, or college or university located in this State and accredited by the Southern Association of Colleges and Schools in any of the following topics:
 - (A) Accounting
 - (B) Finance
 - (C) Business Management
 - (D) Business Law
 - (E) Economics
 - (F) Marketing
 - (G) Computer Science
 - (H) Sales
 - (I) Enhancing Personal or Professional Skills
- (2) Completion of any non-real estate appraisal course and certification; and
- (3) Publication of an article in a recognized professional journal.

(e) Credit hours to be awarded shall be in the discretion of the Board.

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

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors intends to amend the rules cited as 21 NCAC 50 .0301, .0306, .0512, .0515, .1401-.1402, .1404-.1405.

Proposed Effective Date: May 1, 2006

Public Hearing:

Date: March 14, 2006

Time: 8:30 a.m.

Location: State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors at 1109 Dresser Court, Raleigh, NC 27609.

Reason for Proposed Action: The Board is considering whether or not to create its own examination for fire sprinkler inspection technicians so as to alleviate current availability and content issues. In addition the Board wishes to receive comments concerning the use of employees contracted through labor supply firms as a modification of the current requirement of a W-2. The Board also wishes to assure that all licensees have a minimum amount of continuing education by personal attendance at approved programs. Comment on possible exemption for continuing education will also be received. Minor amendments to clarify current practice are also being considered.

Procedure by which a person can object to the agency on a proposed rule: Any person desiring to comment upon or object to a proposed rule may do so either by appearing at the public hearing or in writing to the address below prior to the end of the comment period.

Comments may be submitted to: Sandra O'Brien, State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors, 1109 Dresser Court, Raleigh, NC 27609, phone (919)875-3612, fax (919)875-3616.

Comment period ends: March 14, 2006

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 .0300 - EXAMINATIONS

21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by computer in the following categories:

- Plumbing Contracting, Class I
Plumbing Contracting, Class II
Heating, Group No. 1 - Contracting, Class I
Heating, Group No. 1 - Contracting, Class II
Heating, Group No. 2 - Contracting, Class I
Heating, Group No. 3 - Contracting, Class I
Heating, Group No. 3 - Contracting, Class II
Fuel Piping
Fire Sprinkler Inspection Technician

(b) Each person being examined by the Board for a contractor license applicant shall be required to read, interpret and provide answers to both the business and law part and the technical part of the examination required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor, unlimited classification, must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate technical examination conducted by the Board. Applicants for licensure as a fire sprinkler contractor, unlimited classification, must take and pass the business and law part of the exam administered by the Board.

(d) After July 1, 2004, applicants Applicants for initial licensure in the Limited Fire Sprinkler Inspection Technician classification must either pass the technical examination offered by the Board or submit evidence of Level II Certification in "Inspection and Testing of Water-based Protection Systems" by NICET in lieu of examination. License without examination shall be issued beginning July 1, 2003, and ending July 1, 2004, to applicants who meet the experience requirement in Rule .0306. Applicants who obtained license without examination must either pass the technical examination offered by the Board or submit evidence of Level II Certification in "Inspection and Testing of Water-based Protection Systems" by NICET in lieu of examination no later than July 1, 2006 or Technician license will lapse. Where certification based on NICET Level II certification

~~was not required at the time of initial licensure, such certification must be obtained by December 31, 2005. After December 31, 2005, current NICET Level II certification is required as a condition of license renewal.~~

(e) After July 1, 2005, applicants for the Limited Fire Sprinkler Inspection Contractor classification must submit evidence of Level III certification in "Inspection and Testing of Water-based Fire Protection Systems" by NICET in lieu of examination. License without examination shall be issued based on applications filed between July 1, 2003, and July 1, 2005, to applicants who meet the experience requirement in Rule .0306. ~~Contractors~~ ~~Persons~~ who obtain license by NICET certification must maintain such certification thereafter as a condition of license renewal.

(f) Applicants for license in the Limited Fire Sprinkler Maintenance classification obtain license ~~are qualified~~ based on maintenance experience, education and job classification set forth in Rule. 0306.

Authority G.S. 87-18; 87-21(a); 87-21(b).

21 NCAC 50 .0306 APPLICATIONS: ISSUANCE OF LICENSE

(a) All applicants for licensure or examination shall file an application in the Board office on a form provided by the ~~Board~~ Board and present evidence to establish good character.

(b) Applicants for each plumbing or heating examination shall present evidence at the time of application on forms provided by the Board to establish the equivalent of two years on-site full-time experience in the design and installation of plumbing or heating systems related to the category for which license is sought, whether or not license was required for the work performed. One year of experience in the design or installation of fuel piping is required for fuel piping license. Practical experience shall directly involve plumbing, heating or fuel piping and may include work as a field superintendent, project manager, journeyman, mechanic or plant stationary operator directly involved in the installation, maintenance, service or repair of such systems. Service; maintenance or repair activity; work as a local government inspector of plumbing or heating systems while qualified by the Code Officials Qualification Board; or work as a field representative of this Board; or work by a graduate of an ABET accredited engineering or engineering technology program with direct on-site involvement with plumbing or heating system construction, construction supervision, plant engineering or operation may be used as evidence of one-half the practical experience required; provided that Board members and employees may not sit for examination during their tenure with the Board. After review, the Board may request additional evidence. No more than one-half the experience may be in academic or technical training, maintenance service or repair directly related to the field of endeavor for which examination is requested. The Board shall pro rate experience which involves the kind of work set out above less than 40 hours per week or part-time academic work of less than 15 semester or quarter hours.

(c) The Board shall issue a license certificate bearing the license number assigned to the qualifying individual.

(d) Fire Sprinkler contractors in the unlimited classification shall meet experience requirements in accordance with NICET examination criteria.

(e) Applicants for examination or licensure in the Limited Fire Sprinkler Inspection Technician classification shall submit evidence adequate to establish that the applicant has either:

- (1) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25, as a full-time employee of an Unlimited Fire Sprinkler Contractor or fire insurance underwriting organization; or
- (2) 4000 hours experience involved in inspection and testing of previously installed fire sprinkler systems, consistent with NFPA-25 as a full time employee of a hospital, manufacturing, government or university facility which provides or arranges academic and practical training in fire sprinkler inspections consistent with NFPA-25.

(f) Applicants for licensure in the Limited Fire Sprinkler Inspection Contractor classification shall meet experience requirements in accordance with NICET certification criteria ~~must submit evidence adequate to establish that the applicant was engaged in business in North Carolina as owner or officer in an independent fire sprinkler inspection company full-time, during three of the five years immediately preceding December 31, 2003, or held license as an unlimited fire sprinkler contractor from this board and was actively and regularly engaged in carrying out fire sprinkler system inspections in North Carolina.~~

(g) ~~Applicants for licensure in the Limited Fire Sprinkler Maintenance classification prior to April 1, 2005, must submit evidence of 4000 hours experience at the place for which license is sought as a full time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems as described in 21 NCAC 50 .0515 of this Chapter.~~ Applicants for initial licensure in the Limited Fire Sprinkler Maintenance classification after April 1, 2005, must submit evidence of 4000 hours experience at the place for which license is sought as a full-time maintenance employee in facility maintenance with exposure to periodic maintenance of fire protection systems as described in 21 NCAC 50. 0515 of this Chapter or 2000 hours of such experience, together with six hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service. Applicants who have held Maintenance license previously at a different facility are not required to demonstrate experience in addition to the experience at the time of initial licensure but shall present evidence of two hours classroom instruction in courses approved by the Board consisting entirely of training in fire system maintenance, repair and restoration to service relevant to the systems in the new facility or place of employment.

Authority G.S. 87-18; 87-21(b).

SECTION .0500 - POLICY STATEMENTS AND INTERPRETATIVE RULES

21 NCAC 50 .0512 EMPLOYEES EXEMPTED FROM LICENSURE

(a) ~~As used in G.S. 87-25, the phrase "bona fide employee" shall mean and refer to an~~ An unlicensed person individual who is directly and regularly employed in the ordinary course of business by a contractor licensed pursuant to G.S. 87, Article 2 is not required to have a license and will not be subject to an action for injunctive relief brought by this Board. Factors establishing whether the individual is directly and regularly employed in the ordinary course of business of such contractor include, without limitation, the following list:

- (1) whether the individual is on the licensed contractor's payroll;
- (2) whether the licensed contractor withholds taxes from the payment to the individual and performs such other acts as are lawfully required of an employer;
- (3) whether the licensed contractor exercises control and supervision over the ~~method and method, manner and details~~ of the individual's work; and
- (4) whether the licensed contractor, and not the unlicensed person individual, is and remains obligated to the property owner or general contractor owner for the work.

(b) Persons acting as independent contractors, consultants or subcontractors, or paid as such, are not bona fide ~~employees~~ employees; provided that licensed contractors may utilize employees shared with a labor supplier under a written contract which may allocate payroll or tax withholding obligations to the labor supplier while reserving control, supervision and obligation to the owner or general contractor to the licensee of the Board, and provided the licensee upon whose qualifications the license of the employing contractor is based remains a person meeting all four of the indicia of employment set out in the preceding subsection.

Authority G.S. 87-18; 87-25.

21 NCAC 50 .0515 LIMITED FIRE SPRINKLER MAINTENANCE TECHNICIAN LICENSE

(a) License in the Limited Fire Sprinkler Maintenance classification is required of the technician who carries out periodic maintenance observation or testing of water-based fire protection systems. Licenses shall be issued based on experience and training, as described in Rules .0301 and .0306 of this Chapter and expire annually. This license is limited to work on the systems at the locations of the employer of the licensee for which experience was demonstrated. Upon termination of employment at the location for which certified, the Limited Fire Sprinkler Maintenance license shall lapse, and a new license be obtained for the systems at the new place of employment by compliance with the requirements of Rule .0306 of this Chapter. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes,

in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

(b) Persons holding Limited Fire Sprinkler Maintenance license may only:

- (1) Operate and lubricate hydrants and control valves;
- (2) Adjust valve and pump packing glands;
- (3) Bleed moisture and condensation from air compressors, air lines and dry pipe system auxiliary drains;
- (4) Clean strainers;
- (5) Check for painted, damaged or corroded sprinklers, corroded or leaking piping and verify control valves are open;
- (6) Replace painted, corroded or damaged sprinkler head, using identical serial numbers;
- (7) Replace missing or loose hangers;
- (8) Replace gauges;
- (9) Clean water motor gong;
- (10) Perform air compressor maintenance;
- (11) Reset dry pipe valves;
- (12) Exercise fire ~~pumps~~ pumps, not including conduct of a flow measurement test; (no flow);
- (13) Periodic maintenance observation or testing, not including the annual NFPA-25 inspections; or
- (14) Perform repairs other than the foregoing on an emergency basis where necessary to restore a system to operation, provided the holder of the Limited Fire Sprinkler Maintenance license documents his efforts and inability to obtain the services of the holder of a license as an unlimited Fire Sprinkler Contractor prior to performing the repairs, but obtains such services within 72 hours thereafter.

Authority G.S. 87-21.

SECTION .1400 – CONTINUING EDUCATION

21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS

(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved continuing education for each calendar year as a condition of license renewal. Beginning with renewals of license for years beginning on or after January 1, 2007, each holder of a Fire Sprinkler Contractors license must have completed six hours of approved classroom continuing education for each calendar year as a condition of license renewal.

(b) As part of and not in addition to the requirements set out in Paragraph (a) of this Rule, at least once every three calendar years, each applicant for license renewal, other than fire sprinkler licensees, must complete:

- (1) four hours instruction devoted entirely to N.C. building codes including recent changes or amendments to those codes;
- (2) a minimum of two hours instruction in system design;
- (3) a minimum of two hours instruction in system installation; and
- (4) two hours instruction in business courses such as business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects.

(c) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects.

(d) Persons holding multiple qualifications from the Board must complete at least six hours annually, but are not required to take hours each year in each qualification. Licensees with multiple qualifications shall take instruction so as to remain current in all areas of contracting work in which actively engaged.

(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and teacher. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses and disciplinary action, including revocation or suspension of licenses.

(f) ~~Continuing Education shall not be required of holders~~ Holders of Fire Sprinkler Contractor's licenses, licensed pursuant to the minimum requirements of certification for NICET Level III, subfield of Automatic Sprinkler System Layout, National Institute for Certification of Engineering Technologies (NICET), or for and persons holding NICET certification in Inspection and Testing of water-based Fire Protection Systems obtain continuing education in the process of maintaining current NICET certification; provided, however, such persons submit evidence of continued NICET certification to the Board compliance with the continuing education requirements of NICET and provided that at least six hours of the continuing education is classroom education carried out by personal attendance at courses approved as part of the Board Continuing Education program.

(g) Beginning with renewals of license on or after January 1, 2003, each holder of a Fire Sprinkler Contractors or Fire Sprinkler Inspection Contractor or Technician license not required to be current on the continuing education requirements of NICET must complete six hours of approved continuing education in areas related to fire sprinkler contracting during the preceding calendar year as a condition of license renewal. Licensees in the Limited Fire Sprinkler maintenance classification are required to obtain six hours of approved

classroom continuing education annually relevant to the systems they maintain.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1402 EXEMPTIONS AND CREDITS

(a) Continuing Education courses taken in 1999, 2000, 2001, or 2002 may be applied to the six hour annual requirement for 2003 renewals. Thereafter, licensees may not carry over hours from one calendar year to the next.

(b) Newly licensed individuals shall have no continuing education requirements for the calendar year in which they first become licensed.

(c) Licensees who are unable to fulfill the required number of hours as the result of illness as certified by an attending physician and who will not be engaged in bidding, supervising or other activities for which license is required may petition the Board in writing for an exemption or request approval of an individualized plan tailored to their physical limitations. Such requests shall be determined within 90 days on a case by case basis consistent with the requirements applicable to all licensees.

(d) Licensees who are over the age of 65, and who shall not be engaged in bidding, supervising or other activities for which license is required during the coming year, except as an employee of another licensee, may apply to the Board and obtain an exemption. If exemption is granted and the licensee thereafter wishes to engage in activity requiring license, the continuing education must be completed and satisfactory proof provided to the Board before any activity requiring license is undertaken.

(e) Instructors in Board-approved courses shall receive continuing education credit for lecture hours in approved courses.

(f) Members of the Board receive continuing education credit for hours spent in hearings or in monitoring continuing education courses. Licensees sitting on the Resolution Review Committee or attending formal hearings other than as a Respondent may receive credit for such hours, but are not relieved of the necessity to obtain the code hours required by 21 NCAC 50 .1401(b)(1).

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1404 COURSE REQUIREMENTS AND LIMITATIONS

(a) In order for course credit to be obtained, the course must be approved and consist of instruction in areas related to plumbing, ~~heating and heating,~~ air conditioning and fire sprinkler contracting or inspection contracting such as the technical and practical aspects of the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, and NFPA code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, ~~heating or heating,~~ fuel piping or fire sprinkler contractor or to plumbing or heating or fire sprinkler systems. Business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar

subjects related to plumbing or heating contracting shall also be approved.

(b) In order for course credit to be obtained, the course must be taught by the instructor or alternate listed when the course was approved by the ~~Board~~Board, ~~absent specific prior approval by the Board~~.

(c) Courses shall have a minimum of two hours of actual instruction and a maximum of six hours of actual instruction, per day.

(d) Courses shall be held in facilities conducive to learning. Such facilities include community colleges, technical schools, or community centers.

(e) Courses shall be open to all interested licensees that the host facility can reasonably accommodate and for audit by Board representatives; courses may not be restricted to employees, dealers or members of a particular firm or group.

(f) Once listed on the six-month course roster, a course may not be cancelled during that six month period.

(g) Though courses may have commercial sponsors, the courses shall not include promotion of products or services of a particular firm or manufacturer.

(h) Correspondence, home study, license exam preparation (cram) courses shall not be approved.

(i) For the information of all licenses, the Board shall maintain a calendar of all courses available during a six-month period.

Authority G.S. 87-21(b)(3); 87-22.

21 NCAC 50 .1405 APPROVAL OF COURSES

(a) To obtain approval of a course a provider or proposed provider must submit a written application to the board on or before the first day of September of each year for courses to be offered the following January through June and on or before the first day of March each year for courses to be offered the following July through December. The application must include:

- (1) two complete sets of written course materials and a detailed course outline; and

- (2) an application cover sheet on a form supplied by the Board identifying the applicant, the name, training and experience of all speakers, the proposed date(s) of the course, the host facility, the place where applications for enrollment should be sent, the cost, and the total continuing education hours being offered.

(b) Preliminary review of course applications shall be carried out by a committee appointed by the Board, that shall include some providers of approved courses. Committee recommendations shall be presented to the Board for final approval.

(c) As a condition of course approval, providers shall agree to submit to the board, in the form provided by the Board, and within 30 days of the course date set out on the application, an alphabetical listing of all licensees who attended and completed the course and a copy of any course materials distributed to participants together with certification that the course was provided consistent with the application.

(d) Providers who fail to provide the information set forth in Paragraph (c) of this Rule shall not thereafter be approved to conduct a course.

(e) At their own risk, Licensees~~licensees~~ may select courses other than those offered by pre-approved providers while attending ~~out-of-state~~ educational functions. In order to obtain approval, the licensee must submit a written application for approval on a form obtained from the Board upon completion of each such course. In lieu of such form, an advertising brochure may be submitted, provided the brochure includes the topic, content of lecture material, date, time, location, name and qualifications of speaker and the number of contact hours credit claimed for~~received upon~~ completion of the program. The licensee must also provide independent verification of attendance. Board evaluation of courses not pre-approved may result in disapproval.

Authority G.S. 87-21(b)(3); 87-22.

APPROVED RULES

*This Section includes rules approved by the Rules Review Commission (RRC) at its meeting November 17, 2005, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules have been entered into the North Carolina Administrative Code.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
12	NCAC	09B	.0306*	19:24 NCR
13	NCAC	07F	.0102	20:04 NCR
15A	NCAC	02D	.0101*	19:23 NCR
15A	NCAC	02D	.0103	19:23 NCR
15A	NCAC	02D	.1201*	19:23 NCR
15A	NCAC	02D	.1404	19:23 NCR
15A	NCAC	02D	.1902-.1904*	19:23 NCR
15A	NCAC	02D	.1905-.1906	19:23 NCR
15A	NCAC	02D	.2001	19:23 NCR
15A	NCAC	02D	.2301-.2303*	19:23 NCR
15A	NCAC	02D	.2304-.2306	19:23 NCR
15A	NCAC	02D	.2307-.2310*	19:23 NCR
15A	NCAC	02D	.2311	19:23 NCR
15A	NCAC	02L	.0115*	19:22 NCR
15A	NCAC	02L	.0401-.0417*	19:22 NCR
15A	NCAC	02Q	.0101	19:23 NCR
15A	NCAC	02Q	.0103*	19:23 NCR
15A	NCAC	02Q	.0105	19:23 NCR
15A	NCAC	02Q	.0301	19:23 NCR
15A	NCAC	02Q	.0304-.0305*	19:23 NCR
15A	NCAC	02Q	.0508*	19:23 NCR
15A	NCAC	02Q	.0523	19:23 NCR
15A	NCAC	02Q	.0706*	19:23 NCR
15A	NCAC	02Q	.0808	19:23 NCR
15A	NCAC	02Q	.0810	19:23 NCR
15A	NCAC	10H	.0301-.0302*	19:20 NCR
15A	NCAC	18A	.2532*	20:03 NCR
15A	NCAC	18A	.2539	20:03 NCR
15A	NCAC	18A	.2606	20:03 NCR
15A	NCAC	18A	.2612*	20:03 NCR
21	NCAC	17	.0403	20:03 NCR
21	NCAC	26	.0211*	19:08 NCR
21	NCAC	26	.0306*	19:08 NCR
21	NCAC	26	.0510*	19:08 NCR
21	NCAC	36	.0120	20:01 NCR
21	NCAC	36	.0218	20:01 NCR
21	NCAC	36	.0302	20:01 NCR
21	NCAC	36	.0309	20:01 NCR
21	NCAC	36	.0321	20:01 NCR
21	NCAC	36	.0323-.0324	20:01 NCR

These rules are subject to the next Legislative Session.

15A	NCAC	02H	.0126*	17:18 NCR
15A	NCAC	02H	.0150-.0156*	17:18 NCR
15A	NCAC	02H	.1014-.1019*	17:18 NCR

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0306 PROFESSIONAL LECTURER CERTIFICATION

(a) The Commission may issue Professional Lecturer Certification to a person in a profession, who, by virtue of academic degrees and professional expertise has developed special knowledge in one or more of the following areas:

- (1) Law
- (2) Psychology
- (3) Medicine

(b) To be eligible for such certification, an applicant shall:

- (1) Have attained a degree from an institution of higher learning accredited by an accreditation agency recognized by the United States Department of Education in a subject listed in Paragraph (a) of this Rule;
- (2) Obtain the endorsement of a Commission-recognized School Director or In-Service Training Coordinator who shall:
 - (A) recommend the applicant for certification as a professional lecturer; and
 - (B) describe the applicant's expected participation, topical areas, duties, and responsibilities in a delivery of Commission-certified training conducted by the school; and
 - (C) describe the attributes showing the applicant to be a beneficial contributor to the delivery or presentation in a Commission-certification training program.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. January 1, 2006; July 1, 1991; January 1, 1985.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02D .0101 DEFINITIONS

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, G.S. 143, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means "The North Carolina Water and Air Resources Act."
- (2) "Administrator" means when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or

approval specifically states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.

- (3) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter emitted into or otherwise entering the ambient air.
- (4) "Ambient air" means that portion of the atmosphere outside buildings or other enclosed structures, stacks or ducts, and that surrounds human, animal or plant life, or property.
- (5) "Approved" means approved by the Director of the Division of Air Quality according to these Rules.
- (6) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (7) "CFR" means "Code of Federal Regulations."
- (8) "Combustible material" means any substance that, when ignited, will burn in air.
- (9) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status.
- (10) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filter media, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) before discharge to the ambient air.
- (11) "Day" means a 24-hour period beginning at midnight.
- (12) "Director" means the Director of the Division of Air Quality unless otherwise specified.
- (13) "Division" means Division of Air Quality.
- (14) "Dustfall" means particulate matter that settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (15) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (16) "Facility" means all of the pollutant emitting activities, except transportation facilities as defined under Rule .0802 of this Subchapter, that are located on one or more adjacent properties under common control.

- | | |
|---|--|
| <p>(17) "FR" means Federal Register.</p> <p>(18) "Fugitive emission" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.</p> <p>(19) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.</p> <p>(20) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.</p> <p>(21) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.</p> <p>(22) "Opacity" means that property of a substance tending to obscure vision and is measured as percent obscuration.</p> <p>(23) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.</p> <p>(24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.</p> <p>(25) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.</p> <p>(26) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.</p> <p>(27) "Permitted" means any source subject to a permit under this Subchapter or Subchapter 15A NCAC 02Q.</p> <p>(28) "Person" as defined in G.S. 143-212 includes any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.</p> <p>(29) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.</p> <p>(30) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the</p> | <p>ambient air as measured by methods specified in this Subchapter.</p> <p>(31) "PM2.5" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by methods specified in this Subchapter.</p> <p>(32) "Refuse" means any garbage, rubbish, or trade waste.</p> <p>(33) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.</p> <p>(34) "Rural area" means an area that is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.</p> <p>(35) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.</p> <p>(36) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.</p> <p>(37) "Source" means any stationary article, machine, process equipment, or other contrivance; or any combination; or any tank-truck, trailer, or railroad tank car; from which air pollutants emanate or are emitted, either directly or indirectly.</p> <p>(38) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.</p> <p>(39) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.</p> <p>(40) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.</p> <p>(41) "ug" means micrograms.</p> |
|---|--|
- History Note: Authority G.S. 143-213; 143-215.3(a)(1); Eff. June 1, 1976; Amended Eff. December 1, 1989; July 1, 1988; July 1, 1984;*

Temporary Amendment Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. December 1, 2005; June 1, 2004; July 1, 1998; July 1, 1996; July 1, 1994.

15A NCAC 02D .1201 PURPOSE AND SCOPE

- (a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.
- (b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 02D .0101(21), including incinerators with heat recovery and industrial incinerators.
- (c) The rules in this Section do not apply to:
 - (1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;
 - (2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;
 - (3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or
 - (4) incinerators used to dispose of dead animals or poultry, that meet the following requirements:
 - (A) the incinerator is located on a farm and is operated by the farm owner or by the farm operator;
 - (B) the incinerator is used solely to dispose of animals or poultry originating on the farm where the incinerator is located;
 - (C) the incinerator is not charged at a rate that exceeds its design capacity; and
 - (D) the incinerator complies with Rule .0521 (visible emissions) and .1806 (odorous emissions) of this Subchapter.
- (d) If an incinerator can be defined as being more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply:
 - (1) hazardous waste incinerators;
 - (2) sewage sludge incinerators;
 - (3) sludge incinerators;
 - (4) municipal waste combustors;
 - (5) commercial and industrial solid waste incinerators;
 - (6) hospital, medical, or infectious waste incinerators (HMIWIs);
 - (7) conical incinerators;
 - (8) crematory incinerators; and
 - (9) other incinerators.
- (e) In addition to any permit that may be required under 15A NCAC 02Q, Air Quality Permits Procedures, a permit may be required by the Division of Solid Waste Management as

determined by the permitting rules of the Division of Solid Waste Management.

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

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1), (3), (4), (5); Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995; December 1, 1993; Temporary Amendment Eff. March 1, 2002; Amended Eff. December 1, 2005; August 1, 2002.

15A NCAC 02D .1902 DEFINITIONS

For the purpose of this Section, the following definitions apply:

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for
 - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
 - (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
 - (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
 - (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
 - (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;

- (e) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and
- (f) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (5) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- (6) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- (7) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (8) "Log" means any limb or trunk whose diameter exceeds six inches.
- (9) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- (10) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (11) "Occupied structure" means a building in which people may live or work or one intended for housing farm or other domestic animals.
- (12) "Off-site" means any area not on the premises of the land-clearing activities.
- (13) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (14) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- (15) "Person" as used in 02D .1901(c), means:
 - (a) the person in operational control over the open burning; or
 - (b) the landowner or person in possession or control of the land

- when he has directly or indirectly allowed the open burning or has benefited from it.
- (16) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency or municipal service.
- (17) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (18) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- (19) "Refuse" means any garbage, rubbish, or trade waste.
- (20) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- (21) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- (22) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.

History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); Eff. July 1, 1996; Amended Eff. December 1, 2005; June 1, 2004; July 1, 1998.

15A NCAC 02D .1903 PERMISSIBLE OPEN BURNING WITHOUT AN AIR QUALITY PERMIT

(a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in an air quality forecast area that the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

(b) The following types of open burning are permissible without an air quality permit:

- (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:
 - (A) The material burned originates on the premises of private residences and is burned on those premises;

- (B) There are no public pickup services available;
 - (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic materials are not burned;
 - (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
 - (E) The burning does not create a nuisance; and
 - (F) Material is not burned when the Division of Forest Resources has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
- (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
 - (B) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
 - (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 1,000 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or
 - (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the open burning site.
- Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances;
- (C) Only land cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;
 - (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
 - (E) No fires are initiated or vegetation added to existing fires when the Division of Forest Resources has banned burning for that area; and
 - (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried off-site or transported over public roads to facilities permitted according to Rule .1904 of this Section for the operation of an air curtain burner at a permanent site;
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials or refuse or salvageable materials for fuel;
 - (4) fires purposely set to forest land for forest management practices for which burning is acceptable to the Division of Forest Resources;

- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
- (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
- (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
- (8) fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
- (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
- (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
 - (A) the Division of Forest Resources;
 - (B) the North Carolina Insurance Department;
 - (C) North Carolina technical institutes; or
 - (D) North Carolina community colleges, including:
 - (i) the North Carolina Fire College; or
 - (ii) the North Carolina Rescue College;
- (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
 - (A) The regional office supervisor of the appropriate regional office and the HHCB have been notified according to the procedures and deadlines contained in the appropriate regional notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it; and
 - (B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled; and
- (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.

(c) The authority to conduct open burning under this Section does not exempt or excuse any person from the consequences, damages or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1996; Amended Eff. December 1, 2005; June 1, 2004; July 1, 1998.

15A NCAC 02D .1904 AIR CURTAIN BURNERS

(a) Air quality permits shall be required for air curtain burners subject to 40 CFR 60.2245 through 60.2265 or located at permanent sites or where materials are transported in from another site. Air quality permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months unless they are subject to 40 CFR 60.2245 through 60.2265. The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in any area that has been forecasted by the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

(b) Air curtain burners shall comply with the following conditions and stipulations:

- (1) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
- (2) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;
- (3) No fires shall be started or material added to existing fires when the Division of Forest Resources has banned burning for that area;
- (4) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5) The air curtain burner shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule .1106(b), (c), and (f) of this Subchapter. This Subparagraph shall not apply to temporary air curtain burners;

- (6) An air curtain burner with an air quality permit shall have onsite at all times during operation of the burner a visible emissions reader certified according to 40 CFR Part 60, Method 9 to read visible emissions, and the facility shall test for visible emissions within five days after initial operation and within 90 days before permit expiration;
- (7) Air curtain burners shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;
- (8) Except during start-up, visible emissions shall not exceed ten percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than ten percent but no more than 35 percent shall be allowed for any one-hour period. During start-up, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 45 minutes, and there shall be no more than one start-up per day. Air curtain burners subject to 40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250 instead of the opacity standards in this Subparagraph;
- (9) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;
- (10) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;
- (11) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (12) The location of the burning shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other

occupied structure within 500 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.

(c) Recordkeeping Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. The owner or operator of air curtain burner subject to 40 CFR 60.2245 through 60.2265 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2245 through 60.2265.

(d) Title V Considerations. Burners that have the potential to burn 8,100 tons of material or more per year may be subject to Section 15A NCAC 02Q .0500, Title V Procedures.

(e) Prevention of Significant Deterioration Consideration. Burners that burn 16,200 tons per year or more may be subject to 15A NCAC 02D .0530, Prevention of Significant Deterioration.

(f) A person may use a burner using a different technology or method of operation than an air curtain burner as defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall approve the burner if he finds that it is at least as effective as an air curtain burner. This burner shall comply with all the requirements of this Rule.

(g) In addition to complying with the requirements of this rule, an air curtain burner that commenced construction after November 30, 1999, or that commenced reconstruction or modification on or after June 1, 2001, shall also comply with 40 CFR 60.2245 through 60.2265 in addition to the requirements of this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (10); 143-215.66; 143-215.108; 40 CFR 60.2865;

Eff. July 1, 1996;

Amended Eff. December 1, 2005; August 1, 2004.

15A NCAC 02D .2301 PURPOSE

This Section provides for the creation, banking, transfer, and use of emission reduction credits for:

- (1) nitrogen oxides (NO_x),
- (2) volatile organic compounds (VOC),
- (3) sulfur dioxide (SO₂),
- (4) fine particulate (PM_{2.5}), and
- (5) ammonia (NH₃)

for offsets under 15A NCAC 02D .0531, Sources in Nonattainment Area.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12);

Eff. December 1, 2005.

15A NCAC 02D .2302 DEFINITIONS

For the purposes of this Section, the following definitions shall apply:

- (1) "Air permit" means a construction and operation permit issued under 15A NCAC 02Q .0300, Construction and Operation Permits, or .0500, Title V Procedures.
- (2) "Banking" means a system for recording emission reduction credits so that they may be used or transferred in the future.
- (3) "Enforceable" means enforceable by the Division. Methods for ensuring that emission reduction credits are enforceable include conditions in air permits issued.
- (4) "Federally designated ozone nonattainment area in North Carolina" means an area designated as nonattainment for ozone and described in 40 CFR 81.334.
- (5) "Federally designated fine particulate (PM_{2.5}) nonattainment area in North Carolina" means an area designated as nonattainment for fine particulate (PM_{2.5}) and described in 40 CFR 81.334.
- (6) "Netting Demonstration" means the act of calculating a "net emissions increase" under the preconstruction review requirements of Title I, Part D of the Federal Clean Air Act and the regulations promulgated there under in 15A NCAC 02D .0530, Prevention of Significant Deterioration, or .0531, Sources in Nonattainment Area.
- (7) "Permanent means assured for the life of the corresponding emission reduction credit through an enforceable mechanism such as a permit condition or revocation.
- (8) "Quantifiable" means that the amount, rate, and characteristics of the emission reduction credit can be estimated through a reliable, reproducible method.
- (9) "Real" means a reduction in actual emissions emitted into the air.

(10) "Surplus" means not required by any local, State, or federal law, rule, order, or requirement and in excess of reductions used by the Division in issuing any air permit, in excess of any conditions in an air permit to avoid an otherwise applicable requirement, or to demonstrate attainment of ambient air quality standards in 15A NCAC 02D .0400 or reasonable further progress towards achieving attainment of ambient air quality standards. For the purpose of determining the amount of surplus emission reductions, any seasonal emission limitation or standard shall be assumed to apply throughout the year. The following are not considered surplus:

- (a) emission reductions that have previously been used to avoid 15A NCAC 02D .0530 or .0531 (new source review) through a netting demonstration;
- (b) Emission reductions in hazardous air pollutants listed pursuant to Section 112(b) of the federal Clean Air Act to the extent needed to comply with 15A NCAC 02D .1109, .1111, or .1112; however, emission reductions in hazardous air pollutants that are also volatile organic compounds beyond that necessary to comply with 15A NCAC 02D .1109, .1111, or .1112 are surplus; or
- (c) emission reductions used to offset excess emissions from another source as part of an alternative mix of controls ("bubble") demonstration under 15A NCAC 02D .0501.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12); Eff. December 1, 2005.

15A NCAC 02D .2303 APPLICABILITY AND ELIGIBILITY

(a) Applicability. Any facility that has the potential to emit nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) in amounts greater than 25 tons per year and that is in a federally designated ozone or fine particulate (PM2.5) nonattainment area in North Carolina shall be eligible to create and bank nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) emission reduction credits.

(b) Eligibility of emission reductions.

- (1) To be approved by the Director as an emission reduction credit, a reduction in emissions shall be real, permanent,

quantifiable, enforceable, and surplus and shall have occurred:

- (A) for ozone after December 31, 2002 for the Charlotte-Gastonia-Rock Hill, NC-SC nonattainment area, the Raleigh-Durham-Chapel Hill nonattainment area, the Rocky Mount nonattainment area, and the Haywood and Swain Cos (Great Smoky Mountains National Park) nonattainment area, and after December 31, 2000 for all other nonattainment areas.
- (B) for fine particulate (PM2.5) after December 31, 2002 for the Greensboro-Winston-Salem-High Point, NC and Hickory-Morganton-Lenoir, NC nonattainment areas.

(2) To be eligible for consideration as emission reduction credits, emission reductions may be created by any of the following methods:

- (A) installation of control equipment beyond what is necessary to comply with existing rules;
- (B) a change in process inputs, formulations, products or product mix, fuels, or raw materials;
- (C) a reduction in actual emission rate;
- (D) a reduction in operating hours;
- (E) production curtailment or reduction in throughput;
- (F) shutdown of emitting sources or facilities; or
- (G) any other enforceable method that the Director finds resulting in real, permanent, quantifiable, enforceable, and surplus reduction of emissions.

(c) Ineligible for emission reduction credit. Emission reductions from the following shall not be eligible to be banked as emission reduction credits:

- (1) sources covered under a special order or variance until compliance with the emission standards that are the subject of the special order or variance is achieved;
- (2) sources that have operated less than 24 months;
- (3) emission allocations and allowances used in the nitrogen oxide budget trading program under 15A NCAC 02D .1419;
- (4) emission reductions outside North Carolina; or
- (5) mobile sources.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12); Eff. December 1, 2005.

15A NCAC 02D .2307 USE OF EMISSION REDUCTION CREDITS

(a) Persons holding emission reduction credits may withdraw the emission reduction credits and may use them in any manner consistent with this Section.

(b) An emission reduction credit may be withdrawn only by the owner of record or by the Director under Rule .2310 of this Section and may be withdrawn in whole or in part. In the case of a partial withdrawal, the Director shall issue a revised certificate of emission reduction credit to the owner of record reflecting the new amount of the credit and shall revoke the original certificate.

(c) Emission reduction credits may be used for the following purposes:

- (1) as offsets or netting demonstrations required by 15A NCAC 02D .0531 for a major new source of:
 - (A) nitrogen oxides or volatile organic compounds in a federally designated ozone nonattainment area, or
 - (B) fine particulate (PM2.5) in a federally designated PM2.5 nonattainment area;
- (2) as offsets or netting demonstrations required by 15A NCAC 02D .0531 for a major modification to an existing major source of:
 - (A) nitrogen oxides or volatile organic compounds in a federally designated ozone nonattainment area, or
 - (B) fine particulate (PM2.5) in a federally designated PM2.5 nonattainment area;
- (3) as part of a netting demonstration required by 15A NCAC 02D .0530 when the source using the emission reduction credits is the same source that created and banked the emission reduction credits; or
- (4) to remove a permit condition that created an emission reduction credit.

(d) Emission reduction credits generated through reducing emissions of one pollutant shall not be used for trading with or offsetting of another pollutant, for example emission reduction credits for volatile organic compounds in an ozone nonattainment area shall not be used to offset nitrogen oxide emissions.

(e) Limitations on use of emission reduction credits.

- (1) Emission reduction credits shall not be used to exempt a source from:
 - (A) prevention of significant deterioration requirements (15A NCAC 02D .0530) for netting demonstrations unless the emission reduction credits have been banked by the facility at which the new or modified source is located and have been banked during the period

specified in 15A NCAC 02D .0530. This Subparagraph does not preclude the use of emission reductions not banked as emission credits to complete netting demonstrations.

- (B) nonattainment major new source review (15A NCAC 02D .0531) unless the emission reduction credits have been banked by the facility at which the new or modified source is located and have been banked during the period specified in 15A NCAC 02D .0531. This Subparagraph does not preclude the use of emission reductions not banked as emission credits to complete netting demonstrations.
- (C) new source performance standards (15A NCAC 02D .0524), national emission standards for hazardous air pollutants (15A NCAC 02D .1110), or maximum achievable control technology (15A NCAC 02D .1109, .1111, or .1112); or
- (D) any other requirement of Subchapter 15A NCAC 02D unless the emission reduction credits have been banked by the facility at which the new or modified source is located.

(2) Emission reduction credits shall not be used to allow a source to emit above the limit established by a rule in Subchapter 15A NCAC 02D. (If the owner or operator wants to permit a source to emit above the limit established by a rule in Subchapter 15A NCAC 02D, he needs to follow the procedures in 15A NCAC 02D .0501 for an alternative mix of controls ["bubble"].)

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12); Eff. December 1, 2005.

15A NCAC 02D .2308 CERTIFICATES AND REGISTRY

(a) Certificates of emission reduction credit issued by the Director shall contain the following information:

- (1) the pollutant reduced (nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, fine particulate);
- (2) the amount of the credit in tons per year;
- (3) the date the reduction occurred;
- (4) company name, the street address and county of the source where the reduction occurred; and

(5) the date of issuance of the certificate.

(b) The Division shall maintain an emission reduction credit registry that constitutes the official record of all certificates of emission reduction credit issued and all withdrawals made. The registry shall be available for public review. For each certificate issued, the registry shall show the amount of the emission reduction credit, the pollutant reduced, the name and location of the facility generating the emission reduction credit, and the facility contact person. The Division shall maintain records of all deposits, deposit applications, withdrawals, and transactions.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12); Eff. December 1, 2005.

15A NCAC 02D .2309 TRANSFERRING EMISSION REDUCTION CREDITS

(a) If the owner of a certificate of emission reduction credit transfers the certificate to a new owner, the Director shall issue a certificate of emission reduction credit to the new owner and shall revoke the certificate held by the current owner of record.

(b) If the owner of a certificate of emission reduction credit transfers part of the emission reduction credits represented by the certificate to a new owner, the Director shall issue a certificate of emission reduction credit to the new owner reflecting the transferred amount and shall issue a certificate of emission reduction credit to the current owner of record reflecting the amount of emission reduction credit remaining after the transfer. The Director shall revoke the original certificate of emission reduction credit.

(c) For any transferred emission reduction credits, the creator of the emission reduction credit shall continue to have enforceable conditions in the appropriate permit to assure permanency of the emission reduction and shall be held liable for compliance with those conditions; the user of any transferred emission reduction credits shall not be held liable for any failure of the creator to comply with its permit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12); Eff. December 1, 2005.

15A NCAC 02D .2310 REVOCATION AND CHANGES OF EMISSION REDUCTION CREDITS

(a) The Director may withdraw emission reduction credits if the emission reduction credits

- (1) have already been used;
- (2) are incorrectly calculated; or
- (3) achieved are less than those claimed.

(b) If a banked emission reduction credit were calculated using an emission factor and the emission factor changes, the Director shall revise the banked emission reduction credit to reflect the change in the emission factor. If a banked emission reduction credit had been used, then no change shall be made in the use credit.

(c) When a rule is adopted or amended in this Subchapter or Subchapter 15A NCAC 02Q after November 1, 2005, the Director shall adjust the banked emission reduction credits to account for changes in emissions that would be allowed under the new emission limitation with which the source must currently comply if it is still operating. If a source has permanently ceased operations, then the Director shall make no adjustments in its banked emissions reduction credits. If a banked emission reduction credit has been used, no change shall be made in the used credit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12); Eff. December 1, 2005.

15A NCAC 02H .0126 STORMWATER DISCHARGES

(a) Stormwater picks up pollutants as it drains to waters of the State. When a person alters stormwater drainage, the pollutants carried by stormwater to waters of the State may be concentrated or increased, contributing to "water pollution," as that term is defined in G.S. 143-211. The juncture at which stormwater reaches waters of the State will either be through the terminus of a pipe, ditch or other discrete outlet, or in a diffuse sheet flow manner.

(b) Stormwater discharges subject to NPDES permitting are addressed in this section, which incorporates, supplements and elaborates on the federal rules on stormwater NPDES discharges. Other stormwater control requirements are mainly addressed in Section 2H .1000 entitled "Stormwater Management", but may also be addressed in sections dedicated to particular water classifications or circumstances. For post-construction requirements, a program will be deemed compliant for the areas where it is implementing the Water Supply Watershed Protection Programs for WS-I – WS-IV waters, the HQW and freshwater ORW Waters Management Strategies, the Neuse River Basin Nutrient Sensitive Waters Management Strategy, the Tar-Pamlico River Basin Nutrient Sensitive Waters Management Strategy, or the Randleman Lake Water Supply Watershed program.

(c) Regulated Entities (REs), subject to NPDES permitting, shall receive NPDES permits for stormwater discharges to surface waters, in accordance with this Rule, 15A NCAC 02H .0150 through 02H .0156, and United States Environmental Protection Agency (EPA) regulations 40 CFR 122.21, 122.26, and 122.28 through 122.37 which are hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc. 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of sixty-nine dollars (\$69.00) each plus six dollars (\$6.00) shipping and handling. Copies are also available at the Division of Water Quality, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604. These federal regulations can also be accessed on the world wide web at <http://www.gpo.gov/nara/cfr/index.html>.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. November 1, 1986;

Amended Eff. August 3, 1992;
Temporary Amendment Eff. November 1, 2002;
Temporary Amendment returned to Agency by Rules Review
Commission on January 22, 2004;
Amended Eff. (Pending Legislative Review).

15A NCAC 02H .0150 DEFINITIONS

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and 122.26(b), are incorporated herein by reference. State definitions for NPDES discharges are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .0103. As used in the NPDES stormwater program, the following additional definitions apply:

- (1) 1-year, 24-hour Storm means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.
- (2) Built - Upon Area means that portion of a development project, after construction is completed, that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement, and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.
- (3) Existing Development means those projects that are completed or those projects that are not yet completed, but, at a minimum have established a vested right under North Carolina zoning law as of the effective date of the local government ordinance, or such earlier time that an affected local government's ordinance shall specify, based on at least one of the following criteria:
 - (a) Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
 - (b) Outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1, or
 - (c) Approved site-specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.

- (4) Growing Population Area means an area with High Population Growth or Growth Potential.
- (5) Growth Potential means a projected growth rate exceeding 1.3 times the state growth rate for the previous 10 years or sharing to any extent a geographic boundary with a High Population Growth area.
- (6) High Population Growth means either a 10-year rate of growth exceeding 1.3 times the state population growth rate for that same period or a two-year rate of growth which exceeds 15 percent of its previous population.
- (7) Population Density means the population of an area divided by the area's geographical measure in square miles, equal to persons per square mile. For the purposes of this definition, the population shall equal the Total Population as defined in this Rule.
- (8) Public Entity means the United States, State of North Carolina, city, village, township, county, school district, public college or university, single purpose governmental agency, or any other governing body which is created by federal or state law.
- (9) Redevelopment means any rebuilding activity other than a rebuilding activity that;
 - (a) Results in no net increase in built-upon area, and
 - (b) Provides equal or greater stormwater control than the previous development.
- (10) Regulated Entities means any public entity which must obtain a stormwater permit pursuant to the designation or petition process set out in 15A NCAC 02H .0151 or .0152.
- (11) Sensitive Receiving Waters means
 - (a) Waters classified as high quality, outstanding resource, shellfish, trout or nutrient sensitive waters in accordance with 15A NCAC 02B .0101(d) and (e);
 - (b) Waters which are occupied by, or designated as critical habitat for, federally-listed aquatic animal species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544; or
 - (c) Waters for which the designated use, as set forth in the classification system at 15A NCAC 02B .0101(c), (d), and (e), have been

determined to be impaired in accordance with the requirements of 33 U.S.C. 1313(d).

- (12) Significant Contributor of Pollutants means an MS4 or a discharge that,
 - (a) Contributes to a pollutant loading that may reasonably be expected to adversely affect the quality and uses of a water body; or
 - (b) Destabilizes the physical structure of a water body such that the discharge may reasonably be expected to adversely affect the quality and uses of that water body.

Uses of the waters shall be determined pursuant to 15A NCAC 02B .0211 - .0222 and 15A NCAC 02B .0300.
- (13) Total Maximum Daily Load (TMDL) means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific waterbody and pollutant.
- (14) Total Population means the sum of permanent and seasonal populations. The permanent population will be determined from the most recent data available from the Office of State Budget and Management, State Demographer or the federal Bureau of the Census and the seasonal population will be determined from the most recent data available from the federal Bureau of the Census.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0151 PUBLIC ENTITY DESIGNATIONS

(a) Public Entity Designations shall be made through the federal designation process, the two-step State designation process, and the TMDL MS4 designation process. Once a public entity is designated, it shall become a regulated entity (RE) which must obtain a stormwater permit. REs shall comply with the permit application schedule set forth in Rule .0153.

- (b) The designation process shall be as follows:
 - (1) Federal Designation Process.
In accordance with 40 CFR 122.32, all Small MS4s are designated if they are located in whole or in part within an Urbanized Area as determined by the most recent decennial U.S. census. The Department, within three months of federal verification of decennial census data, shall notify in writing all the public entities identified.
 - (2) State Designation Process.

The Department shall designate additional dischargers or MS4's in a two-step process based on their potential to adversely affect water quality whether the effects constitute violations of water quality standards such as impairment of designated uses, or whether the effects constitute other types of significant water quality impacts such as adverse habitat and biological impacts. As a first step, the State shall identify public entities which are candidates for designation. As a second step, the State shall apply criteria to the identified public entities to determine whether their discharges or MS4's shall be designated.

- (A) Step One: The Department shall identify public entities as candidates for designation based on population and geographical nexus to an MS4.
 - (i) Municipalities. A municipality shall be identified as a candidate for designation if its total population is greater than 10,000 and its population density is at least 1,000 people per square mile.
 - (ii) Counties. A county shall be identified as a candidate for designation if the county municipal and non-municipal total population is greater than 45,000 persons.
 - (iii) Other public entities. A public entity shall be identified as a candidate for designation if it is a municipality located within a designated county or is an owner/operator of a MS4.
- (B) Step Two: Designation of identified public entities. From the identified public entities, the Department shall designate those dischargers or MS4's that are more likely than not, based upon their design or construction, to contribute to a violation of a water quality standard by discharging stormwater to Sensitive Receiving Waters within a Growing Population Area or by providing a Significant Contribution of Pollutants, taking into account the effectiveness of the public entities' existing water

quality protection programs. Effectiveness of existing water quality programs shall be determined based upon the water quality of the receiving waters and whether the waters have been determined to be supporting the uses as set forth in the classifications pursuant to 15A NCAC 02B .0101(c), (d) and (e) and the specific classification of the waters pursuant to 15A NCAC 02B .0300.

- (3) TMDL MS4 designation. Total Maximum Daily Load (TMDL) MS4s. TMDL MS4s include public entities discharging pollutants that are contributing to the impairment of a water body's use, as determined in accordance with 33 U.S.C 1313 (d). TMDL MS4s shall be designated if the MS4 is specifically listed by name for urban stormwater Total Maximum Daily Load development.
- (4) State Designation Administration.
 - (A) The Department shall implement the designation process in accordance with the Department schedule for Basinwide Plans.
 - (B) The Department shall publish a list of public entities identified as candidates for designation. Lists shall be developed for a river basin in accordance with North Carolina's Basinwide Planning Schedule. Publication of this list may be coordinated with public notices issued through basinwide planning efforts.
 - (C) The Department shall notify all public entities identified as candidates for designation prior to the publication of the candidate list.
 - (D) The Department shall accept public comment on the application of the designation criteria to the public entities identified as candidates for designation. A public comment period of not less than 30 days shall be provided.
 - (E) After review of the designation criteria and review of public comments received, the Department shall make a determination on designation for each of the candidates.
 - (F) The Department shall provide written notification to each public entity of its designation

determination and the requirements for application set out in Rule 02H .0153.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0152 PETITIONS

(a) Types of Petitions. A petition may be submitted to the Department to require a NPDES stormwater permit for a discharge or a MS4 as follows:

- (1) Connected Discharge Petition: Any operator of a permitted MS4 may submit a petition to the Department to require a separate NPDES stormwater permit for any connecting discharge.
- (2) Adverse Impact Petition: Any person may submit a petition to the Department to require a NPDES stormwater permit for any discharge or MS4 that contributes to a violation of a water quality standard, is a Significant Contributor of Pollutants, or is a TMDL contributor of pollutants.

(b) Petition Evaluation. Petitions will be evaluated based on the following criteria. If the petition meets the criteria in this Rule, then the Department will require a NPDES stormwater permit.

- (1) A Connected Discharge Petition must show that the discharge flows or will flow into a permitted MS4.
- (2) An Adverse Impact Petition must show that the discharge or MS4 is a contributor to a violation of a water quality standard as described in Step Two of the State's Designation Process; a Significant Contributor of Pollutants; or a TMDL contributor of pollutants because the discharge or MS4 is specifically listed for urban stormwater TMDL development. Petitions may demonstrate that a discharge or MS4 is such a contributor by providing the Department the information outlined below:
 - (A) Monitoring data which includes, at a minimum, representative sampling of the stormwater discharge or MS4 subject to the petition and information describing how the sampling may be considered representative. However, the petitioner must notify the discharger or MS4 which is the subject of the petition prior to conducting monitoring activities.
 - (B) Technical scientific literature supporting any sampling methods.

- (C) Technical study information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses.
- (D) A map delineating the drainage area of the petitioned entity, the location of sampling stations, the location of the stormwater outfalls in the adjacent area of the sampling locations and general features such as, surface waters, major roads and political boundaries to appropriately locate the area of concern for the reviewers.
- (E) For stormwater discharges to impaired waters: documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the discharge or MS4 contributes pollutants for which the waters are impaired or degraded.
- (F) For stormwater discharges to non-impaired waters: monitoring data that demonstrates that the petitioned entity is a significant contributor of pollutants to the receiving waters.

(c) If the petition makes the required showing, the Department shall review the effectiveness of any existing water quality protection programs which may offset the need to obtain a NPDES stormwater permit. The Department shall consider the water quality of the receiving waters and whether the waters have been determined to be supporting the uses as set forth in the classifications pursuant to 15A NCAC 02B .0101(c), (d) and (e) and the specific classification of the waters pursuant to 15A NCAC 02B .0300 when determining the effectiveness of existing programs.

(d) **Petition Administration.** The Department shall process petitions in the following manner:

- (1) The Department shall accept petitions submitted only on Department forms.
- (2) A separate petition must be filed for each discharge or MS4.
- (3) The Department shall evaluate only complete petitions. The Department shall make a determination on the completeness of the petition within 90 days of receipt of a petition application or it shall be deemed complete. If the Department requests additional information, then the petitioner may submit additional information and the Department will review, within 90 days of receipt of the additional information, whether the information completes the petition.
- (4) The Petitioner shall provide a copy of the petition and a copy of any subsequent

additional information submitted to the Department to the persons in control of the discharge or the chief administrative officer of the MS4 within 48 hours of each submittal.

- (5) If the Department determines that the information is insufficient to make its evaluation of the petition under Paragraph (b) of this Rule, then it may request additional information relevant to the criteria listed in Paragraph (b) of this Rule that is necessary to evaluate the petition.
- (6) The Department shall post all petitions on the Division web site and maintain copies available for inspection at the Division's office. The Department shall accept public comments for at least 30 days from the date of posting.
- (7) The Department may hold a public hearing on any petition as part of its case-by-case need for additional information. The Department shall hold a public hearing on the petition if it receives a written request for a public hearing within the public comment period and the Department determines that there is a significant public interest in holding such hearing. The Department's determination to hold a hearing shall be no more than 15 days from the close of the public comment period. The Department shall set the hearing within 45 days of the close of the initial public comment period and shall accept additional public comment through the date of the hearing.
- (8) Information on the discharge or MS4 shall be accepted until the end of the public comment period and shall be considered in making the final determination on the petition.
- (9) New petitions for the same discharge or MS4 received during the public comment period shall be considered as comments on the original petition. New petitions for the same discharge or MS4 received after the public comment period ends and before the final determination is made shall be considered incomplete and placed on administrative hold pending a final determination on the original petition.
 - (A) If the Department determines that a discharger or MS4 must obtain a NPDES stormwater permit, any petitions for that discharge or MS4 that were placed on administrative hold shall be considered in the development of the NPDES stormwater permit.

- (B) If the Department determines that a discharger or MS4 need not obtain a NPDES stormwater permit, new petitions for that discharge or MS4 must present new information relevant to the criteria listed in Paragraph (b) of this Rule that substantially changes the evaluation of the petition in order to be considered.
- (10) The Department shall evaluate petitions within 180 days of the date they are determined or deemed to be complete. If the Department's determination is that the discharger or MS4 shall be permitted, then the Department shall notify the discharger or MS4 within 30 days of the requirement to obtain a permit. The discharger or MS4 must submit its application for a NPDES stormwater permit within 18 months of the date of notification.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0153 APPLICATION SCHEDULE AND REQUIRED CONTENTS

- (a) Regulated Entities must submit applications on Department forms.
- (b) Regulated Entities must apply within 18 months of notification by the Department of automatic federal designation, State designation or State determination that the Regulated Entity needs a NPDES stormwater permit through the petition process. However, an earlier deadline exists for Regulated Entities as follows:
 - (1) 1990 decennial U.S. Census Regulated Entities must apply by March 10, 2003.
 - (2) Regulated municipally-operated industrial activities existing and in operation as of March 10, 2003 must apply by March 10, 2003.
 - (3) Regulated municipally-operated industrial facilities proposed to operate after March 10, 2003 must apply at least six months prior to the start-up date for the facility.
- (c) Regulated Entities that do not own or operate a MS4, shall be permitted in accordance with 15A NCAC 02H .1014.
- (d) Regulated Entities must include a program to implement the six minimum measures set out in 40 CFR 122.26 which is designed to reduce discharge of pollutants to the maximum extent practicable. Public entities may develop and implement comprehensive watershed protection plans that may be used to meet part, or all, of the requirements of this section. The program must incorporate the six minimum measures as follows:
 - (1) A public education and outreach program to inform citizens of the impacts of stormwater

- discharges on water bodies and methods to reduce pollutants in stormwater runoff. The Regulated Entity may satisfy this requirement by developing a local education and outreach program, by participating in a statewide education and outreach program coordinated by the Department, or a combination of those approaches.
- (2) A public involvement and participation program consistent with all applicable state and local requirements.
- (3) A program to detect and eliminate illicit discharges within the jurisdiction or control of the Regulated Entity. The Regulated Entity may satisfy this requirement by developing a storm sewer system mapping process which will, at a minimum, identify stormwater outfalls and waters within the jurisdiction or control of the Regulated Entity, along with investigating illicit discharges and removing illicit discharges.
- (4) A program to reduce pollutants in any stormwater runoff to a MS4 or discharge which result from construction activities that arise from a land disturbance of an acre or more. Implementation and enforcement of the Sedimentation Pollution Control Act, G.S. 113A-50 et seq., by the Department or through a local program developed pursuant to G.S. 113A-54(b), in conjunction with the State's NPDES permit for construction activities, may be used to meet this minimum measure either in whole or in part.
- (5) A program to address post-construction stormwater runoff from new development and redevelopment projects that cumulatively disturb one acre or more, including projects less than one acre that are part of a larger common plan of development or sale, that enter a Regulated Entity's discharge. A Regulated Entity may utilize the Department's model ordinance to fulfill this requirement. A Regulated Entity may also utilize the Department's post construction model practices to fulfill this requirement. A Regulated Entity may also utilize the Department's guidance on scientific and engineering standards for best management practices (BMPs) to develop an alternative program for this minimum measure where a demonstration is made that the alternative program shall provide:
 - (A) Equal or better stormwater management than the model practices;
 - (B) Equal or better protection of the waters of the State than the model practices; and

(C) Minimal potential for nuisance conditions.

(6) A pollution prevention/good housekeeping program for Regulated Entities that addresses operation and maintenance, including a training component, to prevent or reduce pollutant runoff from the Regulated Entity's operations.

(e) Besides the state and local programs identified above, Regulated Entities may propose using any existing state and local programs that relate to the minimum measures to meet, either in whole or in part, the requirements of the minimum measures.

(f) The six minimum measures must extend through the jurisdictional area, including any extraterritorial jurisdictional area under G.S. 160A-360, that drains to the MS4. Likewise, the six minimum measures must extend through the area of control of any discharger required to obtain a permit through the petition process.

(g) Regulated Entities may implement a more stringent program than set out in the six minimum measures.

(h) The Department may waive the permit requirement pursuant to 40 CFR 122.32(d) or 40 CFR 122.32(e).

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0154 IMPLEMENTATION SCHEDULE

(a) The public education and outreach minimum measure shall be implemented no later than 12 months from date of permit issuance.

(b) The post-construction minimum measure must be implemented no later than 24 months from date of permit issuance. A new development or redevelopment approval issued by a Regulated Entity between the effective date of its NPDES permit and the adoption of its post-construction program does not need to incorporate post-construction requirements but does need to include a sunset date no longer than 12 months from the date of approval which shall cause the approval to expire unless the work authorized by the approval has substantially commenced. An example of substantially commenced for a subdivision is the completion of clearing, grubbing, and rough grading in public access areas such as dedicated right of ways.

(c) The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the Regulated Entity's stormwater management program based on the submitted application so that the Regulated Entity fully implements its permitted program within five years from permit issuance.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0155 POST-CONSTRUCTION

MODEL PRACTICES

Post-construction practices for new development and redevelopment projects as described in 15A NCAC 02H .0153(d)(5) are design standards that reduce or eliminate pollutants in stormwater runoff and remain in place beyond the construction phase of development. A Regulated Entity may develop its own comprehensive watershed plan, may use the Department's model ordinance, may design its own post-construction practices based on the Department's guidance on scientific and engineering standards for best management practices (BMPs), or it may incorporate this Rule's post-construction model practices to fulfill the post-construction minimum measure program requirement. If a Regulated Entity chooses an option other than this Rule's post-construction model practices, the Regulated Entity's program for post-construction must meet or exceed the model practices' ability to reduce pollutants in stormwater runoff. The post-construction model practices are set out as follows:

(1) Regulated Entities must require stormwater controls appropriate to a project's level of density as follows:

(a) Low Density. A low density project contains no more than 12 percent built-upon area if the project is within one-half mile of and draining to SA waters or no more than 24 percent built-upon area if the project is located elsewhere. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the development. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff.

(b) High Density. A high density project exceeds the low density thresholds of 12 percent built-upon area if the project is within one-half mile of and draining to SA waters or 24 percent built-upon area if the project is located elsewhere. High density projects must use structural stormwater management systems that will control and treat a treatment volume that consists of the first inch of stormwater runoff from the entire project site plus the first inch of runoff from any offsite drainage routed to the structures and that will store and discharge the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:

- (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
 - (ii) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one-year, 24-hour storm.
 - (iii) Remove an 85% average annual amount of Total Suspended Solids.
 - (iv) Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).
- (2) Regulated Entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Rule 02H .0156.
- (3) Regulated Entities must require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Regulated Entities must require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.
- (5) Regulated Entities must require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMP's required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.
- (6) Regulated Entities may allow cluster development on a project-by-project basis only if the project meets all of the following criteria:
- (a) Overall density of the project meets the low density thresholds of no more than 12 percent built-upon area for projects within one half mile of and draining to SA waters and no more than 24 percent built-upon area for all other projects.
 - (b) Built-upon areas, by design and location, minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the length of flow through vegetated areas.
 - (c) Development areas that have density that is greater than the overall project area density are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
 - (d) Areas other than built-upon areas within the project must remain undeveloped. The undeveloped area may be conveyed to a property owners association, a local government, or a conservation organization for preservation as a park or greenway. The undeveloped area may also be placed in a permanent conservation or farmland preservation easement. A maintenance agreement for the undeveloped area must be filed with the property deed.
 - (e) The project transports stormwater through vegetated conveyances to the maximum extent practicable.
- (7) For areas draining to SA waters, Regulated Entities must:
- (a) Use BMPs that result in the highest degree of fecal coliform die off and controls to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
 - (b) Implement a program to control the sources of fecal coliform to the maximum extent practicable,

- including a pet waste management component (which may be achieved by revising an existing litter ordinance) and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems (which may be coordinated with local county health departments).
- (c) Prohibit new points of stormwater discharge to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.
- (8) For areas draining to Trout Waters, Regulated Entities must:
 - (a) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
 - (b) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
- (9) For areas draining to Nutrient Sensitive Waters, Regulated Entities must:
 - (a) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater

Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

- (b) Implement a nutrient application (both inorganic fertilizer and organic nutrients) management program to reduce nutrients entering waters of the State.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .0156 EXCEPTIONS

The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

- (1) An exception may be granted if the application meets the following criteria:
 - (a) There are practical difficulties or unnecessary hardships that prevent compliance with the requirements. Practical difficulties and unnecessary hardships shall be evaluated in accordance with the following criteria:
 - (i) The applicant cannot secure a reasonable return from, or use of, the applicant's property if the applicant complies with the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded.
 - (ii) The difficulty or hardship results from application of the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded to the property rather than from other factors such as pre-existing deed restrictions or other hardship.

- (iii) The difficulty or hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring properties.
 - (iv) The applicant did not cause the difficulty or hardship by knowingly or unknowingly violating the six minimum measures' requirements.
 - (v) The applicant did not purchase the property after November 1, 2002 (the effective date of the temporary rule incorporating similar exceptions language), and then request an exception.
 - (vi) The difficulty or hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting an exception would be a special privilege denied to others, and would not promote equal justice.
- (b) The exception is in harmony with the general purpose and intent of this Rule and preserves its spirit.
 - (c) In granting the exception, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception. Moreover, the Division or delegated local authority shall consider whether the exception application presents the minimum possible deviation from the terms of the stormwater control requirements that will still allow reasonable use of the property.
- (2) Notwithstanding Paragraph (1) exceptions shall be granted in any of the following instances:
- (a) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (b) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility (such as water, sewer or gas) construction and maintenance corridor; as long as each of these is located 15 feet landward of all perennial and intermittent surface waters and as long as each of these is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (c) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to support the purpose, spirit and intent of the stormwater control requirements.
 - (4) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to protect water quality standards.
 - (5) Local authorities must document the exception procedure and submit an annual report on all exception proceedings.

- (6) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); Eff. (Pending Legislative Review).

15A NCAC 02H .1014 STORMWATER MANAGEMENT FOR URBANIZING AREAS

(a) Stormwater picks up pollutants as it drains to waters of the State. When a person alters stormwater drainage, which is prevalent in urbanizing areas, the pollutants carried by stormwater to waters of the State may be concentrated or increased, contributing to "water pollution" as defined in G.S. 143-213. The juncture at which stormwater reaches waters of the State will either be through the terminus of a pipe, ditch or other discrete outlet; or as a diffuse sheet flow.

(b) Stormwater discharges subject to National Pollutant Discharge Elimination System (NPDES) permitting are addressed in Section 02H .0100 entitled "Wastewater Discharges to Surface Waters," which incorporates, supplements and elaborates on the federal rules for stormwater NPDES discharges.

(c) Other stormwater control requirements are mainly addressed in this section, Section 02H .1000 entitled "Stormwater Management," but may also be addressed in sections dedicated to particular water classifications or circumstances. For post-construction requirements, a program will be deemed compliant for the areas where it is implementing the Water Supply Watershed Protection Programs for WS-I – WS-IV waters, the HQW and freshwater ORW Waters Management Strategies, the Neuse River Basin Nutrient Sensitive Waters Management Strategy, or the Randleman Lake Water Supply Watershed Program. Projects located in urbanizing areas, which are not subject to NPDES permitting, must obtain permits in accordance with Rules 02H .1014 through 02H .1019.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS

State definitions for stormwater are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .1002, except for the definition of Built-Upon Area which is redefined below. Additional definitions for stormwater are set out as follows:

- (1) One-Year, 24-Hour Storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or

exceeded, on average, once in 12 months and with a duration of 24 hours.

- (2) Built - Upon Area means that portion of a development project, after construction is completed, that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement, and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

- (3) Division means the Division of Water Quality.

- (4) Existing Development means those projects that are complete or those projects that, are not yet complete, but, at a minimum, have established a vested right under North Carolina zoning law as of the effective date of the local government ordinance, or such earlier time that an affected local government's vested rights ordinance shall specify, based on at least one of the following criteria:

(a) Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government stormwater approval to proceed with the project, or

(b) Having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1, or

(c) Having an approved site-specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.

- (5) Growing Population Area means an area with High Population Growth or Growth Potential.

- (6) Growth Potential means a projected growth rate exceeding 1.3 times the state growth rate for the previous 10 years or sharing to any extent a geographic boundary with a High Population Growth area.

- (7) High Population Growth means either a 10-year rate of growth exceeding 1.3 times the state population growth rate for that same period or a two-year rate of growth which exceeds 15 percent of its previous population.

- (8) Population Density means the population of an area divided by the area's geographical

- measure in square miles, equal to persons per square mile. For the purposes of this definition, the population shall equal the Total Population as defined in this Rule.
- (9) Public Entity means the United States, State of North Carolina, city, village, township, county, school district, public college or university, single purpose governmental agency, or any other governing body which is created by federal or state law.
- (10) Redevelopment means any rebuilding activity other than a rebuilding activity that;
- (a) Results in no net increase in built-upon area, and
- (b) Provides equal or greater stormwater control than the previous development.
- (11) Sensitive Receiving Waters means
- (a) Waters classified as high quality, outstanding resource, shellfish, trout or nutrient sensitive waters in accordance with 15A NCAC 02B .0101(d) and (e);
- (b) Waters which are occupied by, or designated as critical habitat for, federally-listed aquatic animal species that are listed as threatened or endangered by the U.S. Fish and Wildlife Service or National Marine Fisheries Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544; or
- (c) Waters for which the designated use, as set forth in the classification system at 15A NCAC 02B .0101(c),(d), and have been determined to be impaired in accordance with the requirements of 33 U.S.C. 1313(d).
- (12) Significant Contributor of Pollutants means an entity that allows its stormwater to:
- (a) Contribute to a pollutant loading that may reasonably be expected to adversely affect the quality and uses of a water body; or
- (b) Destabilize the physical structure of a water body such that the discharge reasonably may be expected to adversely affect the quality and uses of that water body.
- Uses of the waters shall be determined pursuant to 15A NCAC 02B .0211 - .0222 and 15A NCAC 02B .0300.
- (13) Total Maximum Daily Load (TMDL) means a written, quantitative plan and analysis for attaining and maintaining water quality

- standards in all seasons for a specific waterbody and pollutant.
- (14) Total Population means the sum of permanent and seasonal populations. The permanent population will be determined from the most recent data available from the Office of Budget and Management, State Demographer and the seasonal population will be determined from the most recent data available from the federal Bureau of the Census.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1016 URBANIZING COUNTY DESIGNATIONS

- (a) Urbanizing county designations shall be made through the federal designation process, the two-step State designation process, and the TMDL designation process. Projects within designated counties must comply with the permit application requirements set forth in 15A NCAC 02H .1017.
- (b) The following items apply in the designation process:
- (1) Federal Designation Process.
Counties are designated as urbanizing counties if they are located in whole or in part within an Urbanized Area as determined by the most recent decennial U.S. census. The Department, within three months of federal verification of decennial census data, shall notify in writing all the counties identified.
- (2) State Designation Process.
The Department shall designate additional urbanizing counties in a two-step process based on their geographical jurisdiction's potential to adversely affect water quality whether the effects constitute violations of water quality standards such as impairment of designated uses, or whether the effects constitute other types of significant water quality impacts such as adverse habitat and biological impacts. As a first step, the State will identify counties which are candidates for designation. As a second step, the State shall apply criteria to the identified counties to determine whether they shall be designated.
- (A) Step One: The Department shall identify counties as candidates for designation based on population. A county shall be identified as a candidate for designation if the county municipal and non-municipal Total Population is greater than 45,000 persons.

- (B) Step Two: From the identified counties, the Department shall designate those that contribute to a violation of a water quality standard by introducing stormwater to Sensitive Receiving Waters within a Growing Population Area or by providing Significant Contribution of Pollutants, taking into account the effectiveness of the public entities' existing water quality protection programs. Effectiveness of existing water quality programs shall be determined based upon the water quality of the receiving waters and whether the waters have been determined to be supporting the uses as set forth in the classifications pursuant to 15A NCAC 02B .0101(c), (d) and (e) and the specific classification of the waters pursuant to 15A NCAC 02B .0300.
- (3) TMDL designation.
The Department shall designate counties that contain projects that introduce pollutants through urban stormwater Total Maximum Daily Load development.
- (4) State Designation Administration.
 - (A) The Department shall implement the designation process in accordance with the Department schedule for Basinwide Plans.
 - (B) The Department shall publish a list of counties identified as candidates for urbanizing county designation. Lists shall be developed for a river basin in accordance with North Carolina's Basinwide Planning Schedule. Publication of this list may be coordinated with public notices issued through basinwide planning efforts.
 - (C) The Department shall notify all counties identified as candidates for urbanizing county designation prior to the publication of the candidate list.
 - (D) The Department shall accept public comment on the application of the designation criteria to the counties identified as candidates for urbanizing county designation. A public comment period of not less than 30 days shall be provided.
 - (E) After review of the designation criteria and review of public

comments received, the Department shall make a determination on designation for each of the candidates.

- (F) The Department shall provide written notification to each county of its designation determination and the requirements for permits set out in Rule 15A NCAC 02H .1017.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1017 APPLICATION SCHEDULE AND REQUIRED CONTENTS

Development projects in a designated urbanizing county must meet the following application schedule and requirements:

- (1) A project which cumulatively disturbs one acre or more of land within an urbanizing county's geographical jurisdiction must obtain a State stormwater permit prior to initiating the land disturbance. If the urbanizing county or other public entity within the geographical jurisdiction of the urbanizing county requests delegation of the State stormwater permit program, then the permit requirement may be suspended in the area requesting delegation until the Department delegates the program or denies the request for delegation. This suspension of permit requirements will occur only where the state has not already begun implementing the program or where a local program in the designated urbanizing county sufficient to meet the state stormwater permit program requirements is not already in place.
- (2) Applications for a permit must be submitted on Department forms to the Department or delegated authority.
- (3) The Department may approve delegation of the State stormwater permit program to an urbanizing county or other public entity within the geographical jurisdiction of the urbanizing county, if the public entity develops and implements a comprehensive watershed protection plan that may be used to meet the post-construction measure. Alternatively, the Department may approve delegation if the public entity uses the Department's model ordinance and post-construction model practices to create a program that will implement the post-construction measure throughout the public entity's jurisdiction. The Department may also approve delegation if the public entity develops a program to implement the post-

construction measure that either meets or exceeds the Department's model ordinance or practices. Such delegated programs may reduce the number of site-specific programs for projects by incorporating ordinances or programs that address the entire public entity's jurisdiction so that each project developer need not obtain a State permit.

- (4) Permit applications must demonstrate that the applicant shall meet the post-construction measure that requires implementation of a program to address post-construction stormwater runoff from new development and redevelopment projects. A permit applicant may utilize the Department's post construction model practices to fulfill this requirement. A permit applicant may also utilize the Department's guidance on scientific and engineering standards for best management practices (BMPs) to develop an alternative program for the post-construction measure where a demonstration is made that the alternative program shall provide:
 - (a) Equal or better stormwater management than the model practices;
 - (b) Equal or better protection of the waters of the State than the model practices; and
 - (c) Minimal potential for nuisance conditions.
- (5) Besides the state and local programs identified above, permit applicants or delegated programs may propose using any existing state or local programs that relate to the post-construction measure, either in whole or in part.
- (6) Permit applicants may submit a more stringent program than set out in the Department's model ordinance and model post-construction practices.

for best management practices (BMPs), or it may incorporate this Rule's post-construction model practices to fulfill the post-construction minimum measure program requirement. If a permit applicant or delegation applicant submits an option other than this Rule's post-construction model practices, the program for post-construction must meet or exceed the model practices' ability to reduce pollutants in stormwater runoff. The post-construction model practices are set out as follows:

- (1) Permittees or delegated programs must require stormwater controls appropriate to a project's level of density as follows:
 - (a) **Low Density.** A low density project contains no more than 12 percent built-upon area, as this term is defined in 15A NCAC 02H .1002(1), if the project is within one-half mile of and draining to SA waters or no more than 24 percent built-upon area if the project is located elsewhere. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the development. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff.
 - (b) **High Density.** A high density project exceeds the low density thresholds of 12 percent built-upon area if the project is within one-half mile of and draining to SA waters or more than 24 percent built-upon area if the project is located elsewhere. High density projects must use structural stormwater management systems that will control and treat a treatment volume that consists of the first inch of stormwater runoff from the entire project site plus the first inch of runoff from any offsite drainage routed to the structures and that will store and discharge the one-year, 24-hour storm. The structural stormwater management system must also meet the following design standards:
 - (i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
 - (ii) Release the storage volume at a rate equal or less than the pre-

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1018 POST-CONSTRUCTION MODEL PRACTICES

Post-construction practices for new development and redevelopment projects as required by 15A NCAC 02H .1017(4) are design standards that reduce or eliminate pollutants in stormwater runoff and remain in place beyond the construction phase of development. A permit applicant or delegated program may develop its own comprehensive watershed plan, may use the Department's model ordinance, may design its own post-construction practices based on the Department's guidance on scientific and engineering standards

- development release rate for the one-year, 24-hour storm.
 - (iii) Remove an 85% average annual amount of Total Suspended Solids.
 - (iv) Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(c).
- (2) Permittees or delegated programs must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For the purpose of this Rule, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Rule 02H .1019.
- (3) Permittees must implement or delegated local programs must require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.
- (4) Permittees must implement or delegated programs must require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.
- (5) Permittees must implement or delegated programs must require an operation and maintenance plan that ensures the adequate long-term operation of the structural BMP's required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the state or delegated program.
- (6) Permittees or delegated programs may allow cluster development on a project-by-project basis only if the project meets all of the following criteria:
 - (a) Overall density of the project meets the low density thresholds of no more than 12 percent built-upon area for projects within one half mile of and draining to SA waters and no more than 24 percent built-upon area for all other projects.
 - (b) Built-upon areas, by design and location, minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the length of flow through vegetated areas.
 - (c) Development areas that have density that is greater than the overall project area density are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
 - (d) Areas other than built-upon areas within the project must remain undeveloped. The undeveloped area may be conveyed to a property owners association, a local government, or a conservation organization for preservation as a park or greenway. The undeveloped area may also be placed in a permanent conservation or farmland preservation easement. A maintenance agreement for the undeveloped area must be filed with the property deed.
 - (e) The project transports stormwater through vegetated conveyances to the maximum extent practicable.
- (7) For areas draining to SA waters, permittees or delegated programs must:
 - (a) Use BMPs that result in the highest degree of fecal coliform die off and controls to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.
 - (b) Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component (which may be achieved by revising an existing

- litter ordinance) and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems (which may be coordinated with local county health departments).
- (c) Prohibit new outlets of stormwater to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater flow through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered an outlet of stormwater. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.
- (8) For areas draining to Trout Waters, permittees or delegated programs must:
 - (a) Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.
 - (b) Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.
- (9) For areas draining to Nutrient Sensitive Waters, permittees or delegated programs must:
 - (a) Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction

requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.

- (b) Implement a nutrient application (both inorganic fertilizer and organic nutrients) management program to reduce nutrients entering waters of the State.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

15A NCAC 02H .1019 EXCEPTIONS

The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants as follows:

- (1) An exception may be granted if the application meets the following criteria:
 - (a) There are practical difficulties or unnecessary hardships that prevent compliance with the requirements. Practical difficulties and unnecessary hardships shall be evaluated in accordance with the following criteria:
 - (i) The applicant cannot secure a reasonable return from, or use of, the applicant's property if the applicant complies with the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded.
 - (ii) The difficulty or hardship results from application of the requirements that built-upon area be located 30 feet landward of surface waters and deed restrictions and protective covenants be recorded to the property rather than from other factors such as pre-existing deed restrictions or other hardship.
 - (iii) The difficulty or hardship is due to the physical nature of the applicant's property, such as its size,

- shape, or topography, which is different from that of neighboring properties.
 - (iv) The applicant did not cause the difficulty or hardship by knowingly or unknowingly violating the six minimum measures' requirements.
 - (v) The applicant did not purchase the property after November 1, 2002 (the effective date of the temporary rule incorporating similar exceptions language), and then request an exception.
 - (vi) The difficulty or hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a exception would be a special privilege denied to others, and would not promote equal justice.
 - (b) The exception is in harmony with the general purpose and intent of this Rule and preserves its spirit.
 - (c) In granting the exception, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception. Moreover, the Division or delegated local authority shall consider whether the exception application presents the minimum possible deviation from the terms of the stormwater control requirements that will still allow reasonable use of the property.
- (2) Notwithstanding Paragraph (1) exceptions shall be granted in any of the following instances:
 - (a) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (b) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility (such as water, sewer or gas) construction and maintenance corridor; as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
 - (c) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
- (3) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to support the purpose, spirit and intent of the stormwater control requirements.
- (4) The Department or appropriate local authority may impose conditions and safeguards, upon any exception it grants, to protect water quality standards.
- (5) Local authorities must document the exception procedure and submit an annual report on all exception proceedings.
- (6) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local

governing body, under G.S. 160A-388 or G.S. 153A-345.

History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1); 143-215.1; Eff. (Pending Legislative Review).

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

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Temporary Adoption Eff. January 2, 1998; Eff. October 29, 1998; Recodified to 15A NCAC 02L .0400 Eff. December 1, 2005.

15A NCAC 02L .0401 PURPOSE AND SCOPE

(a) The purpose of this Section 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) The applicable portions of Section .0100 not specifically excluded apply to this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(a); Amended Eff. December 1, 2005.

15A NCAC 02L .0402 DEFINITIONS

The definitions as set out in 15A NCAC 02L .0102 apply to this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Eff. December 1, 2005.

15A NCAC 02L .0403 RULE APPLICATION

This Section 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 Section. This Section 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 Section as provided in 15A NCAC 02L .0416 of this Section. The requirements of this Section 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 Section as the "responsible party." This Section 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.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(b); Amended Eff. December 1, 2005.

15A NCAC 02L .0404 REQUIRED INITIAL ABATEMENT ACTIONS BY RESPONSIBLE PARTY

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 Item (3) of this Paragraph or the limited site assessment report required under 15A NCAC 02L .0405 of this Section, 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 15A NCAC 02L .0411 of this Section, whichever is lower. If such showing is made, the discharge or release shall be classified as low risk by the Department;

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(1)-(3); Amended Eff. December 1, 2005.

15A NCAC 02L .0405 REQUIREMENTS FOR LIMITED SITE ASSESSMENT

If the required showing cannot be made under 15A NCAC 02L .0404 of this Section, 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 15A NCAC 02L .0406 of this Section. Such report shall include, at a minimum:

- (1) 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 Section, source area means point of release or discharge from the underground storage tank system;
- (2) 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);
- (3) 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;
- (4) 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;
- (5) 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;

(6) the results from a limited site assessment which shall include:

- (a) 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;
- (b) if any constituent in the groundwater sample from the source area monitoring well installed in accordance with Sub-item (a) of this Item, for a site meeting the high risk classification in 15A NCAC 02L .0406(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 three additional monitoring wells or, if free product is present in any of the wells, the amount of free product in such well. The three additional monitoring wells shall be installed as follows: as best as can be determined, one upgradient of the source of contamination and two downgradient of the source of contamination. The monitoring

- (7) wells installed upgradient and downgradient of the source of contamination must be located such that groundwater flow direction can be determined; and
- (c) potentiometric data from all required wells;
- (7) 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;
- (8) the land use, including zoning if applicable, within 1500 feet of the source area of a confirmed discharge or release;
- (9) 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
- (10) 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 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.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(c)(4); Amended Eff. December 1, 2005.

15A NCAC 02L .0406 DISCHARGE OR RELEASE CLASSIFICATIONS

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 15A NCAC 02L .0404(3) of this Section. For purposes of this Section:

- (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 02B .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 risk level identified in 15A NCAC 02L .0407 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(d); Amended Eff. December 1, 2005.

15A NCAC 02L .0407 RECLASSIFICATION OF RISK LEVELS

- (a) 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.
- (b) 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.

(c) 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 15A NCAC 02L .0406(2)(b) of this Section; 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.

(d) 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 15A NCAC 02L .0408 of this Section except as provided in 15A NCAC 02L .0416 of this Section 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.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(e)-(h); Amended Eff. December 1, 2005.

15A NCAC 02L .0408 ASSESSMENT AND REMEDIATION PROCEDURES

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 Section, 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 15A NCAC 02L .0411 of this Section, 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 lower of:
 - (a) the residential or industrial/commercial maximum soil contaminant concentration, whichever is applicable, that has

been established by the Department pursuant to 15A NCAC 02L .0411 of this Section; or

- (b) the "soil-to-groundwater" maximum soil contaminant concentration that has been established by the Department pursuant to 15A NCAC 02L .0411 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(i); Amended Eff. December 1, 2005.

15A NCAC 02L .0409 NOTIFICATION REQUIREMENTS

(a) 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 Section, whichever is lowest, 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. The responsible party shall, within a time frame determined by the Department to be sufficient, 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.

(b) A responsible party who receives a notice pursuant to 15A NCAC 02L .0407(d) of this Section 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 15A NCAC 02L .0411 of this Section, 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.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(j) and (k); Amended Eff. December 1, 2005.

15A NCAC 02L .0410 DEPARTMENTAL LISTING OF DISCHARGES OR RELEASES

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 Section and all petroleum underground storage tank discharges or releases for which notification was issued under 15A NCAC 02L .0407(d) of this Section by the Department on or after the effective date of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(l); Amended Eff. December 1, 2005.

15A NCAC 02L .0411 ESTABLISHING MAXIMUM SOIL CONTAMINATION CONCENTRATIONS

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. The Department shall establish maximum soil contaminant concentrations for residential, industrial/commercial and soil-to-groundwater exposures as follows:

- (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 lower of the concentrations derived from Equations 1 and 2.

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

$$\text{Soil mg/kg} = [0.2 \times \text{oral chronic reference dose} \times \text{body weight, age 1 to 6} \times \text{averaging time noncarcinogens}] / [\text{exposure frequency} \times \text{exposure duration, age 1 to 6} \times (\text{soil ingestion rate, age 1 to 6} / 10^6 \text{ mg/kg})].$$
- (b) Equation 2: Cancer Risk-based Residential Ingestion Concentration

$$\text{Soil mg/kg} = [\text{target cancer risk of } 10^{-6} \times \text{averaging time carcinogens}] / [\text{exposure frequency} \times (\text{soil ingestion factor, age adjusted} / 10^6 \text{ mg/kg}) \times \text{oral cancer slope factor}].$$

The age adjusted soil ingestion factor shall be calculated by: $[(\text{exposure duration, age 1 to 6} \times \text{soil ingestion rate, age 1 to 6}) / (\text{body weight, age 1 to 6})] + [(\text{exposure duration, total} - \text{exposure duration, age 1 to 6}) \times \text{soil ingestion, adult}] / (\text{body weight, adult})].$
- (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 lower of the concentrations derived from Equations 1 and 2.
- (a) Equation 1: Non-cancer Risk-based Industrial/Commercial Ingestion Concentration

$$\text{Soil mg/kg} = [0.2 \times \text{oral chronic reference dose} \times \text{body weight, adult} \times \text{averaging time noncarcinogens}] / [\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 10^6 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested}].$$
- (b) Equation 2: Cancer Risk-based Industrial/Commercial Ingestion Concentration

$$\text{Soil mg/kg} = [\text{target cancer risk of } 10^{-6} \times \text{body weight, adult} \times \text{averaging time carcinogens}] / [\text{exposure frequency} \times \text{exposure duration, adult} \times (\text{soil ingestion rate, adult} / 10^6 \text{ mg/kg}) \times \text{fraction of contaminated soil ingested} \times \text{oral cancer slope factor}].$$
- (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/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 | (B) EPA, 1986. Superfund Public Health Evaluation Manual. Office of Emergency and Remedial Response (EPA/540/1-86/060); |
| (v) | Other appropriate, published health risk assessment data, and scientifically valid peer-reviewed published toxicological data. | (C) Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical]." U.S. Public Health Service; |
| (3) | The following equations and references shall be used in establishing the soil-to-groundwater maximum contaminant concentrations: | (D) Montgomery, J.H., 1996. Groundwater Chemicals Desk Reference. CRC Press, Inc; |
| (a) | Organic Constituents:
Soil mg/kg = groundwater standard or interim standard x [(0.02 x soil organic carbon-water partition coefficient) + 4 + (1.733 x 41 x Henry's Law Constant (atm.-m ³ /mole))]. | (E) 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 |
| (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. | (F) Other appropriate, published, peer-reviewed and scientifically valid data. |
| (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:
(A) EPA, 1996. Soil Screening Guidance: Technical Background Document. | (b) Inorganic Constituents:
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 ³ /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 |

- (ii) maximum contaminant concentrations.
- 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:
- (A) EPA, 1996. Soil Screening Guidance: Technical Background Document. (EPA/540/R95/128);
 - (B) 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;
 - (C) Agency for Toxic Substances and Disease Registry, "Toxicological Profile for [individual chemical]." U.S. Public Health Service;
 - (D) 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
 - (E) Other appropriate, published, peer-reviewed and

scientifically valid data.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(m); Amended Eff. December 1, 2005.

15A NCAC 02L .0412 ANALYTICAL PROCEDURES FOR SOIL SAMPLES

(a) Analytical procedures for soil samples required under this Section, except as provided in 15A NCAC 02L .0417 of this Section, shall be methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released.

(b) A sufficient number of soil samples collected, including the most 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 Section shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under Rule 2H .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 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; or in accordance with other methods or procedures approved by the Director under 15A NCAC 2H.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 Section if these compounds are not detected in soil samples collected during the construction of the source area monitoring well required under 15A NCAC 02L .0405 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(n); Amended Eff. December 1, 2005.

15A NCAC 02L .0413 ANALYTICAL PROCEDURES FOR GROUNDWATER SAMPLES

(a) Analytical procedures for groundwater samples required under this Section shall be methods accepted by the US EPA as suitable for determining the presence and concentration of petroleum hydrocarbons for the type of petroleum released.

(b) 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 Section shall be analyzed for alkane and aromatic carbon fraction classes using methods approved by the Director under Rule 2H .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 or the most recent version of these 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 2H .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 Section if these compounds are not detected in the groundwater sample collected from the source area monitoring well installed pursuant to 15A NCAC 02L .0405 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(o); Amended Eff. December 1, 2005.

15A NCAC 02L .0414 REQUIRED LABORATORY CERTIFICATION

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.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(p); Amended Eff. December 1, 2005.

15A NCAC 02L .0415 DISCHARGES OR RELEASES FROM OTHER SOURCES

This Section 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.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(q); Amended Eff. December 1, 2005.

15A NCAC 02L .0416 ELIGIBILITY OF SITES TO CONTINUE REMEDIATION UNDER RULES EXISTING BEFORE THE EFFECTIVE DATE OF 15A NCAC 02L .0115

If the risk posed by the discharge or release has been classified by the Department as Class AB under S.L. 1995-648, s. 1 (Reg. Sess., 1996), the discharge or release is classified as high risk under this Section 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 S.L. 1995-648, s. 1 (Reg. Sess., 1996), the discharge or release is classified as low risk under this Section 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 Subchapter has been submitted to the Department before the effective date of this Section, 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 Section 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 Subchapter has not been submitted to the Department for a Class AB or Class CDE discharge or release before the effective date of this Section, the responsible party shall comply with 15A NCAC 02L .0404 of this Section 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 Subchapter has been submitted to the Department prior to the effective date of this Section, the Department may issue a notification under 15A NCAC 02L .0407(d) of this Section if the responsible party demonstrates that soil contamination does not exceed contamination cleanup levels established (March 1997) in 15A NCAC 02L .0417 of this Section.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(r); Amended Eff. December 1, 2005.

15A NCAC 02L .0417 ESTABLISHING CLEANUP REQUIREMENTS FOR SITES ELIGIBLE TO CONTINUE REMEDIATION UNDER RULES EXISTING BEFORE THE EFFECTIVE DATE OF 15A NCAC 02L .0115

The Department may issue a notification under 15A NCAC 02L .0407(d) of this Section for a discharge or release classified as low risk under 15A NCAC 02L .0416 of this Section if a site assessment pursuant to Rule .0106(c) and (g) of this Subchapter was submitted to the Department prior to the effective date of this Section 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.

The following requirements are used to establish cleanup levels for sites eligible to continue remediation under the rules existing prior to the effective date of this Section.

- (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; or
 - (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 Item (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 Item (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 Sub-item (b) of this Item 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

Characteristic	Condition	Rating	Score
1) Predominant grain size as	Gravel	150	

APPROVED RULES

classified in accordance with the Unified Soil Classification System or the U.S. Department of Agriculture Soil Classification System	Sand	100
	Silt	50
	Clay	0
<hr/>		
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 table	5-10 feet	20
	>10-40 feet	10
	>40 feet	0
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	0
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	Code B (Multiply initial cleanup level by 2)	2 x ____ = ____mg/kg
91 - 120	40	Code C (Multiply initial cleanup level by 3)	3 x ____ = ____mg/kg
61 - 90	60		
31 - 60	80		
0 - 30	100		

APPROVED RULES

**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	Code B (Multiply initial cleanup level by 2)	2 x ____ = ____mg/kg
91 - 120	160	Code C (Multiply initial cleanup level by 3)	3 x ____ = ____mg/kg
61 - 90	240		
31 - 60	320		
0 - 30	400		

**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.

History Note: Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.94A; 143-215.94E; 143-215.94T; 143-215.94V; 143B-282; 1995 (Reg. Sess. 1996) c. 648, s. 1; Recodified from 15A NCAC 02L .0115(s); Amended Eff. December 1, 2005.

15A NCAC 02Q .0103 DEFINITIONS

For the purposes of this Subchapter, the definitions in G.S. 143-212 and G.S. 143-213 and the following definitions apply:

- (1) "Administrator" means when it appears in any Code of Federal Regulation incorporated by reference in this Subchapter, the Director of the Division of Air Quality unless:
 - (a) a specific rule in this Subchapter specifies otherwise, or
 - (b) the U.S. Environmental Protection Agency in its delegation or approval specifically states that a specific authority of the Administrator of the Environmental Protection Agency is not included in its delegation or approval.
- (2) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor is not considered to be an air pollutant.
- (3) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 2D or by permit conditions if the permit limits emissions to a lesser amount.
- (4) "Alter or change" means to make a modification.
- (5) "Applicable requirements" means:
 - (a) any requirement of Section .0500 of this Subchapter;
 - (b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;
 - (c) any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;
 - (d) any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;
 - (e) any standard or other requirement under Title IV;
- (6) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;
- (g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;
- (h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;
- (i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or
- (j) any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.
- (6) "Applicant" means the person who is applying for an air quality permit from the Division.
- (7) "Application package" means all elements or documents needed to make an application complete.
- (8) "CFR" means Code of Federal Regulations.
- (9) "Construction" means change in the method of operation or any physical change (including on-site fabrication, erection, installation, replacement, demolition, or modification of a source) that results in a change in emissions or affects the compliance status. The following activities are not construction:
 - (a) clearing and grading;
 - (b) building access roads, driveways, and parking lots, except parking lots required to have a construction permit under 15A NCAC 02Q .0600;
 - (c) building and installing underground pipe work, including water, sewer, electric, and telecommunications utilities; or
 - (d) building ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device for which a permit is required under G.S. 143-215.108.
- (10) "Director" means the Director of the Division of Air Quality.
- (11) "Division" means the Division of Air Quality.

- (12) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.
- (13) "EPA approves" means full approval, interim approval, or partial approval by EPA.
- (14) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.
- (15) "Facility" means all of the pollutant emitting activities, except transportation facilities as defined under Rule .0802 of this Subchapter, that are located on one or more adjacent properties under common control.
- (16) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.
- (17) "Fuel combustion equipment" means any fuel burning source covered under 15A NCAC 2D .0503, .0504, .0536, or 40 CFR Part 60 Subpart D, Da, Db, or Dc.
- (18) "Green wood" means wood with a moisture content of 18% or more.
- (19) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants listed only in 15A NCAC 02D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), are not included in this definition.
- (20) "Insignificant activities" means activities defined as insignificant activities because of category or as insignificant activities because of size or production rate under Rule .0503 of this Subchapter.
- (21) "Lesser quantity cutoff" means:
 - (a) for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:
 - (i) maximum achievable control technology (MACT) or generally available control technology (GACT), including work practice standards, requirement under Section 112(d) of the federal Clean Air Act;
 - (ii) a MACT standard established under Section 112(j) of the federal Clean Air Act; or
 - (iii) substitute MACT or GACT adopted under Section 112(l) of the federal Clean Air Act.
- (b) for modification of a source subject to, or may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied under Section 112(g) of the federal Clean Air Act; or
- (c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.
- (22) "Major facility" means a major source as defined under 40 CFR 70.2.
- (23) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.
- (24) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.
- (26) "Permit" means the legally binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document specifies the requirements applicable to the facility or source and to the permittee.
- (27) "Permittee" means the person who has received an air quality permit from the Division.
- (28) "Potential emissions" means the rate of emissions of any air pollutant that would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive emissions

as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities because of category as defined under Rule .0503 of this Section. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants covered under that rule.

- (29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.
- (30) "Regulated air pollutant" means:
 - (a) nitrogen oxides or any volatile organic compound as defined under 40 CFR 51.100;
 - (b) any pollutant for which there is an ambient air quality standard under 40 CFR Part 50;
 - (c) any pollutant regulated under 15A NCAC 02D .0524, .1110, or .1111 or 40 CFR Part 60, 61, or 63;
 - (d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or
 - (e) any Class I or II substance listed under Section 602 of the federal Clean Air Act.
- (31) "Sawmill" means a place or operation where logs are sawed into lumber consisting of one or more of these activities: debarking, sawing, and sawdust handling. Activities that are not considered part of a sawmill include chipping, sanding, planning, routing, lathing, and drilling.
- (32) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.
- (33) "Toxic air pollutant" means any of the carcinogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 02D .1104.
- (34) "Transportation facility" means a complex source as defined at G.S. 143-213(22) that is subject to the requirements of 15A NCAC 02D .0800.

- (35) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 02D .1104.

*History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1);
 Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
 Eff. July 1, 1994;
 Amended Eff. April 1, 1999; July 1, 1998; July 1, 1996;
 Temporary Amendment Eff. December 1, 1999;
 Amended Eff. December 1, 2005; July 1, 2000.*

15A NCAC 02Q .0304 APPLICATIONS

- (a) Obtaining and filing application. Permit, permit modification, or permit renewal applications may be obtained and shall be filed in writing according to Rule .0104 of this Subchapter.
- (b) Information to accompany application. Along with filing a complete application form, the applicant shall also file the following:
 - (1) for a new facility or an expansion of existing facility, a consistency determination according to G.S. 143-215.108(f) that:
 - (A) bears the date of receipt entered by the clerk of the local government, or
 - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
 - (2) for a new facility or an expansion of existing facility in an area without zoning, an affidavit and proof of publication of a legal notice as required under Rule .0113 of this Subchapter;
 - (3) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling according to G.S. 143-215.108(g); the description shall include:
 - (A) for an existing facility, a summary of activities related to source reduction and recycling and a quantification of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling; or
 - (B) for a new facility, a summary of activities related to and plans for source reduction and recycling;
 - (4) for permit renewal, an emissions inventory that contains the information specified under 15A NCAC 02D .0202, Registration of Air Pollution Sources (the applicant may use

(5) emission inventory forms provided by the Division to satisfy this requirement); and the information in Parts (A) or (B) of this Subparagraph if the Director finds this information necessary to evaluate the source, its air pollution abatement equipment, or the facility:

- (A) The applicant is financially qualified to carry out the permitted activities, or
- (B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(c) When to file application. For sources subject to the requirements of 15A NCAC 02D .0530 (prevention of significant deterioration) or .0531 (new source review for sources in nonattainment areas), applicants shall file air permit applications at least 180 days before the projected construction date. For all other sources, applicants shall file air permit applications at least 90 days before the projected date of construction of a new source or modification of an existing source.

(d) Permit renewal and ownership changes with no modifications. If no modification has been made to the originally permitted source, application for permit renewal or ownership change may be made by letter to the Director at the address specified in Rule .0104 of this Subchapter. The renewal or ownership change letter must state that there have been no changes in the permitted facility since the permit was last issued. However, the Director may require the applicant for ownership change to submit additional information, if the Director finds the following information necessary to evaluate the applicant for ownership change, showing that:

- (1) The applicant is financially qualified to carry out the permitted activities, or
- (2) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

To make a name or ownership change, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(3) or (4) of this Section signed by a person specified in Paragraph (j) of this Rule.

(e) Applications for date and reporting changes. Application for changes in construction or test dates or reporting procedures may be made by letter to the Director at the address specified in Rule .0104 of this Section. To make changes in construction or test dates or reporting procedures, the applicant shall send the Director the number of copies of letters specified in Rule .0305(a)(5) of this Section signed by a person specified in Paragraph (j) of this Rule.

(f) When to file applications for permit renewal. Applicants shall file applications for renewals such that they are received by the Division at least 90 days before expiration of the permit.

(g) Ownership or name change. The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(h) Number of copies of additional information. The applicant shall submit the same number of copies of additional information as required for the application package.

(i) Requesting additional information. Whenever the information provided on the permit application forms does not adequately describe the source and its air cleaning device, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air cleaning device. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards.

(j) Signature on application. Permit applications submitted pursuant to this Rule shall be signed as follows:

- (1) for corporations, by a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the emissions described in the permit application form originates;
- (2) for partnership or limited partnership, by a general partner;
- (3) for a sole proprietorship, by the proprietor;
- (4) for municipal, state, federal, or other public entity, by a principal executive officer, ranking elected official, or other duly authorized employee.

(k) Application fee. With the exceptions specified in Rule .0203(i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. A permit application is incomplete until the permit application processing fee is received.

(l) Correcting submittals of incorrect information. An applicant has a continuing obligation to submit relevant facts pertaining to his permit application and to correct incorrect information on his permit application.

(m) Retaining copy of permit application package. The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. December 1, 2005; July 1, 1999.

15A NCAC 02Q .0305 APPLICATION SUBMITTAL CONTENT

(a) If an applicant does not submit, at a minimum, the following information with his application package, the application package shall be returned:

- (1) for new facilities and modified facilities:
 - (A) an application fee as required under Section .0200 of this Subchapter;
 - (B) a consistency determination as required under Rule .0304(b)(1) of this Section;
 - (C) the documentation required under Rule .0304(b)(2) of this Section if required;
 - (D) a financial qualification or substantial compliance statement if required; and
 - (E) applications as required under Rule .0304(a) of this Section and Paragraph (b) of this Rule and signed as required by Rule .0304(j) of this Section;
- (2) for renewals: two copies of applications as required under Rule .0304(a) and (d) of this Section and signed as required by Rule .0304(j) of this Section and an emissions inventory that contains the information specified under 15A NCAC 02D .0202, Registration of Air Pollution Sources;
- (3) for a name change: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) indicating the current facility name, the date on which the name change shall occur, and the new facility name;
- (4) for an ownership change: an application fee as required under Section .0200 of this Subchapter and:
 - (A) two copies of a letter sent by each, the seller and the buyer, indicating the change; or
 - (B) two copies of a letter sent by either bearing the signature of both the seller and buyer, containing a written agreement with a specific date for the transfer of permit responsibility, coverage, and liability between the current and new permittee; and
- (5) for corrections of typographical errors; changes in name, address, or telephone number of any individual identified in the permit; changes in test dates or construction dates; or similar minor changes: two copies of a letter signed by the appropriate individual listed in Rule .0304(j) of this Section describing the proposed change and explaining the need for the proposed change.

(b) The applicant shall submit copies of the application package as follows:

- (1) six copies for sources subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200; or

- (2) three copies for sources not subject to the requirements of 15A NCAC 02D .0530, .0531, or .1200.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. December 1, 2005; April 1, 2004.

15A NCAC 02Q .0508 PERMIT CONTENT

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 02D .0501(f) or 15A NCAC 02D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

- (1) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
 - (A) on forms obtained from the Division at the address in Rule .0104 of this Subchapter,
 - (B) in a manner as specified by a permit condition, or
 - (C) on other forms that contain the information required by these Rules or as specified by a permit condition; and
- (2) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 02D .0524, .0535, .1110, or .1111 and to report by the next business day deviations from permit requirements not covered under 15A NCAC 02D .0524, .0535, .1110, or .1111. The

permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 02D .0535 within two business days after becoming aware of the deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

(g) At the request of the permittee, the Director may allow records to be maintained in computerized form in lieu of maintaining paper records if computerized records contain the same information as the paper records would contain.

(h) The permit for facilities covered under 15A NCAC 02D .2100, Risk Management Program, shall contain:

- (1) a statement listing 15A NCAC 02D .2100 as an applicable requirement;
- (2) conditions that require the owner or operator of the facility to submit:
 - (A) a compliance schedule for meeting the requirements of 15A NCAC 02D .2100 by the dates provided in 15A NCAC 02D .2101(a); or
 - (B) as part of the compliance certification under Paragraph (t) of this Rule, a certification statement that the source is in compliance with all requirements of 15A NCAC 02D .2100, including the registration and submission of the risk management plan.

The content of the risk management plan need not itself be incorporated as a permit term or condition.

(i) The permit shall:

- (1) contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV; but shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement;
- (2) contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit;
- (3) state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application;
- (4) state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;

- (5) state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section;
- (6) state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition;
- (7) specify the conditions under which the permit shall be reopened before the expiration of the permit;
- (8) state that the permit does not convey any property rights of any sort, or any exclusive privileges;
- (9) state that the permittee shall furnish to the Division, in a timely manner;
 - (A) any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit, and
 - (B) copies of records required to be kept by the permit when such copies are requested by the Director.

(For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.)

- (10) contain a provision to ensure that the permittee pays fees required under Section .0200 of this Subchapter;
- (11) contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section;
- (12) include all applicable requirements for all sources covered under the permit;
- (13) include fugitive emissions, if regulated, in the same manner as stack emissions;
- (14) contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter;
- (15) include all sources including insignificant activities; and
- (16) may contain such other provisions as the Director considers appropriate.

(i) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;

- (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
- (3) ensure that each operating scenario meets all applicable requirements of Subchapter 02D of this Chapter and of this Section.

(j) The permit shall identify which terms and conditions are enforceable by:

- (1) both EPA and the Division;
- (2) the Division only;
- (3) EPA only; and
- (4) citizens under the federal Clean Air Act.

(k) The permit shall state that the permittee shall allow personnel of the Division to:

- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
- (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
- (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
- (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.

(l) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 02D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
- (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.

(m) The permit shall contain requirements for compliance certification with the terms and conditions in the permit that are enforceable by EPA under Title V of the federal Clean Air Act , including emissions limitations, standards, or work practices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;

- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices; and
- (3) a requirement that the compliance certification include:

- (A) the identification of each term or condition of the permit that is the basis of the certification;
- (B) the status of compliance with the terms and conditions of the permit for the period covered by the certification, based on the methods or means designated in 40 CFR 70.6(c)(5)(iii)(B). The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under 40 CFR 64 occurred;
- (C) whether compliance was continuous or intermittent;
- (D) the identification of the method(s) or other means used by the owner and operator for determining the compliance status with each term and condition during the certification period; these methods shall include, at a minimum, the methods and means required under 40 CFR Part 70.6(a)(3); and
- (E) such other facts as the Director may require to determine the compliance status of the source;

- (4) that all compliance certifications be submitted to EPA as well as to the Division.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108; Temporary Rule Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. July 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. December 1, 2005; April 1, 2001; July 1, 2000.

15A NCAC 02Q .0706 MODIFICATIONS

(a) For modification of any facility undertaken after September 30, 1993, that:

- (1) is required to have a permit because of applicability of a Section, other than Section .1100, in Subchapter 02D of this Chapter except for facilities whose emissions of toxic air pollutants result only from insignificant activities as defined in 15A NCAC 02Q

.0103(20) or sources exempted under Rule .0102 of this Subchapter;

- (2) has one or more sources subject to a MACT or GACT standard that has previously been promulgated under Section 112(d) of the federal Clean Air Act or established under Section 112(e) or 112(j) of the Clean Air Act; or
- (3) has a standard industrial classification code that has previously been called under Rule .0705 of this Section;

the owner or operator of the facility shall comply with Paragraphs (b) and (c) of this Rule.

(b) The owner or operator of the facility shall submit a permit application to comply with 15A NCAC 02D .1100 if:

- (1) The modification results in:
 - (A) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; or
 - (B) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section; or
- (2) The Director finds that the modification of the facility will cause an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded. The Director shall provide the findings to the owner or operator of the facility. The Director may require the owner or operator of a facility subject to this Subparagraph to provide an evaluation showing what the resultant emissions and impacts on ambient levels for air toxics from the modified facility will be.

(c) The permit application filed pursuant to this Rule shall include an evaluation for all toxic air pollutants covered under 15A NCAC 02D .1104 for which there is:

- (1) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification; and
- (2) emission of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed the levels contained in Rule .0711 of this Section.

All sources at the facility, excluding sources exempt from evaluation in Rule .0702 of this Section, emitting these toxic air pollutants shall be included in the evaluation. A permit application filed pursuant to Subparagraph (b)(2) of this Rule shall include an evaluation for all toxic air pollutants identified by the Director as causing an acceptable ambient level in 15A NCAC 02D .1104 to be exceeded.

(d) If a source is included in an air toxic evaluation, but is not the source that is being added or modified at the facility, and if the emissions from this source must be reduced in order for the facility to comply with the rules in this Section and 15A NCAC 02D .1100, then the emissions from this source shall be reduced by the time that the new or modified source begins operating

such that the facility shall be in compliance with the rules in this Section and 15A NCAC 02D .1100.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S. L. 1989, C. 168, S. 45; Rule originally codified as part of 15A NCAC 2H .0610; Eff. July 1, 1998; Amended Eff. December 1, 2005; April 1, 2005.

15A NCAC 10H .0301 GENERAL REQUIREMENTS

(a) Captivity Permit or License Required

- (1) Requirement. The possession of any species of wild animal that is or once was native to this State or any species of wild bird, native or migratory, that naturally occurs or historically occurred in this State or any member of the family Cervidae is unlawful unless the institution or individual in possession obtains from the North Carolina Wildlife Resources Commission (Commission) a captivity permit or a captivity license as provided by this Rule.
- (2) Injured, Crippled or Orphaned Wildlife. When an individual has taken possession of an injured, crippled or orphaned wild animal or wild bird, that individual shall contact the Commission within 24 hours of taking possession in order to apply for a captivity permit, provided, however, that under no circumstances shall an individual take possession of an injured, crippled or orphaned wild turkey, black bear, deer, elk or any other member of the family Cervidae.

(b) Captivity Permit. A captivity permit shall be requested by mail, phone, facsimile or electronic transmission or in person. A captivity permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release of the animal or bird to the wild; or to obtain a captivity license as provided by Paragraph (c) of this Rule, if such a license is authorized; or to make a proper disposition of the animal or bird if the application for such license is denied, or when an existing captivity license is not renewed or is terminated. Captivity permits shall not be issued for wild turkey, black bear, deer, elk or any other member of the family Cervidae.

(c) Captivity License.

- (1) The purpose of captivity license is to provide humane treatment for wild animals or wild birds that are unfit for release. For purposes of this Rule, wild animals are considered "unfit" if they are incapacitated by injury or otherwise; if they are a non-native species that poses a risk to the habitat or to other species in that habitat; or if they have been rendered tame by proximity to humans to the extent that they cannot feed or care for themselves without human assistance. Persons interested in obtaining a captivity license shall contact the Commission for an application.

- (2) Denial of captivity license. Circumstances or purposes for which a captivity license shall not be issued include the following:
- (A) For the purpose of holding a wild animal or wild bird that was acquired unlawfully.
 - (B) For the purpose of holding the wild animal or wild bird as a pet. For purposes of this Rule, the term "pet" means an animal kept for amusement or companionship. The term shall not be construed to include cervids held in captivity for breeding for sale to another licensed operator.
 - (C) For the purpose of holding wild animals or wild birds for hunting in North Carolina.
 - (D) For the purpose of holding wild turkey or black bear.
 - (E) For the purpose of holding deer, elk or any other member of the family Cervidae on a facility licensed after May 17, 2002, until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm with which the tested cervid has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.
- (3) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity that complies with the standards set forth in Rule .0302 of this Section and the adequacy of such facility has been verified on inspection by a representative of the Commission.
- (4) Term of License
- (A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.
 - (B) Rehabilitable Wildlife. When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license that is issued shall be for a period less than one year as rehabilitation may require.
- (5) Holders of Captivity License for cervids.
- (A) Inspection of records. The licensee shall make all records pertaining to tags, licenses or permits issued by the Commission available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.
 - (B) Inspection. The licensee shall make all enclosures at each licensed facility and the record-book(s) documenting required monitoring of the outer fence of the enclosure(s) available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.
 - (C) Fence Monitoring Requirement. The fence surrounding the enclosure shall be inspected by the licensee or licensee's agent once a week during normal weather conditions to verify its stability and to detect the existence of any conditions or activities that threaten its stability. In the event of severe weather or any other condition that presents potential for damage to the fence, inspection shall occur every three hours until cessation of the threatening condition, except that no inspection shall be required under circumstances that threaten the safety of the person conducting the inspection.
 - (D) A record-book shall be maintained to record the time and date of the inspection, the name of the person who performed the inspection, and the condition of the fence at time of

- inspection. The person who performs the inspection shall enter the date and time of detection and the location of any damage threatening the stability of the fence. If damage has caused the fence to be breachable, the licensee shall enter a description of measures taken to prevent ingress or egress by cervids. Each record-book entry shall bear the signature or initials of the licensee attesting to the veracity of the entry. The record-book shall be made available to inspection by a representative of the Commission upon request during normal business operating hours.
- (E) Maintenance. Any opening or passage through the enclosure fence that results from damage shall, within one hour of detection, be sealed or otherwise secured to prevent a cervid from escape. Any damage to the enclosure fence that threatens its stability shall be repaired within one week of detection.
- (F) Escape. The licensee or designee shall immediately upon discovery report any cervid escape from the facility to the Commission. If possible, the escaped cervid shall be recaptured alive. If live recapture is not possible, the licensee shall request a wildlife take permit and take the escaped cervid pursuant to the terms of the permit. A recaptured live cervid shall be submitted to the Commission for Chronic Wasting Disease (CWD) testing using a test recognized by the Southeastern Cooperative Wildlife Disease Study unless the executive director determines that the risk of CWD transmission as a result of this escape is negligible based upon:
- (i) amount of time the escaped cervid remained out of the facility;
 - (ii) proximity of the escaped cervid to wild populations;
 - (iii) known susceptibility of the escaped cervid species to CWD;
 - (iv) nature of the terrain in to which the cervid escaped.
- (G) Chronic Wasting Disease (CWD)
- (i) Detection. Each licensee shall immediately notify the Commission if any cervid
 - (ii) Cervid death. The carcass of any captive cervid that was six months or older at time of death shall be transported and submitted by the licensee to a North Carolina Department of Agriculture diagnostic lab for CWD evaluation within 48 hours of the cervid's death, or by the end of the next business day, whichever is later. Ear tags distributed by the Commission and subsequently affixed to the cervids as required by this Rule, may not be removed from the cervid's head prior to submitting the head for CWD evaluation.
 - (iii) The Commission may require testing or forfeiture of cervids from a facility holding cervids in this state should the following circumstances or conditions occur:
 - (I) The facility has transferred a cervid that is received by a facility in which CWD is confirmed within five years of the cervid's transport date.
 - (II) The facility has received a cervid that originated from a facility in which CWD has been confirmed within five years of the cervid's transport date.
- (H) Tagging Required. Effective upon receipt of tags from the Commission, each licensee shall implement the tagging requirement using only the tags provided by the Commission as follows:

- (i) All cervids born within a facility shall be tagged by March 1 following the birthing season each year.
 - (ii) All cervids transferred to a facility shall be tagged within five days of the cervid's arrival at the licensee's facility. However, no cervids shall be transported from one facility to another until restrictions on importation (10B .0101) and transportation (Paragraph (f) of this Rule) no longer apply.
 - (iii) All cervids in the possession of a licensee as of October 8, 2002 shall be tagged within six months of the licensee's receipt of the tags.
- (I) Application for Tags.
- (i) Application for tags for newborn cervid. Application for tags for cervids born within a facility shall be made by the licensee by December 1 following the birthing season of each year. The licensee shall provide the following information, along with a statement and licensee's signature verifying that the information is accurate:
 - (I) Applicant name, mailing address, and telephone number;
 - (II) Facility name and site address;
 - (III) Captivity license number;
 - (IV) Species of each cervid; and
 - (V) Birth year of each cervid.
 - (ii) Application for tags for cervids that were not born at the facility site shall be made by written request for the appropriate number of tags along with the licensee's application for transportation of the cervid, along with a statement and licensee's signature verifying that the information is accurate.
- (J) Placement of Tags.
- (i) A single button ear tag provided by the Commission shall be permanently affixed by the licensee onto either the right or left ear of each cervid, provided that the ear chosen to bear the button tag shall not also bear a bangle tag, so that each ear of the cervid bears only one tag.
 - (ii) A single bangle ear tag provided by the Commission shall be permanently affixed by the licensee onto the right or left ear of each cervid except Muntjac deer, provided that the ear bearing the bangle tag does not also bear the button tag, so that each ear of the cervid bears only one tag. Muntjac deer are not required to be tagged with the bangle tag.
 - (iii) Once a tag is affixed in the manner required by this Rule, it shall not be removed.
- (K) Reporting Tags Requirement. For all cervids not in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging Report within 30 days receipt of the tags. With regard to all cervids in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging report to the Commission within seven months of the licensee's receipt of the tags. A Cervidae Tagging Report shall provide the following information and be accompanied by a statement and licensee's signature

These tag applications shall not be processed unless accompanied by a completed application for transportation. However, no transportation permits shall be issued nor shall cervids be transported from one facility to another until restrictions on importation (10B .0101) and transportation (Paragraph (f) of this Rule) no longer apply.

- verifying that the information is accurate:
 - (i) Licensee name, mailing address, and telephone number;
 - (ii) Facility name and site address, including the County in which the site is located;
 - (iii) Captivity license number;
 - (iv) Species and sex of each cervid;
 - (v) Tag number(s) for each cervid; and
 - (vi) Birth year of each cervid.
- (L) Replacement of Tags. The Commission shall replace tags that are lost or unusable and shall extend the time within which a licensee shall tag cervids consistent with time required to issue a replacement.
 - (i) Lost Tags. The loss of a tag shall be reported to the Commission by the licensee and application shall be made for a replacement upon discovery of the loss. Application for a replacement shall include the information required by Subparagraph (c)(5)(C) of this Rule along with a statement and applicant's signature verifying that the information is accurate. Lost tags shall be replaced on the animal by the licensee within 30 days of receipt of the replacement tag.
 - (ii) Unusable Tags. Tags that cannot be properly affixed to the ear of a cervid or that cannot be read because of malformation or damage to the tags or obscurement of the tag numbers shall immediately be returned to the Commission along with an application for a replacement tag with a statement and applicant's signature verifying that the information in the application is accurate.
- (6) Renewal of captivity license for cervids. Existing captivity licenses for the possession of cervids at existing facilities shall be renewed as long as the applicant for renewal
 - (7) continues to meet the requirements of this Section for the license, provided however, no renewal of an existing license shall permit the expansion of pen size or number of pens on the licensed facility to increase the holding capacity of that facility. No renewals shall be issued for a license that has been allowed to lapse due to the negligence of the former licensee.
 - (7) Provision for licensing the possession of cervids in an existing facility. A captivity license shall only be issued to an individual who is 18 years of age or older. If the licensee of an existing facility voluntarily surrenders his or her captivity license, becomes incapacitated or mentally incompetent, or dies, a person who has obtained lawful possession of the facility from the previous licensee or that licensee's estate, may apply for and may receive a captivity license to operate the existing facility. Any license issued under this provision shall be subject to the same terms and conditions imposed on the original licensee at the time of his or her surrender or death and shall be valid only for the purpose of holding the cervids of the existing facility within that existing facility. In addition, any actions pending from complaint, investigation or other cause shall be continued notwithstanding the termination of the original license.
 - (d) Nontransferable. No license or permit or tag issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding facility.
 - (e) Sale, Transfer or Release of Captive Wildlife.
 - (1) It is unlawful for any person to transfer or receive any wild animal or wild bird that is being held under a captivity permit issued under Paragraph (b) of this Rule, except that any such animal or bird may be surrendered to an agent of the Commission.
 - (2) It is unlawful for any person holding a captivity license issued under Paragraph (c) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent of the Commission, and any such licensee may sell or transfer the animal or bird (except members of the family Cervidae) to another person who has obtained a license to hold it in captivity. Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be provided to the Commission.
 - (3) It is unlawful for any person to release into the wild for any purpose or allow to range free:

- (i) any species of deer, elk or other members of the family Cervidae, or
- (ii) any wolf, coyote, or other non-indigenous member of the family Canidae, or
- (iii) any member of the family Suidae.

(f) Transportation Permit.

- (1) Except as otherwise provided herein, no transportation permit shall be required to move any lawfully held wild animal or wild bird within the State.
- (2) No person shall transport black bear or Cervidae for any purpose without first obtaining a transportation permit from the Commission.
- (3) Except as provided in Subparagraph (f)(4) of this Rule, no transportation permits shall be issued for deer, elk, or other species in the family Cervidae until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease, along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm on which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.
- (4) Cervid Transportation. A permit to transport deer, elk, or other species in the family Cervidae may be issued by the Commission to an applicant for the purpose of transporting the animal or animals for export out of state, to a slaughterhouse for slaughter or to a veterinary medical facility for treatment provided that the animal for which the permit is issued does not exhibit clinical symptoms of Chronic Wasting Disease. No person shall transport a cervid to slaughter or export out of state without bearing a copy of the transportation permit issued by the Commission authorizing that transportation. No person shall transport a cervid for veterinary treatment without having obtained approval from the Commission as provided by Subparagraph (f)(4)(C) of this Rule. Any person transporting a cervid shall present the transportation permit to any law enforcement officer or any representative of the Commission upon request, except that a person transporting a cervid by verbal authorization for veterinary treatment shall provide the name of the person who issued the approval to any law enforcement officer or any

representative of the Commission upon request.

(A) Slaughter. Application for a transportation permit for purpose of slaughter shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) Applicant name, mailing address, and telephone number;
- (ii) Facility site address;
- (iii) Captivity license number;
- (iv) Name, address, county and phone number of the slaughter house to which the cervid will be transported;
- (v) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (vi) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
- (vii) Date of transportation;
- (viii) Species and sex of each cervid; and
- (ix) Tag number(s) for each cervid.

(B) Exportation. Nothing in this rule shall be construed to prohibit the lawful exportation of a member of the family Cervidae for sale out of state. Application for a transportation permit for purpose of exportation out of state shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) Applicant's name, mailing address and telephone number;
- (ii) Facility site address;
- (iii) Captivity license number;
- (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;

- (v) Name, site address, county, state and phone number of the destination facility to which the cervid is exported;
 - (vi) A copy of the importation permit from the state of the destination facility that names the destination facility to which the animal is to be exported;
 - (vii) Date of departure;
 - (viii) Species and sex of each cervid; and
 - (ix) Tag number(s) for each cervid.
- (C) Veterinary treatment. No approval shall be issued for transportation of a cervid to a veterinary clinic out of the state of North Carolina, or for transportation from a facility out of the state of North Carolina to a veterinary clinic in North Carolina. An applicant from a North Carolina facility seeking to transport a cervid for veterinary treatment to a facility within North Carolina shall contact the Wildlife Telecommunications Center or the Wildlife Management Division of the Commission to obtain verbal authorization to transport the cervid to a specified veterinary clinic and to return the cervid to the facility. Verbal approval to transport a cervid to a veterinary clinic shall authorize transport only to the specified veterinary clinic and directly back to the facility, and shall not be construed to permit intervening destinations. To obtain verbal authorization to transport, the applicant shall provide staff of the Commission the applicant's name and phone number, applicant's facility name, site address and phone number, the cervid species, sex and tag numbers, and the name, address and phone number of the veterinary facility to which the cervid shall be transported. Within five days of transporting the cervid to the veterinary facility for treatment, the licensee shall provide the following information in writing to the Commission, along with a statement and applicant's signature verifying that the information is correct:
- (i) Applicant's name, mailing address and telephone number;
 - (ii) Facility name and site address;
 - (iii) Captivity license number;
 - (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (v) Date of transportation;
 - (vi) Species and sex of each cervid;
 - (vii) Tag number(s) for each cervid;
 - (viii) Name, address and phone number of the veterinarian and clinic that treated the cervid;
 - (ix) Symptoms for which cervid received treatment; and
 - (x) Diagnosis of veterinarian who treated the cervid.
- (g) Slaughter at cervid facility. Application for a permit for purpose of slaughter at the cervid facility shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:
- (A) Applicant name, mailing address, and telephone number;
 - (B) Facility site address;
 - (C) Captivity license number;
 - (D) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
 - (E) Date of slaughter;
 - (F) Species and sex of each cervid; and
 - (G) Tag number(s) for each cervid.
- Permits or authorization may not be sold or traded by the licensee to any individual for the hunting or collection of captive cervids. Only the licensee may kill a cervid within the cervid enclosure.
- (h) No provision within this Rule other than those that permit transport for export, slaughter or veterinary treatment shall be construed to permit transportation of cervids until restrictions on transportation provided within this Subchapter, and 15A NCAC 10B .0101 no longer apply.

History Note: Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-272.6; 113-274; Eff. February 1, 1976; Amended Eff. April 1, 1991; September 1, 1990; June 1, 1990; July 1, 1988; Temporary Amendment Eff. October 8, 2002; May 17, 2002 (this temporary rule replaced the permanent rule approved by RRC

on June 21, 2001 to become effective in July 2002); July 1, 2001;

Amended Eff. December 1, 2005; August 1, 2004.

15A NCAC 10H .0302 MINIMUM STANDARDS

(a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education that were granted an exemption by the Commission from the standards of this Rule prior to December 1, 2005 are exempt from the standards set forth in this Rule for all birds and animals except the black bear so long as the captivity license in effect on that date has not expired or been revoked.

(b) With the exception of those entities named in Paragraph (a) of this Rule who have received exemption from the Commission, all holders of captivity licenses shall comply with the following requirements:

(1) Deer, Elk and other species of the family Cervidae

(A) Enclosure. The enclosure shall be on a well-drained site containing natural or manmade shelter for shade. The minimum size of the enclosure for all cervids except Muntjac shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held provided that no more than 25% shall be covered with water. At no time shall the number of cervids in the enclosure exceed the number allowed by the captivity license. The enclosure shall be surrounded by a fence of sufficient strength and design to contain the animal under any circumstances, at least eight feet high, and dog-proof to a height of at least six feet. For enclosures exclusively holding Muntjac deer, the minimum pen size shall be 800 square feet for the first three animals and 200 square feet for each additional animal. No exposed barbed wire, nails, or other protrusions that may cause injury to the animal shall be permitted within the enclosure. Captive cervids shall not be contained within or allowed to enter a place of residence.

(B) Sanitation and Care. Licensees shall provide an ample supply of clear water and salt at all times. Food shall be placed in the enclosure as needed, but not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. The animal(s) shall be

protected against fright or harm from other animals.

(2) Wild Boars

(A) Enclosure. The enclosure shall be on a site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held. The enclosure shall be surrounded by a fence at least five feet high and of sufficient strength to contain the animals. No exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing or a lying position for each boar must be provided. This building shall be closed on three sides. A pool of water for wallowing or a sprinkler system shall be provided on days when heat could cause stress to the animal(s).

(B) Sanitation and Care. Licensees shall provide an ample supply of clear water at all times. Food shall be placed in the enclosure as needed, but in any case, not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

(3) Wild Birds

(A) Enclosure. The enclosure shall be large enough for the bird or birds to assume all natural postures. The enclosure shall be designed in such a way that the birds cannot injure themselves and are able to maintain a natural plumage. Protection from sun, weather, and predators shall also be provided.

(B) Sanitation and Care. The cage shall be kept clean, dry, and free from molded or damp feed. Ample food and clean water shall be available at all times.

(4) Alligators

(A) Enclosure. The enclosure shall be surrounded by a fence of sufficient strength to contain the animals and that shall prevent contact between the observer and alligator. The enclosure shall contain a pool of water large enough for the animal to completely submerge itself. If more than one

animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.

- (B) Sanitation and Care. The water area shall be kept clean and food adequate to maintain good health provided. Protection shall be provided at all times from extremes in temperature that could cause stress to the animal.

(5) Black Bear

(A) Educational Institutions and Zoos Operated or Established by Governmental Agencies

(i) Enclosure. A permanent, stationary metal cage, at least eight feet wide by 12 feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.

(ii) Sanitation and Care. Food adequate to maintain good health shall be provided daily; and clean, clear drinking water shall be available at all times. The floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other material shall be placed over the cage to provide additional shade when necessary for the health of the animal. The use of collars, tethers or stakes to restrain the bear is prohibited, except as a temporary safety device.

(B) Conditions Simulating Natural Habitat. Black bears held in captivity by other than educational institutions or governmental zoos shall be held without caging under conditions simulating a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility:

- (i) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.
- (ii) The area of confinement is at least one acre in extent for one or two bears and an additional one-eighth acre for each additional bear.
- (iii) Bears are free, under normal conditions, to move throughout such area.
- (iv) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind.
- (v) The area of confinement contains a pool not less than one and one-half feet deep

- height with a four foot fence overhang at a 45 degree angle on the inside of the pen to prevent escape from climbing and jumping.
 - (II) Fence posts and at least six inches of the fence skirt shall be imbedded in a six inch wide by one foot deep concrete footer to prevent escape by digging.
 - (ii) The area of confinement shall be at least one acre for two cougars with an additional one-eighth acre for each additional cougar. If, following a site evaluation, the Commission determines that terrain and topographical features offer sufficient escape, cover and refuge, and meet all other specifications, and that the safety and health of the animal(s) will not be compromised, smaller areas shall be permitted.
 - (iii) Cougars shall be free under normal conditions to move throughout the area of confinement.
 - (iv) At least one-half of the area of confinement shall be wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind; and a 20 foot wide strip along the inside of the fence shall be maintained free of trees, shrubs and any other obstructions which could provide a base from which escape through leaping could occur.
 - (v) The area of confinement shall contain a pool not less than one and one-half feet deep and not less than four by five feet in size.
 - (vi) Each cougar shall be provided a den to which the cougar may retire for rest, shelter from the elements, or respite from public observation. Each den shall be four feet wide by four feet high by four feet deep. Each den shall be enclosed entirely within at least an eight feet wide by ten feet deep by 12 feet high security cage. The security cage shall be completely within the confines of the facility, cement-floored, shall have nine gauge fencing on all sides and the top, and shall have a four foot, 45 degree fence overhang around the outside top edge to prevent cougar access to the top of the security cage.
 - (vii) The area of confinement shall protect the cougar from harassment or annoyance.
- (C) Provisions shall be made for maintenance of sanitation and for food and water adequate to maintain good health of the animal(s).
- (D) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
- (7) Other Wild Animal Enclosures.
- (A) General Enclosure Requirements.
 - (i) The enclosure shall provide protection from free ranging animals and from sun or weather that could cause stress to the animals.
 - (ii) A den area in which the animal can escape from view and large enough for the animal to turn around and lie down shall be provided for each animal within the enclosure.
 - (iii) No tethers or chains shall be used to restrain the animal.
 - (iv) Either a tree limb, exercise device, or shelf large enough to accommodate the animal shall be provided to allow for exercise and climbing.
 - (v) Sanitation and Care. Fresh food shall be provided daily,

- (vi) and clean water shall be available at all times.
- (vi) An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

- (B) Single Animal Enclosures for certain animals. The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Animal	Dimensions in Feet			Per Animal
	Length	Width	Height	
Bobcat, Otter	10	5	5	50
Raccoon, Fox, Woodchuck	8	4	4	32
Opossum, Skunk, Rabbit	6	3	3	18
Squirrel	4	2	2	8

Amended Eff. December 1, 2005; August 1, 2004.

- (C) Single Enclosure Requirements for animals not mentioned elsewhere in this Rule. For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.
- (D) Multiple Animal Enclosures. The minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures.
- (E) Young animals. The young of any animal may be kept with the parent in a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures shall apply.

15A NCAC 18A .2532 SPAS AND HOT TUBS

Spas and hot tubs shall meet all design specifications for swimming pools and wading pools included in Rules .2512 through .2530 of this Section with the following exceptions:

- (1) The circulation system equipment shall provide a turnover rate for the entire water capacity at least once every 30 minutes.
- (2) The arrangement of water inlets and outlets shall produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the spa.
- (3) A minimum of two inlets shall be provided with inlets added as necessary to maintain required flowrate.
- (4) Water outlets shall be designed so that each pumping system in the spa (filter systems or booster systems if so equipped) provides the following:
 - (a) Two drains connected by "T" piping. Connecting piping shall be of the same diameter as the main drain outlet. Filter system drains shall be capable of emptying the spa completely. In spas constructed after April 1, 2000 drains shall be installed at least three feet apart or located on two different planes of the pool structure.
 - (b) Filtration systems shall provide at least one surface skimmer per 100 square feet, or fraction thereof of surface area.
- (5) The water velocity in spa or hot tub discharge piping shall not exceed 10 feet per second (3.05 meters per second); except for copper pipe where water velocity shall not exceed eight feet per second (2.44 meters per second). Suction water velocity in any piping shall not exceed six feet per second (1.83 meters per second).

History Note: Authority G.S. 19A-11; 106-549.97(b); 113-134; 113-272.5, 113-272.6. Eff. February 1, 1976; Amended Eff. December 1, 1990; June 1, 1990; July 1, 1988; November 9, 1980; Temporary Amendment Eff. October 8, 2002;

- (6) Spa recirculation systems shall be separate from companion swimming pools.
- (a) Where a two-pump system is used, one pump shall provide the required turnover rate, filtration and disinfection for the spa water. The other pump shall provide water or air for hydrotherapy turbulence without interfering with the operation of the recirculation system. The timer switch shall activate only the hydrotherapy pump.
- (b) Where a single two-speed pump is used, the pump shall be designed and installed to provide the required turnover rate for filtration and disinfection of the spa water at all times without exceeding the maximum filtration rates specified in Rule .2519 of this Section. The timer switch shall activate only the hydrotherapy portion of the pump.
- (c) Where a single one-speed pump is used, a timer switch shall not be provided.
- (7) A timer switch shall be provided for the hydrotherapy turbulence system with a maximum of 15 minutes on the timer. The switch shall be placed such that a bather must leave the spa to reach the switch.
- (8) The maximum operational water depth shall be four feet (1.22 m) measured from the water line.
- (9) The maximum depth of any seat or sitting bench shall be two feet (61 centimeters) measured from the waterline.
- (10) A minimum height between the top of the spa/hot tub rim and the ceiling shall be 7 ½ feet.
- (11) Depth markers are not required at spas.
- (12) Steps, step-seats, ladders or recessed treads shall be provided where spa and hot tub depths are greater than 24 inches (61 centimeters).
- (13) Contrasting color bands or lines shall be used to indicate the leading edge of step treads, seats, and benches.
- (14) A spa or hot tub shall be equipped with at least one handrail (or ladder equivalent) for each 50 feet (15.2 meters) of perimeter, or portion thereof, to designate points of entry and exit.
- (15) Where water temperature exceeds 90° Fahrenheit (32° C), a caution sign shall be mounted adjacent to the entrance to the spa or hot tub. It shall contain the following warnings in letters at least ½ inch in height:
- (a) CAUTION:
- (b) -Pregnant women; elderly persons, and persons suffering from heart disease, diabetes, or high or low blood pressure should not enter the spa/hot tub without prior medical consultation and permission from their doctor;
- (c) -Do not use the spa/hot tub while under the influence of alcohol, tranquilizers, or other drugs that cause drowsiness or that raise or lower blood pressure;
- (d) -Do not use alone;
- (e) -Unsupervised use by children is prohibited;
- (f) -Enter and exit slowly;
- (g) -Observe reasonable time limits (that is, 10-15 minutes), then leave the water and cool down before returning for another brief stay;
- (h) -Long exposure may result in nausea, dizziness, or fainting;
- (i) -Keep all breakable objects out of the area.
- (16) Spas shall meet the emergency telephone and signage requirements for swimming pools in Rule .2530(f).
- (17) A sign shall also be posted requiring a shower for each user prior to entering the spa or hot tub and prohibiting oils, body lotion, and minerals in the water.
- (18) Spas shall not be required to provide the lifesaving equipment described in Rule .2530(a) of this Section
- (19) In spas less than four feet deep the slope of the pool wall may exceed 11 degrees from plumb, but shall not exceed 15 degrees from plumb.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. January 1, 2006; July 1, 2004; February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.

15A NCAC 18A .2612 SHELLFISH

- (a) All shellfish and crustacea meat shall be obtained from sources in compliance with 15A NCAC 18A .0100 through .0900 which may be obtained from the Department. If the source of clams, oysters, or mussels is outside the state, the shipper's name shall appear on the "Interstate Certified Shellfish Shippers List" as published monthly by the Shellfish Sanitation Branch, Food and Drug Administration. If the source of the cooked crustacea meat is within the United States, the processor's name, address, and certificate number with State abbreviation shall appear on the container. If the source of the cooked crustacea meat is outside the United States, containers must meet Federal labeling requirements, Food and Drug Administration, HHS Food Labeling requirements, 21 CFR Chapter 1, Part 101-Food Labeling.
- (b) All shucked shellfish and all cooked crustacea meat shall be stored in the original container. Each original container shall be

identified with the name and address of the packer or repacker, and the certification number, and the abbreviated name of the state or territory. Shucked shellfish unit containers shall be dated in accordance with 15A NCAC 18A .0600.

(c) All shellstock shall be stored in the containers in which packed at the source. Each original container shall be identified with a uniform tag or label bearing the name and address of the shipper, the certificate number issued by the state or territory regulatory authority, the abbreviated name of the state, the name of the waters from which the shellfish were taken, the date of harvest, the kind and quantity of the shellstock in the container, and the name and address of the consignee.

(d) Shellstock shall be stored at temperatures and by methods in accordance with 15A NCAC 18A .0427. The re-use of single-service shipping containers and the storage of shucked shellfish in other containers are not allowed.

(e) After each container of shellstock has been emptied, the management shall remove the tag and retain it for a period of at least 90 days.

(f) With the exception of opening shellfish for immediate consumption on the premises, no shellfish shucking shall be performed unless the establishment holds a valid shellfish shucking permit.

(g) Shellstock washing facilities shall consist of a mechanical shellfish washer, or a sink or slab with catch basin, indirectly drained into a sewage collection, treatment, and disposal system. The washing shall be done in a clean area, protected from contamination. A can wash facility shall not be used for the washing of shellstock or other foods.

(h) The cooking of shellfish shall be accomplished in an area meeting the requirements of the rules of this Section.

(i) Re-use of shells for the serving of food is prohibited. It shall not be considered reuse to remove a shellfish from its shell and return it to that same shell for service to the public. Shells shall be stored in a manner to prevent flies, insects, rodents, and odors.

(j) All establishments that prepare, serve, or sell raw shellfish shall post in a conspicuous place where it may be readily observed by the public prior to consumption of shellfish, the following consumer advisory:

"Consumer Advisory
Eating raw oysters, clams, or mussels may cause severe illness. People with the following conditions are at especially high risk: liver disease, alcoholism, diabetes, cancer, stomach or blood disorder, or weakened immune system. Ask your doctor if you are unsure of your risk. If you eat shellfish and become sick, see a doctor immediately."

(k) Cooked crustacea meat shall be held at 40° F or less.

History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. May 1, 1991; July 1, 1984; Temporary Amendment Eff. February 1, 1998;

Amended Eff. August 1, 1998; Temporary Amendment Eff. October 12, 1998; Amended Eff. January 1, 2006; April 1, 2005; April 1, 1999.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 26 - LICENSING BOARD OF LANDSCAPE ARCHITECTS

21 NCAC 26 .0211 INCOMPETENCE

The following acts or omissions are deemed to be gross incompetency within the meaning of G.S. 89A-7:

- (1) to attempt to perform professional services which are beyond the qualifications which the landscape architect and those who are engaged as consultants are qualified by education, training and experience in the specific technical areas involved;
- (2) to be negligent in planning, designing, supervising, managing or inspecting landscape architectural projects such that the public health, safety, or welfare is jeopardized;
- (3) to plan, perform, or supervise work for clients in such a manner and with such results as to be below the level of professional competency exercised by other registered landscape architects who are practicing in the area;
- (4) to have been judged incompetent by a court having jurisdiction under G.S. 35A or former G.S. 35 or committed to a mental health facility for treatment of mental illness, as defined in G.S. 122C-3, by a court under G.S. 122C-271.

History Note: Authority G.S. 89A-3.1; 89A-7; Eff. August 1, 1993; Amended Eff. December 1, 2005; March 1, 1994.

21 NCAC 26 .0306 REINSTATEMENT AFTER REVOCATION

Any person whose certificate of registration is revoked shall be reinstated at any time by majority vote of the board if there is a finding that the cause for revocation no longer exists.

History Note: Authority G.S. 89A-3.1; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. December 1, 2005.

21 NCAC 26 .0510 DISCIPLINARY REVIEW PROCESS

(a) General. Allegations or evidence of a violation of the Landscape Architecture Licensing Act or the rules in this Chapter shall be subject to Board investigation and may be subject to disciplinary action by the Board.

(b) Preliminary Review.

- (1) Upon receipt of a complaint involving a registrant, an investigation shall be initiated by the Board's Chairman.
 - (2) A written notice and explanation of the allegation shall be forwarded to the person or firm against whom the charge is made and a response shall be requested of the person or firm so charged within 30 days of receipt of said notice to show compliance with all lawful requirements for retention of the certificate of registration. Notice of the charge and of the alleged facts or alleged conduct shall be given personally or by certified mail, return receipt requested.
 - (3) In the discretion of the Board Chair, a field investigation may be performed.
 - (4) After preliminary evidence has been obtained, the Board Chair shall either:
 - (A) recommend dismissal of the charge, or;
 - (B) refer the matter to the Disciplinary Review Committee.
 - (5) If the Board Chair recommends dismissal, the Chairman shall give a summary report to the Board and a vote shall be called to dismiss the complaint. If the Board does not vote to dismiss the complaint, the matter shall be forwarded to the Disciplinary Review Committee for further consideration.
- (c) The Disciplinary Review Committee.
- (1) The Disciplinary Review Committee shall be made up of a minimum of one member of the Board and the Board Chair.
 - (2) Upon review of the evidence, the Disciplinary Review Committee shall present to the Board a written recommendation that may include the following:
 - (A) The charge be dismissed as unfounded or that the Board is without jurisdiction over the matter;
 - (B) The charge is admitted as true, whereupon the Board may accept the admission of guilt by the person charged and sanction the individual or company accordingly;
 - (C) The Board accept a proposed settlement negotiated in an effort to resolve the alleged violations; or
 - (D) The charge be presented to the full Board for a hearing and determination of sanctions by the Board in accordance with the substantive and procedural requirements of the provisions of G.S. 150B.
- (d) Consultant. A consultant to the Disciplinary Review Committee shall be designated by the legal counsel of the Board if the Chair of the Disciplinary Review Committee determines that it needs assistance. The consultant shall be a currently registered Landscape Architect, selected from former Board members or other registered professionals who are knowledgeable with the Board's processes and have expressed an interest in serving as a consultant. The consultant shall review all case materials and assist the Disciplinary Review Committee in making a recommendation as to the merits of the case.
- (e) Board Decision. At least 15 days written notice of the date of consideration by the Board of the recommendations of the Disciplinary Review Committee shall be given to the party against whom the charges have been brought and the party submitting the charge.
- (f) Settlement Conference. When the Board issues a notice of hearing, the registrant may request in writing a settlement conference to pursue resolution of the issue(s) through informal procedures. If, after the completion of a settlement conference, the registrant and Board's Disciplinary Review Committee do not agree to a resolution of the dispute for the full Board's consideration, the original disciplinary review process shall commence. During the course of the settlement conference, no sworn testimony shall be taken.

History Note: Authority G.S. 89A-3.1; 89A-7; Eff. December 1, 2005.

RULES REVIEW COMMISSION

<u>Processing Applications</u>	10A	NCAC	67B	.0204
<u>Administrative Fees</u>	10A	NCAC	67B	.0301
<u>Certification Fee</u>	10A	NCAC	67B	.0302
<u>Private Organizations</u>	10A	NCAC	67B	.0401
<u>Contribution of Matching Funds</u>	10A	NCAC	67B	.0402
<u>Monitoring</u>	10A	NCAC	67B	.0403
<u>Monitoring Forms</u>	10A	NCAC	67B	.0404
<u>Purchase Contracts</u>	10A	NCAC	67B	.0501
<u>Vendor Agreement</u>	10A	NCAC	67B	.0502
<u>Budgets</u>	10A	NCAC	67B	.0503
<u>Internal Budget Revisions</u>	10A	NCAC	67B	.0504
<u>Reimbursement Methods</u>	10A	NCAC	67B	.0505

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Definitions</u>	12	NCAC	10B	.0103
<u>Suspension: Revocation: or Denial of Certification</u>	12	NCAC	10B	.0204
<u>Period of Suspension: Revocation: or Denial</u>	12	NCAC	10B	.0205
<u>Minimum Standards for Justice Officers</u>	12	NCAC	10B	.0301
<u>Basic Law Enforcement Training Course for Deputies</u>	12	NCAC	10B	.0502
<u>Time Req/Completion/Basic Law Enforcement Training Course</u>	12	NCAC	10B	.0503
<u>Waiver of Completion of Training</u>	12	NCAC	10B	.0504
<u>Detention Officer Certification Course</u>	12	NCAC	10B	.0601
<u>Evaluation for Training Waiver</u>	12	NCAC	10B	.0603
<u>Administration of Detention Officer Certification Course</u>	12	NCAC	10B	.0703
<u>Responsibilities: School Directors</u>	12	NCAC	10B	.0704
<u>Responsibilities: School Directors, Telecommunicator Cert...</u>	12	NCAC	10B	.0709
<u>Terms and Conditions of Professional Lecturer Cert</u>	12	NCAC	10B	.0907
<u>Limited Lecturer Certification</u>	12	NCAC	10B	.0908
<u>Terms and Conditions of a Limited Lecturer Certification</u>	12	NCAC	10B	.0909
<u>Terms and Conditions of Professional Lecturer Cert. Telec...</u>	12	NCAC	10B	.0917
<u>General Provisions</u>	12	NCAC	10B	.1002
<u>General Provisions</u>	12	NCAC	10B	.1102
<u>General Provisions</u>	12	NCAC	10B	.1202
<u>General Provisions</u>	12	NCAC	10B	.1402
<u>General Provisions</u>	12	NCAC	10B	.1502
<u>Sheriff Responsibilities</u>	12	NCAC	10B	.1701
<u>Domestic Violence In-Service Training Program Specifications</u>	12	NCAC	10B	.1704
<u>Failure to Complete In-Service Domestic Violence Training Program</u>	12	NCAC	10B	.1705
<u>Sheriff Responsibilities</u>	12	NCAC	10B	.1801
<u>Instructors</u>	12	NCAC	10B	.1802
<u>Minimum Training Requirements</u>	12	NCAC	10B	.1803
<u>Law Enforcement In-Service Training Program Specifications</u>	12	NCAC	10B	.1804
<u>Failure to Complete Law Enforcement Training Program</u>	12	NCAC	10B	.1805
<u>In-Service Training Coordinator</u>	12	NCAC	10B	.1806
<u>Topical Areas</u>	12	NCAC	10B	.2002
<u>In-Service Firearms Requalification Specifications</u>	12	NCAC	10B	.2104

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

Fee Schedule 15A NCAC 01R .0101

EDUCATION, STATE BOARD OF

License Patterns 16 NCAC 06C .0304

Licenses for Non-Teacher Education Graduates 16 NCAC 06C .0305

License Renewal 16 NCAC 06C .0307

Testing Requirements and Opportunities 16 NCAC 06D .0301

End-of-Course Assessments 16 NCAC 06D .0305

Definitions 16 NCAC 06D .0501

Student Accountability Standards 16 NCAC 06D .0502

State Graduation Requirements 16 NCAC 06D .0503

Definitions 16 NCAC 06G .0305

Annual Performance Standards 16 NCAC 06G .0312

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

Definitions 21 NCAC 08A .0301

Holding Out to the Public 21 NCAC 08A .0308

Emphasis in Taxation or Accounting 21 NCAC 08A .0311

Filing of Examination Applications and Fees 21 NCAC 08F .0103

Conditioning Requirements 21 NCAC 08F .0105

Granting Examination Credit From Other Jurisdictions 21 NCAC 08F .0106

Communication of Results of CPA Examinations 21 NCAC 08F .0107

Proctoring Other Jurisdictions' Candidates 21 NCAC 08F .0110

Candidate's Request To Sit In Another Jurisdiction 21 NCAC 08F .0112

Waiver of Education Required Prior to Examination 21 NCAC 08F .0304

Work Experience Required of Candidates for CPA Certification 21 NCAC 08F .0401

Satisfaction of Experience Requirement by Teaching 21 NCAC 08F .0409

Education Required of Candidates for CPA Certification 21 NCAC 08F .0410

Professional Ethics and Conduct CPE 21 NCAC 08G .0410

Reciprocal Certificates 21 NCAC 08H .0101

Use of CPA Title 21 NCAC 08H .0105

Peer Review Requirements 21 NCAC 08M .0105

Compliance 21 NCAC 08M .0106

Responsibility For Compliance By Others 21 NCAC 08N .0103

Discipline By Federal And State Authorities 21 NCAC 08N .0204

Reporting Convictions Judgments and Disciplinary Actions 21 NCAC 08N .0208

Other Rules 21 NCAC 08N .0213

Outsourcing To Third-Party Service Providers 21 NCAC 08N .0214

Forms of Practice 21 NCAC 08N .0302

Objectivity and Conflicts of Interest 21 NCAC 08N .0303

Consulting Services Standards 21 NCAC 08N .0304

Retention of Client Records 21 NCAC 08N .0305

CPA Firm Names 21 NCAC 08N .0307

<u>Valuation Services Standards</u>	21	NCAC	08N	.0308
<u>Public Reliance</u>	21	NCAC	08N	.0401
<u>Peer Review Standards</u>	21	NCAC	08N	.0408

COSMETIC ART EXAMINERS, BOARD OF

<u>Designations</u>	21	NCAC	14M	.0101
<u>Form COS-1</u>	21	NCAC	14M	.0102
<u>Form COS-2</u>	21	NCAC	14M	.0103
<u>Form COS-3</u>	21	NCAC	14M	.0104
<u>Form COS-4</u>	21	NCAC	14M	.0105
<u>Form COS-5</u>	21	NCAC	14M	.0106
<u>Form COS-6</u>	21	NCAC	14M	.0107
<u>Form COS-7</u>	21	NCAC	14M	.0108
<u>Form COS-8</u>	21	NCAC	14M	.0109
<u>Form COS-9</u>	21	NCAC	14M	.0110
<u>Form COS-10</u>	21	NCAC	14M	.0111
<u>Form COS-11</u>	21	NCAC	14M	.0112
<u>Form COS-12</u>	21	NCAC	14M	.0113
<u>Copies</u>	21	NCAC	14M	.0114
<u>Access to Forms</u>	21	NCAC	14M	.0115
<u>Form COS-13</u>	21	NCAC	14M	.0116
<u>Form COS-14</u>	21	NCAC	14M	.0117
<u>Form COS-15</u>	21	NCAC	14M	.0118
<u>Form COS-16</u>	21	NCAC	14M	.0119
<u>Form COS-17</u>	21	NCAC	14M	.0120
<u>Form COS-18</u>	21	NCAC	14M	.0121
<u>Form COS-19</u>	21	NCAC	14M	.0122
<u>Form COS-20</u>	21	NCAC	14M	.0123
<u>Form COS-21</u>	21	NCAC	14M	.0124
<u>Form COS-22</u>	21	NCAC	14M	.0125
<u>Form COS-23</u>	21	NCAC	14M	.0126
<u>Form COS-24</u>	21	NCAC	14M	.0127
<u>Form COS-25</u>	21	NCAC	14M	.0128
<u>Form COS-26</u>	21	NCAC	14M	.0129
<u>Form COS-27</u>	21	NCAC	14M	.0130
<u>Form COS-28</u>	21	NCAC	14M	.0131
<u>Form COS-29</u>	21	NCAC	14M	.0132
<u>Form COS-30</u>	21	NCAC	14M	.0133
<u>Form COS-31</u>	21	NCAC	14M	.0134
<u>Time and Place of Examinations</u>	21	NCAC	14N	.0101
<u>Initial Application and Fees</u>	21	NCAC	14N	.0102
<u>General Examination Instructions</u>	21	NCAC	14N	.0103
<u>Live Model Requirements</u>	21	NCAC	14N	.0104
<u>Mannequin Requirements</u>	21	NCAC	14N	.0105
<u>Failure to Appear for Examination</u>	21	NCAC	14N	.0108
<u>Observation of Examination by Third Parties</u>	21	NCAC	14N	.0109

<u>Notification of Examination Results</u>	21	NCAC	14N	.0111
<u>Review of Examination</u>	21	NCAC	14N	.0112
<u>Re-examination</u>	21	NCAC	14N	.0113
<u>Failure to Comply with Chapter</u>	21	NCAC	14N	.0114
<u>Examination-Theory Section</u>	21	NCAC	14N	.0201
<u>Examination-Practical Section</u>	21	NCAC	14N	.0202
<u>Examination-Theory Section</u>	21	NCAC	14N	.0301
<u>Examination-Practical Section</u>	21	NCAC	14N	.0302
<u>Examination-Theory Section</u>	21	NCAC	14N	.0401
<u>Examination-Practical Section</u>	21	NCAC	14N	.0402
<u>Examination-Theory Section</u>	21	NCAC	14N	.0501
<u>Examination-Practical Section</u>	21	NCAC	14N	.0502
<u>Examination-Theory Section</u>	21	NCAC	14N	.0601
<u>Examination-Practical Section</u>	21	NCAC	14N	.0602
<u>Examination-Theory Section</u>	21	NCAC	14N	.0701
<u>Examination-Practical Section</u>	21	NCAC	14N	.0702
<u>Revocation of Licenses and Other Disciplinary Measures</u>	21	NCAC	14P	.0108
<u>Continuing Education Requirements</u>	21	NCAC	14R	.0101
<u>Criteria for Continuing Education Courses</u>	21	NCAC	14R	.0103

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

<u>Principal Office Mailing Address</u>	21	NCAC	18B	.0101
<u>Examinations</u>	21	NCAC	18B	.0204
<u>Waiting Period Between Examinations</u>	21	NCAC	18B	.0211
<u>Continuing Education Requirements Listed Qualified Indivi...</u>	21	NCAC	18B	.1101
<u>Minimum Requirements for Course Sponsor Approval</u>	21	NCAC	18B	.1102
<u>Minimum Requirements for Course Instructor Approval</u>	21	NCAC	18B	.1103
<u>Computation of Continuing Education Hours</u>	21	NCAC	18B	.1105
<u>List of Approved Course Sponsors and Instructors</u>	21	NCAC	18B	.1106

NURSING, BOARD OF

<u>Students</u>	21	NCAC	36	.0320
-----------------	----	------	----	-------

VETERINARY MEDICAL BOARD

<u>Name and Location of Board</u>	21	NCAC	66	.0101
-----------------------------------	----	------	----	-------

ADMINISTRATIVE HEARINGS, OFFICE OF

<u>Electronic Version</u>	26	NCAC	02C	.0105
<u>General Format Instructions</u>	26	NCAC	02C	.0108
<u>Electronic Filing</u>	26	NCAC	02C	.0308
<u>Body of the Rule</u>	26	NCAC	02C	.0405
<u>General</u>	26	NCAC	03	.0101

BUILDING CODE COUNCIL

<u>2006 NC Building Code</u>	041214	Item B-2 B
<u>2006 NC Fire Code</u>	041214	Item B-2 D

RULES REVIEW COMMISSION

<u>NC Mechanical Code</u>	041214	Item B-2 F
<u>2006 NC Plumbing Code</u>	041214	Item B-2 G

**AGENDA
RULES REVIEW COMMISSION
January 19, 2006, 10:00 A.M.**

- I. Review of minutes of last meeting**
- II. Follow-Up Matters**
 - A. Child Care Commission – 10A NCAC 09 .1701 and .1718 (Bryan)
 - B. Sheriffs Education and Training Standards Commission – 12 NCAC 10B .0905 and .0915 (Bryan)
 - C. Cosmetic Art Examiners Board – 21 NCAC 14O .0101 (DeLuca)
 - D. Cosmetic Art Examiners Board – 21 NCAC 14P .0105 and .0112 (DeLuca)
 - E. Board of Examiners of Electrical Contractors – 21 NCAC 18B .0104 and .1104 (DeLuca)
 - F. Board of Nursing – 21 NCAC 36 .0303 and .0317 (Bryan)
 - Commission for Mental Health – 10A NCAC 27G .1301; .1701-.1708 (DeLuca)
- III. Review of Rules (Log Report)**
- IV. Review of Temporary Rules**
 - 1. Department of Labor – 13 NCAC 15 .0705 (Bryan)
 - 2. Building Code Council – 051213 Item D-3 10.10 and Article 100
- V. 2006 Medical Facilities Plan**
- VI. Commission Business**
- VII. Next meeting: February 16, 2006**

**Commission Review/Permanent Rules
Log of Filings
November 22, 2005 through December 20, 2005**

INDIAN AFFAIRS, COMMISSION OF

<u>Authorization</u>	01	NCAC	15	.0201
Amend/*				

<u>Definitions</u>	01	NCAC	15	.0202
Amend/*				
<u>Groups Eligible for Petitioning Process</u>	01	NCAC	15	.0203
Amend/*				
<u>Groups Ineligible for Recognition</u>	01	NCAC	15	.0204
Amend/*				
<u>Commission Assistance to Petitioner</u>	01	NCAC	15	.0205
Amend/*				
<u>Notice of Intent to Petition for Recognition</u>	01	NCAC	15	.0207
Amend/*				
<u>Recognition Committee</u>	01	NCAC	15	.0208
Amend/*				
<u>Procedure for Recognition</u>	01	NCAC	15	.0209
Amend/*				
<u>Recognition Requirement</u>	01	NCAC	15	.0211
Repeal/*				
<u>Criteria for Recognition as an American Indian Tribe</u>	01	NCAC	15	.0212
Amend/*				
<u>Special Committee on Recognition</u>	01	NCAC	15	.0213
Repeal/*				
<u>Tribal Roll</u>	01	NCAC	15	.0214
Repeal/*				

ADMINISTRATION, DEPARTMENT OF

The rules in Chapter 30 concern state construction. The rules in Subchapter 30I concern the goals for minority business participation including rules about good faith efforts (.0100).

<u>Scope</u>	01	NCAC	30I	.0301
Adopt/*				
<u>Definitions</u>	01	NCAC	30I	.0302
Adopt/*				
<u>Adjustments to Goal</u>	01	NCAC	30I	.0303
Adopt/*				
<u>Office for Historically Underutilized Businesses Responsi...</u>	01	NCAC	30I	.0304
Adopt/*				
<u>State Construction Office Responsibilities</u>	01	NCAC	30I	.0305
Adopt/*				
<u>Owner Requirements</u>	01	NCAC	30I	.0306
Adopt/*				
<u>Designer Requirements</u>	01	NCAC	30I	.0307
Adopt/*				
<u>Designer Requirements</u>	01	NCAC	30I	.0308
Adopt/*				
<u>Minority Business Responsibilities</u>	01	NCAC	30I	.0309
Adopt/*				
<u>Dispute Procedures</u>	01	NCAC	30I	.0310
Adopt/*				

INSURANCE, DEPARTMENT OF

The rules in Chapter 6 are from the Agent Services Division. The rules in Subchapter 6A cover general provisions (.0100); forms (.0200); examinations (.0300); licensing (.0400); license renewals and cancellations (.0500); license denials (.0600); prelicensing education (.0700); continuing education (.0800); and public adjusters (.0900).

<u>Definitions</u>	11	NCAC	06A	.0901
Amend/*				
<u>Transactions With Insureds</u>	11	NCAC	06A	.0902
Amend/*				
<u>Regulatory Matters</u>	11	NCAC	06A	.0904
Amend/*				
<u>Catastrophic Disasters</u>	11	NCAC	06A	.0905
Adopt/*				

CODE OFFICIALS QUALIFICATION 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).

<u>Renewal</u>	11	NCAC	08	.0507
Amend/*				
<u>Renewal</u>	11	NCAC	08	.0709
Amend/*				
<u>Continuing Education General</u>	11	NCAC	08	.0712
Adopt/*				
<u>Continuing Education Requirements</u>	11	NCAC	08	.0713
Adopt/*				
<u>Inactive Code Enforcement Officials</u>	11	NCAC	08	.0714
Adopt/*				
<u>Failure to Complete Continuing Education</u>	11	NCAC	08	.0715
Adopt/*				
<u>Compliance</u>	11	NCAC	08	.0716
Adopt/*				
<u>Extensions of Time</u>	11	NCAC	08	.0717
Adopt/*				
<u>Course Sponsors</u>	11	NCAC	08	.0718
Adopt/*				
<u>Continuing Education Coordinator</u>	11	NCAC	08	.0719
Adopt/*				
<u>Approved Courses</u>	11	NCAC	08	.0720
Adopt/*				
<u>Course Accreditation Requirements</u>	11	NCAC	08	.0721
Adopt/*				
<u>Distance Education Courses</u>	11	NCAC	08	.0722
Adopt/*				
<u>Denial or Withdrawal of Approval of Sponsor or Course</u>	11	NCAC	08	.0723
Adopt/*				
<u>Sponsor and Course Changes</u>	11	NCAC	08	.0724
Adopt/*				
<u>Scheduled Courses</u>	11	NCAC	08	.0725

Adopt/*				
<u>Advertising and Providing Course Information</u>	11	NCAC	08	.0726
Adopt/*				
<u>Fee for CE Courses</u>	11	NCAC	08	.0727
Adopt/*				
<u>Cancellation and Refund Policies</u>	11	NCAC	08	.0728
Adopt/*				
<u>Course Attendance</u>	11	NCAC	08	.0729
Adopt/*				
<u>Accommodations for Person With Disabilities</u>	11	NCAC	08	.0730
Adopt/*				
<u>Course Completion Reporting</u>	11	NCAC	08	.0731
Adopt/*				
<u>Retention of Course Records</u>	11	NCAC	08	.0732
Adopt/*				
<u>Board Monitors</u>	11	NCAC	08	.0733
Adopt/*				

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).

<u>Forms</u>	11	NCAC	08	.0904
Amend/*				
<u>Salesman Exam; Temporary License; License Transfer; Fees</u>	11	NCAC	08	.0911
Amend/*				

PRIVATE PROTECTIVE SERVICES BOARD

The rules in Chapter 7 are the rules of the private protective services board. The rules in Subchapter 7D are from the N. C. Private Protective Services Board and cover general provisions (.0100); licenses and trainee permits (.0200); guard dog services (.0300); counterintelligence (.0400); polygraphs (.0500); psychological stress evaluators (PSE) (.0600); unarmed and armed security guards (.0700-.0800); firearms certificate (.0900); recovery funds (.1000); private investigator associates (.1100); firearms instructor trainers (.1200); and continuing education (.1300).

<u>Status of Unlicensed Individuals Participating in Ride-Along</u>	12	NCAC	07D	.0405
Adopt/*				
<u>Training Requirements for Armed Security Guards</u>	12	NCAC	07D	.0807
Amend/*				

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).

<u>Suspension: Denial: or Revocation of Certification</u>	12	NCAC	09A	.0204
Amend/*				
<u>Period of Suspension: Revocation: or Denial</u>	12	NCAC	09A	.0205

Amend/*

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 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

Specialized Driver Instructor Training 12 NCAC 09B .0227
Amend/*

Trainee Attendance 12 NCAC 09B .0404
Amend/*

The rules in Subchapter 9C cover administration of the criminal justice education and training standards including division responsibilities (.0100), forms (.0200), certification of officers (.0300), accreditation of schools and courses (.0400), and equipment and procedures (.0600).

Speed Measurement Instrument (SMI) Operators Certification... 12 NCAC 09C .0308
Amend/*

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 9E relate to the law enforcement officers' in-service training program.

Failure to Complete Annual In-Service Training 12 NCAC 09E .0108
Amend/*

The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

Basic Training for Probation/Parole Officers 12 NCAC 09G .0412
Amend/*

Corrections Specialized Instructor Training-Firearms 12 NCAC 09G .0415
Amend/*

COASTAL RESOURCES COMMISSION

The rules in Chapter 7 are the rules of the Division of Governor's Crime Commission including rules about the purpose and organization (.0100), grant pre-application process (.0200), grant application process and administration (.0300), penalties (.0400), and appeals (.0500). The rules in Subchapter 7B are land use planning guidelines including introduction (.0600); land use planning (.0700); CAMA land use plan review and CRC certification (.0800); and CAMA land use plan amendments (.0900).

Public Hearing and Local Adoption Requirements 15A NCAC 07B .0801
Amend/*

Cama Land Use Plan Amendments 15A NCAC 07B .0901
Amend/*

The rules in Subchapter 7H 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).

<u>Public Trust Areas</u>	15A	NCAC	07H	.0207
Amend/*				
<u>AECS Within Ocean Hazard Areas</u>	15A	NCAC	07H	.0304
Amend/*				
<u>Specific Use Standards for Ocean Hazard Areas</u>	15A	NCAC	07H	.0308
Amend/*				
<u>Use Standards for Ocean Hazard Areas: Exceptions</u>	15A	NCAC	07H	.0309
Amend/*				

The rules in Subchapter 7O cover the N C Coastal Reserve Program including general provisions (.0100); and management, use, and protection of the N C Coastal Preserve (.0200).

<u>Reserve Components</u>	15A	NCAC	07O	.0105
Amend/*				

WILDLIFE RESOURCES COMMISSION

The rules in Chapter 10 are from the Wildlife Resources Commission. The rules in Subchapter 10D are game lands rules.

<u>Hunting on Game Lands</u>	15A	NCAC	10D	.0103
Amend/*				

The rules in Subchapter 10F cover motorboats and water safety including boat registration (.0100); safety equipment and accident reports (.0200); and local water safety regulations covering speed limits, no-wake restrictions, restrictions on swimming and other activities, and placement of markers for designated counties or municipalities (.0300).

<u>Belews Lake</u>	15A	NCAC	10F	.0371
Adopt/*				

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

The rules in Chapter 8 are from the N C State Board of Certified Public Accountant Examiners. The rules in Subchapter 8N are professional ethics and conduct rules including scope and applicability (.0100), rules applicable to all CPAs (.0200), rules applicable to CPAs who use the CPA title in offering or rendering products or services to clients (.0300), and rules applicable to CPAs performing attest services (.0400).

<u>Forecasts</u>	21	NCAC	08N	.0210
Amend/*				
<u>Responsibilities in Tax Practice</u>	21	NCAC	08N	.0211
Amend/*				
<u>Auditing Standards</u>	21	NCAC	08N	.0403

Amend/*				
<u>Accounting and Review Services Standards</u>	21	NCAC	08N	.0404
Amend/*				
<u>Governmental Accounting Standards</u>	21	NCAC	08N	.0405
Amend/*				
<u>Attestation Standards</u>	21	NCAC	08N	.0406
Amend/*				

COSMETIC ART EXAMINERS, BOARD OF

The rules in Chapter 14 are from the Cosmetic Art Examiners. The rules in Subchapter 14H are from the Cosmetic Art Examiners and cover sanitation for both operators and facilities.

<u>Sanitation Floor Coverings</u>	21	NCAC	14H	.0108
Amend/*				

LANDSCAPE ARCHITECTS, BOARD OF

The rules in Chapter 26 are from the N. C. Board of Landscape Architects and include statutory and administrative provisions (.0100); practice of registered landscape architects (.0200); examination and licensing procedures (.0300); rules, petitions and hearings (.0400); and board disciplinary procedures (.0500).

<u>Application of Professional Seal</u>	21	NCAC	26	.0207
Amend/*				

PHARMACY, BOARD OF

The rules in Chapter 46 and from the Board of Pharmacy and cover organization of the Board (.1200), general definitions (.1300), hospitals and other health facilities (.1400), admission requirements and examinations (.1500), licenses and permits (.1600), drugs dispensed by nurse and physician assistants (.1700), prescriptions (.1800), forms (.1900), administrative provisions (.2000), elections (.2100), continuing education (.2200), prescription information and records (.2300), dispensing in health department (.2400), miscellaneous provisions (.2500), devices (.2600), nuclear pharmacy (.2700), sterile parenteral pharmaceuticals (.2800), product selection (.2900), disposal of unwanted drugs (.3000), clinical pharmacist practitioner (.3100), and impaired pharmacist per review program (.3200).

<u>Remote Medication Order Processing Services</u>	21	NCAC	46	.1417
Adopt/*				
<u>License by Reciprocity</u>	21	NCAC	46	.1602
Amend/*				
<u>Charge for Verification for Reinstatement</u>	21	NCAC	46	.1605
Amend/*				
<u>Out-Of-State Pharmacies</u>	21	NCAC	46	.1607
Amend/*				
<u>Fee for Submittal of Dishonored and Returned Check</u>	21	NCAC	46	.1611
Amend/*				
<u>Reinstatement of Licenses and Permits</u>	21	NCAC	46	.1612
Amend/*				
<u>Responsibilities of Pharmacist-Manager</u>	21	NCAC	46	.2502
Amend/*				
<u>Charge for Status</u>	21	NCAC	46	.2511
Adopt/*				
<u>Dispensing and Delivery</u>	21	NCAC	46	.2601
Amend/*				

<u>Anti-Neoplastic Agents</u>	21	NCAC	46	.2807
Amend/*				
<u>Registration</u>	21	NCAC	46	.3301
Amend/*				

VETERINARY MEDICAL BOARD

The rules in Chapter 66 are from the Veterinary Medical Board and include rules about statutory and administrative provisions (.0100); practice of veterinary medicine (.0200); examination and licensing procedures (.0300); and administrative hearings (.0600 and .0700).

<u>Special Registration of Veterinary Technicians, Interns</u>	21	NCAC	66	.0303
Amend/*				

STATE PERSONNEL COMMISSION

The rules in Title 25 are from the Office of State Personnel and cover all aspects of regulation of state employment under the State Personnel Act.

<u>Program Administration</u>	25	NCAC	01N	.0104
Amend/*				
<u>State Agency Responsibilities</u>	25	NCAC	01N	.0105
Amend/*				
<u>Committee Responsibilities</u>	25	NCAC	01N	.0106
Amend/*				
<u>State Employees' Responsibilities</u>	25	NCAC	01N	.0107
Amend/*				
<u>Equipment</u>	25	NCAC	01N	.0203
Amend/*				
<u>Personal Protective Equipment Guide</u>	25	NCAC	01N	.0206
Amend/*				

BUILDING CODE COUNCIL 041214 Items B-2B1-B-2D1 903.2.7

Group R Sprinklers
Amend/*

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

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL AND BEVERAGE COMMISSION</u>				
Richard S Blazak, Park View Lounge v. ABC	96 ABC 0053	Gray	07/06/05	
ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store	98 ABC 0962	Gray	07/12/05	
ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3	03 ABC 1214	Conner	06/28/05	
ABC Comm v. Desperado's Inc T/A Desperado's	04 ABC 1192	Wade	07/20/05	
ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2	05 ABC 0209	Lassiter	09/13/05	
Cameron's One Stop, Sank Cameron v. ALE Agent B Haynes, Ann H. Johnson, Permit Comm Mgr	05 ABC 0799	Elkins	07/28/05	
<u>BOARD OF LICENSING OF GEOLOGISTS</u>				
James W King, PG v Board of Licensing of Geologists	05 BOG 0149	Morrison	08/10/05	
<u>BOARD OF MEDICAL EXAMINERS</u>				
Ricky E. Townsend v. Medical Board	05 BME 1435	Morrison	12/12/05	
<u>AUCTIONEERS LICENSING BOARD</u>				
Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board	04 CFA 1497	Mann	05/13/05	
<u>COMMERCE, DEPARTMENT OF</u>				
Land-of-Sky Regional Council v. Dept of Commerce, Div of Emp. & Trning	96 COM 1921	Gray	07/05/05	
<u>CRIME VICTIMS COMPENSATION</u>				
Dwight D Hoover Sr. v. Victims Compensation Commission	04 CPS 0988	Conner	07/07/05	
Moreno Edoardo Lovejoy v. Crime Control & Public Safety, Victime Comp. Services Division, Crime Victims Compensation Commission	04 CPS 1176	Wade	09/22/05	
Myrtle Perry v. Crime Victims Compensation Commission	04 CPS 1190	Chess	06/21/05	
Marion A Liles v Dept. of Crime Control & Public Safety, Victims Compensation Service Division	05 CPS 0150	DeLuca	07/29/05	
Cecelia Reid v DCCPS, Div of Vic Comp Svcs, Crime Vic Comp Comm	05 CPS 0220	Lassiter	08/08/05	
Rhonda Lynnette Rhodes v. Crime Victims Compensation Program	05 CPS 0484	Gray	06/23/05	
Brenda Edwards, d/b/a B&H Wrecker Service v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	05 CPS 0510	Lassiter	10/19/05	
Terry Ramey, d/b/a Ramey Wrecker Service v. Dept. of Crime Control & Public Safety, Division Of State Highway Patrol	05 CPS 0511	Lassiter	10/18/05	
Curtis Glenn Davis v. Crime Control and Public Safety Crime Victims Compensation Commission	05 CPS 0529	Bryan	10/10/05	
Jamaal O Staten v. Crime Victims Compensation Commission	05 CPS 0711	Elkins	07/28/05	
Sandra A. Tinsley v. Crime Victims Compensation Services	05 CPS 0850	Lassiter	12/02/05	
Ora Evan v. Crime Control and Public Safety, Division of Victim Compensation Services	05 CPS 1578	Gray	11/18/05	
<u>BOARD OF ELECTIONS</u>				
Republican Governors Association & Holly Lynn Koerber v. State	04 BOE 2051	Morrison	06/30/05	20:02 NCR 100

CONTESTED CASE DECISIONS

Board of Elections

HEALTH AND HUMAN SERVICES

MedVisit, Inc. v. Div. of Medical Assistance (DHR)	94 DHR 0012	Gray	07/12/05	
Patsy Norris v. Department of Human Resources	94 DHR 0895	Gray	07/06/05	
Small World DC II, Trena McDaniel v DHHS, Div of Child Dev.	00 DHR 2202 ²	Gray	08/08/05	
Trena S McDaniel & Small World DC II v. DHHS, Div of Child Dev.	01 DHR 0321 ²	Gray	08/08/05	
Richard McKinley Whited v. DHHS	02 DHR 0024	Gray	08/04/05	
Jeffrey D. Cannon v. DHHS, Walter B Jones ADACT	03 DHR 0488	Conner	06/29/05	
Aundria Shante Edwards v DHHS, Division of Facility Services	03 DHR 0806	Gray	08/10/05	
Jamie Kearney v. DHHS	03 DHR 0924	Gray	10/04/05	
Thomas Reiter, a minor, by his mother & legal guardian, Kathryn Reiter	03 DHR 1253	Gray	06/27/05	20:03 NCR 144
Teresa South and Michael South v. DHHS, DMA, Third Party Recovery Section	03 DHR 1515	Gray	10/04/05	
Nina Sherean Hughes v. DHHS, Div of Facility Services	03 DHR 1595	Gray	10/03/05	
Louise Li Lai Fong v. DHHS, Division of Facility Services	03 DHR 1714	Wade	06/27/05	
Lenwood E Hargrove, Wilma Hargrove v. Div. of Medical Assistance	03 DHR 1737	Conner	07/27/05	
Geana E. Anderson v. DHHS, Division of Facility Services	03 DHR 2063	Gray	06/24/05	
Gaile Thomas v. DHHS, Division of Facility Services	04 DHR 0110	Lassiter	06/21/05	
Mecca L Stewart v DHHS, Division of Facility Services	04 DHR 0213	Elkins	08/15/05	
Fatmata Gbondo v. DHHS, DFS	04 DHR 0241	Elkins	10/05/05	
Otis D. Wyche, Jr., v. DHHS, Div. of Facility Services	04 DHR 0294	Chess	05/16/05	
North Brook Rest Home, Inc v. DHHS, Adult Licensure Section	04 DHR 0407	Conner	07/26/05	
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 0539 ¹	Mann	06/03/05	
Jamie Lynn Hensley v. DHHS, Div. of Facility Services	04 DHR 0917	Wade	05/16/05	
Aaron Anderson v. DHHS, Div. of Medical Assistance (DMA)	04 DHR 0929	Gray	08/10/05	
Carla Jean Summers v. DHHS, DFS	04 DHR 1020	Lassiter	09/21/05	
Patricia A. Reece v. DHHS, Division of Facility Services	04 DHR 1062	Mann	07/27/05	20:05 NCR 266
Mario Flores v. DHHS, Division of Facility Services	04 DHR 1110	Mann	08/01/05	
Kid's Day Out Child Care and Learning Cneter, Inc, ID #76000079 v. DHHS, Division of Child Development	04 DHR 1119	Conner	10/27/05	
Charleese K Garrison, mother of Jasmine C Garrison v. DHHS, Division of Medical Assistance	04 DHR 1168	Gray	08/03/05	
Carla Jean Summers v. DHHS, DFS	04 DHR 1222	Lassiter	09/19/05	
Betty Louise Bridges v. DHHS, DFS	04 DHR 1300	Conner	09/22/05	20:09 NCR
Starr Meadows v. DHHS, Div. of Medical Assistance	04 DHR 1334	Wade	10/18/05	
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 1413 ¹	Mann	06/03/05	
Wake Forest University Health Sciences (Lessor) and Huntersville Dialysis Center of Wake Forest University d/b/a Huntersville Dialysis Center (Lessee) v. DHHS, Div. of Facility Services, CON Section and Bio-Medical Applications of NC, Inc. and Total Renal Care of North Carolina, LLC	04 DHR 1406	Conner	05/18/05	
Dawn Allison v. Div. of Medical Assistance	04 DHR 1444	Mann	05/27/05	
Stanlina Williams v. DHHS, DFS	04 DHR 1473	Conner	10/31/05	
Julia Carver Thompson v DHHS	04 DHR 1498	Conner	09/13/05	
Rosa E. Arias v. Patricia M. Epps – HCPR Nurse Investigator, Health Care Personnel Registry	04 DHR 1505	DeLuca	10/07/05	
Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS	04 DHR 1526	Gray	10/03/05	
Filippo Porco v. DHHS, Health Care Personnel Registry Investigations	04 DHR 1647	Elkins	09/29/05	
Dorothy S Coleman v DHHS	04 DHR 2247	Elkins	07/28/05	
Maxine L Fronerberger v DHHS, Division of Facility Services, Health Care Personnel Registry Section	04 DHR 2286	Chess	08/25/05	
LaKenya S. Perry v Division of Child Development	05 DHR 0112	Gray	08/24/05	
Katherine Lewis (guardian) in lieu of Francis Curran Lewis (son) v. Wilson-Greene Mental Health Center, CAP Program	05 DHR 0117	Wade	10/06/05	
Keith's Kids, Inc, Keith Richardson v DHHS, Div. of Facility Services	05 DHR 0196	Wade	08/31/05	
Tara Sue Clark-Grubb v. Guilford County Dept. of Social Services, Laura Blackwell, Tonya Dupree Freeman, Stacy Taylor-Greene	05 DHR 0243	Conner	06/10/05	
Vicky Richardson v DHHS	05 DHR 0262	Wade	08/10/05	
Teresa Sharon Pyles v. Mecklenburg Co. DSS, Kuralt Centre	05 DHR 0264	Wade	06/20/05	
Belinda Darnell Hawkins v. DHHS, Div of Facility Services	05 DHR 0265	Elkins	06/09/05	
LaQuasha K Massey v. DHHS, Division of Social Services	05 DHR 0294	Lassiter	07/11/05	
Wade R Kearney II v. DHHS, Office of Emer Medical Services	05 DHR 0325	Lassiter	07/25/05	
Agnes Williams v. DHHS, DFS	05 DHR 0366	Lassiter	10/24/05	
Cherry Bruce Kearney, Operator 7 th Heaven Day Care v. DHHS, Division of Facility Services	05 DHR 0382	Wade	06/20/05	
DSS, Deloise Bryant v Halifax County Adoption Agency	05 DHR 0388	Lassiter	07/14/05	
Janet Stovall v DHHS	05 DHR 0403	Chess	08/08/05	
Tammy Trejo v. Office of Administrative Hearings	05 DHR 0452	Gray	06/15/05	
Maria Shante Holley v DHHS, DFS	05 DHR 0461	Wade	07/18/05	
Albert Ansah Amoatey v. DHHS	05 DHR 0459	Mann	07/20/05	
Erdem Narter v. DHHS, Division of Facility Services	05 DHR 0463	Mann	06/16/05	
Eric & Carolyn Blue v DHHS	05 DHR 0476	Chess	08/23/05	
Jerry Lemar Pettus v Off. Of Emergency Medical Services	05 DHR 0496	Mann	07/19/05	
Veronica M Black v. DHHS, Division of Facility Services	05 DHR 0533	Gray	08/10/05	

CONTESTED CASE DECISIONS

Valerie R McGahee ID #26001205 Elite Land Child Care & Learning Center v. DHHS, Division of Child Development	05 DHR 0534	Lassiter	09/12/05
D'Jetta D Miley for Jordana Correa v. Wake Co. Dept. of Human Services	05 DHR 0570	Lassiter	06/02/05
William Henry Lane v. DHHS, Div. of Medical Assistance	05 DHR 0571	Chess	05/31/05
Bennie Frederick, Jr., v. DHHS, Div of Social Services	05 DHR 0572	Wade	09/22/05
Stephanie Marie Mabe v DHHS	05 DHR 0590	Elkins	08/11/05
Estate of Alma M Merrill, Kelly Merrill Dozier-heir v. Medicaid, Third Party Recovery Section	05 DHR 0628	Wade	10/17/05
Denise Warren v Cumberland Co. Department of Social Services	05 DHR 0630	Morrison	08/19/05
PJ's Child Care Learning Center #2 v DHHS, Div of Child Development	05 DHR 0633	Lassiter	08/10/05
Candace L Wood on behalf of Caitlyn A Wood v. OPC Men Hlth Area Prog	05 DHR 0649	Conner	08/01/05
Candace L Wood on behalf of Waylon S Keeter v. OPC Men Hlth Area Prog	05 DHR 0650	Conner	08/01/05
Candace L Wood on behalf of Caitlyn A Wood v Alamance Caswell MHDDSA	05 DHR 0651	Conner	07/12/05
Candace L Wood on behalf of Caitlyn A Wood v Alamance Caswell MHDDSA	05 DHR 0652	Conner	07/12/05
Rose McRae v. DHHS, Division of Health Services	05 DHR 0662	Elkins	07/18/05
Charles Edward Shaw, Jr v Dorothea Dix Hospital	05 DHR 0675	Elkins	09/15/05
Walter G Dunston v. DHHS, Division of Facility Services	05 DHR 0688	Elkins	07/11/05
Pinebrook Residential Facility #1 v DHHS, DFS, Adult Care Licensure Sec	05 DHR 0704	Conner	07/26/05
Cheryl Delk v John Umstead Hospital	05 DHR 0716	Elkins	08/11/05
Barbara Munch v. DHHS	05 DHR 0725	Morrison	07/22/05
Gwendolyn Bain v. Hoke Co Dept of Social Svcs, Ms Christin Basil	05 DHR 0749	Lassiter	07/22/05
Amy Hallisey, Pharmacist, Target Pharmacy-Lawndale, Greensboro v. DHHS Accounts Receivable, Division of Medical Assistance	05 DHR 0762	Elkins	08/11/05
Lindsey L Shumacher v DHHS, John Umstead Hospital	05 DHR 0772	Elkins	08/11/05
Amanda M Walters v. DHHS	05 DHR 0779	Elkins	07/28/05
Lisa Shull v. DHHS	05 DHR 0782	Mann	09/14/05
Vernie Ross v. DHHS	05 DHR 0814	Mann	09/14/05
Aralyn F Pressley v DHHS, Div. of Facility Services	05 DHR 0800	Morrison	08/17/05
Julie Torain v. DHHS	05 DHR 0831	Chess	11/07/05
Tamesha Taft v. DHHS	05 DHR 0836	Gray	08/04/05
Linda M Currie v. Medicaid	05 DHR 0854	Gray	07/07/05
Geneva Walton v DHHS, Division of Facility Services	05 DHR 0861	Chess	07/21/05
James E. Taylor v. DHHS	05 DHR 0887	Wade	12/07/05
Claire Diggs v. Moore County, Program Integrity Unit	05 DHR 0915	Gray	08/10/05
Robert S. Moser Jr., v. DHHS, DMA, 3 rd Part Recovery	05 DHR 0916	Lassiter	12/05/05
Francesca L Camp v Nurse Aide 1 & Health Care Registry	05 DHR 0919	Lassiter	07/27/05
Damien Godette v. DHHS	05 DHR 0923	Wade	12/07/05
Benny Brown v. DHHS, Division of Facility Services	05 DHR 0949	Elkins	07/28/05
Clarissa Bailey v DHHS	05 DHR 0961	Conner	08/30/05
LaVyonne Diaz Evans v DHHS, Division of Facility Services	05 DHR 0994	Lassiter	08/16/05
Narell C. Joyner Scholars, Inc v. DHHS	05 DHR 1013	Gray	10/20/05
Michelle A. Galloway v. DHHS, DFS	05 DHR 1042	Gray	10/03/05
Sandra Gregory v. DHHS, Div. of Child Development	05 DHR 1043	Lassiter	10/26/05
Valinda Streater v. DHHS, DFS	05 DHR 1047	Gray	10/06/05
Wakilat Oloko v. DHHS, DFS	05 DHR 1058	Elkins	09/29/05
Priscilla Vann v. Laura Peterson and Dept. of Social Services	05 DHR 1063	Conner	10/26/05
Tracy Anderson v DHHS, Division of Facility Services	05 DHR 1095	Elkins	09/09/05
Roy L. Simpson Jr v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1102	Gray	10/25/05
Tiffany Charles v Office of Administrative Hearings	05 DHR 1105	Gray	09/07/05
Brookside Montessori School v. DHHS, Div of Child Development	05 DHR 1119	Wade	10/12/05
Esther Thompson v. Vance County Dept. of Social Services, Marchita Vann, DHHS, Santana Deberry	05 DHR 1132	Chess	10/03/05
Tammy R. Sykes v. Dare County Social Services, Margaret Scott	05 DHR 1139	Elkins	09/22/05
Hospice & Palliate Care Charlotte Region v. DHHS, DFS, Con Section And Liberty Home Care II, LLC	05 DHR 1142	Elkins	12/14/05
Patricia Collins v. OAH	05 DHR 1174	Elkins	11/01/05
The Learning Tree Enrichment Center, Inc. Joyce W. Cunningham v. The Division of Child Development, DHHS	05 DHR 1184	Elkins	12/13/05
Juanita Williamson, Wee Ones Child Care 67000753 v. Satana T. Deberry DHHS	05 DHR 1218	Lassiter	10/24/05
Shirley Michelle Reinhardt v. DHHS, DFS	05 DHR 1224	Lassiter	09/29/05
Rosetta Starks v. DHHS, DFS, Health Care Personnel Registry Section	05 DHR 1232	Elkins	10/31/05
Janice Arnette, Id# 63000117 v. Div. of Child Development	05 DHR 1257	Lassiter	11/21/05
Steven R. Hudspeth v. DMA	05 DHR 1261	Elkins	12/14/05
Unity Tabernacle Christian Day Care v. Division of Child Development	05 DHR 1269	Gray	12/08/05
Vince Horhorouny v. DHHS, Dept. of the Controller	05 DHR 1325	Conner	11/17/05
Earnie B. Walker v. DHHS, DMA	05 DHR 1332	Elkins	11/01/05
Marianne Stephenson v. DHHS	05 DHR 1414	Gray	12/05/05
Top Flow Family Care Services d/b/a Tara Cottage v. DMA	05 DHR 1416	Chess	12/09/05
Diversicare Assisted Living of New Port HAL-016-004 v. DFS, DHHS Carteret County DSS	05 DHR 1422	Lassiter	11/02/05
Angel Chandler v. DHHS	05 DHR 1446	Conner	11/03/05
Virginia L. Richmond v. John Umstead Hospital	05 DHR 1454	Morrison	11/02/05
Mumbanga Charlotte Mozobo v. DHHS, DFS	05 DHR 1471	Wade	12/14/05
Lori C. Spence for Julia Spence v. Division of Medical Assistance	05 DHR 1617	Wade	12/07/05
Susan K. Hainey v. ACS/Div of Medical Assistance	05 DHR 1680	Lassiter	11/21/05

CONTESTED CASE DECISIONS

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

DEPARTMENT OF JUSTICE

Andrew Arnold Powell, Jr. v. Crim Just Educ & Trng Stds Comm.	01 DOJ 1771	Chess	07/19/05	
Carlos Orellana v. Private Protective Services Board	04 DOJ 0813	Conner	08/01/05	
David Upchurch v. Criminal Justice Education and Training Stds. Comm.	04 DOJ 1157	Lassiter	05/13/05	
Phillip William Engle v. Sheriffs' Education and Training Stds. Comm.	04 DOJ 1283	Mann	06/28/05	20:03 NCR 148
Edward Keith Royal v. Criminal Justice Education & Training Stds. Comm.	04 DOJ 2194	Gray	06/28/05	
Richard Michael Ashley v. Criminal Justice Education & Stds. Comm	04 DOJ 2256	Wade	10/17/05	
Tabitha Ann Boyland v. Sheriffs' Educ. & Training Standards Comm.	05 DOJ 0156	Elkins	07/08/05	
Shuntaneka Brooks v State Bureau of Investigation	05 DOJ 0296	Lassiter	09/07/05	
Ralph Robert Hines, II v. Criminal Justice Educ. & Training Standards Comm.	05 DOS 0482	Elkins	08/24/05	
George Augustus Pyecha v. Criminal Justice Education & Training Stds Commission	05 DOJ 0483	Chess	09/09/05	
Teddy Lynn Warren v. Criminal Justice Education & Training Stds. Comm.	05 DOJ 0505	Conner	06/23/05	
Amanda Gayle Talbert v. Criminal Justice Educ. and Training Stds. Comm.	05 DOJ 0648	Lassiter	06/15/05	
Amanda Gale Hughes v Sheriffs' Educ Trng Stds. Comm.	05 DOJ 0666	Wade	07/18/05	
Jeremy Westbrook v. Alarm Systems Licensing Board	05 DOJ 0693	Lassiter	07/19/05	
Gary Lee King v Private Protective Services Board	05 DOJ 0830	Lassiter	09/12/05	
Kevin Jon Kern v. Criminal Justice Education & Training Stds. Comm.	05 DOJ 0928	Lassiter	10/10/05	
Donald Lee Newton v Criminal Justice Educ. & Training Standards Comm.	05 DOJ 0929	Gray	09/12/05	
Robert Baxter Wilkerson III v Private Protective Services Board	05 DOJ 1074	Bryan	08/22/05	
Steven William Neu v Sheriffs' Education & Training Standards Comm.	05 DOJ 1169	Lassiter	09/08/05	
Sybil Yvonne Murrill v. Sheriffs' Education & Training Stds. Comm.	05 DOJ 1188	Lassiter	09/19/05	
Todd Austin Cahoon v. Criminal Justice Education and Training Stds Commission	05 DOJ 1519	Lassiter	12/02/05	

DEPARTMENT OF TRANSPORTATION

Vernon Park Exxon, Inc., Station No. 14184, and Danny Spence v. DOT, DMV	05 DOT 1054	Chess	09/06/05	
--	-------------	-------	----------	--

DEPARTMENT OF STATE TREASURER

Roy Kevin Tripp v. Dept of St Treasurer, St Retirement Agency	04 DST 1422	Conner	07/27/05	
George L Brown v Dept of St. Treasurer, Retirement Systems Division	05 DST 0147	Morrison	07/22/05	
Tony M Martin v Dept. of State Treasurer, Retirement Systems Division	05 DST 0253	Lassiter	08/31/05	
Robert A. Gabriel , Sr., v. Dept. of State Treasurer	05 DST 0586	Gray	10/21/05	
Cynthia Lee Williams v. DST, Retirement Systems Division	05 DST 0964	Lassiter	11/10/05	
Robert A. Gabriel v. Dept. of State Treasurer	05 DST 1358	Gray	09/23/05	

EDUCATION, STATE BOARD OF

East Winston Primary School Corporation v. State Board of Education	03 EDC 0029	Chess	09/02/05	
Susan Hebach v. Dept. of Public Instruction	05 EDC 0140	Lassiter	09/27/05	
James H. Ballard v State Board of Education	05 EDC 0948	Conner	09/15/05	
Michael L. McIntosh v. DPI	05 EDC 1097	Elkins	11/07/05	

ENVIRONMENT AND NATURAL RESOURCES

Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch	94 EHR 0225	Gray	07/06/05	
Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch	94 EHR 0774	Gray	07/06/05	
JFG, Inc, Mr. Wayne Pierce, Pres. v. Onslow Co Health Dept & DEH&NR, Division of Environmental Health	95 EHR 0110	Gray	07/06/05	
Southwinds Homeowners Association v. DEHNR, Div. of Env. Health	95 EHR 0271	Gray	07/06/05	
Sandy Mitchell & E Ward Norris v. Mecklenburg Co Health Dept and DENR	95 EHR 0306	Gray	07/06/05	
Ralph K & Carolyn Emery v. Montgomery Co Health & Env. Section	95 EHR 0317	Gray	07/06/05	
Deerfield Shores Utility Co v. Carteret Co Environmental Health Dept.	95 EHR 0354	Gray	07/05/05	
Ron Launder v. Vance Co. Health Department	95 EHR 0515	Gray	07/05/05	
Tall Pines Plantation Property Owners Assoc. Inc. v. DENR	01 EHR 1638	Gray	08/17/05	
Heater Utilities, Inc v. NCDENR, Division of Water Quality	02 EHR 0009	Gray	07/06/05	
Tera B Slaughter v DENR	02 EHR 1286	Conner	08/01/05	
Charles C. Barker, Kenneth W. Frazier v. DENR	02 EHR 1714	Wade	11/01/05	
John & Elizabeth Kaylor v. DENR	03 EHR 0046	Conner	06/29/05	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0112 ³	Connor	09/12/05	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0815 ³	Connor	09/12/05	
Federal Land & Timer Corp v. DENR	03 EHR 1718	Gray	07/28/05	
Terry D. Gregory and wife, Pennie Gregory v. DENR, Div. of Coastal Management and Michael D. Swearingen, Jr.	03 EHR 2201	Gray	09/30/05	20:10 NCR
Cynthia Williamson Putnam v DENR	03 EHR 2383	Conner	09/12/05	

CONTESTED CASE DECISIONS

Brenda Severt, David and Nancie Wilson v. DENR	04 EHR 0383	Gray	10/25/05	
Rebecca Page v. DENR	04 EHR 0458	Bryan	09/20/05	
Milton T. Gibson v. Cumberland County Health Dept., Environmental Health	04 EHR 0990	Lassiter	10/11/05	
Robert L. Grissett v. DENR	04 EHR 1237	Chess	05/16/05	
Ellen Darrigrand & husband Charles Darrigrand v. DENR, Div/Coastal Mgmt	04 EHR 1469	Mann	06/30/05	20:05 NCR 270
Glenda Daniel v. Halifax Co Health Dept, Env Health Division	04 EHR 1583	Conner	07/27/05	
Matthew and Kathy Johnson v. DENR	04 EHR 2163	Conner	06/01/05	
Affordable Appliance, Jack Steale v. DENR	04 EHR 2164	Conner	05/31/05	
William Nelms v. DENR, Div. of Air Quality	04 EHR 2264	Conner	10/13/05	

Rebecca Page v. DENR	05 EHR 0458	Bryan	09/20/05	
Don R McGee, McGee's Brother's Co. v. DENR, Div. of Air Quality	05 EHR 0509	Mann	09/07/05	
Lynn E. Graham v. Co. of Durham, Engineering Dept.	05 EHR 0878	Gray	10/06/05	
Robert W Hudson v. Division of Marine Fisheries	05 EHR 0886	Morrison	07/05/05	
Freedman Farms v. Fayetteville, Div of Water Quality Office	05 EHR 0905	Conner	11/21/05	
Daniel J Smith v State of NC Environmental Health	05 EHR 0925	Lassiter	08/08/05	
John C Gallop, Jane Gallop Newbern v. DENR/Div of Coastal Mgmt	05 EHR 0941	Gray	07/29/05	
Robert B. Montouri GC v. New Hanover Co. Health Dept.	05 EHR 1001	Morrison	10/03/05	
Rosalind Nixon, All Good Detail Inc, v. DENR	05 EHR 1215	Lassiter	10/13/05	
George R. Gelsing Jr. v. DENR, Land Quality Section	05 EHR 1253	Elkins	10/31/05	
Keith Spain, Rosewood Farms, LLC v. DENR	05 EHR 1442	Wade	12/07/05	

DEPARTMENT OF INSURANCE

Pentech Infusions, Inc., AS/Assignee of Betty W. Green and Ava Cathey v. Teachers' and State Employees' Comprehensive Major Medical Plan	03 INS 1518	Elkins	10/07/05	
Rachael Elizabeth Ragin v. Teachers' and State Employees' Comprehensive Major Medical Plan	04 INS 1299	Conner	09/26/05	

OFFICE OF STATE PERSONNEL

Charles D Bailey v Department of Cultural Resources	02 OSP 0002 ⁴	Conner	09/12/05	
Leavander J. Cheeks v Department of Cultural Resources	02 OSP 0002 ⁴	Conner	09/12/05	
Vicki B Tamer v. Department of Public Instruction	03 OSP 0243	Gray	08/15/05	
Arlene R Burwell v Department of Corrections	03 OSP 0621	Conner	09/12/05	
Eddie Ray Creech v. Department of Corrections	03 OSP 0831	Wade	05/17/05	
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 0851 ⁵	Conner	11/07/05	
Kathy Sledge v. Department of Corrections	03 OSP 1092	Conner	06/27/05	
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 1141 ⁵	Conner	11/07/05	
Michael B. Carraway v. Wildlife Resources Commission, Div. of Wildlife Management	03 OSP 1545	Gray	09/07/05	
Jack Mason v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1555	Gray	09/07/05	
David Thomas Sawyer v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1556	Gray	09/07/05	
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 1743 ⁵	Conner	11/07/05	
Robert Earl Regan, Jr v DCCPS, State Highway Patrol	03 OSP 2321	Conner	09/12/05	
Wanda Thompson v. Pitt Public Health Center	04 OSP 0116	Gray	11/23/05	
James A Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	06/28/05	
Willie Steve Tellado v Dept. of Transportation	04 OSP 0858	Wade	07/18/05	
Mona Dale Batten v Columbus Co Department of Social Services	04 OSP 1194	Gray	09/07/05	
Loretta G Hooks v. Department of Corrections	04 OSP 1266	Wade	07/11/05	
Wayne Pettit v Department of Correction	04 OSP 1458	Gray	08/04/05	
Carroll (ED) Swain v. UNC-Chapel Hill	04 OSP 1476	Gray	09/20/05	
Daisy L. Smith v. Cumberland Co Mental Health Center	04 OSP 1558	Elkins	07/28/05	20:05 NCR 291
Jacqueline Hightower v Wayne Co Dept of Social Services	04 OSP 1563	Lassiter	09/09/05	
Shelli Henderson Rice v. ESC of NC	04 OSP 1574	Gray	06/27/05	
V Wayne Johnson v Department of Transportation	04 OSP 1716	Elkins	07/06/05	
Beverly R Lee v. Employment Security Commission of NC	04 OSP 1742	Conner	08/03/05	
Robert D Jones v Hendsen County Dept. of Public Health	04 OSP 2081	Gray	08/01/05	
Mary Cogdell v. Wayne Co. Dept. of Social Services, Judy Pelt, Director	04 OSP 2117	Wade	10/11/05	
Regina C Gaither v. Forsyth Co Department of Social Services	05 OSP 0047	Conner	06/27/05	
Thomas Freeman, Jr. v. DHHS/Murdoch Center	05 OSP 0071	Wade	08/15/05	
Percy L. Edwards v. Dept. of Juvenile Justice & Delinquency Prevention	05 OSP 0252	Lassiter	11/30/05	
Thomas A Horton v. Dept. of Crime Control and Public Safety	05 OSP 0389	Lassiter	06/02/05	
Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05	
Peggy Anderson v. Whitaker School, NC DHHS	05 OSP 0427	Gray	10/25/05	
Angela Twitty v DOC, Marion Correctional Institution	05 OSP 0491	Wade	08/31/05	
Alan Bradford v. Avery Co.	05 OSP 0493	Wade	10/06/05	
Derek H. Babson v. Department of Transportation	05 OSP 0515	Chess	05/31/05	
Mary K French Fornes v DOC Eastern Correctional Institution	05 OSP 0584	Gray	07/08/05	
James R Campbell v Forsyth Co Department of Social Services	05 OSP 0587	Elkins	08/26/05	
Gloria Woodard v. Lyndo Tippet, Secretary, NC DOT	05 OSP 0588	Lassiter	06/24/05	
William Rhodney Reep v. DOT, DMV	05 OSP 0717	Lassiter	11/08/05	
Glendora Key v. UNC at Chapel Hill	05 OSP 0784	Gray	09/23/05	
Deborah Faye Murray v NW Piedmont Council of Governments	05 OSP 0802	Chess	07/13/05	
Milton W. Nobles v. DHHS/Dorothea Dix Hospital	05 OSP 0815	Gray	06/15/05	
Sandra Thomas v Department of Correction	05 OSP 0824	Wade	07/21/05	

CONTESTED CASE DECISIONS

Stacy D Bazemore v NCSU CVM-VTH	05 OSP 0874	Gray	08/01/05
Donna P. Minelli v. DOC, Div. of Community Corrections	05 OSP 0889	Conner	10/21/05
Willie Gadden v. Winston-Salem State University	05 OSP 0904	Chess	10/10/05
Susan Hilbourn v. Cumberland County Department of Social Services	05 OSP 0970	Gray	12/07/05
Albert Ridley v. Odom Correctional Institution, Lawrence Solomon	05 OSP 0989	Gray	10/25/05
Mark P. Gibbons v. Derrick Lee, DOT Plymouth, NC, Robby Taylor, DOT, Creswell, NC	05 OSP 1080	Elkins	10/12/05
Cindy Owens v Justice Academy	05 OSP 1038	Conner	09/19/05
Thomas M. Chamberlin v. Vance-Granville Community College	05 OSP 1170	Chess	09/30/05
Joe L. Harris, MSW, LCSW v. Alamance Caswell MHDDSA/LME	05 OSP 1221	Chess	10/11/05
Lolita B. Keel v. Dept. of Revenue	05 OSP 1228	Elkins	10/12/05
David N. Smith v. NC School of Science and Math	05 OSP 1236	Chess	10/04/05
Gerald R. Tripp v. NC School of Science and Math	05 OSP 1242	Chess	09/22/05
Debra D Moore v. Irene Wortham Center	05 OSP 1445	Gray	11/02/05
Samuel Faminiba v. DOT	05 OSP 1468	Morrison	12/13/05
Natalynn P (Para) Tollison v. NCSU Human Resources, Diane Sortini, Director and Galen Jones, Assistant Director	05 OSP 1501	Morrison	12/14/05
Frank G. Bermel v. UNC	05 OSP 1563	Lassiter	12/05/05

SECRETARY OF STATE

Monica A Chitwood v. Dept. of Secretary of State	05 SOS 0237	Conner	06/17/05
Janice W. Craver v. Dept. of Secretary of State	05 SOS 0286	Conner	06/06/05
Barbara Jane Kelly v Secretary of State	05 SOS 0310	Elkins	08/22/05
Richard C Capps v. Dept of Secretary of State	05 SOS 0560	Gray	07/14/05
Silvia Rodriguez v Department of Secretary of State	05 SOS 0926	Lassiter	09/09/05
Curtis Eugene Haynes v. Department of Secretary of State	05 SOS 1031	Wade	10/28/05

UNC HOSPITALS

Bhimjibhai Lanani v UNC Hospitals	04 UNC 0008	Conner	09/12/05
Amanda Mathis Miller v. UNC Hospitals	05 UNC 0247	Lassiter	06/02/05
Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
Tereasa King v. UNC Hospitals	05 UNC 0376	Lassiter	06/02/05
Lenora White v. UNC Hospitals	05 UNC 0574	Bryan	09/13/05
Ellen Griffith v. UNC Hospitals	05 UNC 0585	Conner	07/26/05
Dawn B & John A Gladden v. UNC Hospitals via Dept. of Revenue	05 UNC 0608	Conner	07/26/05
Joyce Porter v UNC Hospitals	05 UNC 0623	Elkins	08/11/05
Martin T Myers v UNC Hospitals	05 UNC 0632	Elkins	08/11/05
Bettie Brame v UNC Hospitals	05 UNC 0638	Conner	08/01/05
Joyce Daugherty v. UNC Hospitals	05 UNC 0663	Elkins	08/11/05
Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
Tashuia Williams v UNC Hospitals	05 UNC 0684	Conner	07/26/05
Audrey Ghia v UNC Hospitals	05 UNC 0856	Gray	09/14/05
De'Juana Middleton v UNC Chapel Hill Hospital	05 UNC 0701	Conner	07/26/05
Marjorie Hindsdale-Shouse v UNC Hospitals	05 UNC 1002	Elkins	09/15/05
Dawn R Dickerson v UNC Hospitals	05 UNC 1028	Elkins	08/11/05

WILDLIFE RESOURCES COMMISSION

Josephine Perdue v. WRC	05 WRC 1440	Gray	11/18/05
-------------------------	-------------	------	----------

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