

NORTH CAROLINA REGISTER

VOLUME 23 • ISSUE 13 • Pages 1210 - 1317

January 2, 2009

I. IN ADDITION	
DENR – Notice of Application for Approval of a Wastewater System.....	1210
Board of Pharmacy, Narrow Therapeutic Index Drugs.....	1211
II. TEMPORARY RULES	
Administrative Hearings, Office of	
Administrative Hearings, Office of.....	1237 – 1238
Environment and Natural Resources, Department of	
Environmental Management Commission.....	1212 – 1237
III. APPROVED RULES.....	1239 – 1309
Agriculture and Consumer Services, Department of	
Tobacco Trust Fund Commission	
Commerce, Department of	
Cemetery Commission	
Correction, Department of	
Department	
Environment and Natural Resources, Department of	
Coastal Resources Commission	
Environmental Management Commission	
Water Treatment Facility Operators Certification Board	
Health and Human Services, Department of	
Blind, Commission for the	
Insurance, Department of	
Department	
Justice, Department of	
Private Protective Services Board	
Occupational Licensing Boards and Commissions	
Cosmetic Art Examiners, Board of	
Nursing, Board of	
Pharmacy, Board of	
Physical Therapy Examiners, Board of	
State Personnel, Office of	
State Personnel Commission	
IV. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	1310 – 1317

Contact List for Rulemaking Questions or Concerns

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.

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Fiscal Notes & Economic Analysis

Office of State Budget and Management
116 West Jones Street (919) 807-4700
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

contact: William Crumbley, Economic Analyst william.crumbley@ncmail.net (919) 807-4740

Governor's Review

Reuben Young reuben.young@ncmail.net
Legal Counsel to the Governor (919) 733-5811
116 West Jones Street
Raleigh, North Carolina 27603

Legislative Process Concerning Rule-making

Joint Legislative Administrative Procedure Oversight Committee
545 Legislative Office Building
300 North Salisbury Street (919) 733-2578
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

County and Municipality Government Questions or Notification

NC Association of County Commissioners
215 North Dawson Street (919) 715-2893
Raleigh, North Carolina 27603

contact: Jim Blackburn jim.blackburn@ncacc.org
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000
215 North Dawson Street
Raleigh, North Carolina 27603

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2009 – December 2009

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 31st legislative day of the session beginning:	270 th day from publication in the Register
23:13	01/02/09	12/08/08	01/17/09	03/03/09	03/20/09	05/01/09	05/2010	09/29/09
23:14	01/15/09	12/19/08	01/30/09	03/16/09	03/20/09	05/01/09	05/2010	10/12/09
23:15	02/02/09	01/09/09	02/17/09	04/03/09	04/20/09	06/01/09	05/2010	10/30/09
23:16	02/16/09	01/26/09	03/03/09	04/17/09	04/20/09	06/01/09	05/2010	11/13/09
23:17	03/02/09	02/09/09	03/17/09	05/01/09	05/20/09	07/01/09	05/2010	11/27/09
23:18	03/16/09	02/23/09	03/31/09	05/15/09	05/20/09	07/01/09	05/2010	12/11/09
23:19	04/01/09	03/11/09	04/16/09	06/01/09	06/22/09	08/01/09	05/2010	12/27/09
23:20	04/15/09	03/24/09	04/30/09	06/15/09	06/22/09	08/01/09	05/2010	01/10/10
23:21	05/01/09	04/09/09	05/16/09	06/30/09	07/20/09	09/01/09	05/2010	01/26/10
23:22	05/15/09	04/24/09	05/30/09	07/14/09	07/20/09	09/01/09	05/2010	02/09/10
23:23	06/01/09	05/08/09	06/16/09	07/31/09	08/20/09	10/01/09	05/2010	02/26/10
23:24	06/15/09	05/22/09	06/30/09	08/14/09	08/20/09	10/01/09	05/2010	03/12/10
24:01	07/01/09	06/10/09	07/16/09	08/31/09	09/21/09	11/01/09	05/2010	03/28/10
24:02	07/15/09	06/23/09	07/30/09	09/14/09	09/21/09	11/01/09	05/2010	04/11/10
24:03	08/03/09	07/13/09	08/18/09	10/02/09	10/20/09	12/01/09	05/2010	04/30/10
24:04	08/17/09	07/27/09	09/01/09	10/16/09	10/20/09	12/01/09	05/2010	05/14/10
24:05	09/01/09	08/11/09	09/16/09	11/02/09	11/20/09	01/01/10	05/2010	05/29/10
24:06	09/15/09	08/24/09	09/30/09	11/16/09	11/20/09	01/01/10	05/2010	06/12/10
24:07	10/01/09	09/10/09	10/16/09	11/30/09	12/21/09	02/01/10	05/2010	06/28/10
24:08	10/15/09	09/24/09	10/30/09	12/14/09	12/21/09	02/01/10	05/2010	07/12/10
24:09	11/02/09	10/12/09	11/17/09	01/02/10	01/20/10	03/01/10	05/2010	07/30/10
24:10	11/16/09	10/23/09	12/01/09	01/15/10	01/20/10	03/01/10	05/2010	08/13/10
24:11	12/01/09	11/05/09	12/16/09	02/01/10	02/22/10	04/01/10	05/2010	08/28/10
24:12	12/15/09	11/20/09	12/30/09	02/15/10	02/22/10	04/01/10	05/2010	09/11/10

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.

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following applications have been submitted to DENR:

Application by: Mark Hooks
Infiltrator Systems, Inc
PO Box 768
Old Saybrook, CT 06475

For: Innovative Approval for Aquaworx Pressure Bell Assembly

DENR Contact: Ted Lyon
1-919-715-3274
Fax: 919-715-3227
ted.lyon@ncmail.net

These applications may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Water Protection Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Water Protection Section web site: http://www.deh.enr.state.nc.us/osww_new/new1//index.htm.

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Ted Lyon, Chief, On-site Water Protection Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or ted.lyon@ncmail.net, or fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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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

Located at 1-40 & 54
6015 Farrington Road, Suite
201
Chapel Hill, NC 27517-8822

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: Environmental Management Commission

Rule Citation: 15A NCAC 02D .1402, .1404, .1407-.1411, .1416-.1422

Effective Date: December 31, 2008

Date Approved by the Rules Review Commission: November 20, 2008

Reason for Action: Temporary rules are proposed to amend the Nitrogen Oxide (NO_x) State Implementation Plan (SIP) Call Rules in the 15A NCAC 02D .1400 Section for the year 2009 and beyond. On May 12, 2005, the United States Environmental Protection Agency (USEPA) promulgated the Clean Air Interstate Rule (CAIR). CAIR established annual and ozone season NO_x emission budgets. The CAIR ozone season NO_x emission budget program was to replace the NO_x SIP Call ozone season program. NC's adoption of CAIR became effective on May 1, 2008. NC's repeal of the NO_x SIP call rules was approved on May 15, 2008. Those repeals become effective on January 1, 2009 (the date the CAIR rules were to take over). On July 11, 2008, a three-judge panel of the U.S. Court of Appeals for the District of Columbia unanimously vacated CAIR in its entirety and remanded the rules to USEPA for revision consistent with the Court's opinion. Temporary rules are being proposed to supersede the repeals and associated amendments that would otherwise become effective on January 1, 2009 in order to ensure there is no gap in the NO_x regulatory program in NC for NO_x SIP call sources. These Temporary Rules include unit-level ozone season NO_x allocations for 2009 that are the same as the 2008 allocations. Temporary Rules also include modifications to ensure their validity for the year 2009 and beyond. For example, allocations for new growth of major point sources are included for the year 2009 and beyond in Rule 15A NCAC 02D .1421. Should the Court mandate vacatur of CAIR as indicated in its original opinion, upon effective date of the repeal of the NO_x SIP Call rules January 1, 2009, there would be a gap in North Carolina's NO_x management program. There would be no NO_x SIP Call rules remaining since they have already been repealed (effective January 1, 2009) in anticipation of the beginning of the CAIR program. The standard rulemaking process did not allow enough time to develop permanent rules and have them approved and become effective between the time of the vacatur (July 11, 2008) and the end of 2008 in order to avoid a gap in the program for 2009 when the otherwise

repealed rules will disappear. Timing of the temporary rulemaking process does allow the possibility of avoiding a gap in North Carolina's NO_x management program rules.

**CHAPTER 02 – ENVIRONMENTAL MANAGEMENT
SUBCHAPTER 02D - AIR POLLUTION CONTROL
REQUIREMENTS**

SECTION .1400 - NITROGEN OXIDES

15A NCAC 02D .1402 APPLICABILITY

(a) The rules in this Section do not apply except as specifically set out in this Rule. In the event that the U.S. Circuit Court does not mandate vacatur of the Clean Air Interstate Rule consistent with its July 11, 2008 Order, North Carolina v. EPA, 531 F.3d 896 (D.C. Cir 2008), Section .2400 of this Subchapter shall apply rather than the nitrogen oxide (NO_x) state implementation plan (SIP) call (40 CFR 51.121) provisions of Rules .1402(c) and (h), .1403(a) and (d) through (f), .1404(a), (b), and (d) through (j), .1409(b), (d), and (h), and .1416 through .1423 of this Subchapter that would be in conflict therewith. To the extent that the Court mandates vacatur of the Clean Air Interstate Rule, the provisions of Rules .1402(c) and (h), .1403(a) and (d) through (f), .1404(a), (b), and (d) through (j), .1409(b), (d), and (h), and .1416 through .1423 of this Subchapter shall apply.

(b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.

(c) ~~Rules .1409(b) and .1416 through .1423 of this Section apply~~ Rule .1409(b) and .1416 through .1423 of this Section applies statewide.

(d) The Rules .1407 through .1409 and .1413 of this Section apply to facilities with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:

- (1) Cabarrus County
- (2) Gaston County
- (3) Lincoln County
- (4) Mecklenburg County
- (5) Rowan County
- (6) Union County
- (7) Davidson Township and Coddle Creek Township in Iredell County

(e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary

to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in according to Rule .1403 of this Section.

(g) If EPA notifies the State that its nonattainment plan for ozone has failed to attain the ambient air quality standard for ozone in the Charlotte-Gastonia-Rock Hill ozone nonattainment area, the rules in this Section shall apply to facilities in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons but less than 100 tons of nitrogen oxides per year. Within 60 days of receipt of the notification from EPA, the Director shall notice the applicability of these rules to these sources in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this

Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(h) Regardless of any other statement of applicability of this Section, this Section does not apply to any:

- (1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant activity as defined at 15A NCAC 02Q .0103(19);
- (2) incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generator;
- (4) emergency use internal combustion engine;
- (5) source that is not covered under ~~Rule .1418~~ Rules .1416, .1417, or .1418 of this Section, and that is at a facility with a federally enforceable potential to emit nitrogen oxides of:
 - (A) less than 100 tons per year; and
 - (B) less than 560 pounds per calendar day beginning May 1 through September 30 of any year.
- (6) stationary internal combustion engine less than 2400 brake horsepower that operates no more than the following hours between May 1 and September 30:
 - (A) for diesel engines:
t = 833,333 / ES
 - (B) for natural gas-fired engines:
t = 700,280 / ES

where t equals time in hours and ES equals engine size in horsepower.

(i) The exemption in Subparagraph (h)(6) of this Rule does not apply to any of the sources listed in Rule .1417(a)(1) or (2), or (b), of this Section except as it applies to a stationary combustion turbine constructed before January 1, 1979, that has a federally enforceable permit that restricts:

- (1) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September 30;
- (2) it to burning only natural gas or oil; and
- (3) its hours of operation as described in 40 CFR 96.4(b)(1)(ii) and (iii).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. June 1, 2008; July 1, 2007; March 1, 2007; July 18, 2002; Temporary Amendment Eff. December 31, 2008.

**15A NCAC 02D .1404 RECORDKEEPING:
REPORTING: MONITORING:**

(a) General requirements. The owner or operator of any source shall comply with the monitoring, recordkeeping and reporting requirements in Section .0600 of this Subchapter and shall maintain all records necessary for determining compliance with all applicable limitations and standards of this Section for five years.

(b) Submittal of information to show compliance status. The owner or operator of any source shall maintain and, when requested by the Director, submit any information required by ~~these rules~~ this Section to determine the compliance status of an affected source.

(c) Excess emissions reporting. The owner or operator shall report excess emissions following the procedures under Rule .0535 of this Subchapter.

(d) Continuous emissions monitors.

(1) The owner or operator shall install, operate, and maintain a continuous emission monitoring system according to 40 CFR Part 75, Subpart H, with such exceptions as may be allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96 if:

(A) a source is covered under Rules .1416, .1417, or .1418 of this Section except internal combustion engines, or

(B) any source that opts into the nitrogen oxide budget trading program under Rule .1419 of this Section .

(2) The owner or operator of a source that is subject to the requirements of this Section but not covered under Subparagraph (1) of this Paragraph and that uses a continuous emissions monitoring system to measure emissions of nitrogen oxides shall operate and maintain the continuous emission monitoring system according to 40 CFR Part 60, Appendix B, Specification 2, and Appendix F or Part 75, Subpart H. If diluent monitoring is required, 40 CFR Part 60, Appendix B, Specification 3, shall be used. If flow monitoring is required, 40 CFR Part 60, Appendix B, Specification 6, shall be used.

(3) The owner or operator of the following sources ~~shall not be~~ is not required to use continuous emission monitors unless the Director determines that a continuous emission monitor is necessary under Rule .0611 of this Subchapter to show compliance with the rules of this Section:

(A) a boiler or indirect-fired process heater covered under Rule .1407 of this Section with a maximum heat input less than or equal to 250 million Btu per hour;

(B) stationary internal combustion engines covered under Rule .1409 of this Section except for engines

covered under Rules .1409(b) and .1418 of this Section.

(e) Missing data.

(1) If data from continuous emission monitoring systems required to meet the requirements of 40 CFR Part 75 are not available at a time that the source is operated, the procedures in 40 CFR Part 75 shall be used to supply the missing data.

(2) For continuous emissions monitors not covered under Subparagraph (1) of this Paragraph, data shall be available for at least 95 percent of the emission sources operating hours for the applicable averaging period, where four equally spaced readings constitute a valid hour. If data from continuous emission monitoring systems are not available for at least 95 percent of the time that the source is operated, the owner or operator of the monitor shall:

(A) use the procedures in 40 CFR 75.33 through 75.37 to supply the missing data; or

(B) document that the combustion source or process equipment and the control device were being properly operated (acceptable operating and maintenance procedures are being used, such as, compliance with permit conditions, operating and maintenance procedures, and preventative maintenance program, and monitoring results and compliance history) when the monitoring measurements were missing.

(f) Quality assurance for continuous emissions monitors.

(1) The owner or operator of a continuous emission monitor required to meet 40 CFR Part 75, Subpart H, shall follow the quality assurance and quality control requirements of 40 CFR Part 75, Subpart H.

(2) For a continuous emissions monitor not covered under Subparagraph (1) of this Paragraph, the owner or operator of the continuous emissions monitor shall follow the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, if the monitor is required to be operated annually under another rule. If the continuous emissions monitor is being operated only to satisfy the requirements of this Section, then the quality assurance and quality control requirements of 40 CFR Part 60, Appendix F, shall apply except that:

(A) A relative accuracy test audit shall be conducted after January 1 and before May 1 of each year;

- (B) One of the following shall be conducted at least once between May 1 and September 30 of each year:
- (i) a linearity test, according to 40 CFR Part 75, Appendix A, Section 3.2, 6.2, and 7.1;
 - (ii) a relative accuracy audit, according to 40 CFR Part 60, Appendix F, Section 5 and 6; or
 - (iii) a cylinder gas audit according to 40 CFR Part 60, Appendix F, Section 5 and 6; and
- (C) A daily calibration drift test shall be conducted according to 40 CFR Part 60, Appendix F, Section 4.0.

(g) End of season reporting for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall report to the Director no later than October 30 of each year, the tons of nitrogen oxides emitted during the previous ozone season. The Division of Air Quality shall make this information publicly available.

(h) Recordkeeping and reporting requirements for large sources. The owner or operator of a source covered under Rules .1416, .1417, or .1418 of this Section shall comply with the recordkeeping and reporting requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans.

(i) Averaging time for continuous emissions monitors. When compliance with a limitation established for a source subject to the requirements of this Section is determined using a continuous emissions monitoring system, a 24-hour block average as described under Rule .0606 of this Subchapter shall be recorded for each day beginning May 1 through September 30 unless a specific rule requires a different averaging time or procedure. Sources covered under Rules .1416, .1417, or .1418 of this Section shall comply with the averaging time requirements of 40 CFR Part 75. A 24-hour block average described in Rule .0606 of this Subchapter shall be used when a continuous emissions monitoring system is used to determine compliance with a short-term pounds-per-million-Btu standard in Rule .1418 of this Section.

- (j) Heat input. Heat input shall be determined:
- (1) for sources required to use a monitoring system meeting the requirements of 40 CFR Part 75, using the procedures in 40 CFR Part 75; or
 - (2) for sources not required to use a monitoring system meeting the requirements of 40 CFR Part 75 using:
 - (A) 40 CFR Part 75,
 - (B) a method in 15A NCAC 2D .0501, or
 - (C) the best available heat input data if approved by the Director (the

Director shall grant approval if he finds that the heat input data is the best available).

(k) Source testing. When compliance with a limitation established for a source subject to the requirements of this Section is determined using source testing, the source testing shall follow the procedures of Rule .1415 of this Section.

(l) Alternative monitoring and reporting procedures. The owner or operator of a source covered under this Rule may request alternative monitoring or reporting procedures under Rule .0612, Alternative Monitoring and Reporting Procedures.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1999; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amendment Eff. December 1, 2005; January 1, 2005; May 1, 2004; July 15, 2002; Temporary Amendment Eff. December 31, 2008(this amendment replaces the amendment approved by RRC on May 15, 2008).

15A NCAC 02D .1407 BOILERS AND INDIRECT-FIRED PROCESS HEATERS

(a) This Rule applies geographically according to Rule .1402 of this Section.

(b) The owner or operator of a boiler or indirect-fired process heater subject to the requirements of this Section as determined by Rule .1402(d) of this Section with a maximum heat input rate of less than or equal to 50 million Btu per hour shall comply with the annual tune-up requirements of Rule .1414 of this Section. The owner or operator of a boiler or indirect-fired process heater subject to the requirements of this Paragraph shall maintain records of all tune-ups performed for each source according to Rule .1404 of this Section.

(c) The owner or operator of a fossil fuel-fired boiler with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million Btu per hour, a boiler with a maximum heat input greater than 50 million Btu per hour that is not a fossil fuel-fired boiler, or an indirect-fired process heater with a maximum heat input greater than 50 million Btu per hour shall comply by:

- (1) installation of, if necessary, combustion modification technology or other NO_x control technology and maintenance, including annual tune-ups and recordkeeping; and
- (2) demonstration through source testing or continuous emission monitoring that the source complies with the following applicable limitation:

**MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR BOILERS AND INDIRECT PROCESS HEATERS
(POUNDS PER MILLION BTU)**

Firing Method				
Fuel/Boiler Type	Tangential	Wall	Stoker or Other	

Coal (Wet Bottom)	1.0	1.0	N/A
Coal (Dry Bottom)	0.45	0.50	0.40
Wood or Refuse	0.20	0.30	0.20
Oil	0.30	0.30	0.30
Gas	0.20	0.20	0.20

(d) If this Rule applies to a boiler or indirect-fired process heater pursuant to Rule .1402(d) of this Section, and the emissions are greater than the applicable limitation in Paragraph (c) of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT, the owner or operator may petition the Director for an alternative limitation or standard in accordance with Rule .1412 of this Section.

(e) Compliance with the limitation established for a boiler or indirect-fired process heater under this Rule shall be determined:

- (1) using a continuous emissions monitoring system for boilers or indirect-fired process heaters with a maximum heat input rate greater than 250 million Btu per hour;
- ~~(1)~~(2) using a continuous emission monitoring system if the boiler or indirect-fired process heater is required to use a continuous emissions monitoring system under Rule .0524 of this Section or 40 CFR Part 60 to measure emissions of nitrogen oxides; or
- ~~(2)~~(3) using annual source testing according to Rule .1415 of this Section for boilers or indirect-fired process heaters with a maximum heat input rate less than or equal to 250 million Btu per hour but greater than 50 million BTU per hour with the exception allowed under Paragraph (f) of this Rule.

(f) If a source covered under this rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under Subparagraph ~~(e)(2)~~ (e)(3) of this Rule shall not be required for that fuel.

(g) If two consecutive annual source tests show compliance, the Director may reduce the frequency of testing up to once every five years. In years that a source test is not done, the boiler or indirect-fired process heater shall comply with the annual tune-up requirements of Rule .1414 of this Section. If after the Director reduces the frequency of testing, a source test shows that the emission limit under this Rule is exceeded, the Director shall require the boiler or indirect-fired process heater to be tested annually until two consecutive annual tests show compliance. Then the Director may again reduce the frequency of testing.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5),(7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. June 1, 2008; July 18, 2002; Temporary Amendment Eff. December 31, 2008.

15A NCAC 02D .1408 STATIONARY COMBUSTION TURBINES

(a) This Rule applies geographically according to Rule .1402 of this Section.

(b) Unless the owner or operator chooses the option of emission averaging under Rule .1410 of this Section, the owner or operator of a stationary combustion turbine with a heat input rate greater than 100 million Btu per hour but less than or equal to 250 million Btu per hour shall comply with the following limitations:

- (1) Emissions of NO_x shall not exceed 75 ppm by volume corrected to 15 percent oxygen for gas-fired turbines, or
- (2) Emissions of NO_x shall not exceed 95 ppm by volume corrected to 15 percent oxygen for oil-fired turbines.

If necessary, the owner or operator shall install combustion modification technology or other NO_x control technology to comply with the applicable limitation set forth in this Paragraph.

(c) If this Rule applies to a stationary combustion turbine pursuant to Rule .1402(d) of this Section, and the emissions are greater than the applicable limitation in Paragraph (b) of this Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT for the particular stationary combustion turbine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(d) Compliance with the limitation established for a stationary combustion turbine under this Rule shall be determined:

- (1) using a continuous emissions monitoring system, or
- (2) using annual source testing according to Rule .1415 of this Section.

(e) If a source covered under this rule can burn more than one fuel, the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the sources testing required under this Rule is not required for that fuel.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. June 1, 2008; July 18, 2002; Temporary Amendment Eff. December 31, 2008.

15A NCAC 02D .1409 STATIONARY INTERNAL COMBUSTION ENGINES

(a) This Rule applies geographically according to Rule .1402 of this Section.

(b) The owner or operator of a stationary internal combustion engine having a rated capacity of 650 horsepower or more that is not covered under Paragraph (c) of this Rule or Rule .1418 of

TEMPORARY RULES

this Section shall not allow emissions of NO_x from the stationary internal combustion engine to exceed the following limitations:

**MAXIMUM ALLOWABLE NO_x EMISSION RATES FOR
STATIONARY INTERNAL COMBUSTION ENGINES
(GRAMS PER HORSEPOWER HOUR)**

Engine Type	Fuel Type	Limitation
Rich-burn	Gaseous	2.5
Lean-burn	Gaseous	2.5
Compression Ignition	Liquid	8.0

(c) Engines identified in the table in this Paragraph shall not exceed the emission limit in the table during the ozone ~~season~~-season:

SUM OF MAXIMUM ALLOWABLE OZONE SEASON NO _x EMISSIONS (tons per ozone season)				
FACILITY	REGULATED SOURCES	<u>ALLOWABLE EMISSIONS</u> <u>2004</u>	<u>ALLOWABLE EMISSIONS</u> <u>2005</u>	<u>ALLOWABLE EMISSIONS</u> <u>2006 and later</u>
Transcontinental Gas Pipeline Station 150	Mainline engines #12, 13, 14, and 15	<u>311</u>	<u>189</u>	76
Transcontinental Gas Pipeline Station 155	Mainline engines #2, 3, 4, 5, and 6	<u>509</u>	<u>314</u>	127
Transcontinental Gas Pipeline Station 160	Mainline engines #11, 12, 13, 14, and 15	<u>597</u>	<u>367</u>	149

Compliance shall be determined by summing the actual emissions from the engines listed in the table at each facility for the ozone season and comparing those sums to the limits in the table. Compliance may be achieved through trading under Paragraph (g) of this Rule if the trades are approved before the ozone season.

(d) If this Rule applies to a stationary internal combustion engine pursuant to Rule .1402(d) of this Section, then, if after reasonable effort as defined in Rule .1401 of this Section, the emissions from that stationary internal combustion engine are greater than the applicable limitation in Paragraph (b) of this Rule, Rule after reasonable effort as defined in Rule .1401 of this Section, or if the requirements of this Rule are not RACT for the particular stationary internal combustion engine, the owner or operator may petition the Director for an alternative limitation or standard according to Rule .1412 of this Section.

(e) For the engines identified in Paragraph (c) of this Rule and any engine involved in emissions trading with one or more of the engines identified in Paragraph (c) of this Rule, the owner or operator shall determine compliance using:

- (1) a continuous emissions monitoring system which meets the applicable requirements of Appendices B and F of 40 CFR part 60 and Rule .1404 of this Section; or
- (2) an alternate monitoring and recordkeeping procedure based on actual emissions testing and correlation with operating parameters.

The installation, implementation, and use of this alternate procedure allowed under Subparagraph (e)(2) of this Paragraph shall be approved by the Director before it may be used. The Director may approve the alternative procedure if he finds that it can show the compliance status of the engine.

(f) If a stationary internal combustion engine is permitted to operate more than 475 hours during the ozone season, compliance with the limitation established for a stationary internal combustion engine under Paragraph (b) of this Rule

shall be determined using annual source testing according to Rule .1415 of this Section. If a source covered under this rule can burn more than one fuel, then the owner or operator of the source may choose not to burn one or more of these fuels during the ozone season. If the owner or operator chooses not to burn a particular fuel, the source testing required under this Rule is not required for that fuel.

(g) If a stationary internal combustion engine is permitted to operate no more than 475 hours during the ozone season, the owner or operator of the stationary internal combustion engine shall show compliance with the limitation under Paragraph (b) of this Rule with source testing during the first ozone season of operation according to Rule .1415 of this Section. Each year after that, the owner or operator of the stationary internal combustion engine shall comply with the annual tune-up requirements of Rule .1414 of this Section.

(h) The owner or operator of a source covered under Paragraph (c) of this Rule may offset part or all of the emissions of that source by reducing the emissions of another stationary internal combustion engine at that facility by an amount equal to or greater than the emissions being offset. Only actual decreased emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations may be used to offset the emissions of another source. The person requesting the offset shall submit the following information to the Director:

- (1) identification of the source, including permit number, providing the offset and what the new allowable emission rate for the source will be;
- (2) identification of the source, including permit number, receiving the offset and what the new allowable emission rate for the source will be;
- (3) the amount of allowable emissions in tons per ozone season being offset;

- (4) a description of the monitoring, recordkeeping, and reporting that shall be used to show compliance; and
- (5) documentation that the offset is an actual decrease in emissions that has not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations.

- (7) an operational plan to provide reasonable assurance that the sources being averaged will satisfy Subparagraph (5) of this Paragraph when the combined maximum daily heat input rate is less than the permitted maximum heat input rate; and
- (8) the method to be used to determine the actual NO_x emissions from each source.

The Director may approve the offset if he finds that all the information required by this Paragraph has been submitted and that the offset is an actual decrease in emissions that have not previously been relied on to comply with Subchapter 02D or 02Q of this Title or Title 40 of the Code of Federal Regulations. If the Director approves the offset, he shall put the new allowable emission rates in the respective permits.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. July 18, 2002; Temporary Amendment Eff. December 31, 2008(this amendment replaces the amendment approved by RRC on May 15, 2008).

History Note: Authority G.S. 143-215.3(a)(1); 143-215.66; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Temporary Amendment Eff. August 1, 2001; November 1, 2000; Amended Eff. June 1, 2008; June 1, 2004; July 18, 2002; Temporary Amendment Eff. December 31, 2008.

15A NCAC 02D .1410 EMISSIONS AVERAGING

- (a) This Rule shall not apply to sources covered under Rule .1416, .1417, or .1418 of this Section. Sources that have obtained an alternative limitation as provided by Rule .1412 of this Section or that apply seasonal fuel switching as provided by Rule .1411 of this Section are not eligible to participate in an emissions averaging plan under this Rule.
- (b) With the exceptions in Paragraph (a) of this Rule, the owner or operator of a facility with two or more sources with comparable plume rise and subject to the requirements of this Section for all such sources as determined by Rule .1402 of this Section may elect to apply an emissions averaging plan according to Paragraph (c) of this Rule. An ~~emissions~~ emissions averaging plan may be used if the total NO_x emissions from the averaged set of sources based on the total heat input are equal to or less than the NO_x emissions that would have occurred if each source complied with the applicable limitation.

15A NCAC 02D .1411 SEASONAL FUEL SWITCHING

- (a) This Rule shall not apply to sources covered under Rule .1416, .1417, or .1418 of this Section.
- (b) The owner or operator of a coal-fired or oil-fired boiler subject to the requirements of Rule .1407 of this Section may elect to comply by applying seasonal combustion of natural gas according to Paragraph (c) of this Rule. This option is not available to a boiler that used natural gas as its primary fuel in or since 1990. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.
- (c) The owner or operator electing to comply with the requirements of this Section through the seasonal combustion of natural gas shall establish a NO_x emission limit beginning October 1 and ending April 30 that will result in annual NO_x emissions of less than or equal to the NO_x that would have been emitted if the source complied with the applicable limitation for the combustion of coal for the entire calendar year. Compliance with this Section according to this Rule does not remove or reduce any applicable requirement of the Acid Rain Program.
- (d) To comply with the requirements of this Section through the seasonal combustion of natural gas, the owner or operator shall submit to the Director the following information:

- (c) To request approval of an emissions averaging plan to comply with the requirements of this Section, the owner or operator of a facility shall submit a written request to the Director including the following information:
 - (1) the name and location of the facility;
 - (2) information identifying each source to be included under the averaging plan;
 - (3) the maximum heat input rate for each source;
 - (4) the fuel or fuels combusted in each source;
 - (5) the maximum allowable NO_x emission rate proposed for each averaging source;
 - (6) a demonstration that the nitrogen oxide emissions of the sources being averaged when operated together at the maximum daily heat input rate, will be less than or equal to the total NO_x emissions if each source complied with the applicable limitation of this Section individually;

- (1) the name and location of the facility;
- (2) information identifying the source to use seasonal combustion of natural gas for compliance;
- (3) the maximum heat input rate for each source;
- (4) a demonstration that the source will comply with the applicable limitation for the combustion of coal during the ozone season
- (5) a demonstration that the source will comply with the NO_x emission limitation established under Paragraph (c) of this Rule beginning October 1 and ending April 30; and
- (6) a written statement from the natural gas supplier providing reasonable assurance that the fuel will be available beginning during the ozone season.

History Note: Authority G.S. 143-215.3(a)(1) 143-215.65; 143-215.107(a)(5), (7), (10);

TEMPORARY RULES

Eff. April 1, 1995;
Temporary Amendment Eff. November 1, 2000;
Amended Eff. April 1, 2001;

Temporary Amendment Eff. August 1, 2001;
Amended Eff. June 1, 2008; July 18, 2002;
Temporary Amendment Eff. December 31, 2008.

15A NCAC 02D .1416 EMISSION ALLOCATIONS FOR UTILITY COMPANIES

(a) After November 1, 2000 but before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

- (1) Carolina Power and Light. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power and Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
 - (A) 12,019 tons per ozone season for 2004;
 - (B) 15,566 tons per ozone season for 2005;
 - (C) 14,355 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Asheville, Buncombe Co.	1	551	714	659
	2	538	697	643
Cape Fear Chatham Co	5	286	371	342
	6	406	526	485
Lee Wayne Co	1	145	188	173
	2	159	206	190
	3	465	603	556
Mayo Person Co	1	1987	2572	2373
Roxboro Person Co	1	861	1115	1028
	2	1602	2075	1914
	3	1773	2295	2116
	4	1698	2199	2028
L V Sutton New Hanover Co.	1	182	236	217
	2	198	256	236
	3	806	1044	962
Weatherspoon Robeson Co.	1	85	110	102
	2	97	125	116
	3	180	234	215

- (2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
 - (A) 17,816 tons per ozone season for 2004;
 - (B) 23,072 tons per ozone season for 2005;
 - (C) 21,278 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
G G Allen Gaston Co.	1	350	453	418
	2	355	460	424

TEMPORARY RULES

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/season) 2005	EMISSION ALLOCATIONS (tons/season) 2006 and later
	3	590	764	705
	4	528	683	630
	5	678	748	690
Belews Creek Stokes Co.	1	2591	3356	3095
	2	3020	3911	3608
Buck Rowan Co.	5	66	86	79
	6	73	95	87
	7	78	101	93
	8	319	413	381
	9	337	437	403
Cliffside Cleveland and Rutherford Co.	1	76	98	91
	2	82	106	98
	3	107	138	128
	4	120	156	144
	5	1326	1717	1584
Dan River Rockingham Co.	1	132	171	157
	2	144	186	172
	3	304	394	363
Marshall Catawba Co.	1	1011	1309	1207
	2	1056	1367	1261
	3	1784	2311	2131
	4	1764	2285	2107
Riverbend Gaston Co.	10	299	387	357
	7	216	280	258
	8	225	291	268
	9	285	369	340

(b) After November 1, 2000, and after any EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the following limits apply:

- (1) Carolina Power and Light. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Carolina Power and Light Company's Asheville, Cape Fear, Lee, Mayo, Roxboro, Sutton, and Weatherspoon facilities shall not exceed:
 - (A) 12,019 tons per ozone season in 2004;
 - (B) 15,024 tons per ozone season for 2005;
 - (C) 11,320 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Asheville Buncombe Co	1	551	689	519
	2	538	672	507
Cape Fear Chatham Co	5	286	358	270
	6	406	508	382
Lee Wayne Co.	1	145	182	137
	2	159	199	150
	3	465	582	438
Mayo Person Co	1	1987	2483	1872
Roxboro	1	861	1076	811

TEMPORARY RULES

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
Person Co	2	1602	2003	1509
	3	1773	2215	1669
	4	1698	2122	1599
L V Sutton New Hanover Co.	1	182	228	171
	2	198	247	186
	3	806	1007	759
Weatherspoon Robeson Co.	1	85	107	80
	2	97	121	91
	3	180	225	170

- (2) Duke Power. The total emissions from all the coal-fired boilers and combustion turbines that are not listed in Rule .1417 of this Section at Duke Power Company's Allen, Belews Creek, Buck, Cliffside, Dan River, Marshall, and Riverbend facilities shall not exceed:
- (A) 17,816 tons per ozone season;
 - (B) 22,270 tons per ozone season for 2005;
 - (C) 16,780 tons per ozone season for 2006 and each year thereafter until revised according to Rule .1420 of this Section; and

Furthermore, except as allowed under Paragraph (d) of this Rule, individual sources at these facilities named in the table in this Subparagraph shall not exceed during the ozone season the nitrogen oxide emission allocations in the table.

FACILITY	SOURCE	EMISSION ALLOCATIONS (tons/ozone season) 2004	EMISSION ALLOCATIONS (tons/ozone season) 2005	EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
G G Allen Gaston Co.	1	350	437	329
	2	355	444	334
	3	590	737	556
	4	528	660	497
	5	578	722	544
Belews Creek Stokes Co.	1	2591	3239	2441
	2	3020	3775	2846
Buck Rowan Co.	5	66	83	63
	6	73	91	69
	7	78	97	73
	8	319	399	300
	9	337	422	318
Cliffside Cleveland and Rutherford Co.	1	76	95	71
	2	82	102	77
	3	107	134	101
	4	120	150	113
	5	1326	1658	1249
Dan River Rockingham Co.	1	132	165	124
	2	144	180	135
	3	304	380	286
Marshall Catawba Co.	1	1011	1263	952
	2	1056	1320	994
	3	1784	2230	1680
	4	1764	2206	1662
Riverbend Gaston Co.	10	299	374	282
	7	216	270	204
	8	225	281	212
	9	285	356	268

- (c) Posting of emission allocation. The Director shall post the emission allocations for sources covered under this Rule on the Division's web page.
- (d) Trading. Sources shall comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section.
- (e) Monitoring. The owner or operator of a source subject to this Rule shall show compliance using a continuous emission monitor that meets the requirements of 40 CFR Part 75, Subpart H, with such exceptions as allowed under 40 CFR Part 75, Subpart H or 40 CFR Part 96.
- (f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated during the ozone season in the manner in which they are designed and permitted to be operated.
- (g) Days of violations. For the purposes of this Rule, the number of days of violation for a source shall be determined after the end of the ozone season as follows:
 - (1) To the source's allocation in this Rule, the allocations acquired before December 1 of that year under Rule .1419 of this Section are added and the allocations transferred before December 1 of that year under Rule .1419 of this Section are subtracted.
 - (2) The value calculated under Subparagraph (1) of this Paragraph is compared to the actual emissions from the source for the ozone season. If the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions from the source for the ozone season, the source is in compliance. If the value calculated under Subparagraph (1) of this Paragraph is less than the actual emissions from the source for the ozone season, the source is not in compliance.
 - (3) If the source is not in compliance, beginning with September 30, the actual emissions for that day and each preceding day are subtracted from the actual emissions for the ozone season until the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions. Each day that the source operated after this day to September 30 is a day of violation.
- (h) Modification and reconstruction. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its emission allocations under Paragraph (a) or (b) of this Rule.
- (i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

*History Note: Authority G.S. 143-215.3(a)(1);143-215.107(a)(5), (7), (10);
 Temporary Adoption Eff. November 1, 2000;
 Eff. April 1, 2001;
 Temporary Amendment Eff. August 1, 2001;
 Amended Eff. June 1, 2004; July 18, 2002;
 Temporary Amendment Eff. December 31, 2008(this amendment replaces the repeal approved by RRC on May 15, 2008).*

15A NCAC 02D .1417 EMISSION ALLOCATIONS FOR LARGE COMBUSTION SOURCES

- (a) Applicability. This Rule applies to the sources listed in Paragraph (b) of this Rule or to the following types of sources that are permitted before November 1, 2000, and are not covered under Rule .1416 of this Section:
 - (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
 - (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph.
- (b) Initial emission allocations.
 - (1) After November 1, 2000 but before the EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the emission allocations in the tables in this Subparagraph shall apply. Except as allowed under Paragraph (d) of this Rule, sources named in the tables in this Subparagraph shall not exceed during the ozone season the nitrogen oxide (NO_x) emission allocations in the tables until revised according to Rule .1420 of this Section:

ELECTRICAL GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2006 and later
<u>Public Works Commission - Butler Warner Generating Plant, Cumberland Co.</u>	Combustion Turbine 1	27	33	49
	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	43	63
	Combustion Turbine 5	35	43	63
<u>Cogentrix Rocky Mount, Edgecombe GenCo, Edgecombe Co.</u>	Boiler ST unt	319	398	351
<u>Cogentrix-Elizabethtown, Elizabethtown Power, Bladen Co.</u>	Coal boiler ST-own	115	143	126
<u>Cogentrix Kenansville, Coastal Carolina Clean Power, LLC, Duplin Co.</u>	Stoker boiler ST-LLE	103	128	113
<u>Cogentrix Lumberton, Lumberton Power, Robeson Co.</u>	Coal boiler ST-TON	114	142	125
<u>Cogentrix Roxboro, Primary Energy, Roxboro, Person Co.</u>	ST-ORO	175	218	192
<u>Cogentrix Southport, Primary Energy, Southport, Brunswick Co.</u>	ST-ORT	356	443	391
Duke Power, Lincoln	Combustion Turbine 1	18	23	23
	Combustion Turbine 2	18	23	23
	Combustion Turbine 3	18	23	23
	Combustion Turbine 4	18	23	23
	Combustion Turbine 5	18	23	23
	Combustion Turbine 6	18	23	23
	Combustion Turbine 7	18	23	23

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	Combustion Turbine 8	18	23	23
	Combustion Turbine 9	18	23	23
	Combustion Turbine 10	18	23	23
	Combustion Turbine 11	18	23	23
	Combustion Turbine 12	18	23	23
	Combustion Turbine 13	18	23	23
	Combustion Turbine 14	18	23	23
	Combustion Turbine 15	18	23	23
	Combustion Turbine 16	19	24	24
Panda-Rosemary , <u>Rosemary Power Station</u> , Halifax Co.	CT-ary	35	43	32
	CW-ary	25	31	23
Roanoke Valley , <u>Westmoreland LG&E Partners Roanoke Valley</u> , Halifax Co.	1	447	557	492
	2	142	178	167
RJ Reynolds Tobaccoville Facility, Forsyth Co.	Boiler 1	194	243	64
	Boiler 2	218	273	64
	Boiler 3	178	223	64
	Boiler 4	190	238	64
UNC-CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128
	Boiler no. 8	120	150	113
CP&L , <u>Carolina Power and Light</u> , Lee Plant, Wayne County	Combustion Turbine 10	25	31	31
	Combustion Turbine 11	25	31	31
	Combustion Turbine 12	92	115	115
	Combustion Turbine 13	92	115	115
Dynegy , <u>Dynegy-Rockingham Power</u> ,	Combustion Turbine 1	34	42	42

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2006 and later
Rockingham County	Combustion Turbine 2	33	42	42
	Combustion Turbine 3	33	42	42
	Combustion Turbine 4	33	41	41
	Combustion Turbine 5	33	41	41
CP&L, Southern Power Company, Plant Rowan County, Woodleaf, Rowan County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	27	27
CP&L, Carolina Power and Light, Mark's Creek, Richmond County	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
CP&L, Carolina Power and Light, Asheville, Buncombe County	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON-ELECTRICAL GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2006 and later
Weyerhaeuser Paper Co., Domtar Paper Co., Martin Co.	Riley boiler	566	709	379
	Package boiler	20	25	25

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2006 and later
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler – Big Bill	212	265	141
	Pulverized coal dry bottom boiler – Peter G	187	234	125
	Pulverized coal dry bottom boiler – Riley Coal	358	447	239
	Pulverized coal, wet bottom boiler – No. 4	365	456	244
	Boiler – Riley Bark	135	169	90
<u>International Paper Corp., Kapstone Kraft Paper Corp., Halifax Co.</u>	Wood/ bark, no. 6 oil, pulverized coal dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International. Paper, Columbus Co.	No. 3 Power Boiler	126	158	84
	No. 4 Power Boiler	334	418	223
Fieldcrest-Cannon, Plant 1 Cabarrus Co.	Boiler	174	217	116

- (2) After November 1, 2000, and after any EPA promulgation of revisions to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the emission allocations in the tables in this Subparagraph shall apply. Except as allowed under Paragraph (d) of this Rule, sources named in the tables in this Subparagraph shall not exceed during the ozone season the nitrogen oxide (NO_x) emission allocations in the tables until revised according to Rule .1420 of this Section:

ELECTRIC GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCA-TIONS (tons/ozone season) 2006 and later
<u>Public Works Commission - Butler</u>	Combustion Turbine 1	27	33	49

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCA-TIONS (tons/ozone season) 2006 and later
Warner Generating, Generation Plant, Cumberland Co.	Combustion Turbine 2	27	33	49
	Combustion Turbine 3	27	33	49
	Combustion Turbine 6	28	35	52
	Combustion Turbine 7	27	33	49
	Combustion Turbine 8	27	33	49
	Combustion Turbine 4	34	43	63
	Combustion Turbine 5	35	43	63
Cogentrix Rocky Mount, Edgecombe GenCo, LLC, Edgecombe Co.	Boiler ST-unt	319	398	351
Cogentrix-Elizabethtown, Elizabethtown Power, LLC, Bladen Co.	Coal boiler ST-OWN	115	143	126
Cogentrix-Kenansville, Coastal Carolina Clean Power, LLC, Duplin Co.	Stoker boiler ST-LLE	103	128	113
Cogentrix-Lumberton, Lumberton Power, Robeson Co.	Coal boiler ST-TON	114	142	125
Cogentrix-Roxboro, Primary Energy, Roxboro, Person Co.	ST-ORO	175	218	192
Cogentrix-Southport, Primary Energy, Southport, Brunswick Co.	ST-ORT	356	444	392
Duke Power, Lincoln	Combustion Turbine 1	18	23	26
	Combustion Turbine 2	18	23	26
	Combustion Turbine 3	18	23	26
	Combustion Turbine 4	18	23	26
	Combustion Turbine 5	18	23	26
	Combustion Turbine 6	18	23	26
	Combustion Turbine 7	18	23	26

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCATIONS (tons/ozone season) 2006 and later	
	Combustion Turbine 8	18	23	26	
	Combustion Turbine 9	18	23	26	
	Combustion Turbine 10	18	23	26	
	Combustion Turbine 11	18	23	26	
	Combustion Turbine 12	18	23	26	
	Combustion Turbine 13	18	23	26	
	Combustion Turbine 14	18	23	26	
	Combustion Turbine 15	18	23	26	
	Combustion Turbine 16	19	24	27	
	Panda Rosemary, Rosemary Power Station, Halifax Co.	CT-ary	35	43	32
		CW-ary	25	31	23
Roanoke Valley, Westmoreland LG&E Partners Roanoke Valley, Halifax Co.	1	447	558	493	
	2	142	178	167	
RJ Reynolds Tobbaccoville Facility, Forsyth Co.	Boiler 1	194	243	64	
	Boiler 2	218	273	64	
	Boiler 3	178	223	64	
	Boiler 4	190	238	64	
UNC-CH, Orange Co.	Boiler no. 5, 6, and 7	116	145	128	
	Boiler no. 8	120	150	113	
CP&L, Carolina Power and Light, Lee Plant, Wayne County	Combustion Turbine 10	25	31	31	
	Combustion Turbine 11	25	31	31	
	Combustion Turbine 12	92	115	115	
	Combustion Turbine 13	92	115	115	
Dynegy, Dynegy-Rockingham Power, Rockingham County	Combustion Turbine 1	34	42	42	
	Combustion Turbine 2	33	42	42	
	Combustion Turbine 3	33	42	42	
	Combustion Turbine 4	33	41	41	
	Combustion Turbine 5	33	41	41	

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSIONS ALLOCA-TIONS (tons/ozone season) 2006 and later
<u>CP&L, Southern Power Company, Plant Rowan County, Woodleaf, Rowan County</u>	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	21	27	27
	Combustion Turbine 5	22	28	28
<u>CP&L, Carolina Power and Light, Mark's Creek, Richmond County</u>	Combustion Turbine 1	22	27	27
	Combustion Turbine 2	22	27	27
	Combustion Turbine 3	22	27	27
	Combustion Turbine 4	22	27	27
	Combustion Turbine 5	21	27	27
	Combustion Turbine 6	21	27	27
	Combustion Turbine 7	22	28	28
<u>CP&L, Carolina Power and Light, Asheville, Buncombe County</u>	Combustion Turbine	60	75	75
	Combustion Turbine	60	75	75

NON-ELECTRIC GENERATING UNITS

FACILITY	SOURCE	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCA-TIONS (tons/ozone season) 2006 and later
<u>Weyerhaeuser Paper Company/Domtar Paper Co., Martin Co.</u>	Riley boiler	566	708	379
	Package boiler	20	25	25
Blue Ridge Paper Products, Haywood Co.	Pulverized coal dry bottom boiler – Big Bill	212	265	141
	Pulverized coal dry bottom boiler – Peter G	187	234	125
	Pulverized coal dry bottom boiler – Riley Coal	358	447	239

TEMPORARY RULES

FACILITY	SOURCE	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2004	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2005	NO _x EMISSION ALLOCATIONS (tons/ozone season) 2006 and later
	Pulverized coal, wet bottom boiler – No. 4	365	456	244
	boiler–Riley Bark	135	169	90
International Paper Corp., Kapstone Kraft Paper Corp., Halifax Co.	Wood/bark, no. 6 oil, pulverized coal dry bottom boiler	518	648	346
Weyerhaeuser Co. New Bern Mill, Craven Co.	#1 power boiler	181	226	121
	#2 power boiler	58	72	72
International Paper, Columbus Co.	No. 3 Power Boiler	126	158	84
	No. 4 Power Boiler	334	418	223
Fieldcrest-Cannon, Plant 1, Cabarrus Co.	Boiler	174	217	116

(3) Any source covered under this Rule but not listed in Subparagraph (b)(1) or (2) of this Paragraph shall have a nitrogen oxide emission allocation of zero tons per season during the ozone season.

(c) Posting of emission allocations. The Director shall post the emission allocations for sources covered under this Rule on the Division’s web page.

(d) Trading. Sources shall comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section.

(e) Monitoring. The owner or operator of a source subject to this Rule shall show compliance using a continuous emission monitor that meets the requirements of Rule .1404(d) of this Section.

(f) Operation of control devices. All emission control devices and techniques installed to comply with this Rule shall be operated beginning May 1 through September 30 in the manner in which they are designed and permitted to be operated.

(g) Days of violations. For the purposes of this Rule, the number of days of violation for a source shall be determined after the end of the ozone season as follows:

(1) To the source's allocation in this Rule, the allocations acquired before December 1 of that year under Rule .1419 of this Section are added and the allocations transferred before December 1 of that year under Rule .1419 of this Section are subtracted.

(2) The value calculated under Subparagraph (1) of this Paragraph is compared to the actual emissions from the source for the ozone season. If the value calculated under

Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions from the source for the ozone season, the source is in compliance. If the value calculated under Subparagraph (1) of this Paragraph is less than the actual emissions from the source for the ozone season, the source is not in compliance.

(3) If the source is not in compliance, beginning with September 30, the actual emissions for that day and each preceding day are subtracted from the actual emissions for the ozone season until the value calculated under Subparagraph (1) of this Paragraph is greater than or equal to the actual emissions. Each day that the source operated after this day to September 30 is a day of violation.

(h) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source covered under this Rule shall not make that source a "new" source under this Rule. A source that is modified or reconstructed shall retain its emission allocation under Paragraph (b) of this Rule. If one or more sources covered under this Rule is replaced, the new source shall receive the allocation of the source, or sources, that it replaced instead of an allocation under Rule .1421 of this Section. If the owner of a source changes, the emission allocations under this Rule and revised emission allocations made under Rule .1420 of this Section shall remain with the source. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 96.5. The allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under

Rule .1420 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired.

(i) Additional controls. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this Rule for a specific source if compliance with the lower emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality standard for ozone.

History Note: Authority G.S. 143-215.3(a)(1);143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Adoption Eff. August 1, 2001; Eff. July 18, 2002; Amended Eff. June 1, 2004; Temporary Amendment Eff. December 31, 2008(this amendment replaces the repeal approved by RRC on May 15, 2008).

15A NCAC 02D .1418 NEW ELECTRIC GENERATING UNITS, LARGE BOILERS, AND LARGE I/C ENGINES

(a) Electric generating units. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system permitted after October 31, 2000, serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity shall not exceed:

- (1) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.15 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or
- (3) lowest available achievable emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(b) Large boilers. Emissions of nitrogen oxides from any fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system having a maximum design heat input greater than 250 million Btu per hour which is permitted after October 31, 2000, and not covered under Paragraph (a) of this Rule, shall not exceed:

- (1) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels if it is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major new source review) of this Subchapter;
- (2) 0.17 pounds per million Btu for gaseous and solid fuels and 0.18 pounds per million Btu for liquid fuels or best available control technology requirements of Rule .0530 of this

Subchapter, whichever requires the greater degree of reduction, if it is covered under Rule .0530 of this Subchapter; or

- (3) lowest available achievable emission rate technology requirements of Rule .0531 of this Subchapter if it is covered under Rule .0531 of this Subchapter.

(c) Internal combustion engines. The following reciprocating internal combustion engines permitted after October 31, 2000, shall comply with the applicable requirements in Rule .1423 of this Section if the engine is not covered under Rule .0530 (prevention of significant deterioration) or .0531 (nonattainment area major source review) of this Subchapter:

- (1) rich burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,
- (2) lean burn stationary internal combustion engines rated at equal to or greater than 2,400 brake horsepower,
- (3) diesel stationary internal combustion engines rated at equal to or greater than 3,000 brake horsepower, or
- (4) dual fuel stationary internal combustion engines rated at equal to or greater than 4,400 brake horsepower,

If the engine is covered under Rule .0530 of this Subchapter, it shall comply with the requirements of Rule .1423 of this Section or the best available control technology requirements of Rule .0530 of this Subchapter, whichever requires the greater degree of reduction. If the engine is covered under Rule .0531 of this Subchapter, it shall comply with lowest available achievable emission rate technology requirements of Rule .0531 of this Subchapter.

(d) Monitoring. The owner or operator of a source subject to this Rule except internal combustion engines shall show compliance using a continuous emission monitor that meets the requirements of Rule .1404(d) of this Section. Internal combustion engines shall comply with the monitoring requirements in Rule .1423 of this Section. Monitors shall be installed before the first ozone season in which the source will operate and shall be operated each day during the ozone season that the source operates.

(e) Offsets. If emission allocations are not granted under Rule .1421 of this Section or are not equal to or greater than the emissions of nitrogen oxides of the source for that ozone season, until revised under Rule .1420 of this Section, the owner or operator of the source shall acquire emission allocations of nitrogen oxides under Rule .1419 of this Section from other sources sufficient to offset its emissions. Sources shall comply with the requirements of this Rule using the nitrogen oxide budget trading program set out in Rule .1419 of this Section. The owner or operator of internal combustion engines covered under Paragraph (c) of this Rule shall not be required to obtain emission allocations or emission reductions.

History Note: Authority G.S. 143-215.3(a)(1);143-215.107(a)(5), (7), (10); Temporary Adoption Eff. August 1, 2001; November 1, 2000; Eff. July 18, 2002;

Amended Eff. June 1, 2004;

Temporary Amendment Eff. December 31, 2008(this amendment replaces the amendment approved by RRC on May 15, 2008).

15A NCAC 02D .1419 NITROGEN OXIDE BUDGET TRADING PROGRAM

(a) Definitions. For the purposes of this Rule, the definitions in 40 CFR 96.2 shall apply except that:

- (1) "Permitting agency" means the North Carolina Division of Air Quality.
- (2) "Fossil fuel fired" means fossil fuel fired as defined under Rule .1401 of this Section instead of the definition in 40 CFR 96.2.

(b) Existing sources. Sources covered under Rule .1416 or .1417 of this Section shall comply with the requirements of Rule .1416 or .1417 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Nitrogen Oxide Budget Trading Program for State Implementation Plans, with the following exceptions:

- (1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter ~~2Q02Q~~ of this Title instead of the procedures and schedules in 40 CFR Part 96; and
- (2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, if a source operates during the ozone season, it shall have installed and begun operating by May 1, 2004, a continuous emissions monitoring system that complies with 40 CFR Part 96.

(c) New sources. Except for internal combustion engines, sources covered under Rule .1418 of this Section shall comply with the requirements of Rule .1418 of this Section using the procedures of and complying with the requirements of 40 CFR Part 96, Budget Trading Program for State Implementation Plans, with the following exceptions:

- (1) Permit applications shall be submitted following the procedures and schedules in this Section and in Subchapter ~~2Q02Q~~ of this Title instead of the procedures and schedules in 40 CFR Part 96; and
- (2) The dates and schedules for monitoring systems in 40 CFR Part 96 shall not apply; however, a source shall not operate during the ozone season until it has installed and is operating a continuous emissions monitoring system that complies with 40 CFR Part 96.

(d) Opt-in provisions. Boilers, turbines, and combined cycle systems not covered under Rule .1416, .1417, or .1418 of this Section or internal combustion engines may opt into the budget trading program of 40 CFR Part 96 by following the procedures and requirements of 40 CFR Part 96, Subpart I, including using continuous emission monitors that meet the requirements of 40 CFR Part 75, Subpart H. Before an internal combustion engine opts into the budget trading program, the owner or operator of the engine shall demonstrate that the continuous emissions monitor on the engine can comply with the requirements of 40 CFR Part 75, Subpart H, by operating the monitor on the engine

under the conditions specified in 40 CFR Part 75 for at least one ozone season before opting into the budget trading program.

(e) Divisional requirements. The Director and the Division of Air Quality shall follow the procedures of 40 CFR Part 96 in reviewing permit applications and issuing permits for NO_x Budget sources, in approving or disapproving monitoring systems for NO_x Budget sources, and in taking enforcement action against NO_x Budget sources. The Director may issue permits after May 1, 2003, for sources covered under this Section that are participating in the nitrogen oxide budget trading program under this Section. The provisions of 40 CFR Part 96 pertaining to early reduction credits shall not apply.

(f) Submitting ~~emission~~emissions allocations to the EPA. For sources covered under Rule .1416, .1417, or .1418, the Director shall submit to the Administrator of the Environmental Protection Agency NO_x ~~emission~~emissions allocations according to 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rules .1416, .1417, and .1420 for ~~emission~~emissions allocations instead of the methodology specified in 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rule .1421 of this Section for set-asides and new source allocations instead of the provisions of 40 CFR Part 96. The Environmental Management Commission and the Director shall follow Rule .1422 of this Section for distributing the compliance supplement pool instead of the provisions of 40 CFR Part 96.

(g) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the budget trading program of 40 CFR Part 96 on behalf of North Carolina. The Director shall provide the EPA the information necessary under 40 CFR Part 96 for the EPA to administer 40 CFR Part 96 on behalf of North Carolina. The owner or operator of each source covered under Rule .1416, .1417, or .1418, except internal combustion engines, of this Section shall establish an account, designate an authorized account representative, and comply with the other requirements of 40 CFR Part 96 as necessary for the EPA to administer the nitrogen oxide budget trading program on behalf of North Carolina.

(h) Restrictions on trading. NO_x ~~emission~~emissions allocations obtained under this Rule shall not be used to meet the emission limits for a source if compliance with that emission limit is required as part of the State Implementation Plan to attain or maintain the ambient air quality ozone standard. Sources covered under Rule .0531 (nonattainment area major new source review) of this Subchapter shall not use the nitrogen oxide budget trading program to comply with Rule .0531 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1);143-215.65; 143-215.66; 143- 215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Adoption Eff. August 1, 2001; Eff. July 18, 2002; Amended Eff. June 1, 2004; Temporary Amendment Eff. December 31, 2008(this amendment replaces the repeal approved by RRC on May 15, 2008).

15A NCAC 02D .1420 PERIODIC REVIEW AND REALLOCATIONS

(a) Periodic Review. In ~~2006~~2009 and every five years thereafter, the Environmental Management Commission shall review the emission allocations of sources covered under Rules .1416, .1417, or .1418 of this Section and decide if any revisions are needed. In making this decision the Environmental Management Commission shall consider the following:

- (1) the size of the allocation pool for new source growth under Rule .1421 of this Section;
- (2) the amount of emissions allocations requested under Rule .1421 of this Section;
- (3) the amount of emissions allocations available through nitrogen oxide budget trading program;
- (4) the impact of reallocation on existing sources;
- (5) the impact of reallocations on sources covered under Rule .1421 of this Section;
- (6) impact on future growth; and
- (7) other relevant information on the impacts of reallocation.

(b) If the Environmental Management Commission decides to revise emission allocations, it shall propose for each source that has been permitted for and has complied with an emission rate of 0.10 pounds per million Btu or less, emission allocations greater than or equal to the greater of:

- (1) the source's current allocation, or
- (2) an allocation calculated by multiplying the average of the source's two highest seasonal energy inputs for the four most recent years by 0.15 pounds per million Btu and dividing by 2000.

(c) Posting of emission allocations. The Director shall post the new emission allocations once they are adopted on the Division's web page.

History Note: Authority G.S. 143-215.3(a)(1);143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Adoption Eff. August 1, 2001; Eff. July 18, 2002; Temporary Amendment Eff. December 31, 2008(this amendment replaces the repeal approved by RRC on May 15, 2008).

15A NCAC 02D .1421 ALLOCATIONS FOR NEW GROWTH OF MAJOR POINT SOURCES

(a) Purpose. The purpose of this Rule is to establish an allocation pool from which emission allocations of nitrogen oxides may be allocated to sources permitted after October 31, 2000.

(b) Eligibility. This Rule applies only to the following types of sources covered under Rule .1418 of this Section, and permitted after October 31, 2000:

- (1) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems serving a generator with a nameplate capacity greater than 25 megawatts electrical and selling any amount of electricity; or
- (2) fossil fuel-fired stationary boilers, combustion turbines, or combined cycle systems having a

maximum design heat input greater than 250 million Btu per hour that are not covered under Subparagraph (1) of this Paragraph;

(c) Requesting allocation. To receive emission allocations under this Rule, the owner or operator of the source shall provide the following written documentation to the Director before January 1 of the year preceding the ozone season for which the emission allocation is sought:

- (1) a description of the combustion source or sources including heat input;
- (2) evidence that the source complies with the emission limit under Rule .1418 of this Section;
- (3) an estimate of the actual emissions of nitrogen oxides in tons per ozone season;
- (4) the expected hours of operation during the ozone season;
- (5) the date on which the source is expected to begin operating if it is not already operating;
- (6) the tons per ozone season of emission allocations being requested (the amount requested shall be the lesser of the estimated actual emissions under Subparagraph (3) of this Paragraph or the product of the emission limit under Rule .1418 of this Section times the maximum design heat input in millions of Btu per hour times the number of hours that the source is projected to operate (not to exceed 3672 hours) divided by 2000); and
- (7) a description of the monitoring, recordkeeping, and reporting plan that will assure continued compliance.

(d) Approving requests. The Director shall approve a request for emissions allocation if he finds that:

- (1) All the information and documentation required under Paragraph (c) of this Rule has been submitted;
- (2) The request was received before January 1;
- (3) The source is eligible for emission allocations under this Rule;
- (4) The source complies with Rule .1418 of this Section;
- (5) The requested emission allocations do not exceed the estimated actual emissions of nitrogen oxides;
- (6) The source has or is likely to have an air quality permit before the end of the upcoming ozone season; and
- (7) The source is operating or is scheduled to begin operating before the end of the upcoming ozone season.

(e) Preliminary allocations. By March 1 before each ozone season, the Director shall have calculated and posted on the Division's web page preliminary emission allocations for sources whose requests under this Rule he has approved. Preliminary emission allocations shall be determined as follows:

- (1) If the emission allocations requested do not exceed the amount in the pool, each source

shall have a preliminary allocation equal to its request.

- (2) If the emission allocations requested exceed the amount in the pool, each source's emission allocations shall be calculated as follows:
- (A) For each source, its maximum design heat input in millions of Btu per hour is multiplied by the number of hours that the source is projected to operate not to exceed 3672 hours; this product is the source's seasonal heat input;
 - (B) The seasonal heat inputs calculated under Part (A) of this Subparagraph are summed.
 - (C) For each source, its seasonal heat input calculated under Part (A) of this Subparagraph is multiplied by the tons of emission allocations in the allocation pool and divided by the sum of seasonal heat inputs calculated under Part (B) of this Subparagraph; this amount is the source's preliminary emission allocations.

The preliminary emission allocations computed under this Paragraph may be revised under Paragraph (f) of this Rule after the ozone season. Emissions allocations issued under this Paragraph are solely for planning purposes and are not reported to the EPA to be recorded in allowance tracking system account. The emission allocations granted under Paragraph (f) of this Rule shall be the emission allocations granted the source to offset its emissions.

(f) Final allocations. According to Paragraph (g) of this Rule, the Director shall grant emission allocations for each source for which he has approved an allocation from the allocation pool as follows:

- (1) For each individual source, its allowable emission rate under Rule .1418 of this Section is multiplied by its heat input during the ozone season. This product is divided by 2000.
- (2) The lesser of the source's actual emissions of nitrogen oxides, the value calculated under Subparagraph (1) of this Paragraph, or the preliminary emission allocations determined under Paragraph (e) of this Rule shall be the source's emission allocation from the allocation pool.

Emissions allocations granted under this Paragraph are reported to the EPA to be recorded in allowance tracking system account.

(g) Issuance of final allocations. By November 1 following each ozone season, the Director shall issue final allocations according to Paragraph (f) of this Rule and shall notify each source that receives an allocation of the amount of allocation that it has been granted. By November 1 following the ozone season, the Director shall also notify the EPA of allocations issued and to whom they have been issued and the amount issued to each source. The Director shall post the final allocations on the Division's web page.

(h) Allocation pool.

- (1) Before the EPA promulgation of revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, 122 tons,
 - (B) in 2005, 599 tons plus emission allocations carried over from the previous year;
 - (C) in 2006, 505 tons plus emission allocations carried over from the previous year; and
 - (D) in 2007, 1,058 tons plus emission allocations carried over from the previous year.
- (2) After the EPA promulgates revisions after November 1, 2000, to 40 CFR Part 51, Subpart G, revising the nitrogen oxide budget for North Carolina, the allocation pool shall contain the following:
 - (A) in 2004, 122 tons,
 - (B) in 2005, 78 tons plus emission allocations carried over from the previous year;
 - (C) in 2006, 1117 tons plus emission allocations carried over from the previous year; and
 - (D) in 2007, in 2007 and each year thereafter through 2009, 1670 tons plus emission allocations carried over from the previous year.

(i) Changes in the allocation pool. By ~~July 1, 2006~~, June 28, 2009, the Commission shall ~~begin to~~ develop and adopt through rulemaking allocations for ~~2008~~2010 and later years.

(j) Carryover. Emission allocations remaining in the allocation pool at the end of the year shall be carried over into the next year for use during the next ozone season.

(k) Future requests. Once the owner or operator of a source has made a request under this Rule for emission allocations from the allocation pool, he does not have to request emission allocations under this Rule in future years. The request shall automatically be included in following years as long as the source remains eligible for emission allocations under this Rule.

(l) Loss of eligibility. Once a source receives emission allocations under Rule .1420 of this Section, it shall no longer be eligible for emission allocations under this Rule.

(m) Use of allocation. Allocations granted under this rule apply only to the ozone season immediately preceding the issuance of final allocations under Paragraph (g) of this Rule. Allocations issued under Paragraph (g) of this Rule for use in one year do not carry forward into any following ozone season. Allocations granted under this Rule shall be calculated for each ozone season.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143 215.107(a)(5), (7), (10); Temporary Adoption Eff. November 1, 2000; Temporary Adoption Eff. August 1, 2001;

*Eff. July 18, 2002;
Temporary Amendment Eff. December 31, 2008(this amendment
replaces the repeal approved by RRC on May 15, 2008).*

**15A NCAC 02D .1422 COMPLIANCE SUPPLEMENT
POOL CREDITS**

(a) Purpose. The purpose of this Rule is to regulate North Carolina's eligibility for and use of the Compliance Supplement Pool under 40 CFR 51.121(e)(3).

(b) Eligibility. Sources covered under Rule .1416 of this Section may earn Compliance Supplement Pool Credits for those nitrogen oxide emissions reductions required by Rule .1416 of this Section that are achieved during the ozone season after September 30, 1999 and are demonstrated using baseline and current emissions determined according to 40 CFR Part 75 before May 1, 2003, and are beyond the total emission reductions required under 40 CFR Part 76 or any other provision of the federal Clean Air Act.

(c) Credits. The Compliance Supplement Pool Credits earned under this Rule shall be tabulated in tons of nitrogen oxides reduced per ozone season. The control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reductions shall be permitted. The facility shall provide the Division of Air Quality with written notification certifying the installation and operation of the control device or the modification or change in operational practice that enables the combustion source or sources to achieve the emissions reduction. Only ~~emission~~emissions reductions that are beyond ~~emission~~emissions reductions required under 40 CFR Part 76 or any other provision of the federal Clean Air Act are creditable Compliance Supplement Pool Credits. Credits are counted in successive seasons through May 1, 2003. Seasonal credits shall be recorded in a Division of Air Quality database and will accumulate in this database until May 1, 2003. At that point a cumulative total of all the Compliance Supplement Pool Credits earned during the entire period shall be tabulated. These credits will then be available for use by the State of North Carolina to achieve compliance with the State ozone season NOx budget.

(d) Requesting credits. In order to earn Compliance Supplement Pool Credits, the owner or operator of the facility shall provide the following written documentation to the Director before January 1, 2003.

- (1) the combustion source or sources involved in the emissions reduction;
- (2) the start date of the emissions reduction;
- (3) a description of the add-on control device, modification, or change in operational practice that enables the combustion source or sources to achieve the emissions reduction;
- (4) the current and baseline emissions of nitrogen oxides of the combustion source or sources involved in this reduction in terms of tons of nitrogen oxides per season;
- (5) the amount of reduction of emissions of nitrogen oxides achieved by this action in tons of nitrogen oxides per season per combustion source involved;

(6) the total reduction of nitrogen oxides achieved by this action in tons of nitrogen oxides per season for all the combustion sources involved;

(7) a demonstration that the proposed action has reduced the emissions of nitrogen oxides from the combustion sources involved by the amount specified in Subparagraphs (d)(5) and (d)(6) of this Rule; and

(8) a description of the monitoring, recordkeeping, and reporting plan used to ensure continued compliance with the proposed emissions reduction activity; continuous emissions monitors shall be used to monitor emissions.

(e) Approving requests. Before any Compliance Supplement Pool Credits can be allocated, the Director shall have to approve them. The Director shall approve credits if he finds that:

- (1) early emissions reductions are demonstrated using baseline and current emissions determined according to 40 CFR Part 75 to be beyond the reductions required under 40 CFR Part 76, Acid Rain Nitrogen Oxides Emission Reduction Program and any other requirement of the federal Clean Air Act;
- (2) the emission reductions are achieved after September 30, 1999, and before May 1, 2003, and
- (3) all the information and documentation required under Paragraph (d) have been submitted.

The Director shall notify the owner or operator of the source and EPA of his approval or disapproval of a request and of the amount of Compliance Supplement Pool Credits approved. If the Director disapproves a request or part of a request, he shall explain in writing to the owner or operator of the source the reasons for disapproval.

(f) Compliance supplement pool. The Director shall verify that the Compliance Supplement Pool Credits do not exceed a statewide total of 10,737 tons for all the ozone seasons of the years 2003, 2004, and 2005.

(g) Interim report. The owner or operators of the facility shall submit to the Director by January 1, 2001 and January 1, 2002 an interim report that contains the information in Paragraph (d) of this Rule for the previous ozone season.

(h) Recording credits. Based on the interim reports submitted under Paragraph (g) of this Rule, the Division shall record the Compliance Supplement Pool Credits earned under this Rule in a central database. The Division of Air Quality shall maintain this database. These credits shall be recorded in tons of emissions of nitrogen oxides reduced per season with the actual start date of the reduction activity. Based on the final formal request submitted under Paragraph (d) of this Rule as approved under Paragraph (e) of this Rule, the Director shall finalize the Compliance Supplement Pool Credits earned and record the final earned credits in the Division's database.

(i) Use of credits. Final earned Compliance Supplement Pool Credits shall be available for Carolina Power & Light Co. and Duke Power Co. to use in 2003. The allocations of Carolina Power & Light Co.'s sources and Duke Power Co.'s sources in

Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003 using the procedures in Paragraph (k) of this Rule. Compliance Supplement Pool Credits not used in 2003 shall be available for use by the Director of the Division of Air Quality to offset excess emissions of nitrogen oxides in order to achieve compliance with the North Carolina ozone season NOx budget after May 30, 2004, but no later than September 30, 2005. The credits shall be used on a one for one basis, that is, one ton per season of credit can be used to offset one ton, or less, per season of excess emissions to achieve compliance with the requirements of Rule .1416 or .1417 of this Section. All credits shall expire and will no longer be available for use after November 30, 2005.

(j) Reporting. The Director shall report:

- (1) to the EPA, Carolina Power & Light Co. and Duke Power Co. by
 - (A) March 1, 2003 the Compliance Supplement Pool Credits earned by Carolina Power & Light Co. and by Duke Power Co., and
 - (B) March 1, 2004 the reductions in allocations calculated under Paragraphs (k) and (l) of this Rule; and
- (2) to the EPA by:
 - (A) December 1, 2003, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2003,
 - (B) December 1, 2004, the Compliance Supplement Pool Credits used beginning May 31 through September 30, 2004, and
 - (C) December 1, 2005, the Compliance Supplement Pool Credits used beginning May 1 through September 30, 2005.

(k) Using Compliance Supplement Pool Credits in 2003. Carolina Power & Light Co. and Duke Power Co. may use Compliance Supplement Pool Credits in 2003. If they do use Compliance Supplement Pool Credits in 2003, then the allocations for their sources in Rule .1416 of this Section shall be reduced for 2004 or 2005 by the amount of Compliance Supplement Pool Credits used in 2003. Before the Director approves the use of Compliance Supplement Pool Credits in 2003, the company shall identify the sources whose allocations are to be reduced to offset the Compliance Supplement Pool Credits requested for 2003 and the year (2004 or 2005) in which the allocation is reduced. The Director shall approve no more than 4,295 tons for Carolina Power & Light Co. and no more than 6,442 tons for Duke Power Co. The Director shall approve no more than 5,771 tons being offset by reductions in allocations in 2004 and no more than 4,966 tons being offset by reductions in allocations in 2005.

(l) Failure to receive sufficient credits. If the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. ~~are~~ is less than 10,737 tons, the following procedure shall be used to reduce the allocations in Rule .1416 of this Section:

- (1) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are greater than or equal to 6,442 tons, the allocation for Carolina Power & Light Co.'s sources shall be reduced by the amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.
- (2) If the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons, and the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are greater than or equal to 4,295 tons, the allocation for Duke Power Co.'s sources shall be reduced by the amount obtained by subtracting from 10,737 tons the sum of Compliance Supplement Pool Credits received by Carolina Power & Light Co. and Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.
- (3) If the Compliance Supplement Pool Credits received by Carolina Power & Light Co. are less than 4,295 tons, and the Compliance Supplement Pool Credits received by Duke Power Co. are less than 6,442 tons:
 - (A) The allocation for Carolina Power & Light Co.'s sources shall be reduced by the amount obtained by subtracting from 4,295 tons the Compliance Supplement Pool Credits received by Carolina Power & Light Co. The allocations of Carolina Power & Light Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph; and
 - (B) The allocation for Duke Power Co.'s sources shall be reduced by the amount obtained by subtracting from 6,442 tons the Compliance Supplement Pool Credits received by Duke Power Co. The allocations of Duke Power Co.'s sources shall be reduced using the procedure in Subparagraph (4) of this Paragraph.
- (4) When the allocations in Rule .1416 of this Section for Carolina Power & Light Co.'s sources or for Duke Power Co.'s sources are required to be reduced, the following procedure shall be used:

- (A) If the reduction required is less than or equal to 4,966 tons, then the following procedure shall be used:
 - (i) The ~~allocation~~ allocations of all sources listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. are summed.
 - (ii) The reduction required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from the sum computed under Subpart (i) of this Part.
 - (iii) The allocation of each source listed in Rule .1416 of this Section for 2005 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed under Subpart (ii) of this Part and divided by the value computed under Subpart (i) of this Part. The result is the revised allocation for that source.

- (B) If the reduction required is more than 4,966 tons, then the following procedure shall be used:
 - (i) The reduction for the allocations for 2005 is determined using the procedure under Part (A) of this Subparagraph and substituting 4,966 as the reduction required under Subpart (A)(ii) of this Subparagraph.
 - (ii) The reduction for the allocations for 2004 shall be determined using the following procedure:
 - (I) The reduction required under Subparagraph (1), (2), or (3) of this Paragraph is subtracted from 4,966.
 - (II) The allocations of all sources listed in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. for 2004 are summed.

- (III) The allocation of each source listed in Rule .1416 of this Section for 2004 for Carolina Power & Light Co. or Duke Power Co. is multiplied by the value computed under Sub-Subpart (I) of this Subpart and divided by the value computed Sub-Subpart (II) of this Subpart. The result is the revised allocation for that source

(m) If allocations are reduced in 2004 or 2005 for Carolina Power & Light Co. or Duke Power Co. under Paragraph (k) or (l) of this Rule, the company whose allocations are reduced shall reduce its allocations by returning allowances through the use of allowance transfers to the State following the procedures in 40 CFR Part 96. These allowances shall be retired.

History Note: Authority G.S. 143-215.3(a)(1);143-215.65; 143-215.66; 143-215.107(a)(5), (7), (10); Temporary Adoption Eff. August 1, 2001; Eff. July 18, 2002; Amended Eff. June 1, 2004; Temporary Amendment Eff. December 31, 2008(this amendment replaces the repeal approved by RRC on May 15, 2008).

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Rule-making Agency: *Office of Administrative Hearings*

Rule Citation: *26 NCAC 03 .0401-.0403*

Effective Date: *December 2, 2008*

Date Approved by the Rules Review Commission: *November 20, 2008*

Reason for Action: *Section 10.15A(h2) provides "(2) Simple Procedures...in order to complete the case as quickly as possibly." Federal guidelines require that these cases be decided within 90 days from the filing of the petition, including the final agency decision. Therefore, the normal timeframes for hearings with OAH are considerably shortened. The simplified procedures will allow OAH to rapidly proceed to hearing in an expeditious manner while safeguarding the procedural and substantive due process rights of the parties to an impartial hearing. The Office of Administrative Hearings is responsible for hearing cases effective October 1, 2008 and these rules govern the procedures for those cases.*

CHAPTER 03 – HEARINGS DIVISION

SECTION .0400 – SIMPLIFIED PROCEDURES FOR
MEDICAID APPLICANT AND RECIPIENT APPEALS

26 NCAC 03 .0401 HEARING PROCEDURES
RULES

(a) The rules in 26 NCAC 03 .0100 apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13 except:

- (1) 26 NCAC 03 .0101(a);
- (2) 26 NCAC 03 .0102(3);
- (3) 26 NCAC 03 .0103(a);
- (4) 26 NCAC 03 .0104;
- (5) 26 NCAC 03 .0107;
- (6) 26 NCAC 03 .0108;
- (7) 26 NCAC 03 .0109;
- (8) 26 NCAC 03 .0112(b), (c), (e), (f), (g);
- (9) 26 NCAC 03 .0115;
- (10) 26 NCAC 03 .0117;
- (11) 26 NCAC 03 .0118;
- (12) 26 NCAC 03 .0123;
- (13) 26 NCAC 03 .0124;
- (14) 26 NCAC 03 .0125; and
- (15) 26 NCAC 03 .0127(a).

(b) Nothing in this Section affects discretionary powers granted to an administrative law judge as set out in G.S. 150B-33(b).

History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13; Temporary Adoption Eff. December 2, 2008.

26 NCAC 03 .0402 MEDIATION SETTLEMENT
CONFERENCE RULES

The rules in 26 NCAC 03 .0200 do not apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13.

History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13; Temporary Adoption Eff. December 2, 2008.

26 NCAC 03 .0403 EXPEDITED HEARINGS
PROCEDURES FOR COMPLEX CONTESTED CASES

The rules in 26 NCAC 03 .0300 do not apply to contested Medicaid cases commenced by Medicaid applicants or recipients under S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13.

History Note: Authority G.S. 7A-751(a); S.L. 2008-107, s. 10.15A.(h1) as rewritten by S.L. 2008-118, s. 3.13; Temporary Adoption Eff. December 2, 2008.

APPROVED RULES

*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on November 20, 2008.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

TOBACCO TRUST FUND COMMISSION

<u>Applications for Grants</u>	02	NCAC 57 .0204*	22:24 NCR
<u>Out of Cycle Award of Grants</u>	02	NCAC 57 .0206	22:24 NCR
<u>Review of Proposals</u>	02	NCAC 57 .0207*	22:24 NCR
<u>Reporting</u>	02	NCAC 57 .0209*	22:24 NCR
<u>Applications for Grants</u>	02	NCAC 57 .0304*	22:24 NCR
<u>Out of Cycle Consideration of Grants</u>	02	NCAC 57 .0305	22:24 NCR
<u>Review of Proposals</u>	02	NCAC 57 .0306*	22:24 NCR
<u>Reporting</u>	02	NCAC 57 .0308*	22:24 NCR

CEMETERY COMMISSION

<u>Delivery</u>	04	NCAC 05D .0202*	23:04 NCR
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CORRECTIONS, DEPARTMENT OF

<u>Location</u>	05	NCAC 01F .0101	22:24 NCR
<u>Filing a Petition for Rule-making</u>	05	NCAC 01F .0201*	22:24 NCR

BLIND, COMMISSION FOR THE

<u>Licensing and Placement</u>	10A	NCAC 63C .0202*	23:02 NCR
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INSURANCE, DEPARTMENT OF

<u>Definitions</u>	11	NCAC 11F .0601	23:03 NCR
<u>2001 CSO Mortality Table as Minimum Standard</u>	11	NCAC 11F .0602	23:03 NCR
<u>Conditions</u>	11	NCAC 11F .0603	23:03 NCR
<u>Gender-Blended Tables</u>	11	NCAC 11F .0605*	23:03 NCR
<u>Minimum Standards for Preneed Life Insurance</u>	11	NCAC 11F .0606*	23:03 NCR

PRIVATE PROTECTIVE SERVICES BOARD

<u>Requirements for a Firearms Trainer Certificate</u>	12	NCAC 07D .0901*	22:22 NCR
<u>Records Retention</u>	12	NCAC 07D .0906*	22:22 NCR
<u>Post-Delivery Report for Firearms Training Courses</u>	12	NCAC 07D .0908	22:22 NCR

WATER TREATMENT FACILITY OPERATORS CERTIFICATION BOARD

APPROVED RULES

Professional Growth Hours 15A NCAC 18D .0308* 23:01 NCR

COSMETIC ART EXAMINERS, BOARD OF

Definitions 21 NCAC 14A .0101 22:22 NCR
Salon Renewal 21 NCAC 14F .0114 22:22 NCR
Forms 21 NCAC 14G .0102 22:22 NCR
Equipment and Teachers 21 NCAC 14G .0107 22:22 NCR
Cleanliness of Operators 21 NCAC 14H .0111 22:22 NCR
Cleanliness of Clinic Area: Supplies: Combs and Brushes 21 NCAC 14H .0112* 22:22 NCR
Cleanliness of Scissors, Shears, Razors and Other Equipment 21 NCAC 14H .0113 22:22 NCR
Health of Operators 21 NCAC 14H .0116 22:22 NCR
Animals 21 NCAC 14H .0117 22:22 NCR
Systems of Grading Beauty Establishments 21 NCAC 14H .0118* 22:22 NCR
Footspa Sanitation 21 NCAC 14H .0120* 22:22 NCR
Transfer of Credit 21 NCAC 14I .0105* 22:22 NCR
Report of Enrollment 21 NCAC 14I .0107 22:22 NCR
Summary of Cosmetic Art Education 21 NCAC 14I .0109* 22:22 NCR
Recitation Room 21 NCAC 14I .0301 22:22 NCR
Classroom Bulletin Board 21 NCAC 14I .0303 22:22 NCR
Application/Licensure/Individuals Who Have Been Convicted... 21 NCAC 14I .0401* 22:22 NCR
Requests for Preapplication Review of Felony Convictions 21 NCAC 14I .0402 22:22 NCR
Equipment 21 NCAC 14J .0302 22:22 NCR
Uniforms 21 NCAC 14K .0101 22:22 NCR
Equipment and Instruments 21 NCAC 14K .0103* 22:22 NCR
Identification Pins 21 NCAC 14K .0105* 22:22 NCR
Live Model Performances 21 NCAC 14K .0107 22:22 NCR
Application to Take Examination 21 NCAC 14L .0106* 22:22 NCR
Supervision of Cosmetic Art Teacher Trainer 21 NCAC 14L .0208* 22:22 NCR
Effect on Student-Teacher Ration 21 NCAC 14L .0210 22:22 NCR
Fee 21 NCAC 14L .0214 22:22 NCR
Initial Application and Fees 21 NCAC 14N .0102 22:22 NCR
Uniforms 21 NCAC 14O .0101* 22:22 NCR
Course of Study 21 NCAC 14O .0102 22:22 NCR
Identification Pins 21 NCAC 14O .0105 22:22 NCR
Sanitation 21 NCAC 14O .0107 22:22 NCR
Renewals, Expired Licenses, Licenses Required 21 NCAC 14P .0105 22:22 NCR
Licenses Required 21 NCAC 14P .0106 22:22 NCR
Licenses to be Posted 21 NCAC 14P .0107 22:22 NCR
Revocation of Licenses and Other Disciplinary Measures 21 NCAC 14P .0108 22:22 NCR
Sanitary Ratings and Posting of Ratings - Applicable to E... 21 NCAC 14P .0112 22:22 NCR

APPROVED RULES

<u>Operations of Schools of Cosmetic Art</u>	21	NCAC 14P .0113		22:22 NCR
<u>Sanitary Ratings</u>	21	NCAC 14P .0115		22:22 NCR
<u>Continuing Education Requirements</u>	21	NCAC 14R .0101		22:22 NCR
<u>Application Criteria and Continuing Education Course Appr...</u>	21	NCAC 14R .0102*		22:22 NCR
<u>Criteria for Continuing Education Courses</u>	21	NCAC 14R .0103		22:22 NCR

NURSING, BOARD OF

<u>Regular Renewal</u>	21	NCAC 36 .0201*		23:01 NCR
<u>Reinstatement of Lapsed License</u>	21	NCAC 36 .0203*		23:01 NCR

PHARMACY, BOARD OF

<u>Partial Examination</u>	21	NCAC 46 .1507		23:04 NCR
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PHYSICAL THERAPY EXAMINERS, BOARD OF

<u>Definitions</u>	21	NCAC 48G .0105*		23:03 NCR
<u>Continuing Competence</u>	21	NCAC 48G .0106*		23:03 NCR
<u>Standards for Continuing Competence Activities</u>	21	NCAC 48G .0107*		23:03 NCR
<u>Approval of Providers and Activities</u>	21	NCAC 48G .0108*		23:03 NCR
<u>Continuing Competence Activities</u>	21	NCAC 48G .0109*		23:03 NCR
<u>Evidence of Compliance</u>	21	NCAC 48G .0110*		23:03 NCR
<u>Costs</u>	21	NCAC 48G .0112		23:03 NCR

STATE PERSONNEL COMMISSION

<u>Separation: Payment of Vacation Leave</u>	25	NCAC 01C .1009		23:02 NCR
<u>Leave</u>	25	NCAC 01D .0517		23:02 NCR
<u>Separation: Payment of Vacation Leave</u>	25	NCAC 01E .0210*		23:02 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3.)

ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Jordan Water Supply Nutrient Strategy: Purpose and Scope</u>	15A	NCAC 02B .0262*		21:24 NCR
<u>Jordan Water Supply Nutrient Strategy: Definitions</u>	15A	NCAC 02B .0263*		21:24 NCR
<u>Jordan Water Supply Nutrient Strategy: Stormwater Managem...</u>	15A	NCAC 02B .0265*		21:24 NCR
<u>Jordan Water Supply Nutrient Strategy: Stormwater Managem...</u>	15A	NCAC 02B .0266*		21:24 NCR
<u>Jordan Water Supply Nutrient Strategy: Protection of Exis...</u>	15A	NCAC 02B .0267*		21:24 NCR
<u>Cape Fear River Basin</u>	15A	NCAC 02B .0311*		21:24 NCR

COASTAL RESOURCES COMMISSION

<u>General Use Standards for Ocean Hazard Areas</u>	15A	NCAC 07H .0306*		22:24 NCR
<u>Requesting the Static Line Exception</u>	15A	NCAC 07J .1201*		22:24 NCR

APPROVED RULES

<u>Review of the Static Line Exception Request</u>	15A NCAC	07J	.1202	22:24 NCR
<u>Procedure for Approving the Static Line Exception</u>	15A NCAC	07J	.1203*	22:24 NCR
<u>Review of the Large-Scale Beach-Fill Project and Approved...</u>	15A NCAC	07J	.1204*	22:24 NCR
<u>Revocation and Expiration of the Static Line Exception</u>	15A NCAC	07J	.1205*	22:24 NCR
<u>Local Government and Communities with Static Vegetation L...</u>	15A NCAC	07J	.1206*	22:24 NCR

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 57 .0204 APPLICATIONS FOR GRANTS

(a) The Commission shall designate specific dates for submission of grant applications based on the amount of funds available. Grant application submission dates will be announced by the Commission at least 30 days before the date applications are due.

(b) Grant proposals shall be typed or printed and an original and four copies timely submitted to the Commission by hand-delivery, by a designated delivery service authorized pursuant to G.S. 1A-1, Rule 4, or by U.S. Mail. Applications shall be deemed timely submitted if delivered by hand to the Commission's physical office and signed for by Commission staff before 5:00 p.m. on the submission date; or by designated delivery service, whereby the parcel bears a shipping date on or before the submission date; or by placing into the U.S. Mail, addressed to 1080 Mail Service Center, Raleigh, NC 27699, and postmarked on or before the submission date. Applicants may also provide an electronic courtesy copy formatted in Microsoft Word or Adobe Acrobat.

(c) To be considered for funding, applicants shall complete the Tobacco Trust Fund Grant Application Form which shall contain the following information:

- (1) Names, mailing addresses, telephone numbers, and signatures of the applicant;
- (2) If the applicant is an organization, consortium, cooperative or other entity representing multiple eligible beneficiaries, a description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and members of the Board of Directors. If the applicant involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the Compensatory Program;
- (3) A description of the Compensatory Program, its goals and objectives, and the manner in which it will accomplish its goals and objectives, including how the applicant will quantify actual losses due to the Master Settlement Agreement that are not

- compensated by payments from the National Tobacco Grower Settlement Trust;
- (4) A statement of the projected cost of the Compensatory Program, including any administrative costs and including expected funding from any other source;
 - (5) A description of how the project will be completed including time lines;
 - (6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State Auditor;
 - (7) An explanation of how the project's results will be evaluated;
 - (8) At least two references who may be contacted by the Commission;
 - (9) Any other information required by G.S. 143, Article 75 or these Rules in order to make a decision on the grant proposal;
 - (10) An explanation of how the project will enhance North Carolina's tobacco-related economy for the common good; and
 - (11) A list and history of the applicant's past projects funded by grants or awards.
- (d) As a condition of applying for or of receiving a grant for a Compensatory Program, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience.

History Note: Authority G.S. 143-718; 143-720; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003; Amended Eff. December 1, 2008.

02 NCAC 57 .0206 OUT OF CYCLE AWARD OF GRANTS

History Note: Authority G.S. 143-718; Temporary Adoption Eff. May 15, 2002; Eff. April 15, 2003; Repealed Eff. December 1, 2008.

02 NCAC 57 .0207 REVIEW OF PROPOSALS

(a) The Executive Director of the Commission or Commission staff or designee shall screen applications to see if they are

complete. Commission staff shall notify applicants if the grant application is incomplete.

(b) Applications that are complete will be forwarded to a Grant Review Committee of the Commission. The Grant Review Committee members shall be Commissioners.

(c) During the review and evaluation of proposals, the Grant Review Committee may solicit information from persons who have expertise in technical or specialized areas or request that the Commission staff or designee make reports on any site visits that may be required for consideration of the grant proposal. The Grant Review Committee will make recommendations to the Commission. Scoring and rating of proposals may be determined by using any consistent rating methodology, including adjectival, numerical or ordinal rankings.

(d) The Commission will receive the suggestions of the Grant Review Committee and will evaluate proposals as set out in G.S. 143-720.

(e) In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, the cost of administering the grant and whether the grant will benefit tobacco dependent economies of the State in a measurable manner. Proposals will be given a preference for statewide impact and for containing a delivery mechanism to intended beneficiaries.

(f) No grant shall be awarded for a project that is unlawful.

History Note: Authority G.S. 143-718; 143-720;

Temporary Adoption Eff. May 15, 2002;

Eff. April 15, 2003;

Amended Eff. December 1, 2008.

02 NCAC 57 .0209 REPORTING

(a) Grantees shall submit written progress reports at three month intervals or upon completion of the project, whichever is sooner. Written reports shall describe the status of the Compensatory Program, progress toward achieving program objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days to avoid having the next grant payment withheld.

(c) Upon completion of the Compensatory Program, the grantee must make a final written report to the Commission which final report shall include an evaluation of the success of the program.

History Note: Authority G.S. 143-718;

Temporary Adoption Eff. May 15, 2002;

Eff. April 15, 2003;

Amended Eff. December 1, 2008.

02 NCAC 57 .0304 APPLICATIONS FOR GRANTS

(a) The Commission shall designate specific dates for submission of grant applications based on the amount of funds

available. Grant application submission dates shall be announced by the Commission at least 30 days before the date applications are due.

(b) Grants proposals shall be typed or printed and an original and four copies timely submitted to the Commission by hand-delivery, by a designated delivery service authorized pursuant to G.S. 1A-1, Rule 4, or by U.S Mail. Applications shall be deemed timely submitted if delivered by hand to the Commission's physical office and signed for by Commission staff before 5:00 p.m. on the submission date; or by designated delivery service, which package bears a shipping date on or before the submission date; or by placing into the U.S. Mail, addressed to 1080 Mail Service Center, Raleigh, NC 27699 and postmarked on or before the submission date. Applicants may also provide an electronic courtesy copy formatted in Microsoft Word or Adobe Acrobat.

(c) To be considered for funding, applicants shall complete the Tobacco Trust Fund Grant Application Form which shall contain the following information:

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

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

*History Note: Authority G.S. 143-718; 143-721;
Temporary Adoption Eff. May 15, 2002;
Eff. April 15, 2003;
Amended Eff. December 1, 2008.*

**02 NCAC 57 .0305 OUT OF CYCLE
CONSIDERATION OF GRANTS**

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002;
Eff. April 15, 2003;
Repealed Eff. December 1, 2008.*

02 NCAC 57 .0306 REVIEW OF PROPOSALS

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

(b) Applications that are complete will be forwarded to a Grant Review Committee of the Commission. Grant Review Committee members shall be Commissioners.

(c) During the review and evaluation of grant proposals, the Grant Review Committee may solicit information from persons who have expertise in technical or specialized areas or request that the Commission staff or designee make reports on any site visits that may be required for consideration of the grant proposal. The Grant Review Committee will make recommendations to the Commission based on its review and evaluation. Scoring and ranking of proposals may be determined by using any consistent rating methodology, including adjectival, numerical or ordinal rankings.

(d) The Commission will evaluate grant proposals and recommendations made to it by the Grant Review Committee as set out in G.S. 143-721.

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

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

*History Note: Authority G.S. 143-718; 143-721;
Temporary Adoption Eff. May 15, 2002;
Eff. April 15, 2003;
Amended Eff. December 1, 2008.*

02 NCAC 57 .0308 REPORTING

(a) Grantees shall submit written progress reports at three month intervals or upon completion of the project, whichever is sooner. Written reports shall describe the status of the grant projects, progress toward achieving project objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days to avoid having the next grant payment withheld.

(c) Upon completion of the project, the grantee must make a final written report to the Commission which final report shall include an evaluation of the success of the project.

*History Note: Authority G.S. 143-718;
Temporary Adoption Eff. May 15, 2002;
Eff. April 15, 2003;
Amended Eff. December 1, 2008.*

TITLE 04 – DEPARTMENT OF COMMERCE

04 NCAC 05D .0202 DELIVERY

(a) Vaults and crypts are not considered delivered unless installed or stored on the cemetery premises or stored off premises by a supplier. If vaults are not to be installed, the contract between the cemetery and purchaser must so state in bold print that the purchaser has accepted above ground delivery. If a vault is to be installed, then the contract must be broken down into sales cost and installation cost.

(b) Markers, bases and vases are not considered delivered unless installed or stored at the cemetery or if stored off premises by a supplier, there shall be no additional charge for delivery or freight, unless specified in bold print in the contract. If vaults, crypts or other merchandise are stored off premises, the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased through a North Carolina cemetery company and which at the date of the report was then in storage and designated the property of the cemetery company's customer and not the property of the supplier. If vaults, crypts or other merchandise are stored at the cemetery, the cemetery company must submit to the Cemetery Commission not less than annually a report by a certified public accountant of each item which has been purchased and which at the date of the report was then in storage and designated the property of the cemetery company's customer.

(c) If opening and closing of crypts at the time of interment are not included in the cost of this merchandise, then that must be so stated in bold print on the contract between the cemetery and purchaser.

History Note: Authority G.S. 65-49; 65-66;
Eff. February 1, 1976;
Readopted Eff. January 16, 1978;
Amended Eff. December 1, 2008; May 3, 1993; July 1, 1988;
April 1, 1987; September 1, 1979.

TITLE 05 – DEPARTMENT OF CORRECTION

05 NCAC 01F .0101 LOCATION

- (a) The principal place of business for the Department of Correction (DOC) is located at 214 West Jones Street, Raleigh, North Carolina. The mailing address is 4201 Mail Service Center, Raleigh, NC 27699-4201.
- (b) DOC information may be obtained from the agency's website at: www.doc.state.nc.us.
- (c) DOC business office hours for the public are 8:00 a.m. to 5:00 p.m. Monday through Friday.

History Note: Authority G.S. 143B-10; 143B-260; 143B-261.1;
Eff. December 1, 2008.

05 NCAC 01F .0201 FILING A PETITION FOR RULE-MAKING

- (a) Any person may petition the Department of Correction (DOC) to adopt a new rule, or amend or repeal an existing rule by submitting a rule-making petition to DOC. The petition shall be addressed to:
- The North Carolina Department of Correction
Controller's Office
2020 Yonkers Road; MSC 4220
Raleigh, North Carolina 27699-4220
- (b) The petition shall be labeled "Petition for Rule-making" and must include the following information:
- (1) the name(s) and address(es) of the petitioners;
 - (2) a citation to any rule for which an amendment or repeal is requested;
 - (3) a draft of the proposed text of the requested rule or amended rule;
 - (4) an explanation of why the new rule or amendment or repeal of an existing rule is requested;
 - (5) the effect of the new rule, amendment, or repeal on the procedures of DOC;
 - (6) a fiscal note on the impact of the proposed rule on existing practices in the area involved, including cost factors and basis of analysis; and
 - (7) any other information the person submitting the petition considers relevant.

History Note: Authority G.S. 150B-18; 150B-19; 150B-20; 150B-21;
Eff. December 1, 2008.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 63C .0202 ELIGIBILITY FOR LICENSING

- (a) The Division shall interview prospective licensees as referred by the rehabilitation program and shall make written recommendations to the Chief of Business Enterprises concerning the potential of the referral commensurate with the specific job requirements of the Business Enterprises Program.
- (b) To be licensed:
- (1) The consumer must meet the definition of legally blind as outlined in 34 CFR 395.1;
 - (2) The consumer must be at least 18 years of age;
 - (3) The consumer must be physically able to perform all the duties as further detailed in this Chapter;
 - (4) All consumers must be evaluated for and demonstrate proficiency of skill in basic mobility, activities of daily living, mathematics and basic food service practices;
 - (5) The consumer must be familiar with the rules and regulations for Business Enterprises facility operators. The consumer must successfully complete the Business Enterprises training program sponsored by the Division and must be certified by the Division as capable of operating a Business Enterprises facility;
 - (6) The consumer must be a citizen of the United States; and
 - (7) The consumer must have no previous conviction(s) of any felony class A through E.

History Note: Authority G.S. 111-27; 34 C.F.R. 395; 20 U.S.C. sec. 107; 143B-157;
Eff. October 1, 1978;
Amended Eff. January 1, 2009; August 1, 2002; August 1, 1990;
February 1, 1986; June 1, 1982.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 11F .0601 DEFINITIONS

As used in this Section:

- (1) "2001 CSO Mortality Table" means that mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the *Proceedings of the NAIC (2nd Quarter 2002)*. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that

table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

- (2) "2001 CSO Mortality Table (F)" means that mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.
- (3) "2001 CSO Mortality Table (M)" means that mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.
- (4) "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.
- (5) "Preneed life insurance" means a life insurance policy which, whether by assignment or otherwise, has for a purpose the funding of a preneed funeral contract or an insurance-funded funeral or burial prearrangement, the insured being the person for whose service the funds were paid.
- (6) "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

History Note: Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e);
 Eff. March 1, 2004;
 Amended Eff. December 1, 2008.

11 NCAC 11F .0602 2001 CSO MORTALITY TABLE AS MINIMUM STANDARD

(a) At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this Section, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after January 1, 2005, and before the date specified in Paragraph (b) of this Rule to which G.S. 58-58-50(c)(2)(a), G.S. 58-58-55(e)(4)h.6, 11 NCAC 11F .0403(a) or 11 NCAC 11F .0403(b) are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

(b) Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on or after January 1, 2009, to which G.S. 58-58-50(c)(2)(a), G.S. 58-58-55(e)(4)h.6, 11 NCAC 11F.0403(a) or 11 NCAC 11F.0403(b) are applicable, except for preneed life insurance as specified in 11 NCAC 11F .0606.

(c) The 2001 CSO Mortality Table shall be the basis for computation of minimum values related to extended term benefits for policies for which the 2001 CSO Mortality Table is the minimum standard for valuation and nonforfeiture purposes.

History Note: Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e);
 Eff. March 1, 2004;
 Amended Eff. December 1, 2008.

11 NCAC 11F .0603 CONDITIONS

(a) For each plan of insurance with separate rates for smokers and nonsmokers an insurer shall use one of the following:

- (1) Composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;
- (2) Smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by G.S. 58-58-50(g) and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or
- (3) Smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

(b) For plans of insurance without separate rates for smokers and nonsmokers the composite mortality tables shall be used.

(c) When the 2001 CSO Mortality Table is used for the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, it may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of 11 NCAC 11F .0604 and 11 NCAC 11F .0400, relative to use of the select and ultimate form.

(d) When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the Commissioner shall be based on an asset adequacy analysis as specified in 11 NCAC 11F .0303.

History Note: Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e);
 Eff. March 1, 2004;
 Amended Eff. December 1, 2008.

11 NCAC 11F .0605 GENDER-BLENDED TABLES

(a) For any ordinary life insurance policy delivered or issued for delivery in this state on or after January 1, 2005 that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits, except for preneed life insurance policies issued after December 31, 2008, as provided in 11 NCAC 11F .0606. Notwithstanding this rule, the 2001 CSO Mortality Table, consisting of separate rates of mortality for male and female lives, shall be the minimum valuation standard even if blended tables are used in determining minimum cash surrender values and nonforfeiture benefits.

(b) When using a gender-blended table based on the 2001 CSO Mortality Table for determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the company

shall choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002.

(c) An insurer's issuance of the same kind of policy of life insurance on both a sex-distinct and a sex-neutral basis shall not solely constitute a violation of Article 63 of Chapter 58 of the North Carolina General Statutes.

History Note: Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e); Eff. March 1, 2004; Amended Eff. December 1, 2008.

11 NCAC 11F .0606 MINIMUM STANDARDS FOR PRENEED LIFE INSURANCE

(a) For preneed life insurance, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for policies issued after December 31, 2008, shall be the Commissioners' 1980 Standard Ordinary Life Valuation Mortality Tables (1980 CSO), without ten-year selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983. If the policy utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a table that is a blend of the 1980 CSO Table (M) and the 1980 CSO Table (F), without ten-year selection factors may, at the option of the insurer, be substituted for the 1980 CSO Table to determine minimum cash surrender values and nonforfeiture benefits. For the Commissioners' 1980 Extended Term Insurance Table (1980 CET), a mortality table which is the same blend of the 1980 CET Table (M) and 1980 CET Table (F) may be substituted. The blended tables must be selected from those published in the 1984 Proceedings of the NAIC, Vol. I., or in the 1987 Proceedings of the NAIC, Volume I.

(b) Notwithstanding 11 NCAC 11F .0606(a), for preneed life insurance policies issued after December 31, 2008 and before January 1, 2012, the 2001 CSO Mortality Table may be used as the minimum standard for reserves and nonforfeiture values. If an insurer elects to use the 2001 CSO Mortality Table as a minimum standard for any preneed life insurance policy issued after December 31, 2008 and before January 1, 2012, the insurer shall provide, as a part of the actuarial memorandum submitted in support of the insurer's asset adequacy testing, an annual written notification to the domiciliary commissioner. The notification shall include:

- (1) A complete list of all preneed policy forms that use the 2001 CSO Mortality Table as a minimum standard;
- (2) A certification signed by the appointed actuary stating that the reserve methodology employed by the insurer in determining reserves for the preneed life insurance policies issued after December 31, 2008 and using the 2001 CSO Mortality Table as a minimum standard, develops adequate reserves for these policies without being aggregated with any other policies; and

- (3) Supporting information regarding the adequacy of reserves for preneed life insurance policies issued after December 31, 2008 and using the 2001 CSO Mortality Table as a minimum standard for reserves. The supporting information shall include documentation of the actuarial assumptions and methods used in testing these reserves for adequacy.

History Note: Authority G.S. 58-2-40; 58-58-50(k); 58-58-50(l); 58-58-55(e); Eff. December 1, 2008.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 07D .0901 REQUIREMENTS FOR A FIREARMS TRAINER CERTIFICATE

(a) Firearms trainer applicants shall:

- (1) meet the minimum standards established by 12 NCAC 07D .0703;
- (2) have a minimum of one year supervisory experience in security with a contract security company or proprietary security organization, or one year experience with any federal, U.S. military, state, county or municipal law enforcement agency;
- (3) attain a 90 percent score on a firearm's course approved by the Board and the Attorney General, with a copy of the firearm's course certificate to be kept on file in the administrator's office;
- (4) successfully complete a training course approved by the Board and the Attorney General which shall consist of a minimum of 40 hours of classroom and practical range training in handgun and shotgun safety and maintenance, range operations, night firearm training, control and safety procedures, and methods of handgun and shotgun firing;
- (5) pay the certified trainer application fee established in 12 NCAC 07D .0903(a)(1); and
- (6) successfully complete the requirements of a Unarmed Trainer Certificate established by 12 NCAC 07D .0909.

(b) In lieu of completing the training course set forth in Subparagraph (a)(4) of this Rule, an applicant may submit to the Board a current Criminal Justice Specialized Law Enforcement Firearms Instructor Certificate from North Carolina Criminal Justice Education and Training Standards Commission and complete the eight hour course given by the Board on rules and regulations.

(c) A Firearms Trainer Certificate expires two years after the date of issuance.

History Note: Authority G.S. 74C-5; 74C-13; Eff. June 1, 1984;

Amended Eff. December 1, 2008; January 1, 2008; August 1, 2004; November 1, 1991.

12 NCAC 07D .0906 RECORDS RETENTION

(a) A Certified Firearms Trainer shall retain the following in the individual's armed certification file:

- (1) a copy of the post delivery report listing the name(s) of individual(s) who qualified or attempted to qualify for armed security guard registration, and hour(s) of training, weapon qualification scores and any other information thereon;
- (2) a copy of the individual's Firearm Training Certificate; and
- (3) the individual's B-27 target and the Certified Firearms Trainer's Documentation Record.

(b) The individual's B-27 qualification attempt target shall be retained for a minimum of 18 calendar months from the date of each qualification attempt. Each B-27 target must contain the full name of the individual that fired the qualification course of fire, the date that qualification attempt took place, the printed name and signature of the private protective service certified firearms trainer who scored the target and the score. The qualification target shall also show letter "N" or "D" to indicate if the qualification attempt was a day time ("D") or night time ("N") qualification attempt. The information required by this Paragraph shall be placed on the B-27 target in ink or permanent marker.

History Note: Authority G.S. 74C-5; 74C-13; Eff. May 3, 1993; Amended Eff. December 1, 2008.

12 NCAC 07D .0908 POST-DELIVERY REPORT FOR FIREARMS TRAINING COURSES

Firearms Trainers shall submit to the Board a post-delivery report for all firearms training courses required by 12 NCAC 07D .0807 within 20 days after completion of the firearms training. The report shall be submitted on a Board form and shall contain the following information:

- (1) Certified Firearms Trainer's name;
- (2) Date, time, and location of classroom training;
- (3) Date, time, and location of range qualification;
- (4) Full name of the students who completed the firearms training course;
- (5) Certification by the Firearms Trainer that the applicant has successfully completed the firearms classroom training;
- (6) Range score for each student completing the firearms training course; and
- (7) Certified Firearms Trainer's signature.

History Note: Authority G.S. 74C-5; 74C-13; Temporary Adoption Eff. October 2, 2002; Temporary Adoption Expired July 29, 2003; Eff. December 1, 2003; Amended Eff. December 1, 2008; January 1, 2008.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0262 JORDAN WATER SUPPLY NUTRIENT STRATEGY: PURPOSE AND SCOPE

PURPOSE. The purpose of this Rule, 15A NCAC 02B .0263 through .0273 and .0311(p) shall be to restore and maintain nutrient-related water quality standards in B. Everett Jordan Reservoir; protect its classified uses as set out in 15A NCAC 02B .0216, including use as a source of water supply for drinking water, culinary and food processing purposes; and maintain or enhance protections currently implemented by local governments in existing water supply watersheds. These Rules, as further enumerated in Item (3) of this Rule, together shall constitute the Jordan water supply nutrient strategy, or Jordan nutrient strategy. Additional provisions of this Rule include establishing the geographic and regulatory scope of the Jordan nutrient strategy, defining its relationship to existing water quality regulations, setting specific nutrient mass load goals for Jordan Reservoir, providing for the use of adaptive management to restore Jordan Reservoir, and citing general enforcement authorities. The following provisions further establish the framework of the Jordan water supply nutrient strategy:

- (1) **SCOPE.** B. Everett Jordan Reservoir is hereafter referred to as Jordan Reservoir. All lands and waters draining to Jordan Reservoir are hereafter referred to as the Jordan watershed. Jordan Reservoir and all waters draining to it have been supplementally classified as Nutrient Sensitive Waters (NSW) pursuant to 15A NCAC 02B .0101(e)(3) and 15A NCAC 02B .0223. Water supply waters designated WS-II, WS-III, and WS-IV within the Jordan watershed shall retain their classifications. The remaining waters in the Jordan watershed shall be classified WS-V. The requirements of all of these water supply classifications shall be retained and applied except as specifically noted in Item (6) of this Rule and elsewhere within the Jordan nutrient strategy. Pursuant to G.S. 143-214.5(b), the entire Jordan watershed shall be designated a critical water supply watershed and through the Jordan nutrient strategy given additional, more stringent requirements than the state minimum water supply watershed management requirements. These requirements supplement the water quality standards applicable to Class C waters, as described in Rule .0211 of this Section, which apply throughout the Jordan watershed.
- (2) **STRATEGY GOAL.** Pursuant to G.S. 143-215.1(c5), 143-215.8B, and 143B-282(c) and (d) of the Clean Water Responsibility Act of 1997, the Environmental Management Commission establishes the goal of reducing the average annual loads of nitrogen and

phosphorus delivered to Jordan Reservoir from all point and nonpoint sources of these nutrients located within its watershed, as specified in Item (5) of this Rule, and provides for adaptive management of the strategy and goal, as specified in Item 8 of this Rule.

(3) RULES ENUMERATED. The second rule in the following list provides definitions for terms that are used in more than one rule of the Jordan nutrient strategy. An individual rule may contain additional definitions that are specific to that rule. The rules of the Jordan nutrient strategy shall be titled as follows:

- (a) Rule .0262 Purpose and Scope;
- (b) Rule .0263 Definitions;
- (c) Rule .0264 Agriculture;
- (d) Rule .0265 Stormwater Management for New Development;
- (e) Rule .0266 Stormwater Management for Existing Development;
- (f) Rule .0267 Protection of Existing Riparian Buffers;
- (g) Rule .0268 Mitigation for Riparian Buffers;
- (h) Rule .0269 Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program;
- (i) Rule .0270 Wastewater Discharge Requirements;
- (j) Rule .0271 Stormwater Requirements for State and Federal Entities;
- (k) Rule .0272 Fertilizer Management;
- (l) Rule .0273 Options for Offsetting Nutrient Loads; and
- (m) Rule .0311 Cape Fear River Basin.

(4) RESERVOIR ARMS AND SUBWATERSHEDS. For the purpose of the Jordan nutrient strategy, Jordan Reservoir is divided into three arms and the Jordan watershed is divided into three tributary subwatersheds as follows:

- (a) The Upper New Hope arm of the reservoir, identified by index numbers 16-41-1-(14), 16-41-2-(9.5), and 16-41-(0.5) in the Schedule of Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, encompasses the upper end of the reservoir upstream of SR 1008, and its subwatershed encompasses all lands and waters draining into it.
- (b) The Lower New Hope arm of the reservoir, identified by index number 16-41-(3.5) in the Schedule of Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, lies downstream of SR 1008 and upstream of the Jordan Lake Dam, excluding the Haw River arm of the

reservoir, and its subwatershed encompasses all lands and waters draining into the Lower New Hope arm of the reservoir excluding those that drain to the Upper New Hope arm of the reservoir and the Haw River arm of the reservoir.

(c) The Haw River arm of the reservoir, identified by index number 16-(37.5) in the Schedule of Classifications for the Cape Fear River Basin, 15A NCAC 02B .0311, lies immediately upstream of Jordan Lake Dam, and its subwatershed includes all lands and waters draining into the Haw River arm of the reservoir excluding those draining into the Upper and Lower New Hope arms.

(5) NUTRIENT REDUCTION GOALS. Each arm of the lake has reduction goals, total allowable loads, point source wasteload allocations, and nonpoint source load allocations for both nitrogen and phosphorus based on a field-calibrated nutrient response model developed pursuant to provisions of the Clean Water Responsibility Act of 1997, G.S. 143-215.1(c5). The reduction goals and allocations are to be met collectively by the sources regulated under the Jordan nutrient strategy. The reduction goals are expressed in terms of a percentage reduction in delivered loads from the baseline years, 1997-2001, while allocations are expressed in pounds per year of allowable delivered load. Each arm and subwatershed shall conform to its respective allocations for nitrogen and phosphorus as follows:

- (a) The at-lake nitrogen load reduction goals for the arms of Jordan Reservoir are as follows:
 - (i) The Upper New Hope arm has a 1997-2001 baseline nitrogen load of 986,186 pounds per year and a TMDL reduction goal of 35 percent. The resulting TMDL includes a total allowable load of 641,021 pounds of nitrogen per year: a point source mass wasteload allocation of 336,079 pounds of nitrogen per year, and a nonpoint source mass load allocation of 304,942 pounds of nitrogen per year.
 - (ii) The Lower New Hope arm has a 1997-2001 baseline nitrogen load of 221,929

- pounds per year and a nitrogen TMDL capped at the baseline nitrogen load. The resulting TMDL includes a total allowable load of 221,929 pounds of nitrogen per year: a point source mass wasteload allocation of 6,836 pounds of nitrogen per year, and a nonpoint source mass load allocation of 215,093 pounds of nitrogen per year.
- (iii) The Haw River arm has a 1997-2001 baseline nitrogen load of 2,790,217 pounds per year and a TMDL percentage reduction of 8 percent. The resulting TMDL includes a total allowable load of 2,567,000 pounds of nitrogen per year: a point source mass wasteload allocation of 895,127 pounds of nitrogen per year, and a nonpoint source mass load allocation of 1,671,873 pounds of nitrogen per year.
- (b) The at-lake phosphorus load reduction goals for the arms of Jordan Reservoir are as follows:
- (i) The Upper New Hope arm has a 1997-2001 baseline phosphorus load of 87,245 pounds per year and a TMDL percentage reduction of five percent. The resulting TMDL includes a total allowable load of 82,883 pounds of phosphorus per year: a point source mass wasteload allocation of 23,108 pounds of phosphorus per year, and a nonpoint source mass load allocation of 59,775 pounds of phosphorus per year.
 - (ii) The Lower New Hope arm has a 1997-2001 baseline phosphorus load of 26,574 pounds per year and a phosphorus TMDL capped at the baseline phosphorus load. The resulting TMDL includes a total allowable load of 26,574 pounds of phosphorus per year: a point source mass wasteload allocation of 498 pounds of phosphorus per year, and a nonpoint source mass load allocation of 26,078 pounds of phosphorus per year.
- (iii) The Haw River arm has a 1997-2001 baseline phosphorus load of 378,569 pounds per year and a TMDL percentage reduction of five percent. The resulting TMDL includes a total allowable load of 359,641 pounds of phosphorus per year: a point source mass wasteload allocation of 106,001 pounds of phosphorus per year, and a nonpoint source mass load allocation of 253,640 pounds of phosphorus per year.
- (c) The allocations established in this Item may change as a result of allocation transfer between point and nonpoint sources to the extent provided for in rules of the Jordan nutrient strategy and pursuant to requirements on the sale and purchase of load reduction credit set out in 15A NCAC 02B .0273.
- (6) **RELATION TO WATER SUPPLY REQUIREMENTS.** For all waters designated as WS-II, WS-III, or WS-IV within the Jordan watershed, the requirements of water supply 15A NCAC 02B .0214 through .0216 shall remain in effect with the exception of Sub-Item (3)(b) of those rules addressing nonpoint sources. The nonpoint source requirements of Sub-Item (3)(b) of those rules are superseded by the requirements of this Rule and 15A NCAC 02B .0263 through .0269, and .0271 through .0273, except as specifically stated in any of these Rules. For the remaining waters of Jordan watershed, the requirements of water supply Rule .0218 and Rules .0263 through .0273 and .0311 shall be applied. For WS-II, WS-III, and WS-IV waters, the retained requirements of 15A NCAC 02B .0214 through .0216 are the following:
- (a) Item (1) of 15A NCAC 02B .0214 through .0216 addressing best usages;
 - (b) Item (2) of 15A NCAC 02B .0214 through .0216 addressing predominant watershed development conditions, discharges expressly allowed watershed-wide, general prohibitions on and allowances for domestic and industrial discharges, Maximum Contaminant Levels

- following treatment, and the local option to seek more protective classifications for portions of existing water supply watersheds;
- (c) Sub-Item (3)(a) of 15A NCAC 02B .0214 through .0216 addressing waste discharge limitations; and
 - (d) Sub-Items (3)(c) through (3)(h) of 15A NCAC 02B .0214 through .0216 addressing aesthetic and human health standards.
- (7) **APPLICABILITY.** Types of parties responsible for implementing rules within the Jordan nutrient strategy and, as applicable, their geographic scope of responsibility, are identified in each rule. The specific local governments responsible for implementing Rules .0265, .0266, .0267, .0268, and .0273 shall be as follows:
- (a) Rules .0265, .0266, .0267, .0268, and .0273 shall be implemented by all incorporated municipalities, as identified by the Office of the Secretary of State, with planning jurisdiction within or partially within the Jordan watershed. Those municipalities currently are:
 - (i) Alamance;
 - (ii) Apex;
 - (iii) Burlington;
 - (iv) Carrboro;
 - (v) Cary;
 - (vi) Chapel Hill;
 - (vii) Durham;
 - (viii) Elon;
 - (ix) Gibsonville;
 - (x) Graham;
 - (xi) Green Level;
 - (xii) Greensboro
 - (xiii) Haw River;
 - (xiv) Kernersville;
 - (xv) Mebane;
 - (xvi) Morrisville;
 - (xvii) Oak Ridge;
 - (xviii) Ossipee;
 - (xix) Pittsboro;
 - (xx) Pleasant Garden;
 - (xxi) Reidsville;
 - (xxii) Sedalia;
 - (xxiii) Stokesdale;
 - (xxiv) Summerfield;
 - (xxv) Wilsonville; and
 - (xxvi) Whitsett;
 - (b) Rules .0265, .0266, .0267, .0268, and .0273 shall be implemented by the following counties for the portions of the counties where the municipalities listed in Sub-Item (7)(a) do not have an implementation requirement:
 - (i) Alamance;
 - (ii) Caswell;
 - (iii) Chatham;
 - (iv) Durham;
 - (v) Guilford;
 - (vi) Orange;
 - (vii) Rockingham; and
 - (viii) Wake.
- (8) **ADAPTIVE MANAGEMENT.** The Division shall evaluate the effectiveness of the Jordan nutrient strategy after at least ten years following the effective date and periodically thereafter as part of the review of the *Cape Fear River Basinwide Water Quality Plan*. The Division shall base its evaluation on, at a minimum, trend analyses as described in the monitoring section of the *B. Everett Jordan Reservoir, North Carolina Nutrient Management Strategy and Total Maximum Daily Load*, and lake use support assessments. The Division may also develop additional watershed modeling or other source characterization work. Any nutrient response modeling and monitoring on which any recommendation for adjustment to strategy goals may be based shall meet the criteria set forth in the Clean Water Act, G.S. 143-215.1(c5), and meet or exceed criteria used by the Division for the monitoring and modeling used to establish the goals in Item (5) of this Rule. Any modification to these rules as a result of such evaluations would require additional rulemaking.
- (9) **LIMITATION:** The Jordan nutrient strategy may not fully address significant nutrient sources in the Jordan watershed in that the rules do not directly address atmospheric sources of nitrogen to the watershed from sources located both within and outside of the watershed. As better information becomes available from ongoing research on atmospheric nitrogen loading to the watershed from these sources, and on measures to control this loading, the Commission may undertake

separate rule making to require such measures it deems necessary from these sources to support the goals of the Jordan nutrient strategy.

- (10) ENFORCEMENT. Failure to meet requirements of Rules .0262, .0264, .0265, .0266, .0267, .0268, .0269, .0270, .0271, .0272 and .0273 of this Section may result in imposition of enforcement measures as authorized by G. S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal penalties), and G.S. 143-215.6C (injunctive relief).

- (8) "Ditch or canal" means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.

- (9) "Ephemeral stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

- (10) "Existing development" means development, other than that associated with agricultural or forest management activities, that meets one of the following criteria:

- (11) It either is built or has established a vested right based on statutory or common law as interpreted by the courts, for projects that do not require a state permit, as of the effective date of either local new development stormwater programs implemented under 15A NCAC 02B .0265 or, for projects requiring a state permit, as of the applicable compliance date established in 15A NCAC 02B .0271(5) and (6); or

- (12) It occurs after the compliance date set out in Sub-Item (4)(d) of Rule .0265 but does not result in a net increase in built-upon area.

- (13) "Intermittent stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

- (14) "Jordan nutrient strategy," or "Jordan water supply nutrient strategy" means the set of 15A NCAC 02B .0262 through .0273 and .0311(p).

- (15) "Jordan Reservoir" means the surface water impoundment operated by the US Army Corps of Engineers and named B. Everett Jordan Reservoir, as further delineated for purposes of the Jordan nutrient strategy in 15A NCAC 02B .0262(4).

- (16) "Jordan watershed" means all lands and waters draining to B. Everett Jordan Reservoir.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.1; 143-215.3(a)(1); 143-215.6A; 143-215.6A; 143-215.6B; 143 215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; Eff. Pending Legislative Review.

15A NCAC 02B .0263 JORDAN WATER SUPPLY NUTRIENT STRATEGY: DEFINITIONS

The following words and phrases, which are not defined in G.S. 143, Article 21, shall be interpreted as follows for the purposes of the Jordan nutrient strategy:

- (1) "Allocation" means the mass quantity of nitrogen or phosphorus that a discharger, group of dischargers, nonpoint source, or collection of nonpoint sources is assigned as part of a TMDL. For point sources, possession of allocation does not authorize the discharge of nutrients but is prerequisite to such authorization through a NPDES permit.
- (2) "Applicator" means the same as defined in 15A NCAC 02B .0202(4).
- (3) "Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
- (4) "DBH" means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- (5) "Delivered," as in delivered allocation, load, or limit, means the allocation, load, or limit that is measured or predicted at Jordan Reservoir. A delivered value is equivalent to a discharge value multiplied by the transport factor for that discharge location.
- (6) "Development" means the same as defined in 15A NCAC 02B .0202(23).
- (7) "Discharge," as in discharge allocation, load, or limit means the allocation, load, or limit that is measured at the point of discharge into surface waters in the Jordan watershed. A discharge value is equivalent to a delivered value divided by the transport factor for that discharge location.

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| <p>(17) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent "discharge load."</p> <p>(18) "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from http://www.epa.gov/lawsregs/search/40cfr.html or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.</p> <p>(19) "Modified natural stream" means an on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.</p> <p>(20) "New development" means any development project that does not meet the definition of existing development set out in this Rule.</p> <p>(21) "Nitrogen" or "total nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.</p> <p>(22) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting process required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.</p> <p>(23) "Nutrients" means total nitrogen and total phosphorus.</p> <p>(24) "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.</p> <p>(25) "Perennial waterbody" means a natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths sufficient to preclude growth of rooted plants. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).</p> | <p>(26) "Phosphorus" or "total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.</p> <p>(27) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.</p> <p>(28) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters.</p> <p>(29) "Technical specialist" means the same as defined in 15A NCAC 06H .0102(9).</p> <p>(30) "Total Maximum Daily Load," or "TMDL," means the same as set forth in federal regulations 40 CFR 130.2(i) and 130.7(c)(1), which are incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from http://www.epa.gov/lawsregs/search/40cfr.html or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.</p> <p>(31) "Total nitrogen" or "nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater.</p> <p>(32) "Total phosphorus" or "phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater.</p> <p>(33) "Transport factor" means the fraction of a discharged nitrogen or phosphorus load that is delivered from the discharge point to Jordan Reservoir, as determined in an approved TMDL.</p> <p>(34) "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.</p> <p>(35) "Wasteload" means the mass quantity of a nutrient or pollutant released into surface waters by a wastewater discharge over a given time period. Wasteloads may be expressed in terms of pounds per year and may be expressed as "delivered wasteload" or an equivalent "discharge wasteload."</p> <p>(36) "Wasteload allocation" means the same as set forth in federal regulations 40 CFR 130.2(h), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from http://www.epa.gov/lawsregs/search/40cfr.html or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.</p> |
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History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C;

143 215.8B; 143B-282(c); 143B-282(d); S.L. 2001-355; S.L. 2005-190; S.L. 2006-259; Eff. Pending Legislative Review.

15A NCAC 02B .0265 JORDAN WATER SUPPLY NUTRIENT STRATEGY: STORMWATER MANAGEMENT FOR NEW DEVELOPMENT

The following is the stormwater strategy for new development activities within the Jordan watershed, as prefaced in 15A NCAC 02B .0262:

- (1) PURPOSE. The purposes of this Rule are as follows:
 - (a) To achieve and maintain the nitrogen and phosphorus loading goals established for Jordan Reservoir in 15A NCAC 02B .0262 from lands in the Jordan watershed on which new development occurs;
 - (b) To provide control for stormwater runoff from new development in Jordan watershed to ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows; and
 - (c) To protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed from the potential impacts of new development.
- (2) APPLICABILITY. This Rule shall apply to those areas of new development, as defined in 15A NCAC 02B .0263, that lie within the Jordan watershed and the planning jurisdiction of a municipality or county that is identified in 15A NCAC 02B .0262.
- (3) REQUIREMENTS. All local governments subject to this Rule shall develop stormwater management programs for submission to and approval by the Commission, to be implemented in areas described in Item (2) of this Rule, based on the standards in this item:
 - (a) An approved stormwater management plan shall be required for all proposed new development disturbing one acre or more for single family and duplex residential property and recreational facilities, and one-half acre or more for commercial, industrial, institutional, multifamily residential, or local government property. These stormwater plans shall not be approved by the subject local governments unless the following criteria are met:
 - (i) Nitrogen and phosphorus loads contributed by the proposed new development

activity in a given subwatershed shall not exceed the unit-area mass loading rates applicable to that subwatershed as follow for nitrogen and phosphorus, respectively, expressed in units of pounds per acre per year: 2.2 and 0.82 in the Upper New Hope; 4.4 and 0.78 in the Lower New Hope; and 3.8 and 1.43 in the Haw. The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Sub-Item (4)(a) or other equivalent method acceptable to the Division.

(ii) Proposed new development undertaken by a local government solely as a public road project shall be deemed compliant with the purposes of this Rule if it meets the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268.

(iii) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations in addition to the other requirements of this Sub-Item. Proposed new development in any water supply watershed in the Jordan watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions, obligations, and requirements for engineered stormwater controls, clustering options, and 10/70 provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable Rule among 15A NCAC 02B .0214 through .0216;

(iv) Stormwater systems shall be designed to control and treat the runoff generated from all

surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the Division. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the new development shall not contribute to degradation of waters of the State. At a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event;

- (v) Proposed new development that would replace or expand structures or improvements that existed as of December 2001, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that it shall provide stormwater control at least equal to the previous development. Proposed new development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage loading reduction goals stated in 15A NCAC 02B .0262 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the

loading rate targets described in Sub-Item (3)(a)(i). These requirements shall supersede those identified in 15A NCAC 02B .0104(q);

- (vi) Proposed new development shall comply with the riparian buffer protection requirements of 15A NCAC 02B .0267 and .0268; and
- (vii) Developers shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures as follows: Before using offsite offset options, a development shall attain a maximum nitrogen loading rate on-site of four pounds per acre per year for single-family, detached and duplex residential development and eight pounds per acre per year for other development, including multi-family residential, commercial and industrial and shall meet any requirements for engineered stormwater controls described in Sub-Item (3)(a)(iii) of this Rule. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (3)(a)(i) of this Rule. A developer may make offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the local government in which the development activity occurs. A developer may propose other offset measures to the local government, including providing his or her own offsite offset or utilizing a private seller. All offset

- measures identified in this Sub-Item shall meet the requirements of 15A NCAC 02B .0273 (2) through (4).
- (b) A plan to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub-Item (3)(a) of this Rule for the life of the development;
 - (c) A plan to ensure enforcement and compliance with the provisions in Sub-Item (3)(a) of this Rule for the life of the new development; and
 - (d) The following requirements in water supply 15A NCAC 02B .0104 shall apply to new development throughout the Jordan watershed:
 - (i) Requirements in Paragraph (f) for local governments to assume ultimate responsibility for operation and maintenance of high-density stormwater controls, to enforce compliance, to collect fees, and other measures;
 - (ii) Variance procedures in Paragraph (r);
 - (iii) Assumption of local programs by the Commission in Paragraph (x); and
 - (iv) Delegation of Commission authorities to the Director in Paragraph (aa).
- (4) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
- (a) Within 18 months after the effective date of this Rule, the Division shall submit a model local stormwater program, including a model local ordinance, in conjunction with similar requirements in 15A NCAC 02B .0266, that embodies the criteria described in Item (3) of this Rule to the Commission for approval. The model program shall include a tool that will allow developers to account for nutrient loading from development lands and loading changes due to BMP implementation to meet the requirements of Item (3) of this Rule. The accounting tool shall utilize nutrient efficiencies and associated design criteria established for individual BMPs in the July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the Division. The Division shall work in cooperation with subject local governments and other watershed interests in developing this model program;
 - (b) Within six months after the Commission's approval of the model local stormwater program and model ordinance, subject local governments shall submit stormwater management programs, in conjunction with similar requirements in 15A NCAC 02B .0266, to the Division for preliminary approval. These local programs shall meet or exceed the requirements in Item (3) of this Rule;
 - (c) Within 15 months after the Commission's approval of the model local stormwater program, the Division shall provide recommendations to the Commission on local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in Item (3) of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
 - (d) Within three months after the Commission's approval of a local program, or upon the Division's first renewal of a local government's NPDES stormwater permit, whichever occurs later, the affected local government shall complete adoption of and implement its local stormwater management program; and
 - (e) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Item (3) of this Rule, including changes to nutrient loading due to implementation of Sub-Item (3)(a) of this Rule.
- (5) **RELATIONSHIP TO OTHER REQUIREMENTS.** Local governments shall have the following options with regard to satisfying the requirements of other rules in conjunction with this Rule:
- (a) A local government may in its program submittal under Sub-Item

(4)(b) of this Rule request that the Division accept the local government's implementation of another stormwater program or programs, such as NPDES municipal stormwater requirements, as satisfying one or more of the requirements set forth in Item (3) of this Rule. The Division will provide determination on acceptability of any such alternatives prior to requesting Commission approval of local programs as required in Sub-Item (4)(c) of this Rule. The local government shall include in its program submittal technical information demonstrating the adequacy of the alternative requirements.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; Eff. Pending Legislative Review.

**15A NCAC 02B .0266 JORDAN WATER SUPPLY
NUTRIENT STRATEGY: STORMWATER
MANAGEMENT FOR EXISTING DEVELOPMENT**

This Rule establishes an adaptive approach by which municipalities and counties are to contribute to achieving the nonpoint source loading goals of the Jordan nutrient strategy by reducing or otherwise offsetting nutrient contributions from existing development. It provides local governments three and one-half years to develop plans that propose the pace and nature of implementation actions to the Division, which they shall initiate within four and one-half years after the effective date of this Rule as specified in Sub-Item (4). The following is the watershed stormwater strategy for existing development in the Jordan watershed, as prefaced in 15A NCAC 02B .0262:

- (1) **PURPOSE.** The purposes of this Rule are as follows:
 - (a) To achieve and maintain the nonpoint source nitrogen and phosphorus percentage reduction goals established for Jordan Reservoir in 15A NCAC 02B .0262 on nutrient loading from existing development in the Jordan watershed relative to the baseline period defined in that Rule. Existing development is defined in 15A NCAC 02B .0263; and
 - (b) To protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed.
- (2) **APPLICABILITY.** This Rule shall apply to municipalities and counties in the Jordan watershed as identified in 15A NCAC 02B

.0262(6). A local government's load reduction need shall be based on the developed lands that fall within its general police powers and within the Jordan watershed. The load reduction need shall not include lands under state or federal control, and a county shall not include lands within its jurisdictional boundaries that are under municipal police powers.

- (3) **REQUIREMENTS.** All local governments subject to this Rule shall develop stormwater programs for submission to and approval by the Commission that include the following elements and meet the associated minimum standards:

- (a) A load reduction program for achieving and maintaining nutrient loading reductions from existing development. This program shall meet the following criteria:

- (i) The long-term objective of this load reduction program shall be for a local government to achieve the percentage nutrient load reduction goals in Item (3) of 15A NCAC 02B .0262 relative to annual mass load, in pounds per year, representative of the baseline period defined in that Rule and reaching Jordan Reservoir from existing developed lands under the local government's police powers within each of the three subwatersheds, defined in that rule, that fall within its jurisdiction. The load reduction need shall not include lands under state or federal control, and a county shall not include lands within its jurisdictional boundaries that are under municipal police powers. Loading shall be calculated by applying the Tar-Pamlico Nutrient Export Calculation Worksheet, Piedmont Version, dated October 2004, or an equivalent or more accurate method acceptable to the Division, to acreages of different types of existing development. To provide local governments spatial latitude to obtain reductions in different

locations, loads thus calculated shall be converted to delivered loads to Jordan Reservoir using transport factors established in the Division document, *Nitrogen and Phosphorus Delivery from Small Watersheds to Jordan Lake*, dated June 30, 2002. A local government shall include estimates of, and plans for offsetting, nutrient loading increases from lands developed subsequent to the baseline period but prior to implementation of new development programs. For these post-baseline developed lands, the new loading rate shall be compared to the applicable loading rate target in Sub-Item (3)(a)(i) of 15A NCAC 02B .0265 for the subwatershed and acres involved, and the difference shall constitute the load reduction need. Note: A local government may seek supplemental funding for implementation of load-reducing activities through grant sources such as the North Carolina Clean Water Act Section 319 Grant Program or other funding programs for nonpoint sources;

(ii) The load reduction program shall include a plan and supporting technical analysis for achieving half of each load reduction goal within 10 years after the effective date of this Rule. A load reduction program may propose an alternative compliance timeframe provided it includes a technical analysis that demonstrates the need for that timeframe. At 10 years after the effective date of this Rule, the local government shall submit a revised load reduction program that shall include a plan and timeframes for

achieving the remainder of each load reduction goal based on additional technical analysis. A program technical analysis shall examine the feasibility of achieving stated goals and shall consider factors such as magnitude of reduction need relative to area within a subwatershed, the potential for utilizing the range of load-reducing activities listed in Sub-Item (3)(a)(iv), and relative costs and efficiencies of each activity to the extent information is available. The load reduction program shall propose implementation rates and timeframes for each activity. This schedule shall provide for proportionate annual progress toward the reduction goals as practicable, that is, capable of being put into practice, done, or accomplished.

(iii) The load reduction program shall identify specific load-reducing practices implemented to date subsequent to the baseline period and for which the local government is seeking credit. It shall estimate load reductions for these practices using methods provided for in Sub-Item (4)(b), and their anticipated duration;

(iv) The load reduction program shall identify the types of activities the local government intends to implement and types of existing development affected, relative proportions or a prioritization of practices, and the relative magnitude of reductions it expects to achieve from each. A local government may earn reduction credit toward the requirements of this Item for any nitrogen or phosphorus load reductions in excess of those required by other rules in this

Chapter. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term reductions. The load reduction program shall meet the requirements of 15A NCAC 02B .0273. Potential load-reducing activities may include stormwater activities such as street sweeping; improvement of existing ponds and stormwater structures; removal of existing built-upon area; retrofitting of existing development with engineered best management practices (BMPs); requiring treatment of runoff in redevelopment projects; requiring over-treatment of runoff in new development projects; source control activities such as pet waste reduction and fertilization reduction; alternative stormwater practices such as rain barrels, cisterns, downspout disconnections, and stormwater capture and reuse; restoration of ecological communities such as streams and riparian buffers; and wastewater activities such as creation of surplus allocation through advanced treatment at publicly owned treatment works (POTW), expansion of surplus allocation through regionalization, collection system improvements, removal of illegal discharges, and connection of onsite wastewater systems and discharging sand filter systems to central sewer;

- (v) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps taken or planned to secure such funding;
- (vi) A municipality shall have the option of working with the county or counties in

which it falls, or with another municipality or municipalities within the same subwatershed, to jointly meet the loading targets from all lands within their combined jurisdictions within a subwatershed. A local government may utilize private or third party sellers. All reductions shall meet the requirements of 15A NCAC 02B .0273; and

- (vii) A local government may choose to conduct monitoring of stream flows and runoff from catchments to quantify disproportionately high loading rates relative to those used in the accounting methods stipulated under Sub-Item (4)(b), and to subsequently target load-reducing activities to demonstrated high-loading source areas within such catchments for proportionately greater load reduction. A local government may propose such actions in its initial load reduction program submittal or at any time subsequent, and shall obtain Division approval of the monitoring design. It shall obtain Division approval of any resulting load reduction benefits based on the standards set out in this Rule. As set out in Item (4) of this Rule, a local government that chooses such monitoring initially may delay submittal of its load reduction program by one year for the purpose of incorporating monitoring findings into its program design provided it submits to the Division within six months of the effective date of this Rule a satisfactory monitoring proposal involving at least one year of up-front monitoring, executes the monitoring, and provides the results to the

- Division as part of its load reduction program submittal.
- (b) An existing development administrative program that includes the following components and meets the applicable standards set out in 40 CFR 122.34 and the most recent version of NC NPDES General Permit NCG 230000:
 - (i) A component to ensure maintenance of load reductions achieved as a result of the provisions in Sub-Item (3)(a) of this Rule for the life of the development;
 - (ii) A public education component to inform citizens, business, and industry of how to reduce nutrient pollution including education on home fertilization practices;
 - (iii) A mapping component that includes major components of the municipal separate storm sewer system, waters of the State, land use types, and location of sanitary sewers; and
 - (iv) A component to identify and remove illegal discharges.
- (4) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
- (a) Within six months after the effective date of this Rule, any local government that intends to use water quality monitoring to guide the initial design of its load reduction program shall provide a monitoring design to the Division. The Division shall notify any such local government of the adequacy of its design within three months of submittal. If a local government's monitoring design is deemed adequate, it may delay submittal of its load reduction program by up to one year from the timeframe given in Sub-Item (4)(f) of this Rule, whereupon the same time interval would be added to the approval and implementation timeframes given in Sub-Items (4)(g) – (4)(i) of this Rule;
 - (b) Within 18 months after the effective date of this Rule, the Division shall submit a model local program that embodies the criteria described in Item (3) of this Rule, including model local ordinances as applicable, and including methods to quantify loading reduction requirements and resulting loading reduction assignments for individual local governments, and methods to account for loading reduction credits from various activities, to the Commission for approval. The Division shall work in cooperation with subject local governments and other watershed interests in developing this model program;
 - (c) Within six months after the Commission's approval of the model local program and model ordinance, subject local governments shall submit existing development administrative programs that meet or exceed the requirements of Sub-Item (3)(b) of this Rule to the Division for review and preliminary approval;
 - (d) Within 12 months of the Commission's approval of the model local program, the Division shall provide recommendations to the Commission on existing development administrative programs. The Commission shall either approve the programs or require changes based on the standards set out in Sub-Item (3)(b) of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
 - (e) Within three months after the Commission's approval of a local existing development administrative program, or upon the Division's first renewal of a local government's NPDES stormwater permit, whichever occurs later, the affected local government shall complete adoption of and begin implementation of its existing development administrative program;
 - (f) Within 24 months after the Commission's approval of the model local program, subject local governments shall submit load reduction programs that meet or exceed the requirements of Sub-Item (3)(a) of this Rule to the Division for review and preliminary approval;

- (g) Within 34 months after the Commission's approval of the model local program, the Division shall provide recommendations to the Commission on local load reduction programs. The Commission shall either approve the programs or require changes based on the standards set out in Sub-Item (3)(a) of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;

(h) Within three months following Commission approval of a load reduction program, subject local governments shall complete adoption of and begin to implement load reduction programs;

(i) Upon implementation of the programs required under Item (3) of this Rule, local governments shall provide annual reports to the Division documenting their progress in implementing those requirements within three months following each anniversary of program implementation date;

(j) With the annual report following the tenth year after the effective date of this rule, local governments shall submit revised load reduction programs that include a plan and timeframes for achieving the remainder of each load reduction goal to the Division for preliminary approval. Within nine months after submittal, the Division shall make recommendations to the Commission on approval of these revised load reduction programs. The Commission shall either approve the programs or require changes based on the standards set out in this rule. Should the Commission require changes, the applicable local governments shall submit revisions within two months, and the Division shall provide follow-up recommendations to the Commission within three months after receiving revisions. Local governments shall continue to implement load reduction programs during review and approval of revisions.
- (k) A local government may, at any time after commencing implementation of its load reduction program, submit program revisions to the Division for approval based on identification of more cost-effective strategies or other factors not originally recognized; and

(l) At least every 10 years after the effective date, the Division shall review the accounting methods stipulated under Sub-Item (4)(b) to determine the need for revisions to those methods and to loading reductions assigned using those methods. Its review shall include values subject to change over time independent of changes resulting from implementation of this rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as nutrient removal efficiencies.

(5) **RELATIONSHIP TO OTHER REQUIREMENTS.** A local government may in its program submittal under Item (4)(c) of this Rule request that the Division accept the local government's implementation of another stormwater program or programs, such as NPDES municipal stormwater requirements, as satisfying one or more of the requirements set forth in Item (3) of this Rule. The Division will provide determination on acceptability of any such alternatives prior to requesting Commission approval of local programs under Item (4) of this Rule. The local government shall include in its program submittal technical information demonstrating the adequacy of the alternative requirements. Where requirements of this Rule exceed those in a NPDES permit, a local government shall meet the requirements of this Rule upon the first renewal of its NPDES permit.

History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143 215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; Eff. Pending Legislative Review.

15A NCAC 02B .0267 JORDAN WATER SUPPLY NUTRIENT STRATEGY: PROTECTION OF EXISTING RIPARIAN BUFFERS

Protection of the nutrient removal and other water quality benefits provided by riparian buffers throughout the watershed is an important element of the overall Jordan water supply nutrient strategy. The following is the strategy for riparian buffer protection and maintenance in the Jordan watershed, as prefaced in 15A NCAC 02B .0262:

(1) **PURPOSE.** The purposes of this Rule shall be to protect and preserve existing riparian buffers throughout the Jordan watershed as generally described in 15A NCAC 02B .0262, in order to maintain their nutrient removal and stream protection functions. Additionally this Rule will help protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed. Local governments shall establish programs to meet or exceed the minimum requirements of this Rule. The requirements of this Rule shall supersede all locally implemented buffer requirements stated in 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. Local governments subject to this Rule may choose to implement more stringent requirements, including requiring additional buffer width.

(2) **DEFINITIONS.** For the purpose of this Rule, these terms shall be defined as follows:

- (a) 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces and related structures to access a surface water, including boardwalks, steps, rails, signage.
- (b) 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definition or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms,

lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':

- (i) Satellite parking facilities;
 - (ii) Retail and commercial development outside of the terminal area, such as rental car facilities; and
 - (iii) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of 'airport facilities':
- (c) 'Forest management plan' means as defined in Chapter 160A-458.5(4).
 - (d) 'Forest plantation' means an area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.
 - (e) 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious or impervious surfaces and related structures including but not limited to boardwalks, steps, rails,

- and signage, and that generally run parallel to the shoreline.
- (f) 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.
 - (g) 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, rip rap, or gabions, while providing bank stabilization, shall not be considered stream restoration.
 - (h) 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.
 - (i) 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level.
 - (j) 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, or pipes or water dependent structures, or to maintain public traffic during construction.
- (3) **APPLICABILITY.** This Rule applies to all landowners and other persons conducting activities in the Jordan watershed, including state and federal entities, and to all local governments in the Jordan watershed, as described in 15A NCAC 02B .0262. Local governments shall develop riparian buffer protection programs for approval by the Commission, incorporating the minimum standards set out throughout this Rule and shall apply the requirements of this Rule throughout their jurisdictions within the Jordan watershed except where The Division shall exercise jurisdiction. For the following types of buffer activities in the Jordan watershed, wherever local governments are referenced in this Rule, the Division shall implement applicable requirements to the exclusion of local governments:
- (a) Activities conducted under the authority of the State.
 - (b) Activities conducted under the authority of the United States.
 - (c) Activities conducted under the authority of multiple jurisdictions.
 - (d) Activities conducted under the authority of local units of government.
 - (e) Forest harvesting activities described in Item (14) of this Rule.
 - (f) Agricultural activities.
 - (g) Activities conducted in a location where there is no local government program implementing NPDES stormwater requirements, Water Supply Watershed requirements, or a voluntary local stormwater or buffer initiative at the time of the activity.
- (4) **BUFFERS PROTECTED.** The following minimum criteria shall be used for identifying regulated buffers:
- (a) This Rule shall apply to activities conducted within, or outside of with impacts upon, 50-foot wide riparian buffers directly adjacent to surface waters in the Jordan watershed (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands.
 - (b) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 02H .0506.
 - (c) A surface water shall be subject to this Rule if the feature is approximately shown on any of the following references, and shall not be subject if it does not appear on any of these references:
 - (i) The most recent version of the soil survey map prepared

- by the Natural Resources Conservation Service of the United States Department of Agriculture.
 - (ii) The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).
 - (iii) The maps approved by the Commissioners more accurate than those identified in Sub-Item (4)(c)(i) and (4)(c)(ii) of this Rule.
- (d) Where the specific origination point of a stream regulated under this Item is in question, upon request of the Division or another party, the local government shall make an on-site determination. A local government representative who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall establish that point using the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, available at http://h2o.enr.state.nc.us/ncwetlands/documents/NC_Stream_ID_Manual.pdf or from the Division of Water Quality, 401/Wetlands Unit, 1650 Mail Service Center, Raleigh, NC, 27699-1650. A local government may accept the results of a site assessment made by another party who meets these criteria. Any disputes over on-site determinations made according to this Sub-Item shall be referred to the Director in writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.
- (e) Riparian buffers protected by this Rule shall be measured pursuant to Item (7) of this Rule.
- (f) Parties subject to this rule shall abide by all State rules and laws regarding waters of the state including but not limited to 15A NCAC 02H .0500, 15A NCAC 02H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.
- (g) A riparian buffer may be exempt from this Rule as described in Item (5) or (6) of this Rule.
- (h) No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Rule.

- (5) EXEMPTION BASED ON ON-SITE DETERMINATION. When a landowner or other affected party including the Division believes that the maps have inaccurately depicted surface waters, he or she shall consult the appropriate local government. Upon request, a local government representative who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall make an on-site determination. Local governments may also accept the results of site assessments made by other parties who have successfully completed such training. Any disputes over on-site determinations shall be referred to the Director in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to this Rule if a site evaluation reveals any of the following cases:
 - (a) Manmade ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC 02B .0100, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.
 - (b) Ephemeral streams.
 - (c) The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.
 - (d) Ditches or other manmade water conveyances, other than modified natural streams.
- (6) EXEMPTION WHEN EXISTING USES ARE PRESENT AND ONGOING. This Rule shall not apply to uses that are existing and ongoing; however, this Rule shall apply at the time an existing, ongoing use is changed to another use. Change of use shall involve the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:

- (a) It was present within the riparian buffer as of the effective date of a local program enforcing this Rule and has continued to exist since that time. For any Division-administered activities listed in Item (3) of this Rule, a use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date of this Rule and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer occupied by the footprint of the existing use is exempt from this Rule. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of a local program enforcing this Rule, or for Division-administered activities listed in Item (3) of this Rule as of the effective date of this Rule, and existing diffuse flow is maintained. Grading and revegetating Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised, the ground is stabilized and existing diffuse flow is maintained.
- (b) Projects or proposed development that are determined by the local government to meet at least one of the following criteria:
- (i) Project requires a 401 Certification/404 Permit and these were issued prior to the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;
 - (ii) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of the local program implementing this Rule, and prior to the effective date of this Rule for Division-administered activities listed in Item (3) of this Rule;
 - (iii) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of the local program enforcing this Rule, and prior to the effective date of this Rule for state and federal entities; or
 - (iv) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the local government prior to the effective date of the local program enforcing this Rule, or the written approval of the Division prior to the effective date of this Rule for state and federal entities;

- (7) **ZONES OF THE RIPARIAN BUFFER.** The protected riparian buffer shall have two zones as follows:
- (a) Zone One shall consist of a vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. The location of Zone One shall be as follows:
 - (i) For intermittent and perennial streams, Zone One shall begin at the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank.
 - (ii) For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.
 - (b) Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Item (9) of this Rule. Grading and revegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised. Zone Two shall begin at the outer edge of Zone One and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be 50 feet on all sides of the surface water.
- (8) **DIFFUSE FLOW REQUIREMENT.** Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow prior to its entry into the buffer and reestablishing vegetation as follows:
- (a) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone Two of the riparian buffer;
 - (b) Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies; and
 - (c) As set out in Items (7) and (9) of this Rule, no new stormwater conveyances are allowed through the buffers except for those specified in Item (9) of this Rule addressing stormwater management ponds, drainage ditches, roadside ditches, and stormwater conveyances.
- (9) **TABLE OF USES.** The following chart sets out potential new uses within the buffer, or outside the buffer with impacts on the buffer, and categorizes them as exempt, allowable, or allowable with mitigation. All uses not categorized as exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer or outside the buffer if the use would impact the buffer, unless a variance is granted pursuant to Item (12) of this Rule. The requirements for each category are given in Item (10) of this Rule.

APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities: <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Rule or impervious surface is added to the riparian buffer 	X	X	
Airport facilities: <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)¹ 		X	X
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in this Rule and no impervious surface is added to the buffer.	X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Dam maintenance activities: <ul style="list-style-type: none">• Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
<p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> • New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies. • Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations. • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed. 	X	X X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X X	X
Driveway impacts other than crossing of a stream or other surface waters subject to this Rule			X
Fences: <ul style="list-style-type: none"> • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Rule • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Rule 	X	X	
Forest harvesting - see Item (14) of this Rule			
Fertilizer application: one-time application to establish vegetation	X		
Grading and revegetation in Zone Two provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated.	X		

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APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Historic preservation	X		
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Items (7) and (8) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements or Items (7) and (8) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	

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APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is NOT established adjacent to the pond 		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Rule.			X
Railroad crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X

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APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Recreational and accessory structures in Zone Two: <ul style="list-style-type: none"> • Sheds and gazebos in Zone Two, provided they are not prohibited under local water supply ordinance: <ul style="list-style-type: none"> ○ Total footprint less than or equal to 150 square feet per lot. ○ Total footprint greater than 150 square feet per lot. • Wooden slatted decks and associated steps, provided the use meets the requirements of Items (7) and (8) of this Rule: <ul style="list-style-type: none"> ○ Deck at least eight feet in height and no vegetation removed from Zone One. ○ Deck less than eight feet in height or vegetation removed from Zone One. 		X	X
Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Rule			X
Road crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> • Road crossings that impact equal to or less than 40 linear feet of riparian buffer • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X

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APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
Stormwater BMPs: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone Two if diffuse flow of discharge is provided into Zone One • Wet detention, bioretention, and constructed wetlands in Zone One 		X	X
Scientific studies and stream gauging	X		
Streambank or shoreline stabilization		X	
Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation: At the end of five years the restored buffer shall comply with the restoration criteria in Item (8) of 15A NCAC 02B.0268: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation or bridge construction or replacement. 	X	X X	

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APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
<p>Temporary sediment and erosion control devices, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (8) of Rule 15A NCAC 02B.0268:</p> <ul style="list-style-type: none">• In Zone Two provided ground cover is established within timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone One is not compromised, and runoff is released as diffuse flow in accordance with Item (8) of this Rule.• In Zones one and two to control impacts associated with uses approved by the local government or that have received a variance, provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer.• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act.• In-stream temporary erosion and sediment control measures for work within a stream channel.	<p>X</p> <p>X</p>	<p>X</p> <p>X</p>	
<p>Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this Rule^{2,3,5}:</p> <ul style="list-style-type: none">• Disturb equal to or less than 150 linear feet of riparian buffer• Disturb greater than 150 linear feet of riparian buffer	<p>X</p>	<p>X</p>	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Utility, electric, aerial, other than perpendicular crossings ⁵ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One^{2,3} 		X	X
Utility, electric, underground, perpendicular crossings ^{3,4,5} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of riparian buffer • Disturb greater than 40 linear feet of riparian buffer 	X	X	
Utility, electric, underground, other than perpendicular crossings ⁴ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 	X X		
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Rule ^{3,5} : <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of riparian buffer 	X	X X	X X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Utility, non-electric, other than perpendicular crossings ^{4,5} : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 		X	X
Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone Two • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank. • Removal of individual trees which are dead, diseased or damaged. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in: <i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</i> 	X X X X X X X X		
Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet.		X	
Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers.		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

APPROVED RULES

Use	Exempt *	Allowabl e*	Allowable with Mitigation *
Water supply reservoirs: <ul style="list-style-type: none"> New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the reservoir New reservoirs where a riparian buffer that meets the requirements of Items (7) and (8) of this Rule is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> Single family residential water wells All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> Wetland, stream and buffer restoration that requires Division approval for the use of a 401 Water Quality Certification Wetland, stream and buffer restoration that does not require Division approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Item (10) of this Rule.

- ¹ Provided that:
- No heavy equipment is used in Zone One.
 - Vegetation in undisturbed portions of the buffer is not compromised.
 - Felled trees are removed by chain.
 - No permanent felling of trees occurs in protected buffers or streams.
 - Stumps are removed only by grinding.
 - At the completion of the project the disturbed area is stabilized with native vegetation.
- ² Provided that, in Zone One, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the local government, as defined in Item (11) of this Rule.
- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
 - Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
 - Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
 - Riprap shall not be used unless it is necessary to stabilize a tower.
 - No fertilizer shall be used other than a one-time application to re-establish vegetation.
 - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
 - Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
 - In wetlands, mats shall be utilized to minimize soil disturbance.
- ³ Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the local government completes a no practical alternative evaluation as defined in Item (11) of this Rule.
- ⁴ Provided that, in Zone One, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the local government, as defined in Item (11) of this Rule.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
 - Underground cables shall be installed by vibratory plow or trenching.
 - The trench shall be backfilled with the excavated soil material immediately following cable installation.
 - No fertilizer shall be used other than a one-time application to re-establish vegetation.
 - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
 - Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
 - In wetlands, mats shall be utilized to minimize soil disturbance.
- ⁵ Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

(10) REQUIREMENTS FOR CATEGORIES OF USES. Uses designated in Item (9) of this Rule as exempt, allowable, and allowable with mitigation within a riparian buffer shall have the following requirements:

- (a) EXEMPT. Uses designated as exempt are permissible without local government authorization provided that they adhere to the limitations of the activity as defined in Item (9). In addition, exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.
- (b) ALLOWABLE. Uses designated as allowable may proceed provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule. This includes construction, monitoring, and maintenance activities. These uses require written authorization from the local government.
- (c) ALLOWABLE WITH MITIGATION. Uses designated as allowable with mitigation may proceed provided that there are no practical alternatives to the requested use pursuant to Item (11) of this Rule and an appropriate mitigation strategy has been approved pursuant to Item (13) of this Rule. These uses require written authorization from the local government.

- (a) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- (b) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
- (c) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (d) The applicant shall also submit at least the following information in support of their assertion of "no practical alternatives":
 - (i) The name, address and phone number of the applicant;
 - (ii) The nature of the activity to be conducted by the applicant;
 - (iii) The location of the activity, including the jurisdiction;
 - (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
 - (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and

(11) DETERMINATION OF "NO PRACTICAL ALTERNATIVES." Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to the local government. The applicant shall certify that the project meets all the following criteria for finding "no practical alternatives":

- (vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity.
- (e) Within 60 days of a submission that addresses Sub-Item (11)(b) of this Rule, the local government shall review the entire project and make a finding of fact as to whether the criteria in Sub-Item (11)(a) have been met. A finding of "no practical alternatives" shall result in issuance of an Authorization Certificate. Failure to act within 60 days shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:
 - (i) The applicant agrees, in writing, to a longer period;
 - (ii) The local government determines that the applicant has failed to furnish requested information necessary to the local government's decision;
 - (iii) The final decision is to be made pursuant to a public hearing; or
 - (iv) The applicant refuses access to its records or premises for the purpose of gathering information necessary to the local government's decision.
- (f) The local government may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.
- (g) Any appeals of determinations regarding Authorization Certificates shall be referred to the Director. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
- (12) **VARIANCES.** Persons who wish to undertake prohibited uses may pursue a variance. The local government may grant minor variances. For major variances, local governments shall prepare preliminary findings and submit them to the Commission for approval. The variance request procedure shall be as follows:
 - (a) For any variance request, the local government shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
 - (i) If the applicant complies with the provisions of this Rule, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the local government shall consider whether the variance is the minimum possible deviation from the terms of this Rule that shall make reasonable use of the property possible;
 - (ii) The hardship results from application of this Rule to the property rather than from other factors such as deed restrictions or other hardship;
 - (iii) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this rule would not allow reasonable use of the property;
 - (iv) The applicant did not cause the hardship by knowingly or unknowingly violating this Rule;
 - (v) The applicant did not purchase the property after the effective date of this Rule, and then request a variance; and
 - (vi) The hardship is rare or unique to the applicant's property.
 - (b) For any variance request, the local government shall make a finding of fact as to whether the variance is in harmony with the general purpose and intent of the State's riparian

- buffer protection requirements and preserves its spirit; and
- (c) For any variance request, the local government shall make a finding of fact as to whether, in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
 - (d) **MINOR VARIANCES.** A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Sub-Items (11)(a) through (11)(c) of this Rule by the local government pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The local government may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the local governments shall be made in writing to the Director. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.
 - (e) **MAJOR VARIANCES.** A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the local government has determined that a major variance request meets the requirements in Sub-Items (12)(a) through (12)(c) of this Rule, then it shall prepare a preliminary finding and submit it to the Commission for approval. Within 90 days after receipt by the local government, the Commission shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Commission decision on a major variance request are made on judicial review to Superior Court.
- (13) **MITIGATION.** Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use.
- (a) Obtain a determination of "no practical alternatives" to the proposed use pursuant to Item (11) of this Rule; and
 - (b) Obtain approval for a mitigation proposal pursuant to 15A NCAC 02B .0268.
- (14) **REQUIREMENTS SPECIFIC TO FOREST HARVESTING.** The following requirements shall apply for forest harvesting operations and practices:
- (a) All the following measures shall apply in the entire riparian buffer as applicable:
 - (i) Logging decks and sawmill sites shall not be placed in the riparian buffer;
 - (ii) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 01I .0203. Temporary stream crossings shall be permanently stabilized after any site disturbing activity is completed;
 - (iii) Timber felling shall be directed away from the stream or waterbody;
 - (iv) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts;
 - (v) Individual trees may be treated to maintain or improve their health, form or vigor;
 - (vi) Harvesting of dead or infected trees as necessary to prevent or control the spread of tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to the rule. The Division of Forest Resources must notify the Division of all approvals;
 - (vii) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed;
 - (viii) Natural regeneration of forest vegetation and planting of trees, shrubs, or

- ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized.
- (ix) High-intensity prescribed burns shall not be allowed; and
 - (x) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
- (b) In Zone One, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan. A plan drafted under either option shall meet the standards set out in this Item. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:
- (i) Tracked or wheeled vehicles are permitted for the purpose of selective timber harvesting where there is no other practical alternative for removal of individual trees provided activities comply with forest practice guidelines for water quality as defined in 15A NCAC 01I .0101 through .0209, and provided no equipment shall operate within the first 10 feet immediately adjacent to the stream except at stream crossings designed, constructed and maintained in accordance with Rule 15A NCAC 01I .0203;
 - (ii) Soil disturbing site preparation activities are not allowed; and
 - (iii) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
- (c) In addition to the requirements of (b) in this Item, the following provisions for selective harvesting shall be met:
- (i) The first 10 feet of Zone One directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut unless listed as an exempt activity under Vegetation Management in the Table of Uses, Sub-Item (9) of this Rule;
 - (ii) In the outer 20 feet of Zone One, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible; and
 - (iii) In Zone Two, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0200 as enforced by the Division of Forest Resources.
- (15) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
- (a) For Division-administered activities listed in Item (3) of this Rule, the Division shall implement the requirements of this Rule as of its effective date;
 - (b) Within two months after the effective date of this Rule, the Division shall submit a model local riparian buffer protection ordinance that embodies the standards set out in this Rule and 15A NCAC 02B .0268 to the Commission for approval.
 - (c) Within six months after the Commission's approval of a model local buffer ordinance, local governments shall submit local

programs to the Division for review based on the standards set out in this Rule and 15A NCAC 02B .0268. A local program shall also detail implementation including but not limited to such factors as a method for making variance determinations, a plan for record keeping, and a plan for enforcement. Local governments shall use the latest version of the Division's publication, Identification Methods for the Origins of Intermittent and Perennial Streams, available at http://h2o.enr.state.nc.us/nwetlands/documents/NC_Stream_ID_Manual.pdf or at the 401/Wetlands Unit of the North Carolina Division of Water Quality at: Mail Service Center 1650, Raleigh, NC, 27699-1650, to establish the existence of streams;

- (d) Within one year after the Commission's approval of a model local buffer ordinance, the Division shall provide recommendations to the Commission on local buffer programs. The Commission shall either approve the programs or require changes based on the standards set out in this Rule and 15A NCAC 2B .0268. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
- (e) Within two months after the Commission's approval of local buffer programs, local governments shall implement programs to ensure that existing land use activities and proposed development complies with local programs. A local government shall issue an approval for new development only if the development application proposes to avoid impacts to riparian buffers defined in Item (4) of this Rule, or where the application proposes to impact such buffers, it demonstrates that the applicant has done the following, as applicable:
 - (i) Determined that the activity is exempt from requirements of this Rule;
 - (ii) Received an Authorization Certificate from the Division pursuant to Item (11) of this

Rule for uses designated as Allowable or Allowable with Mitigation;

- (iii) For uses designated as Allowable with Mitigation, received approval of a mitigation plan pursuant to 15A NCAC 02B .0268; and
- (iv) Received a variance pursuant to Item (12) of this Rule;
- (f) Upon implementation, local governments shall submit annual reports to the Division summarizing their activities in implementing the requirements of this Rule;
- (g) If a local government fails to adopt or adequately implement its program as called for in this Rule, the Division may take appropriate enforcement action as authorized by statute, and may choose to assume responsibility for implementing that program until such time as it determines that the local government is prepared to comply with its responsibilities; and
- (h) LOCAL OVERSIGHT. The Division shall periodically inspect local programs to ensure that they are being implemented and enforced in keeping with the requirements of this Rule. Local governments shall maintain on-site records for a minimum of five years, and shall furnish a copy of these records to the Division within 30 days of receipt of a written request for them. Local programs' records shall include the following:
 - (i) A copy of all variance requests;
 - (ii) Findings of fact on all variance requests;
 - (iii) Results of all variance proceedings;
 - (iv) A record of complaints and action taken as a result of complaints;
 - (v) Records for stream origin calls and stream ratings; and
 - (vi) Copies of all requests for authorization, records approving authorization and Authorization Certificates.
- (16) OTHER LAWS, REGULATIONS AND PERMITS. In all cases, compliance with this Rule does not preclude the requirement to comply with all other federal, state and local laws, regulations, and permits regarding

streams, steep slopes, erodible soils, wetlands, floodplains, forest harvesting, surface mining, land disturbance activities, or any other landscape feature or water quality-related activity.

- (18) August 3, 1992;
- (19) September 1, 1994;
- (20) August 1, 1998;
- (21) April 1, 1999;
- (22) August 1, 2002;
- (23) November 1, 2004;
- (24) November 1, 2007;
- (25) April 1, 2009.

History Note: Authority 143-214.1; 143-214.5; 143-214.7; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d) S.L. 1999-329, s. 7.1.; S.L. 2005-190; S.L. 2006-259; Eff. Pending Legislative Review.

15A NCAC 02B .0311 CAPE FEAR RIVER BASIN

(a) The Cape Fear River Basin Schedule of Classifications and Water Quality Standards may be inspected at the following places:

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
 - (A) Winston-Salem Regional Office
Waughtown Street
Winston-Salem, North Carolina
 - (B) Fayetteville Regional Office
Green Street
Systel Building Suite 714
Fayetteville, North Carolina
 - (C) Raleigh Regional Office
Barrett Drive
Raleigh, North Carolina
 - (D) Washington Regional Office
Washington Square Mall
Washington, North Carolina
 - (E) Wilmington Regional Office
Cardinal Drive Extension
Wilmington, North Carolina
 - (F) Division of Water Quality
Central Office
North Salisbury Street
Raleigh, North Carolina.

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

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) December 14, 1980;
- (4) August 9, 1981;
- (5) April 1, 1982;
- (6) December 1, 1983;
- (7) January 1, 1985;
- (8) August 1, 1985;
- (9) December 1, 1985;
- (10) February 1, 1986;
- (11) July 1, 1987;
- (12) October 1, 1987;
- (13) March 1, 1988;
- (14) June 1, 1988;
- (15) July 1, 1988;
- (16) January 1, 1990;
- (17) August 1, 1990;

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

- (1) Cane Creek [Index No. 16-21-(1)] from source to a point 0.5 mile north of N.C. Hwy. 54 (Cane Reservoir Dam) including the Cane Creek Reservoir and all tributaries has been reclassified from Class WS-III to WS-I.
- (2) Morgan Creek [Index No. 16-41-1-(1)] to the University Lake dam including University Lake and all tributaries has been reclassified from Class WS-III to WS-I.

(d) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective July 1, 1988 by the reclassification of Crane Creek (Crains Creek) [Index No. 18-23-16-(1)] from source to mouth of Beaver Creek including all tributaries from C to WS-III.

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

- (1) Intracoastal Waterway (Index No. 18-87) from southern edge of White Oak River Basin to western end of Permuda Island (a line from Morris Landing to Atlantic Ocean), from the eastern mouth of Old Topsail Creek to the southwestern shore of Howe Creek and from the southwest mouth of Shinn Creek to channel marker No. 153 including all tributaries except the King Creek Restricted Area, Hardison Creek, Old Topsail Creek, Mill Creek, Futch Creek and Pages Creek were reclassified from Class SA to Class SA ORW.
- (2) Topsail Sound and Middle Sound ORW Area which includes all waters between the Barrier Islands and the Intracoastal Waterway located between a line running from the western most shore of Mason Inlet to the southwestern shore of Howe Creek and a line running from the western shore of New Topsail Inlet to the eastern mouth of Old Topsail Creek was reclassified from Class SA to Class SA ORW.
- (3) Masonboro Sound ORW Area which includes all waters between the Barrier Islands and the mainland from a line running from the southwest mouth of Shinn Creek at the Intracoastal Waterway to the southern shore of Masonboro Inlet and a line running from the Intracoastal Waterway Channel marker No. 153 to the southside of the Carolina Beach Inlet was reclassified from Class SA to Class SA ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin has been amended effective January 1, 1990 as follows: Big Alamance Creek [Index No. 16-19-(1)] from source to Lake Mackintosh Dam including all tributaries has been reclassified from Class WS-III NSW to Class WS-II NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Cape Fear 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.

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

- (1) The Black River from its source to the Cape Fear River [Index Nos. 18-68-(0.5), 18-68-(3.5) and 18-65-(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (2) The South River from Big Swamp to the Black River [Index Nos. 18-68-12-(0.5) and 18-68-12(11.5)] was reclassified from Classes C Sw and C Sw HQW to Class C Sw ORW.
- (3) Six Runs Creek from Quewhiffle Swamp to the Black River [Index No. 18-68-2] was reclassified from Class C Sw to Class C Sw ORW.

(i) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective September 1, 1994 with the reclassification of the Deep River [Index No. 17-(36.5)] from the Town of Gulf-Goldston water supply intake to US highway 421 including associated tributaries from Class C to Classes C, WS-IV and WS-IV CA.

(j) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 1998 with the revision to the primary classification for portions of the Deep River [Index No. 17-(28.5)] from Class WS-IV to Class WS-V, Deep River [Index No. 17-(41.5)] from Class WS-IV to Class C, and the Cape Fear River [Index 18-(10.5)] from Class WS-IV to Class WS-V.

(k) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of Buckhorn Creek (Harris Lake)[Index No. 18-7-(3)] from the backwaters of Harris Lake to the Dam at Harris Lake from Class C to Class WS-V.

(l) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 1999 with the reclassification of the Deep River [Index No. 17-(4)] from the dam at Oakdale-Cotton Mills, Inc. to the dam at

Randleman Reservoir (located 1.6 mile upstream of U.S. Hwy 220 Business), and including tributaries from Class C and Class B to Class WS-IV and Class WS-IV & B. Streams within the Randleman Reservoir Critical Area have been reclassified to WS-IV CA. The Critical Area for a WS-IV reservoir is defined as 0.5 mile and draining to the normal pool elevation of the reservoir. All waters within the Randleman Reservoir Water Supply Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0248.

(m) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective August 1, 2002 as follows:

- (1) Mill Creek [Index Nos. 18-23-11-(1), 18-23-11-(2), 18-23-11-3, 18-23-11-(5)] from its source to the Little River, including all tributaries was reclassified from Class WS-III NSW and Class WS III&B NSW to Class WS-III NSW HQW@ and Class WS-III&B NSW HQW@.
- (2) McDeed's Creek [Index Nos. 18-23-11-4, 18-23-11-4-1] from its source to Mill Creek, including all tributaries was reclassified from Class WS III NSW and Class WS III&B NSW to Class WS-III NSW HQW@ and Class WS-III&B NSW HQW@.
- (3) The "@" symbol as used in Paragraph (m) of this Rule means that if the governing municipality has deemed that a development is covered under a "5/70 provision" as described in Rule 15A NCAC 02B .0215(3)(b)(i)(E) (Fresh Surface Water Quality Standards for Class WS-III Waters), then that development is not subject to the stormwater requirements as described in rule 15A NCAC 02H .1006 (Stormwater Requirements: High Quality Waters).

(n) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2004 as follows:

- (1) A portion of Rocky River [Index Number 17-43-(1)] from a point approximately 0.3 mile upstream of Town of Siler City upper reservoir dam to a point approximately 0.3 mile downstream of Lacy Creek from WS-III to WS-III CA.
- (2) A portion of Rocky River [Index Number 17-43-(8)] from dam at lower water supply reservoir for Town of Siler City to a point approximately 65 feet below dam (site of proposed dam) from C to WS-III CA.
- (3) A portion of Mud Lick Creek (Index No. 17-43-6) from a point approximately 0.4 mile upstream of Chatham County SR 1355 to Town of Siler City lower water supply reservoir from WS-III to WS-III CA.
- (4) A portion of Lacy Creek (17-43-7) from a point approximately 0.6 mile downstream of Chatham County SR 1362 to Town of Siler

City lower water supply reservoir from WS-III to WS-III CA.

(o) The Schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective November 1, 2007 with the following reclassifications. The North Carolina Division of Water Quality maintains a Geographic Information Systems data layer for the UWLs.

- (1) Military Ocean Terminal Sunny Point Pools, all on the eastern shore of the Cape Fear River [Index No. 18-(71)] were reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (2) Salters Lake Bay near Salters Lake [Index No. 18-44-4] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (3) Jones Lake Bay near Jones Lake [Index No. 18-46-7-1] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (4) Weymouth Woods Sandhill Seep near Mill Creek [18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (5) Fly Trap Savanna near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (6) Lily Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (7) Grassy Pond near Cape Fear River [Index No. 18-(71)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (8) The Neck Savanna near Sandy Run Swamp [Index No. 18-74-33-2] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (9) Bower's Bog near Mill Creek [Index No. 18-23-11-(1)] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.
- (10) Bushy Lake near Turnbull Creek [Index No. 18-46] was reclassified to Class WL UWL as defined in 15A NCAC 02B .0101.

(p) The schedule of Classifications and Water Quality Standards for the Cape Fear River Basin was amended effective April 1, 2008 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at B. Everett Jordan Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the B. Everett Jordan Reservoir Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in 15A NCAC 02B .0262 through .0272.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. November 1, 2007; November 1, 2004; August 1, 2002; April 1, 1999; August 1, 1998; September 1, 1994; June 1, 1994; August 3, 1992; August 1, 1990; Amended Eff. Pending Legislative Review.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the CRC's Rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load bearing;

Decks, roof-covered porches and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (2) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130

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| <p>(D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;</p> <p>(E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;</p> <p>(F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;</p> <p>(G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;</p> <p>(H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;</p> <p>(I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;</p> <p>(J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater; and</p> <p>(K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation</p> | <p>line or measurement line, whichever is farthest landward.</p> <p>(3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ocean hazard setback, whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.</p> <p>(4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.</p> <p>(5) If neither a primary nor frontal dune exist in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.</p> <p>(6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.</p> <p>(7) Established common-law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.</p> <p>(8) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for</p> |
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continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section. However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraph (1) and (2)(A) of this Paragraph a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200 to allow development of property that lies both within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
- (B) Total floor area of a building is no greater than 2,500 square feet;
- (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- (D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes

the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

- (E) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and
- (F) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

(b) In order to avoid weakening the protective nature of ocean beaches and primary and frontal dunes, no development is permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon which would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable, and any disturbance of any other dunes is allowed only to the extent allowed by 15A NCAC 07H .0308(b).

(c) Development shall not cause irreversible damage to historic architectural or archaeological resources documented by the Division of Archives and History, the National Historical Registry, the local land-use plan, or other sources.

(d) Development shall comply with minimum lot size and setback requirements established by local regulations.

(e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(f) Development shall comply with general management objective for ocean hazard areas set forth in 15A NCAC 07H .0303.

(g) Development shall not interfere with legal access to, or use of, public resources nor shall such development increase the risk of damage to public trust areas.

(h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action,
- (2) restore the affected environment, or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

(i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to DCM that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. By granting permits, the Coastal Resources Commission does not

guarantee the safety of the development and assumes no liability for future damage to the development.

(j) All relocation of structures requires permit approval. Structures relocated with public funds shall comply with the applicable setback line as well as other applicable AEC rules. Structures including septic tanks and other essential accessories relocated entirely with non-public funds shall be relocated the maximum feasible distance landward of the present location; septic tanks may not be located oceanward of the primary structure. In these cases, all other applicable local and state rules shall be met.

(k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under 15A NCAC 07H .0308(a)(2).

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. April 1, 2007; November 1, 2004; June 27, 1995;
Amended Eff. Pending Legislative Review.

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after five years have passed since the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;
- (2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources

Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. Pending Legislative Review.

15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

- (1) A description of the area affected by the static line exception request;
- (2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);
- (3) A summary of the evidence required for a static line exception; and
- (4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. Pending Legislative Review.

15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

- (1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.
- (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
- (3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in

no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. Pending Legislative Review.

15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

- (1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
- (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and
- (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

- (1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.
- (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
- (3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. Pending Legislative Review.

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION

(a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.

(b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d) (2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).

(c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. Pending Legislative Review.

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124;
Eff. Pending Legislative Review.

15A NCAC 18D .0308 PROFESSIONAL GROWTH HOURS

(a) All certified operators shall complete six contact hours of Board approved training each year following the year of initial certification. The Board shall approve training if it determines that the subject matter of the training is relevant to water treatment facility operation, and to the professional growth of operators. Training providers shall submit an attendance roster to the Board after completion of the training event. Ultimately proof of professional growth hours is the responsibility of the operator. The roster shall contain the operator's certification ID number or the last four digits of the Social Security number.

(b) The organization providing the training shall give each participant a certificate or other proof of completion which includes the name of the provider, the provider's address, and contact person with telephone number. The proof of completion shall identify the name of the participant, the number of contact hours completed, the course name, the instructor's name, and the date of the training received. For in-house training, an instructor from outside of the organization shall provide the training.

(c) The Board shall mail renewal notices to operators prior to the renewal date and shall state whether the Board has a record of their professional growth hours for the preceding year. If the Board does not have a record of professional growth for an operator, the operator must provide proof of the required six contact hours of training at the time of annual certification renewal.

History Note: Authority G.S. 90A-25.1; 90A-26;
Eff. August 1, 1998;
Amended Eff. November 1, 2008; August 1, 2004; August 1, 2000.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 14 – COSMETIC ART EXAMINERS

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not solely a manicurist or an esthetics school.
- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school that teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O .0102.
- (9) "Natural hair braiding" is a service that results in tension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, is not subject to regulation pursuant to G.S. 88B, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (10) "Natural hair styling" is the provision of natural hair braiding services together with any of the other services or procedures included within the regulated practice of cosmetic art, and is subject to regulation pursuant to G.S. 88B, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.
- (11) "Licensing cycle" for cosmetologists is the three-year period beginning on the first day of October 2004 and ending on the 30th day of

September 2007, and continuing thereafter in three year intervals. For estheticians and manicurists the licensing cycle is one year in length beginning on the first day of October and ending on the 30th day of September. For teachers, the licensing cycle is the two-year period beginning on the first day of October of an even-numbered year and ending on the 30th day of September of an even-numbered year.

History Note: Authority G.S. 88B-2; 88B-4; Eff. February 1, 1976; Amended Eff. June 1, 1993; October 1, 1991; May 1, 1991; January 1, 1989; Temporary Amendment Eff. January 1, 1999; Amended Eff. December 1, 2008; May 1, 2005; December 1, 2004; May 1, 2004; February 1, 2004; April 1, 2001; August 1, 2000.

21 NCAC 14F .0114 SALON RENEWAL

History Note: Authority G.S. 88-21(8),(9),(10); 88-25; Eff. June 1, 1995; Repealed Eff. December 1, 2008.

21 NCAC 14G .0102 FORMS

History Note: Authority G.S. 88-23; Eff. February 1, 1976; Amended Eff. December 1, 2004; July 1, 1993; April 1, 1988; Repealed Eff. December 1, 2008.

21 NCAC 14G .0107 EQUIPMENT AND TEACHERS

- (a) A cosmetic art school shall have the necessary classrooms and equipment for teaching as required by Subchapters 14I, 14J, 14K and 14O and shall provide a staff of cosmetic art teachers licensed by the Board.
- (b) The Board shall not accept an application for a letter of approval until all furniture, supplies and equipment as prescribed by the Rules in this Chapter have been installed and the entire school is complete.
- (c) All courses in a cosmetic art school must be taught by a licensed cosmetology teacher, except that manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist teacher and esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.
- (d) Notwithstanding Paragraph (c) of this Rule, a licensed cosmetologist not licensed to teach cosmetic art may substitute for a cosmetology, esthetician, or manicurist teacher and a licensed manicurist not licensed as a manicurist teacher may substitute for a manicurist teacher, and an esthetic teacher and a registered esthetician not licensed as an esthetic teacher may substitute for an esthetician teacher. In no event may such a substitution last for more than 15 working days per year per teacher.

History Note: Authority G.S. 88B-11; 88B-16; 88B-23 88B-4;

*Eff. February 1, 1976;
Amended Eff. December 1, 2008; November 1, 2005; August 1, 1998; May 1, 1991; January 1, 1989.*

21 NCAC 14H .0111 CLEANLINESS OF OPERATORS

- (a) All operators and students shall be personally clean and neat.
- (b) Every person employed in a beauty establishment shall wear clean, washable outer garments with sleeves while serving patrons.
- (c) Each licensee and student shall wash his or her hands with soap and water or an equally effective cleansing agent immediately before and after serving each client.

*History Note: Authority G.S. 88B-4; 88B-14;
Eff. February 1, 1976;
Amended Eff. December 1, 2008; January 1, 2008; June 1, 1994.*

21 NCAC 14H .0112 CLEANLINESS OF CLINIC AREA: SUPPLIES AND IMPLEMENTS: COMBS AND BRUSHES

- (a) The clinic area shall be kept clean.
- (b) Waste material shall be kept in covered receptacles. The area surrounding the waste receptacles shall be maintained in a neat and sanitary manner.
- (c) Sanitation rules which apply to towels and cloths are as follows:
 - (1) Separate and clean protective drapes, linens and towels shall be used for each patron.
 - (2) After a protective drape, linen or towel has been used once, it shall be discarded and placed in a clean, closed container until laundered.
 - (3) There shall be an adequate supply of clean protective drapes, linens and towels at all times.
 - (4) All capes used on patrons shall not be allowed to come in direct contact with the patron's neck.
 - (5) Clean drapes, linens and towels shall be stored in a clean closed container when not in use.
- (d) At least six combs and brushes shall be provided for each cosmetology operator and cosmetology student.
- (e) All combs, brushes, and implements shall be cleaned and disinfected after each use in the following manner:

- (1) They shall be soaked in a cleaning solution that shall not leave a residue and, if necessary, scrubbed.
- (2) They shall be disinfected in accordance with the following:
 - (A) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal, that is mixed and used according to the manufacturer's directions; or
 - (B) household bleach in a 10 percent solution for 10 minutes.

The disinfectant shall not shorten the service life of the comb, brush, esthetics or

manicuring instrument. In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant manufacturer.

- (3) They shall be rinsed with hot tap water and dried with a clean towel before their next use. If they are not used immediately, they shall be stored in a clean, closed cabinet or container until they are needed.

- (f) Disposable and porous implements must be discarded immediately after use.

*History Note: Authority G.S. 88B-4; 88B-14;
Eff. February 1, 1976;
Amended Eff. June 1, 1994; April 1, 1991; January 1, 1989; April 1, 1988;
Temporary Amendment Eff. January 20, 1999;
Amended Eff. December 1, 2008; October 1, 2006; November 1, 2005; August 1, 2000.*

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

- (a) All scissors, shears, razors, and other metal instruments must be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it shall be cleaned by wiping it with a clean cloth moistened or spraying with a disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
- (2) If it is immersible, it shall be disinfected by immersion and whenever it comes in contact with blood, with:
 - (A) disinfectant, used in accordance with the manufacturer's instructions, that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency.
 - (B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal, that is mixed and used according to the manufacturer's directions; or
 - (C) household bleach in a 10 percent solution for 10 minutes.
- (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

- (b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

- (c) Lancets, disposable razors, and other sharp objects shall be disposed in puncture-resistant containers.

*History Note: Authority G.S. 88B-4; 88B-14;
Eff. February 1, 1976;
Amended Eff. December 1, 2008; January 1, 2008; October 1,
2006; February 1, 2004; August 1, 1998; June 1, 1994; January
1, 1989; April 1, 1988.*

21 NCAC 14H .0116 HEALTH OF OPERATORS

*History Note: Authority G.S. 88-23; 88-26(3);
Eff. February 1, 1976;
Amended Eff. January 1, 1989;
Repealed Eff. December 1, 2008.*

21 NCAC 14H .0117 ANIMALS

Animals and birds shall not be kept in a beauty establishment. Trained animals accompanying sightless or hearing impaired persons are exempt.

*History Note: Authority G.S. 88B-4; 88B-17; 88B-23;
Eff. February 1, 1976;
Amended Eff. December 1, 2008.*

21 NCAC 14H .0118 SYSTEMS OF GRADING BEAUTY ESTABLISHMENTS

The system of grading the sanitary rating of cosmetic art schools and shops based on the rules set out in 21 NCAC 14H .0106 to .0117 shall be as follows, setting out areas to be inspected and considered, and the maximum points given for compliance:

- (1) clean and repaired entrance and reception room 2;
- (2) general condition of the entire establishment 8;
- (3) water system; hot and cold running water 2;
- (4) walls, ceiling and floors:
 - (A) construction and coverings 4;
 - (B) clean 4;
 - (C) good repair 3;
- (5) lighting and fresh continuous ventilation (windows included); their adequacy and cleanliness 3;
- (6) public toilet:
 - (A) clean and ventilated 5;
 - (B) liquid soap and individual towels furnished 5;
 - (C) hot and cold running water 2;
- (7) appearance of operators and students 4;
- (8) linens:
 - (A) supply of clean drapes, linens and towels stored in clean closed containers 2;
 - (B) soiled drapes, linens and towels properly stored in closed containers 3;
- (9) waste in closed containers and clean area 4;
- (10) equipment cleanliness:
 - (A) disinfectants selected from those approved by the Federal Environmental

- Protection Agency 6;
- (B) disinfectants used properly 5;
- (C) all implements cleaned, disinfected, and properly stored 12;
- (D) furniture, fixtures, and equipment clean and in good repair 7;
- (11) working area:
 - (A) workstation clean 4;
 - (B) lavatories clean 4;
 - (C) jars and containers closed, clean and disinfected 2;
 - (D) no unnecessary articles in work area 2;
- (12) antiseptics and first aid supplies on hand 1;
- (13) cosmetics:
 - (A) clean and sanitary conditions 2;
 - (B) storage area for supplies clean and in order 3;
- (14) no animals or birds kept or allowed in the establishment except as provided by Rule .0117 of this Subchapter.

*History Note: Authority G.S. 88B-2; 88B-4; 88B-14;
Eff. February 1, 1976;
Amended Eff. August 1, 1998; June 1, 1994; April 1, 1991;
January 1, 1989;
Temporary Amendment Eff. January 20, 1999;
Amended Eff. December 1, 2008; August 1, 2000.*

21 NCAC 14H .0120 FOOTSPA SANITATION

Manicurists and Cosmetologists shall use the following disinfection procedures to ensure proper cleaning and maintenance of any footspa equipment and to prevent bacterial infection:

- (1) Between each customer a manicurist or cosmetologist shall:
 - (a) drain all water and remove all debris from the footspa;
 - (b) clean and scrub the surfaces and walls of the footspas with a scrub-brush and soap or detergent and rinse with clean, clear water; and
 - (c) disinfect with an EPA registered, hospital/pseudomonocidal (bactericidal, virucidal, and fungicidal) and tuberculocidal disinfectant, used according to the manufacturer's instructions.
- (2) At the end of the day a manicurist or cosmetologist shall:
 - (a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;
 - (b) before replacing the screen wash the screen with a chlorine bleach solution of one part bleach to 10 parts water,

- or totally immerse the screen in an EPA registered disinfectant;
- (c) fill the footspa tub with five gallons of water and four cups of five per cent bleach solution; or
- (d) disinfect with an EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal disinfectant, used according to the manufacturer's instructions;
- (e) circulate the solution through the footspa system for no less than 10 minutes;
- (f) let the solution sit overnight (at least six hours);
- (g) drain and flush the system the following morning; and
- (h) make a record of the date/time of this cleaning and disinfecting, on a form provided by the Board. The record for the last 90 days shall be accessible upon client or Board inspector request.

History Note: Authority G.S. 88B-4; 88B-14; Eff. February 1, 2004; Amended Eff. December 1, 2008; May 1, 2007; October 1, 2006; November 1, 2005.

21 NCAC 141 .0105 TRANSFER OF CREDIT

- (a) In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring.
- (b) A cosmetology student must complete at least 500 hours in the cosmetic art school certifying his or her application for the state board examination.
- (c) Upon written petition by the student, the Board shall make an exception to the requirements set forth in Paragraph (b) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing 500 hours at the school that certifies his or her application.
- (d) A student who transfers from a cosmetology curriculum to a manicuring or an esthetics curriculum shall not receive credit for hours received in the cosmetology curriculum.
- (e) A student who transfers from a manicurist or an esthetic curriculum to a cosmetology curriculum shall not receive credit for hours received in the manicurist or an esthetic curriculum.
- (f) If a student is transferring from another state, the student shall submit certification of hours and performances to the cosmetic art school in which they are enrolled.
- (g) Licensed manicurists or estheticians may apply up to 50 percent of required hours earned toward another cosmetic art curriculum.
- (h) Up to 50 percent of all credit earned in an approved esthetician or manicurist teacher training program may be transferred to a cosmetology teacher training program. A maximum of 160 hours earned in either an esthetician or

manicurist teacher training program may be transferred between programs.

History Note: Authority G.S. 88B-4; 88B-7; 88B-8; 88B-9; 88B-10; Eff. February 1, 1976; Amended Eff. December 1, 2008; July 1, 2006; December 1, 2004; February 1, 2004; August 1, 1998; December 1, 1993; January 1, 1991; January 1, 1989; April 1, 1988.

21 NCAC 141 .0107 REPORT OF ENROLLMENT

- (a) A cosmetic art school shall report cosmetology enrollments to the Board not later than 30 working days after a student enrolls in school. A cosmetic art school shall report manicurist and esthetician enrollments to the Board not later than 15 working days after a student enrolls in school. If a student's enrollment is not reported within 30 working days for cosmetology and 15 working days for esthetician and manicurist, the cosmetic art school shall file a copy of the student's daily time records when it reports the student's enrollment.
- (b) The school must report the enrollment of students prior to the student applying for the cosmetologist, manicurist, or esthetician examination and before any hours can be credited.

History Note: Authority G.S. 88B-4; 88B-9; Eff. February 1, 1976; Amended Eff. August 1, 1998; April 1, 1991; January 1, 1989; April 1, 1988; Temporary Amendment Eff. January 1, 1999; Amendment Eff. December 1, 2008; August 1, 2000; April 1, 1999.

21 NCAC 141 .0109 SUMMARY OF COSMETIC ART EDUCATION

- (a) The manager of each cosmetic art school must compile, from the school's records, a summary of hours, live model/mannequin performance completions, date of enrollment, and last date of attendance. Within 30 days after the student's graduation date, the cosmetic art school must present to the student his or her licensure registration documentation.
- (b) This licensure registration documentation must be signed by the owner/director, a teacher, and the student and must have the seal of the school affixed.
- (c) The licensure registration documentation must be prepared on a form furnished by the Board. The cosmetic art school shall mail a copy with the school seal affixed of the licensure registration documentation to the Board at the Board's address.

History Note: Authority G.S. 88B-4; 88B-7; 88B-8; 88B-9; 88B-10; 88B-16; Eff. February 1, 1976; Amended Eff. December 1, 2008; August 1, 2000; August 1, 1998; May 1, 1991; January 1, 1989; April 1, 1988.

21 NCAC 141 .0301 RECITATION ROOM

- (a) Each cosmetic art school shall have a recitation room, large enough to accommodate 20 students, which shall be equipped with desks or chairs suitable for classroom work, chair(s) suitable for demonstrating cosmetology practices, a dry erase

board, and charts, except that the demonstration chair(s) in a manicurist school need be suitable only for demonstrating manicuring and pedicuring practices.

(b) Charts in the recitation room shall include those with illustrations of the skin, bones, muscles, and nerves of the head, neck, feet, and hands, except that the set of charts in a manicurist school need not include those illustrating the head and neck.

History Note: Authority G.S. 88-23; 88-30; Eff. February 1, 1976; Amended Eff. December 1, 2008; April 1, 1991; January 1, 1989.

21 NCAC 14I .0303 CLASSROOM BULLETIN BOARD

- (a) Each classroom must have a bulletin board on the wall.
- (b) Any memorandum, letter, or bulletin issued by the Board, which states that it is to be posted in a cosmetic art school for the information of the students, must be posted on this bulletin board.
- (c) A copy of the sanitation rules must be posted on this bulletin board, also.

History Note: Authority G.S. 88B-4; 88B-23; Eff. February 1, 1976; Amended Eff. December 1, 2008; April 1, 1991; January 1, 1989.

21 NCAC 14I .0401 APPLICATION/LICENSURE/INDIVIDUALS WHO HAVE BEEN CONVICTED OF FELONY

(a) Any applicant convicted of a felony or charged with a felony that is still pending may apply for Board approval upon enrollment in a cosmetic art school. All documentation submitted shall have no effect on an individual's ability to attend a cosmetic art school, take an examination administered by the Board, or apply for a license; is not binding on the Board with respect to any future application from the individual reviewed; and is not a final agency decision.

- (b) The applicant shall supply the following:
 - (1) A statement of facts of the crime accompanied by a certified copy of the indictment (or, in the absence of an indictment, a copy of the "information" that initiated the formal judicial process), the judgment and any commitment order for each felony for which there has been a conviction;
 - (2) A copy of the applicant's restoration of rights certificate, if applicable;
 - (3) At least three letters attesting to the applicant's character from individuals unrelated by blood or marriage. If available, one of these letters must be from someone familiar with the applicant's cosmetology training and experience, one from the applicant's probation or parole officer, and one from the applicant's vocational rehabilitation officer. If letters from persons in these positions are unavailable, the applicant shall submit an

explanatory statement as to why they are unavailable;

- (4) The name and address of the applicant's current employer;
 - (5) A summary of the applicant's personal history since conviction including, if applicable, date of release, parole or probation status, employment, and military service;
 - (6) Records of any cosmetology or manicurist school disciplinary actions;
 - (7) A description of any pending criminal charges with a copy of the indictment or, if there is not yet an indictment, the arrest warrant for each pending charge; and
 - (8) The applicant may supply any other information which in the opinion of the applicant would be useful or pertinent to the consideration by the Board of the applicant's request;
- (c) If a conviction was for an offense involving habitual drug or alcohol abuse, the applicant shall also provide evidence showing that he or she is drug/alcohol free. Examples of evidence which will be considered are:
- (1) enrollment in an on-going licensed treatment program;
 - (2) drug analysis test results; and
 - (3) certification of completion of a licensed treatment program.

History Note: Authority G.S. 88B-4; 88B-24(1); Eff. June 1, 1995; Amended Eff. December 1, 2008; April 1, 2001; August 1, 1998.

21 NCAC 14I .0402 REQUESTS FOR PREAPPLICATION REVIEW OF FELONY CONVICTIONS

History Note: Authority G.S. 88-23; 88-26(1); Eff. June 1, 1995; Repealed December 1, 2008.

21 NCAC 14J .0302 EQUIPMENT

Each cosmetology school shall provide training in the decontamination methods used to prevent the growth of germs and bacteria. Each cosmetology school shall provide the following equipment or supplies for use in the training and teaching of all students:

- (1) containers of sufficient size for the purpose of disinfecting implements by the immersion of implements in an EPA recommended, hospital grade disinfectant solution;
- (2) covered containers for storage of disinfected implements until they are needed to prevent contamination.

History Note: Authority G.S. 88B-4; 88B-14; Eff. February 1, 1976; Amended Eff. December 1, 2008; May 1, 2007; January 1, 1989; April 1, 1988.

21 NCAC 14K .0101 UNIFORMS

All students must wear a clean washable uniform or professional attire and nametag pin, or something similar, identifying academic status.

History Note: Authority G.S. 88B-4; 88B-23; Eff. February 1, 1976; Amended Eff. December 1, 2008; December 1, 2004; August 1, 1998.

21 NCAC 14K .0103 EQUIPMENT AND INSTRUMENTS

(a) A manicurist school shall be equipped with at least the following minimum equipment:

- (1) two handwashing sinks, separate from restrooms, located in or adjacent to the clinic area;
- (2) adequate chairs for patrons in the clinic area;
- (3) ten work tables with adequate light in the clinic area for every 20 students;
- (4) pedicure chair and basin;
- (5) covered disinfectant container for each work table;
- (6) a covered waste container located in the clinic area; and
- (7) a covered container for soiled or disposable towels located in the clinic area.

(b) Each student shall be supplied with:

- (1) a manicurist bowl;
- (2) nail brushes;
- (3) a tray for manicuring supplies;
- (4) one mannequin hand;
- (5) a manicuring kit containing proper implements for manicuring and pedicuring; and
- (6) implements for artificial nails, nail wraps and tipping.

(c) The minimum requirement for a school of manicuring with a department of esthetics in its training program shall be one of each item specified in 21 NCAC 14O .0103(a).

History Note: Authority G.S. 88B-4; 88B-14; 88B-16; Eff. February 1, 1976; Amended Eff. December 1, 2008; April 1, 2001; August 1, 1998; April 1, 1991.

21 NCAC 14K .0105 IDENTIFICATION PINS

Each student enrolled for only a manicurist course shall wear a pin or something similar, stating "Manicurist Only." The lettering on the pin must be easily read and in large print.

History Note: Authority G.S. 88B-4; 88B-23; Eff. February 1, 1976; Amended Eff. December 1, 2008; January 1, 1989.

21 NCAC 14K .0107 LIVE MODEL PERFORMANCES

(a) In completing the 40 hours of live model performances required by 21 NCAC 14K .0102(b), all manicurist students shall complete the following minimum number of live model performances during the manicurist course under the supervision

of a licensed cosmetic art teacher before taking the manicurist examination and submission of the license registration documentation:

- (1) 15 manicures, including trimming, filing, and shaping; decorating; and arm and hand massage;
- (2) 100 applications or repair of sculptured or other artificial nails; and
- (3) 4 pedicures.

(b) No manicurist student may perform any live model performances until he or she has completed 16 hours of classroom work.

(c) Live model performances are the rendering of the required service on a live person other than himself or herself. They do not include performing the service on a mannequin.

History Note: Authority G.S. 88B-4; 88B-10; Eff. July 1, 1990; Amended Eff. April 1, 1991; December 1, 1990; Temporary Amendment Eff. January 1, 1999; Amended Eff. December 1, 2008; April 1, 2001; August 1, 2000.

21 NCAC 14L .0106 APPLICATION TO TAKE EXAMINATION

(a) To apply to be a cosmetic art teacher, an applicant must apply to the Board on a form provided by the Board.

(b) The Board shall not consider an application until the applicant submits all the information required by the application rules.

(c) An applicant cannot take the cosmetic art teacher examination until the Board approves the applicant's application.

History Note: Authority G.S. 88B-7; 88B-8; 88B-9; 88B-10; 88B-16; 88B-18; Eff. April 1, 1991; Amended Eff. December 1, 2008.

21 NCAC 14L .0208 SUPERVISION OF COSMETIC ART TEACHER TRAINEE

(a) A cosmetic art teacher trainee shall be supervised by a cosmetic art teacher at all times when the trainee is at a cosmetic art except as set out in Paragraph (b) of this Rule.

(b) A manicurist or esthetician teacher may not supervise a cosmetologist teacher trainee with regard to any cosmetic art other than manicuring or esthetics, as appropriate.

(c) Violation of this Rule is just cause to revoke the Board's approval of the cosmetic art school's teacher trainee program for a period of one year.

History Note: Authority G.S. 88B-11; Eff. February 1, 1976; Amended Eff. December 1, 2008; April 1, 1991; August 1, 1989.

21 NCAC 14L .0210 EFFECT ON STUDENT-TEACHER RATIO

(a) A student who is either a cosmetology, esthetics or manicurist teacher trainee need not be counted as a student in computing the allowable student-teacher ratio set by 21 NCAC 14G .0113. However, a cosmetic art school must have at least:

- (1) One cosmetology teacher for every five cosmetology teacher trainees, or cosmetologist, manicurist, and esthetician trainees combined; or
- (2) For manicurist teacher trainees only, one cosmetology or manicurist teacher for every five manicurist teacher trainees.

- (5) client consultation,
- (6) facial/body treatment (cleansing, massage, masks),
- (7) hair removal,
- (8) basic dermatology,
- (9) machines, electricity, apparatus,
- (10) aromatherapy,
- (11) nutrition,
- (12) business management,
- (13) make-up/color theory,
- (14) professional ethics.

(b) A cosmetic art school may not count a teacher trainee as a cosmetic art teacher in computing the allowable student-teacher ratio set by 21 NCAC 14G .0113. Teachers included in the ratio determined under 21 NCAC 14G .0113 may be included in computing the ratio required by this Rule.

History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. December 1, 2008; December 1, 2004; April 1, 1999; June 1, 1991; August 1, 1989.

21 NCAC 14L .0214 FEE

History Note: Authority G.S. 88B-4; 88B-20; Eff. February 1, 1976; Amended Eff. April 1, 1999; August 1, 1998; April 1, 1991; August 1, 1989; May 1, 1988; Repealed Eff. December 1, 2008.

21 NCAC 14N .0102 INITIAL APPLICATIONS AND FEES

Cosmetologist candidates having completed a minimum of 1000 hours in a cosmetology curriculum from an approved cosmetic art school are authorized to receive the written examination. All cosmetic art licensee candidates must have successfully completed the appropriate cosmetic art curriculum in an approved cosmetic art school before receiving the practical examination.

History Note: Authority G.S. 88B-4; 88B-7(1); 88B-8(1); 88B-18; 88B-20(a); Eff. June 1, 1992; Amended Eff. December 1, 2008; May 1, 2007; December 1, 2005; August 1, 2000; August 1, 1998.

21 NCAC 14O .0101 UNIFORMS

All students in training as an esthetician shall wear a clean washable uniform and nametag pin or something similar identifying academic status.

History Note: Authority G.S. 88B-4; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. December 1, 2008.

21 NCAC 14O .0102 COURSE OF STUDY

The following course outline is required by the Board before taking the esthetician examination:

- (1) orientation,
- (2) anatomy/physiology,
- (3) hygiene/ decontamination /first aid,
- (4) chemistry,

History Note: Authority G.S. 88B-4; 88B-9; 88B-16; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. December 1, 2008.

21 NCAC 14O .0105 IDENTIFICATION PINS

Each student enrolled for an esthetics course only shall wear a nametag pin or something similar stating "Esthetics ". The lettering on a pin must be easily read and in large print.

History Note: Authority G.S. 88B-4; Temporary Adoption Eff. January 1, 1999; Temporary Adoption Expired October 12, 1999; Temporary Adoption Eff. February 10, 2000; Eff. April 1, 2001; Amended Eff. December 1, 2008.

21 NCAC 14O .0107 SANITATION

History Note: Authority G.S. 88B-4; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Repealed Eff. December 1, 2008.

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

- (1) 1st offense \$100.00
- (2) 2nd offense \$300.00

- (3) 3rd offense \$500.00
- (e) The presumptive civil penalty for an improperly licensed cosmetic art shop (incorrect number of chairs licensed) is:
 - (1) 1st offense warning (\$50.00)
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00
- (f) The presumptive civil penalty for teaching with an expired license is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00

History Note: Authority G.S. 88B-4; 88B-11; 88B-21; 88B-22; 88B-23(a); 88B-24; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. December 1, 2008; September 1, 2006; February 1, 2004; August 1, 2002; April 1, 2001.

21 NCAC 14P .0106 LICENSES REQUIRED

- (a) The presumptive civil penalty for practicing cosmetic art without a license is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00
- (b) The presumptive civil penalty for performing services which the practitioner is not licensed to perform is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00

History Note: Authority G.S. 88B-4; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. December 1, 2008; August 1, 2002.

21 NCAC 14P .0107 LICENSES TO BE POSTED

- (a) The presumptive civil penalty for failure to display a current cosmetic art shop/school license is:
 - (1) 1st offense \$50.00
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00
- (b) The presumptive civil penalty for failure to display a current individual license is:
 - (1) 1st offense \$50.00
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00
- (c) The presumptive civil penalty for a school/shop for allowing an employee to practice cosmetic art without displaying a current license is:
 - (1) 1st offense \$50.00
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00
- (d) The presumptive civil penalty for displaying a copied license is:
 - (1) 1st offense \$50.00
 - (2) 2nd offense \$100.00
 - (3) 3rd offense \$200.00

History Note: Authority G.S. 88B-4; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. December 1, 2008; February 1, 2004; April 1, 2001.

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

- (a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:
 - (1) 1st offense \$250.00
 - (2) 2nd offense \$500.00
 - (3) 3rd offense \$1000.00
- (b) The presumptive civil penalty for practicing cosmetology, manicuring or esthetics with a license issued to another person is:
 - (1) 1st offense \$300.00
 - (2) 2nd offense \$500.00
 - (3) 3rd offense \$1,000.00
- (c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:
 - (1) 1st offense \$300.00
 - (2) 2nd offense \$400.00
 - (3) 3rd offense \$500.00
- (d) The presumptive civil penalty for submitting false or fraudulent documents is:
 - (1) 1st offense \$500.00
 - (2) 2nd offense \$800.00
 - (3) 3rd offense \$1,000.00
- (e) The presumptive civil penalty for refusing to present photographic identification is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$250.00
 - (3) 3rd offense \$500.00
- (f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement is:
 - (1) 1st offense warning (\$300.00)
 - (2) 2nd offense \$400.00
 - (3) 3rd offense \$500.00
- (g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license is:
 - (1) 1st offense \$300.00
 - (2) 2nd offense \$400.00
 - (3) 3rd offense \$500.00
- (h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation is:
 - (1) 1st offense \$500.00
 - (2) 2nd offense \$800.00
 - (3) 3rd offense \$1000.00
- (i) The presumptive civil penalty for the illegal use or possession of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:
 - (1) 1st offense \$300.00
 - (2) 2nd offense \$500.00
 - (3) 3rd offense \$1000.00
- (j) The presumptive civil penalty for failure to maintain footspa sanitation records is:
 - (1) 1st offense \$100.00
 - (2) 2nd offense \$200.00

APPROVED RULES

(3) 3rd offense \$300.00

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

History Note: Authority G.S. 88B-4; 88B-24; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. December 1, 2008; January 1, 2006; April 1, 2004; August 1, 2002; April 1, 2001.

(i) The presumptive civil penalty for failure to dispose of supplies or instruments which come in direct contact with a patron and which cannot be disinfected is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(j) The presumptive civil penalty for failure to disinfect non-electrical instruments and equipment is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(k) The presumptive civil penalty for failure to store and label creams, powders, and other cosmetic preparations is:

(1) 1st offense warning (\$25.00)

(2) 2nd offense \$50.00

(3) 3rd offense \$100.00

(l) The presumptive civil penalty for failure to have necessary first aid equipment on hand is:

(1) 1st offense warning (\$25.00)

(2) 2nd offense \$50.00

(3) 3rd offense \$100.00

(m) The presumptive civil penalty for failure to provide necessary lighting or ventilation is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(n) The presumptive civil penalty for windows and doors not effectively screened is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(o) The presumptive civil penalty for trash containers not covered is:

(1) 1st offense warning (\$25.00)

(2) 2nd offense \$50.00

(3) 3rd offense \$100.00

(p) The presumptive civil penalty for failure to use EPA approved disinfectant is:

(1) 1st offense \$50.00

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(q) The presumptive civil penalty for failure to maintain a sanitary establishment (80% rating or better) is:

(1) 1st offense warning (\$25.00)

(2) 2nd offense \$50.00

(3) 3rd offense \$100.00

History Note: Authority G.S. 88B-4; 88B-29; Temporary Adoption Eff. January 1, 1999;

21 NCAC 14P .0112 SANITARY RATINGS AND POSTING OF RATINGS - APPLICABLE TO ESTABLISHMENTS WITH A SANITATION GRADE OF LESS THAN 80%

(a) The presumptive civil penalty for failure to display an inspection grade card is:

(1) 1st offense \$50.00

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(b) The presumptive civil penalty for non-working toilet facilities is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(c) The presumptive civil penalty for failure to maintain equipment, furnishings and floor coverings is:

(1) 1st offense warning (\$25.00)

(2) 2nd offense \$50.00

(3) 3rd offense \$100.00

(d) The presumptive civil penalty for failure to provide hot and cold running water is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(e) The presumptive civil penalty for keeping any animal or bird in a cosmetic art shop or school is: (Trained animals accompanying sightless or hearing impaired persons are exempt)

(1) 1st offense warning (\$25.00)

(2) 2nd offense \$50.00

(3) 3rd offense \$100.00

(f) The presumptive civil penalty for failure to have students wear clean washable uniform is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(g) The presumptive civil penalty for failure of operators in cosmetic art shops to wear clean outer garments with sleeves is:

(1) 1st offense warning (\$50.00)

(2) 2nd offense \$100.00

(3) 3rd offense \$200.00

(h) The presumptive civil penalty for failure to store used or clean protective drapes, linens or towels, or failure to launder used protective drapes, linens or towels is:

(1) 1st offense warning (\$50.00)

*Eff. August 1, 2000;
Amended Eff. December 1, 2008; February 1, 2006.*

21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF COSMETIC ART

(a) The presumptive civil penalty for failure to record student's hours of daily attendance is:

- (1) 1st offense warning (\$100.00)
- (2) 2nd offense \$200.00
- (3) 3rd offense \$300.00

(b) The presumptive civil penalty for failure to report withdrawal or graduation of a student within 30 working days is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(c) The presumptive civil penalty for failure to submit cosmetology enrollments within 30 working days or manicurist and esthetician enrollments within 15 working days is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(d) The presumptive civil penalty for failure to display a copy of the sanitation rules is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:

- (1) 1st offense warning (\$50.00)
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

(f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

(g) The presumptive civil penalty for a cosmetic art school that is not separated from a cosmetic art shop or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all times is:

- (1) 1st offense \$200.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$600.00

*History Note: Authority G.S. 88B-4; 88B-16; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. December 1, 2008; April 1, 2004.*

21 NCAC 14P .0115 SANITARY RATINGS

The presumptive civil penalty for failure to display a current inspection grade card is:

- (1) 1st offense \$50.00
- (2) 2nd offense \$100.00
- (3) 3rd offense \$200.00

*History Note: Authority G.S. 88B-4; 88B-29;
Temporary Adoption Eff. January 1, 1999;*

*Eff. August 1, 2000;
Amended Eff. December 1, 2008; February 1, 2004; April 1, 2001.*

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

(a) The continuing education requirement for all licensees is eight hours per year. Cosmetologists may complete the 24 hours of continuing education any time within the cosmetologist's three-year licensing cycle. No licensee shall receive credit for course duplication completed during the licensing cycle.

(b) Courses completed prior to an individual being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board.

(c) Estheticians and manicurists must complete courses in their subject area. Only licensed teachers may complete courses in teacher training techniques.

(d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.

(e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be posted to the Board's website and updated monthly. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self-addressed envelopes.

(f) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.

(g) Licensees shall be exempt from 8 hours of continuing education requirements until the licensing period commencing after their initial licensure.

(h) CE Course instructors shall receive credit for any approved CE class taught once during the renewal period.

(i) Licensees may take internet and correspondence courses not to exceed 12 hours per renewal period for cosmetologists, four hours per renewal period for manicurists and estheticians and eight hours per renewal period for teachers.

History Note: Authority G.S. 88B-4; 88B-21(e);

Eff. May 1, 2004;

Amended Eff. December 1, 2008; January 1, 2006; December 1, 2004.

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE APPROVAL

(a) Application for course approval shall be completed on forms provided by the Board and shall demonstrate that the applicant is:

- (1) A provider as defined in 21 NCAC 14A .0101;
- (2) Submitting the form to the Board's office at least 30 days prior to the proposed initial date of the course offering.
- (3) Proposing a course offering that must include at least 50% of subject matter in the cosmetic arts or cosmetic art teacher training techniques;

- (4) Providing a resume for all course instructors.
- (b) The following offerings shall not be approved by the Board for continuing education credit:
 - (1) That portion of any offering devoted to any breaks including: breakfast, lunch and dinner or other refreshments;
 - (2) Any application that fails to meet the standards of this Rule.
- (c) A continuing education number shall be assigned to each approved course.
- (d) Approved courses may be conducted as often as desired during the calendar year.

History Note: Authority G.S. 88-B 4; 88B-21(e); Eff. May 1, 2004; Amended Eff. December 1, 2008; May 1, 2007.

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

- (a) Programs shall not be approved by the Board in segments of less than two hours.
- (b) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name and teacher's license number, to verify attendance. Forms may be copied. Course monitors will be required at the rate of one monitor per 20 students with a maximum of 10 monitors at any course. Instructors may serve as the course monitor for courses with fewer than 20 students.
- (c) No provider shall certify the attendance of a person who was not physically present during at least ninety per cent of the course time.
- (d) A provider shall maintain for four years a record of attendance of each person attending a course including the following information:
 - (1) Board approved continuing education number;
 - (2) Name and license number of attendee;
 - (3) Course title and description
 - (4) Hours of attendance;
 - (5) Date of course;
 - (6) Name and signature of instructor/monitor in employ of provider;

The provider shall certify the items above and furnish a copy to the attendee upon completion of the course.

- (e) Course attendance may be restricted to licensees due to valid course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and fully disclosed during the application criteria and procedures for continuing education approval.
- (f) Minimum attendance of a course for credit purposes is four attendees.
- (g) Each provider shall notify the Board; at least one day in advance, of any additional course dates, or any changes including locations, times, and changes of course instructors.
- (h) Each provider shall submit to the Board, within ten days after completion of each course, an attendance list of licensees who completed the course. The list shall include for each licensee:
 - (1) Course title;
 - (2) Date conducted;

- (3) Address location where the course was conducted;
- (4) Licensee name;
- (5) Licensee's license number;
- (6) Course continuing education number;
- (7) Continuing education hours earned.7688
- (i) The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of the rules in this Subchapter. Written justification of the suspension, denial, or revocation shall be given.
- (l) Random audits of CE course providers will be conducted and complete records must be provided to the Board upon request.

History Note: Authority G.S. 88B-4; 88B-21(e); Eff. May 1, 2004; Amended Eff. December 1, 2008; January 1, 2006.

CHAPTER 36 – BOARD OF NURSING

21 NCAC 36 .0201 REGULAR RENEWAL

- (a) Renewal notices shall be sent no less than 60 days prior to expiration date of a license to all registrants whose licenses are due for biennial renewal. The notices will be mailed to each eligible registrant's address as it appears in the records of the Board. A license is issued for the following biennium when:
 - (1) all required information is submitted as requested on the application form; and
 - (2) all payment of required fees are received; and
- (b) It shall be the duty of each registrant to keep the Board informed of a current mailing address. Failure of the Board to send or of the registrant to receive a notice of renewal shall not excuse the registrant from the requirements for license renewal.
- (c) Renewal applications must be postmarked on or before the date the current license expires.
- (d) Applicants for license renewal may be required to demonstrate mental and physical competency to practice nursing if required by the Board.

History Note: Authority G.S. 90-171.29; 90-171.23(b); 90-171.34; 90-171.37; Eff. February 1, 1976; Amended Eff. December 1, 2008; April 1, 1989; May 1, 1982.

21 NCAC 36 .0203 REINSTATEMENT OF LAPSED LICENSE

- (a) The registrant whose license has lapsed and who desires reinstatement of that license shall:
 - (1) furnish information required on forms provided by the Board;
 - (2) submit evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
 - (3) attest to having completed Continuing Competence requirements and be prepared to submit evidence of completion if requested by the Board as specified in 21 NCAC 36 .0232(b).

- (4) submit evidence of completion of all court conditions resulting from any misdemeanor or felony conviction(s);
 - (5) submit such other evidence that the Board may require according to these Rules to determine whether the license should be reinstated;
 - (6) provide a statement of the reason for failure to apply for renewal prior to the deadline; and
 - (7) submit payment of reinstatement and renewal fee.
- (b) The registrant whose license has lapsed for a period of five years or more shall also submit:
- (1) evidence of mental and physical health necessary to competently practice nursing; and
 - (2) evidence of satisfactory completion of a Board-approved refresher course or proof of active licensure within the past five years in another jurisdiction.
- (c) If a refresher course is required, the registrant shall apply for reinstatement of the license within one year of completing the refresher course in order to receive a current license. The application for reinstatement shall include verification from the provider of the refresher course that the registrant has satisfactorily met both theory and clinical objectives and is deemed competent to practice nursing at the appropriate level of licensure.
- (d) The Board shall decline to reinstate a license if it is not satisfied as to the applicant's ability to practice nursing.

History Note: Authority G.S. 90-171.23(b); 90-171.35; 90-171.37;
 Eff. February 1, 1976;
 Amended Eff. December 1, 2008; January 1, 1996; February 1, 1994; August 3, 1992; January 1, 1990.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1507 PARTIAL EXAMINATION

History Note: Authority G.S. 90-85.6; 90-85.15; 90.85.16;
 Eff. April 1, 1983;
 Amended Eff. May 1, 1989;
 Repealed Eff. January 1, 2009.

CHAPTER 48 – BOARD OF PHYSICAL THERAPY EXAMINERS

21 NCAC 48G .0105 DEFINITIONS

As used in this Subchapter, the following definitions apply:

- (1) "Approved provider" means an entity that been approved by the Board to provide continuing competence activities for licensees as provided in the rules in this Section.

- (2) "Clinical Practice" means physical therapy consultation or patient care/client management or the supervision thereof.
- (3) "Contact Hour" means at least 50 consecutive minutes of engagement in a continuing competence activity. Two segments of at least 25 consecutive minutes each is equivalent to one contact hour. Breaks and meals are not included in contact hours.
- (4) "Continuing Competence" means the licensee's ongoing activities to augment knowledge, skills, behaviors, and abilities related to the practice of physical therapy.
- (5) "Continuing Education" means courses of study designed to provide learning experiences for physical therapy licensees.
- (6) "Documentation" means evidence of completion of continuing competence activities.
- (7) "Jurisprudence Exercise" is an online set of questions concerning the Physical Therapy Practice Act, Board rules and Position Statements.
- (8) "Licensee" means a physical therapist or physical therapist assistant licensed in North Carolina.
- (9) "Peer-reviewed" means judged by an independent panel of experts having special knowledge or skills in a particular field of study.
- (10) "Point" means a unit of continuing competence.
- (11) "Registered" means enrollment in a continuing competence activity.
- (12) "Reporting period" means a two-year period commencing on January 1 during which the licensee must complete all continuing competence requirements.

History Note: Authority G.S. 90-270.26(3a);
 Eff. January 1, 2009.

21 NCAC 48G .0106 CONTINUING COMPETENCE REQUIREMENT

- (a) For individuals licensed prior to January 1, 2009, during each reporting period thereafter, each physical therapist must accumulate 30 points, and each physical therapist assistant must accumulate 20 points of continuing competence activities to be eligible for license renewal.
- (b) For individuals whose date of initial licensure is after January 1, 2009, commencing on January 1 following the date of initial licensure, each physical therapist must accumulate 30 points and each physical therapist assistant must accumulate 20 points of continuing competence during the reporting period to be eligible for license renewal.
- (c) Up to 10 extra points earned during one reporting period may be carried over to the next reporting period.

History Note: Authority G.S. 90-270.26(3a);

Eff. January 1, 2009.

21 NCAC 48G .0107 STANDARDS FOR CONTINUING COMPETENCE ACTIVITIES

The Board shall approve continuing competence activities which meet the following standards and provisions:

- (1) They have intellectual or practical content based on best available scientific evidence and the primary objective is to increase the participant's professional competence and proficiency as a licensee;
- (2) They constitute learning experiences dealing with matters directly related to the practice of physical therapy or patient welfare;
- (3) Live instruction, mechanically or electronically recorded, reproduced or transmitted material, other electronic media, or a computer website accessed via the Internet are used;
- (4) Continuing competence materials are prepared, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity of the program or clinical experience and, when appropriate, equipped with suitable writing surfaces or sufficient space for taking notes;
- (5) Written materials are distributed to all attendees at or before the time a course is presented. These may include scientific materials based on written references printed from a computer presentation, computer website, or other electronic media. A written agenda, objectives or outline for a presentation satisfies this requirement when written reference materials are not suitable or readily available for a particular subject;
- (6) The provider remits costs as required by Rule .0112 of this Subchapter and keeps and maintains attendance records of each continuing competence experience sponsored by it in North Carolina; and
- (7) For activities that are directed to more than one discipline, or are directed primarily to another health care discipline, the Board is satisfied that the content of the activity would enhance physical therapy skills or aid in the practice of physical therapy.

History Note: Authority G.S. 90-270.26(3a); Eff. January 1, 2009.

21 NCAC 48G .0108 APPROVAL OF PROVIDERS AND ACTIVITIES

(a) The Board shall approve a provider if it is satisfied that the provider's programs have met the standards set forth in Rule .0107 of this Section.

(b) Once a provider is approved, the continuing competence activities sponsored by that organization are approved for credit and no application must be made to the Board for approval.

(c) The following organizations are approved providers:

- (1) Any agency or board responsible for licensing individuals to practice physical therapy in the United States or Canada;
- (2) The American Physical Therapy Association (APTA), including any Sections, credentialed residencies and fellowships and its accrediting subsidiary;
- (3) State Chapters of APTA;
- (4) The Federation of State Boards of Physical Therapy (FSBPT), and any accrediting subsidiary;
- (5) Any providers approved or accredited by the agencies or organizations listed in Subparagraphs (1) through (4) of this Paragraph;
- (6) Physical therapist and physical therapist assistant programs approved by an agency recognized by either the U.S. Department of Education or the Council on Postsecondary Accreditation; and
- (7) The North Carolina Department of Public Instruction, North Carolina Division of Public Health and North Carolina Area Health Education Centers with regard to activities directly related to physical therapy.

(d) The Board may at any time revoke the approval of a provider for failure to satisfy the requirements of Rule .0107 of this Section. The Board may evaluate an activity presented by an approved provider and, upon a determination that the activity does not satisfy the requirements of Rule .0107 of this Section, notify the approved provider that any presentation of the same activity is not approved for credit. The notice shall be sent by the Board to the approved provider within 30 days after receipt of the notification. The approved provider may request reconsideration of the decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(e) Any organization not approved as a provider that desires approval of a course or activity to be offered in North Carolina shall apply to the Board at least 60 days prior to the date the activity is scheduled. Required information includes the name and address of the activity provider, the date, location and schedule for the activity, a description of the qualifications of the presenters and the content of the activity, including written materials. An activity shall be approved if notice of denial is not furnished to the organization within 30 days of the scheduled activity. An applicant denied approval of a program may request reconsideration of the decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(f) A licensee desiring approval of a course or activity that has not otherwise been approved shall apply to the Board at least 30 days prior to the date the activity is scheduled. The licensee shall furnish the name and address of the activity provider, the date, location and schedule of the activity and a description of

the qualifications of the presenters and the content of the activity, including written materials. An activity shall be approved if notice of denial is not furnished to the licensee within 10 days of the scheduled activity. An applicant denied approval of a program may request reconsideration of the decision by submitting a letter of appeal to the Board's Executive Director within 15 days of receipt of the notice of disapproval.

(g) For continuing competence activities offered for credit in this State, the providers shall furnish to the Board the assigned activity code number assigned by the Board and a list of all licensees completing the activity, including full name and license number, within 90 days of the completion of the approved activity.

History Note: Authority G.S. 90-270.26(3a); Eff. January 1, 2009.

21 NCAC 48G .0109 CONTINUING COMPETENCE ACTIVITIES

(a) Continuing Education activities are eligible for points as follows:

- (1) A registered attendee at courses or conferences offered by approved providers earns one point for each contact hour, and the maximum number of points allowed during any reporting period is 29. Credit shall not be given for the same course or conference more than once during any reporting period. The licensee shall submit the Certificate of Attendance issued by the approved provider.
- (2) For registered participation in an academic course related to physical therapy offered for credit in a post-baccalaureate program unless the course is required for licensure, one class hour earns one point, and the maximum number of points allowed during any reporting period is 29. The licensee must obtain a letter grade of "C" or better or "P" if offered on a Pass/Fail basis. Credit shall not be given for the same course more than one time. The licensee shall submit the course description published by the approved provider.
- (3) For attendance or participation in an activity related to physical therapy for which no assessment is received, two contact hours earns one point, and the maximum number of points allowed during any reporting period is five. Credit shall not be given for the same activity more than one time. The licensee shall submit a certificate of completion, or if that is not available, a summary of the objectives of the activity and the time spent in the activity.
- (4) For registered participation in a course offered by an approved provider by videotape, satellite transmission, webcast, DVD or other electronic media for which an assessment is received, one hour of participation earns one point, and the maximum number of points

allowed during any reporting period is 10. Credit shall not be given for the same course more than once during a reporting period. The licensee shall submit a certificate of completion and assessment results furnished by the approved provider.

- (5) For participation in a study group consisting of at least three licensees involved whose purpose is to advance the knowledge and skills of the participants related to the practice of physical therapy, two hours of participation in the study group earns one point, and the maximum number of points allowed during any reporting period is five. The licensee shall submit a biography of each participant, a statement of the goals of the study group, attendance records for each participant, assignments for each participant and an analysis by each participant specifying the knowledge and skills enhanced by participating in the study group.
 - (6) For participation in a home study program designed to advance the knowledge and skill of the participant related to the practice of physical therapy, three hours of home study earns one point, and the maximum number of points allowed for home study during any reporting period is five. The licensee shall submit a description of the plans and objectives of the home study, an analysis of the manner in which the plans and objectives were met, and a certification of the time spent on the project.
 - (7) For participation in continuing education required by credentialed residencies and fellowships, one point is granted for each contact hour and the maximum number of points for each reporting period is 29. The licensee shall submit the certificate of attendance issued by the APTA credentialed residency or fellowship.
- (b) Points are awarded for Advanced Training as follows:
- (1) For fellowships conferred by organizations credentialed by the American Physical Therapy Association ("APTA") in a specialty area of the practice of physical therapy, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. The licensee shall submit the certificate conferred on the licensee.
 - (2) For completion of a residency program in physical therapy offered by an APTA credentialed organization, 10 points are awarded for each full year of clinical participation, up to a maximum of 20 points for this activity. The licensee shall submit evidence that all requirements of the residency program have been met.

- (3) For specialty certification or specialty recertification by the American Board of Physical Therapy Specialization ("ABPTS"), or its successor organization, 20 points are awarded upon receipt of such certification or recertification during any reporting period. The licensee shall submit evidence from ABPTS that the certification or recertification has been granted.
 - (4) For a physical therapist assistant ("PTA"), Advanced Proficiency designation by the APTA for the PTA earns 19 points. The licensee shall submit evidence from APTA that the designation has been awarded.
- (c) Achieving a passing score on the FSBPT's Practice Review Tool ("PRT") earns 10 points. Taking the PRT without achieving a passing score earns five points. The licensee shall submit the certificate of completion and performance report. Points shall be awarded only one time for any specific practice area.
- (d) Clinical Education Activities are eligible for points as follows:
- (1) For completion of a course offered by an approved provider for a licensee to become a Credentialed Clinical Instructor recognized by APTA, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a credential certificate issued by the approved provider. Credit for completing the same course shall be given only one time.
 - (2) For enrollment in a course offered by APTA for a licensee to become a Credentialed Clinical Instructor Trainer, one course hour earns one point, and the maximum number of points awarded during any reporting period is 29. The licensee shall submit a Trainer certificate issued by APTA. Credit for completing the same course will be given only one time.
 - (3) For serving as a Clinical Instructor for a physical therapist or physical therapist assistant student, resident or fellow for a period of at least 80 hours, 40 hours of direct supervision earns one point, and a maximum credit of eight points is allowed during any reporting period. The licensee shall submit verification of the clinical affiliation agreement with the accredited educational program for the student supervised and a log showing the number of hours spent supervising the student.
- (e) Presenting or teaching for an accredited physical therapy educational program, a transitional Doctor of Physical Therapy ("DPT") program, an accredited program for health care practitioners licensed under the provisions of Chapter 90 of the North Carolina General Statutes, or a state, national or international workshop, seminar or professional health care conference earns two points for each hour of presentation or

teaching. The licensee shall submit written materials advertising the presentation or teaching, or other evidence of the date, subject and goals and objectives of the presentation and any written materials prepared by the licensee. A maximum of six points is allowed during any reporting period, and credit shall not be given for teaching or presenting the same subject matter more than one time.

(f) Research and published books or articles are eligible to accumulate up to a maximum of 15 points as follows:

- (1) Submission of a request to a funding agency for a research grant as a Principal or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant, which must include the title, an abstract, the funding agency and the grant period. Points shall be awarded only one time during any reporting period.
- (2) Having a research grant funded as a Principal Investigator or Co-Principal Investigator earns 10 points. The licensee shall submit a copy of the research grant, which must include the title, an abstract, the funding agency, the grant period and documentation of the funding received and for what period. Points shall be awarded only one time during a reporting period.
- (3) Service as a Grants Reviewer earns one point for each two hours of grant review and a maximum of five points may be earned. The licensee shall submit a description of all grants reviewed and any reports generated in connection with the reviews, including the dates of service, the agency for whom the review was performed and the hours spent on the grant review. Points shall be awarded only one time during any reporting period.
- (4) The author or editor of a book dealing with a subject related to the practice of physical therapy earns 10 points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (5) The author or editor of a chapter in a book dealing with a subject related to the practice of physical therapy earns five points. The licensee shall submit a copy of the published book and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (6) The author of a published peer-reviewed article relating to the practice of physical therapy earns 10 points. The licensee shall submit the article, names and employers of the reviewers and a list of consulted resources. Points shall be awarded only one time during any reporting period.
- (7) The author of a published non peer-reviewed article relating to the practice of physical

therapy earns three points. The licensee shall submit the article and a list of consulted resources. Points shall be awarded only one time during any reporting period.

- (8) The author of a peer-reviewed abstract for a poster or presentation related to the practice of physical therapy to a professional health care group earns five points for a presentation, up to a maximum of 15 points during any reporting period, and credit for the same poster or presentation shall not be awarded more than one time. The licensee shall submit a copy of the poster or presentation and a list of consulted resources.

(g) Clinical practice is eligible for points as follows:

- (1) For each year that a licensee is engaged in full-time clinical practice, three points shall be awarded. The licensee shall submit certification from the licensee's employer(s) or documentation of practice hours as owner of a practice that clinical practice during the year reached or exceeded 1750 hours.
- (2) For each year that a licensee is engaged in part-time clinical practice, two points shall be awarded. The licensee shall submit a certification from the licensee's employer(s) or documentation of practice hours as owner of a practice that clinical practice during the year reached or exceeded 1000 hours.
- (3) For each year that a licensee is engaged in clinical practice for at least 200 hours, one point shall be awarded. The licensee shall submit a certification from the employer(s) for whom the services were performed or documentation of practice hours as owner of a practice.

(h) Professional Self-Assessment earns five points for completion of an approved Reflective Practice Exercise. This exercise shall be approved if it is a process for a licensee to evaluate current professional practice abilities, to establish goals to improve those abilities, to develop a plan to meet those goals and to document that the objectives are being accomplished. The licensee shall submit evidence of completion of all elements of the Reflective Practice Exercise. Points shall be awarded only one time during any reporting period.

(i) Workplace Education is eligible for points as follows:

- (1) Presentation or attendance at an in-service session related to the practice of physical therapy, including health care issues related to the practice of physical therapy, is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two hours of in-service earns one point. A maximum of five points may be earned during any reporting period. Credit for the same in-service shall not be granted more than one time.
- (2) Presentation or attendance at an in-service session devoted to general patient safety,

emergency procedures, or governmental regulatory requirements is allowed. The licensee shall submit a roster or certificate of attendance signed by a representative of the employer. Two contact hours of in-service are equivalent to one point, which is the maximum credit that shall be granted during any reporting period. Credit for the same in-service shall not be granted more than one time during any reporting period.

(j) Professional Service is eligible for points as follows:

- (1) Participation in a national physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee or physical therapy services task force member for at least one year earns five points for each full year of participation, up to a maximum of 10 points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.
- (2) Participation in a state physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy services committee for at least one year earns four points for each full year of participation, up to a maximum of eight points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.
- (3) Participation in a local or regional physical therapy or interdisciplinary (including physical therapy) organization as an officer or chair of a physical therapy service committee for at least one year earns two points for each full year of participation, up to a maximum of four points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the position and a summary of the activities of the licensee.
- (4) Participation as a member of a physical therapy professional organization committee involved with physical therapy services for at least one year earns one point for each full year of participation, up to a maximum of two points during any reporting period. The licensee shall submit organizational materials listing the licensee's participation, a statement of the responsibilities of the committee and a summary of the work of the committee.
- (5) Participation in unpaid volunteer service to the general public related to physical therapy earns one point for at least 20 hours spent on service activities during each year, up to a maximum

of two points during any reporting period. The licensee shall submit published materials describing the service activity.

- (6) Membership in the APTA for one year earns one point. A point may be earned for each year of membership. The licensee shall submit proof of membership in the APTA.
- (7) Membership in an APTA Section for one year earns one-half point. The licensee shall submit proof of membership in the APTA Section. Points shall not be awarded for membership in more than one Section.

(k) During each reporting period, a licensee may complete an ethics exercise as directed by the Board. A certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee.

(l) During each reporting period, every licensee must complete a jurisprudence exercise provided by the Board. The jurisprudence exercise shall be available online at the Board's website, and a certificate of completion shall be issued to a licensee at the conclusion of the exercise, at which time one point shall be awarded to the licensee.

*History Note: Authority G.S. 90-270.26(3a);
Eff. January 1, 2009.*

21 NCAC 48G .0110 EVIDENCE OF COMPLIANCE

(a) Each licensee shall submit a completed Continuing Competence Compliance Form with an application for license renewal.

(b) Licensees shall retain evidence of compliance with continuing competence requirements for a period of four years following the end of the reporting period for which credit is sought for an activity.

(c) Documentary evidence for Continuing Education activities shall include the following for each activity:

- (1) Name of approved sponsor;
- (2) Name of accrediting organization;
- (3) Title;
- (4) Summary of content;
- (5) Schedule;
- (6) Location;
- (7) Name and qualifications of each presenter;
- (8) Date;
- (9) Hours for presentation;
- (10) Record of attendance or participation by sponsor; and
- (11) Other information demonstrating completion of the activity.

(d) The Board shall conduct random audits to ensure continuing competence compliance. Within 30 days from receipt of an Audit Notice from the Board, the licensee must furnish the Board with the documentary evidence required by the rules in this Subchapter showing completion of the points required for the audited reporting period.

(e) Requests for extensions of time for up to an additional 30 days to respond to the Audit Notice shall be granted by the Board's Executive Director. For circumstances beyond the

control of the licensee or for personal hardship, the Board shall grant an additional period of time to respond to the Audit Notice.

(f) If the results of the audit show a licensee has not completed the required points, and the number of additional points needed by the licensee is 10 or less, the licensee shall complete the remaining points within 90 days from the date the Board notifies the licensee by certified mail of the deficiency. For circumstances beyond the control of the licensee or for personal hardship, the Board shall grant an additional period of time to respond to the Audit Notice.

(g) Failure to respond to the Board's Audit Notice in a timely fashion, or failure to provide the necessary documentary evidence of compliance pursuant to this Rule shall subject the licensee to disciplinary action pursuant to 21 NCAC 48G .0601(a)(10).

*History Note: Authority G.S. 90-270.26(3a);
Eff. January 1, 2009.*

21 NCAC 48G .0112 COSTS

(a) There is no cost for approval of continuing competence activities offered by approved sponsors.

(b) For a non-Approved provider seeking approval of a continuing competence activity offered to licensees in this State, the cost is one hundred fifty dollars (\$150.00) per activity.

(c) For a licensee seeking approval of a continuing competence activity that is not offered by an approved sponsor, the cost is twenty-five dollars (\$25.00).

*History Note: Authority G.S. 90-270.26(7);
Eff. Pending Consultation Pursuant to G.S. 12-3.1.*

TITLE 25 – OFFICE OF STATE PERSONNEL

25 NCAC 01C .1009 SEPARATION: PAYMENT OF VACATION LEAVE

Payment for vacation leave shall be in accordance with 25 NCAC 01E .0210.

*History Note: Authority G.S. 28A-25-6; 126-4;
Eff. February 1, 1976;
Amended Eff. March 1, 1989, December 1, 1988, January 1, 1983;
Temporary Amendment Eff. January 1, 1989, for a Period of 180 Days to Expire June 29, 1989;
Amended Eff. July 1, 1995;
Recodified from 25 NCAC 01E .0210 Eff. December 29, 2003;
Amended Eff. December 1, 2008; October 1, 2004.*

25 NCAC 01D .0517 LEAVE

*History Note: Authority G.S. 126-4(6),(10);
Eff. March 1, 1987;
Amended Eff. November 1, 1990;
Repealed Eff. December 1, 2008.*

**25 NCAC 01E .0210 SEPARATION: PAYMENT OF
VACATION LEAVE**

(a) The agency shall pay an employee in a lump sum for vacation leave only at the time of separation.

(b) When separated from state service due to resignation, dismissal, or death, an employee shall be paid in a lump sum for accumulated vacation leave not to exceed a maximum of 240 hours. The employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation.

(c) When separated from state service due to service retirement, early retirement, or reduction in force, an employee may, at the discretion of the employee's supervisor, elect to exhaust vacation leave after the last day of work but prior to the effective date of the separation. All benefits accrue while leave is being exhausted including holidays that occur during the period. Unused leave not exhausted shall be paid in a lump sum not to exceed 240 hours. An employee who was reduced in force and who had over 240 hours of vacation leave at the time of separation shall have the excess leave reinstated when reemployed within one year. The date of separation is as follows:

- (1) If leave is exhausted, the last day of leave is the date of separation.

- (2) If no leave is exhausted, the last day of work is the date of separation.

(d) If an employee separates and is overdrawn on leave, the employing agency shall deduct the value of the overdrawn leave from the final salary check.

(e) The employing agency shall make a retirement deduction from all leave payments.

(f) Receipt of lump sum leave payment and retirement benefit is not considered as dual compensation.

(g) In the case of a deceased employee, the employing agency shall make a payment for unpaid salary, leave, and travel, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, the employing agency must make a payment in accordance with the provisions of G.S. 28A-25-6.

History Note: Authority G.S. 28A-25-6(a),(c); 126-4;

Eff. February 1, 1976;

Amended Eff. December 1, 1988; January 1, 1993;

Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989;

Amended Eff. December 1, 2008; December 1, 2007; July 1, 1995; March 1, 1989.

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) 431-3000. 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

Beecher R. Gray	Randall May
Selina Brooks	A. B. Elkins II
Melissa Owens Lassiter	Joe Webster
Don Overby	Shannon Joseph

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
Partnership T/A C Js Lounge v. ABC Commission	07 ABC 0201	Overby	03/11/08	
ABC Commission v. Rainbow Enterprises, Inc T/A Club N Motion	07 ABC 1532	Gray	06/20/08	23:05 NCR 489
Benita, Inc., T/A Pantana Bob's v. ABC Commission	07 ABC 1584	Overby	04/21/08	23:01 NCR 141
Original Grad, Inc/ T/A Graduate Food and Pub	07 ABC 1648	Joseph	02/25/08	
N.C. Alcoholic Beverage Control Commission v. Feest Inc. T/A Spankys Sports Bar and Grill	07 ABC 2135	Gray	09/12/08	
N.C. Alcoholic Beverage Control Commission v. Jenny S. Chanthalacksa T/A JB Food Mart	08 ABC 0097	May	09/03/08	
N.C. Alcoholic Beverage Control Commission v. Jenny S. Chanthalacksa T/A JB Food Mart	08 ABC 0351	May	09/03/08	
AM Enterprises of Fayetteville, Inc., T/A Izzy's Sports Bar v. ABC Commission	08 ABC 0371	Lassiter	06/13/08	
Bhavesh Corporation, T/A K&B Foomart v. ABC Commission	08 ABC 0508	Overby	05/19/08	
<u>CRIME VICTIMS COMPENSATION</u>				
Patricia Ginyard v. Crime Victim Compensation Commission	06 CPS 1720	Gray	05/27/08	
Carrie R. McDougal v. Victims Compensation Services Division	07 CPS 1970	Elkins	05/23/08	
Taereka S Johnson v. NC Crime Victims Compensation Commission	08 CPS 0402	Morrison	08/08/08	
Rich's Towing and Service Inc. v. NC Department of Crime Control And Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 0698	May	08/13/08	
Steel Supply and Erection Co., Department of Crime Control and Public Safety, Division of State Highway Patrol and Department of Revenue	08 CPS 0777	Overby	05/29/08	
Randy S. Griffin v. NC Crime Victims Compensation Commission	08 CPS 0995	May	09/11/08	
Interstate Crushing Inc. v. NC Dept. of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1086	Overby	09/29/08	
Sterett Equipment Company LLC v. N.C. Dept. of Crime Control And Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1206	Overby	09/29/08	
Bertrand E. Dupuis d/b/a New England Heavy Hauling v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1207	Overby	09/29/08	
Bulldog Erectors, Inc v. N.C. Department of Crime Control and Public Safety, Division of State Highway Patrol, Motor Carrier Enforcement Section	08 CPS 1208	Overby	09/29/08	
Continental Machinery Movers Inc. v. N.C. Department of Crime	08 CPS 1209	Overby	09/29/08	

CONTESTED CASE DECISIONS

Control and Public Safety, Division of State Highway Patrol,
Motor Carrier Enforcement Section
Michael Alan Moore v. Crime Victims Compensation Commission 08 CPS 1478 Lassiter 09/08/08
SOOF Trucking, Ray Charles Solomon v. Secretary of Crime Control 08 CPS 1526 Overby 09/09/08
And Public Safety

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS 06 DHR 0633 Lassiter 07/11/08
Gloria McNair Jean's Jewels v. Div. of Child Development, DHHS 06 DHR 1350 Lassiter 07/11/08

Character Builders, Inc., Clavon Leonard v. DMA, Developmental 07 DHR 0124 Elkins 08/07/08
Disabilities and Substance Abuse Services
Character Builders, Inc., Clavon Leonard v. DMA, Developmental 07 DHR 0125 Elkins 08/07/08
Disabilities and Substance Abuse Services
Arthur Burch and Margaret and Burch v. Department of Health and 07 DHR 0242 Brooks 04/30/08
Human Services
The "M" Company LLC, v. DHHS, DMA, Program Integrity 07 DHR 0429 Webster 05/29/08
Judy E. Pettus v. Office of Chief Medical Examiner, Thomas B. Clark, 07 DHR 0535 Webster 05/05/08
Iii, Md, Pathologist
Alterra Clare Bridge of Asheville v. DHHS, DFS, Adult Care 07 DHR 0914 Gray 06/06/08
Licensure Section
Shirley Brooks Dial v. Health Care Personnel Registry 07 DHR 0931 Webster 02/27/08
Midtown Food Mart #2, Kerab Giebrehiwot, Mehreteab Wooldeghebibel 07 DHR 1044 Webster 04/25/08
and Fesseha Zeru
Midtown Food Mart III, Chenet Hailesslassi and Fesseha Zeru v. DHHS 07 DHR 1045 Webster 04/28/08
Carolyn E. Reed v. DHHS, Division of Social Services Program Integrity 07 DHR 1214 Webster 07/21/08
AFDC/Work First
Mrs. Elizabeth Futrell v. Value Options 07 DHR 1331 Lassiter 06/09/08
Cornell Jones v. DHHS, Division of Health Services Regulation 07 DHR 1399 Joseph 04/22/08
Dianetta Foye v. Division of Child Development, DHHS, Services 07 DHR 1440 Joseph 05/07/08
Rufus Patrick Devers v. DHHS, Division of Health Service Regulation 07 DHR 1442 Joseph 05/29/08
Health Care Personnel Registry
Ray Dukes, Bright Future Learning Center v. DHHS, Division of Public 07 DHR 1473 Joseph 04/08/08
Health, Child and Adult Care Food Program
William Manning c/o Thyllis Smith, A Touch From the Heart Staff v. 07 DHR 1060 Webster 10/14/08
NC Department of Health and Human Services, Division of
Medical Assistance
Hospice of the Piedmont, Inc., v. DHHS, Division of Health Service 07 DHR 1617 Elkins 05/21/08
Regulation, Licensure and Certification Section and DHHS,
Division of Health Service Regulation, CON Section
Janice Addison v. Value Options 07 DHR 1618 Webster 05/16/08
Donna Hicks Crocker v. DHHS/DMA 07 DHR 1629 Joseph 08/01/08
Rebecca Dehart v. DHHS, Division of Health Service Regulation 07 DHR 1650 Elkins 05/21/08
Health Care Personnel Registry Section
Ellen Brown v. DHHS, Division of Health Service Regulation, Health 07 DHR 1651 Elkins 05/21/08
Care Personnel Registry Section
Joann Lennon v. Value Options Medicaid 07 DHR 1770 Webster 05/16/08
Angeline Currie v. DHHS 07 DHR 1986 Elkins 06/04/08
Tameala Jones v. OAH 07 DHR 1993 Webster 05/16/08
Dianetta Foye v. Division of Child Development, DHHS, Services 07 DHR 2020 Joseph 05/07/08
Lashauna Reid v. CCMHC (PFCS-Service Provider) 07 DHR 2039 Elkins 08/05/08
Presbyterian Diagnostic Center at Cabarrus LLC v. N.C. Department 07 DHR 2043 Lassiter 08/18/08
of Health and Human Services, Division of Health Service
Regulation and Southern Piedmont Imaging, LLC
Southern Piedmont Imaging, LLC v. N.C. Department of Health 07 DHR 2045 Lassiter 08/18/08
and Human Services, Division of Health Service Regulation and
Presbyterian Diagnostic Center at Cabarrus, LLC
Family & Youth Services, Inc. Angela Ford, President v. DHHS, 07 DHR 2057 Webster 05/16/08
Division of Medical Assistance Provider Services
Yolanda Jones v. DHHS, Adult Licensure Section 07 DHR 2081 Webster 05/16/08
Tianna Troy Legal guardian Mother Traci Lookadoo v. Value Option 07 DHR 2087 Elkins 05/23/08
Gary Carlton, Sr., v. DHHS 07 DHR 2099 Brooks 07/10/08
Alexis Ford/Linda M McLaughlin v. DHHS 07 DHR 2111 Elkins 06/04/08
Roger Houston v. DHHS, Div. of Health Service Regulation 07 DHR 2176 Gray 07/08/08
Dorothy L. Davis v. OAH 07 DHR 2179 May 07/02/08
Kevin McMillian/Linda M McLaughlin v. DHHS 07 DHR 2239 Elkins 06/04/08
Maurisha Bethea/Linda McLaughlin v. DHHS 07 DHR 2240 Elkins 06/04/08
Gladys Cherry v. NC Department of Health and Human Services 07 DHR 2288 Webster 10/10/08
Anna Fields v. Value Options 07 DHR 2326 Joseph 06/02/08

CONTESTED CASE DECISIONS

Larry Hopper v. DHHS	07 DHR 2356	May	06/20/08
Shelby Davis v. DHHS	08 DHR 0014	Lassiter	05/09/08
Hellon P. Johnson v. DHHS	08 DHR 0020	May	07/03/08
Lenora King v. DHHS	08 DHR 0034	Joseph	05/01/08
Forest Mewborn v. Health Care Personnel Registry	08 DHR 0043	Elkins	05/23/08
Wilma Jackson v. Value Options	08 DHR 0082	Joseph	06/02/08
Carmelita Wiggins v. Value Options	08 DHR 0198	Webster	05/16/08
Murphy's Outreach Community Developmental Services, Inc, d/b/a Outreach Home Health	08 DHR 0220	Joseph	07/22/08
Lisa Helms v. DHHS	08 DHR 0255	Overby	06/17/08
Pearlene Johnson Ivery v. DMA, Third Party Recovery (Medicaid)	08 DHR 0286	Brooks	07/07/08
Mamaue Aytch v. DHHS	08 DHR 0325	Elkins	05/23/08
Brenda McGilvary v. DHHS, Division of Social Services	08 DHR 0384	Webster	08/05/08
Fannie M. Wilson v. OAH	08 DHR 0393	Webster	06/17/08
Angela D Seabrooks/The Jabez House LLC v. DHHS/Division of Mental Health, Developmental and Substance Abuse Services, The Guilford	08 DHR 0403	Joseph	06/09/08
Angela D. Seabrooks/The Jabez House LLC v. NC Department of Health and Human Services, Division of Mental Health, Developmental Disabilities and Substance Abuse Services and The Guilford Center	08 DHR 0403	Joseph	09/03/08
William McCray Pretty v. DHHS, Division of Facility Services	08 DHR 0411	Webster	06/12/08
Focus Health Services, Inc. via Annette Johnson, Owner Operator v. North Carolina Department of Health and Human Services and Albemarle Mental Health Center for Developmental Disabilities and Substance Abuse Services	08 DHR 0442	Gray	06/12/08
Earline Ross (Quentin Galloway) v. DHHS (Medicaid)	08 DHR 0549	May	06/09/08
Frances Milligan v. DHHS	08 DHR 0566	May	06/19/08
Betty Williams v. DHHS	08 DHR 0570	Joseph	06/02/08
Susan Nelson v. Medicaid	08 DHR 0573	May	06/09/08
Brent Morris Per Dedrea Moors (Mother) v. Priscilla Valet, DMA	08 DHR 0585	May	06/09/08
Brenda M. Finney v. Medicaid	08 DHR 0586	Joseph	06/09/08
Allred & Allred Day Care Center, Inc. v. N.C. Department of Health and Human Services, Division of Public Health, Child And Adult Care Food Program	08 DHR 0617	May	06/04/08
Lakeva Robinson v. DMA/Value Options	08 DHR 0625	May	05/28/08
Ronald Lee Young v. N.C. Department of Health and Human Services	08 DHR 0631	Joseph	07/21/08
Tina Miller v. OAH, DHHS	08 DHR 0661	Lassiter	06/10/08
Doris Harris v. Division of Child Development	08 DHR 0710	May	07/02/08
Michelle D. Mills v. DHHS, Division of Health Service Regulation	08 DHR 0712	Joseph	06/09/08
Trena Ellis v. DHHS	08 DHR 0730	Lassiter	07/03/08
Faith Davis v. Pride in North Carolina Value Options	08 DHR 0746	Overby	05/28/08
Evonne Neal v. Medicaid	08 DHR 0748	May	06/20/08
Maria Dejesus Ruiz La Vaca Ramona v. N.C. Department of Health and Human Services	08 DHR 0760	Overby	07/24/08
Ray C. Price v. DHHS, Office of the Controller	08 DHR 0767	Brooks	07/07/08
Cheryl I Rice v. DHHS	08 DHR 0793	Overby	07/10/08
Destiny A Taylor v. Division of Child Development	08 DHR 0794	Gray	07/21/08
Shawanda Rayner v. Cherry Hospital	08 DHR 0797	Webster	10/10/08
Mary Ada Mills, Mary M. Mills MSA FCH v. Adult Care Licensure	08 DHR 0808	May	08/26/08
Lula Bowden v. OAH	08 DHR 0852	May	06/20/08
Donovan Harris v. Value Options	08 DHR 0894	May	06/19/08
Gabrielle Lloyd v. DHHS, Division of Health Service Regulation	08 DHR 0905	May	09/22/08
Janice Chavis v. DHHS	08 DHR 0923	Lassiter	05/19/08
Frankie Nicole Carter v. DHHS, Division of Health Service Regulation	08 DHR 0929	Brooks	06/19/08
Christine Maria Plyer v. Medicaid Reimbursement	08 DHR 0949	Mann	06/18/08
Margaret Mubanga v. NC Department of Health and Human Services	08 DHR 0961	Gray	08/25/08
Evangeline Ingram v. Value Options	08 DHR 0997	Gray	06/10/08
Marcia Veronica Harris v. Department of Health and Human Services, Division of Health Service Regulation	08 DHR 0169	Lassiter	08/11/08
Maureen Jordan parent of Destinne Jordan v. Value Options	08 DHR 1005	Gray	06/19/08
Triangle Alternative Inc. Dorothy George v. Office of Administrative Hearings	08 DHR 1012	May	07/21/08
Terrie P Hill dba Positive Care MHL 041-595 2203 Wanda Drive v. N.C. Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1015	Lassiter	09/12/08
Terrie P Hill dba Positive Care II MHL 041-633 3406 Fern Place v. NC Department of Health and Human Services, Division of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1016	Lassiter	09/12/08
Terrie P Hill dba Positive Care II MHL 041-765 3406 Fern Place v. NC Department of Health and Human Services, Division of	08 DHR 1017	Lassiter	09/12/08

CONTESTED CASE DECISIONS

Health Service Regulation, Mental Health Licensure and Certification Section			
Mario Jackson v. DHHS	08 DHR 1024	Overby	06/19/08
Adam L. Powell v. NC Department of Health and Human Services	08 DHR 1030	Lassiter	09/05/08
Edwin F. Clavijo, El Exito v. NC Department of Health and Human Services, Division of Public Health, Nutrition Services Branch	08 DHR 1034	Lassiter	09/15/08
Linda F. Ellison v. NC Department of Health and Human Services and or EDS	08 DHR 1035	Joseph	07/09/08
Doris Smith v. Health Care Personnel Registry	08 DHR 1238	Brooks	08/08/08
Latrish T. Perry v. Department of Health and Human Services	08 DHR 1023	Webster	08/29/08
Martha Washington Harper v. DSS	08 DHR 1041	Brooks	06/23/08
Mary K. Tulay v. DHHS	08 DHR 1055	Joseph	07/09/08
Gwendolyn F. Gulley v. NC Department of Health and Human Services, Division of Health Service Regulation, Adult Care Licensure Section	08 DHR 1062	Overby	09/09/08
Rhonda Jones v. Value Options	08 DHR 1064	Webster	07/18/08
One Love Developmental Services v. Division of Health Service Regulation, Department of Health and Human Services	08 DHR 1068	Lassiter	07/25/08
Jona Turner v. Office of Administrative Hearings	08 DHR 1092	Webster	07/18/08
Tonia Chatman Davis v. N.C. Department of Health and Human Services	08 DHR 1141	Lassiter	07/28/08
Mary M. Branch v. North Carolina Dept of Health and Human Services, Value Options	08 DHR 1174	Elkins	08/11/08
Haywood Miller, Bobby Jean Graves Miller v. DHHS, Mental Health Licensure Certification Section	08 DHR 1181	Overby	07/01/08
Jan Williams v. Value Options, DHHS	08 DHR 1231	Overby	07/09/08
Heather Peete v. OAH	08 DHR 1281	Lassiter	07/02/08
Ann Moody v. DHHS	08 DHR 1299	Webster	07/18/08
Khahada Kirby v. Value Options	08 DHR 1310	Webster	07/18/08
Amir Abusamak v. N.C. Department of Health and Human Services	08 DHR 1325	Gray	07/16/08
Big Z Supermarket, Abdul Hamdan v. Cory Menees, NC Dept. of Health and Human Services	08 DHR 1343	Overby	08/27/08
Alesia Alwahishi dba Brotherhood Market	08 DHR 1356	Gray	07/22/08
Nigel Brown v. Value Options	08 DHR 1358	Gray	08/29/08
Michael Grondahl v. DHHS	08 DHR 1491	Gray	08/01/08
Tyechia Jones v. Value Options/DHHS	08 DHR 1492	Mann	09/18/08
Kelly A Schofield MD – Clinical Director Youth Quest Inc. v. N.C. Department of Health Service Regulation, Mental Health Licensure and Certification Section	08 DHR 1505	Lassiter	09/08/08
Edward Kenneth Smith v. NC Department of Health and Human Services, Division of Health Service Regulation	08 DHR 1537	Lassiter	09/16/08
Elsie Mae Joiner v. Health Care Registry DHHS	08 DHR 1560	Lassiter	09/11/08
Margaret Brack for Elgin Brack v. Value Options Emery Milliken DHHS	08 DHR 1576	Lassiter	08/27/08
Evans Momanyi Mose v. DHHS, Division of Health Service Regulation	08 DHR 1591	Webster	10/01/08
Draughton's Supermarket, Betty Draughton v. Cumberland County Health Dept. WIC Office	08 DHR 1592	Gray	08/25/08
Brittany Brown v. Value Options	08 DHR 1599	Webster	10/10/08
Tyvonne Sheri Glenn v. Value Options	08 DHR 1628	May	09/19/08
Amanda Hennes v. N.C. Department of Health and Human Services	08 DHR 1696	Gray	09/22/08
Bobbie L Cribb v. Office of Administrative Hearings	08 DHR 1714	Gray	09/08/08
Irene McLendon/Mikala McLendon v. Value Options	08 DHR 1722	Webster	10/01/08
Keyanna Byrd v. DHHS	08 DHR 1751	Webster	10/01/08
Janelle Gatewood v. Value Options	08 DHR 1763	Webster	10/10/08
Roxanne Haughton v. Value Options/DMA	08 DHR 1799	Elkins	10/14/08
Joshua Dmae Thompson (Consumer) Sebrena Yvett Thompson (Mother) v. Department of Mental Health	08 DHR 1844	Webster	10/01/08

DEPARTMENT OF JUSTICE

Jamu Kimyakki Sanders v. N.C. Criminal Justice Education And Training Standards Commission	06 DOJ 1741	May	08/29/08
Dallas Ray Joyner v. Criminal Justice Education and Training Standards Commission	07 DOJ 0719	Overby	04/15/08
Richard Junior Hopper v. Private Protective Services Board	07 DOJ 1071	Webster	02/21/08
Sheldon Avery McCoy v. Criminal Justice Education and Training Standards Commission	07 DOJ 1162	Mann	04/07/08
David Steven Norris v. Private Protective Services Board	07 DOJ 1256	Elkins	04/16/08
Scott McLean Harrison v. North Carolina Criminal Justice Education And Training Standards Commission	07 DOJ 1330	Webster	06/24/08
Brian Campbell v. Department of Justice, Company Police Program	07 DOJ 1344	Webster	02/25/08
John Mark Goodin v. Alarm Systems Licensing Board	07 DOJ 1405	Lassiter	04/04/08

CONTESTED CASE DECISIONS

James Lee Rodenberg v. Depart. of Justice, Company Police Program	07 DOJ 1434	Webster	02/25/08
Michael L. Scriven v. Private Protective Services Board	07 DOJ 1483	Elkins	03/25/08
Lamuel Tommy Anderson v. North Carolina Department of Justice Campus Police Program	07 DOJ 1500	Joseph	06/03/08
Roger Wayne Mungo, Jr., Sheriffs' Education and Training Standards Commission	07 DOJ 1510	Overby	05/19/08
Steven L. Haire v. North Carolina Department of Justice, Campus Police Program	07 DOJ 1558	Joseph	05/22/08
Timothy Daniel McFalls v. N.C. Criminal Justice Education and Training Standards Commission	07 DOJ 1712	May	09/03/08
Iris Nina Bumpass v. Criminal Justice Education and Training Standards Commission	07 DOJ 2071	Webster	05/16/08
Michael Gerald Copeland v. Private Protective Services Board	07 DOJ 2286	Gray	07/17/08
Leigh Ann Branch v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0177	Gray	06/23/08
Jimmy Dean Poston v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0179	Webster	08/28/08
Katheryn Renee Johnson v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 0180	Brooks	06/18/08
Gerald Boyce Bond, Jr. v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0181	Gray	07/14/08
Lamar Krider v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0183	Gray	06/20/08
John Edward Isaacks, Jr. v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 0184	May	06/18/08
Anthony Ray Haynie v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0207	Brooks	08/06/08
Joseph Shane Johnston v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0209	Lassiter	10/07/08
Anthony Ray Haynie v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 0532	Brooks	08/06/08
Jonathan R. Elam v. Private Protective Services Board	08 DOJ 0568	Webster	05/08/08
Wilford Odell Hamlin v. Private Protective Services Board	08 DOJ 0713	Joseph	05/01/08
Stephen Joseph Ciliberti v. N.C. Private Protective Services Board	08 DOJ 0858	Gray	07/15/08
Deborah Moore Anderson v. North Carolina Sheriffs' Education And Training Standards Commission	08 DOJ 1038	Brooks	05/28/08
Dustin Elvin Campbell v. Criminal Justice Education and Training Standards Commission	08 DOJ 1078	Lassiter	07/14/08
Cynthia Kay Saintsing v. Criminal Justice Education and Training Standards Commission	08 DOJ 1079	Lassiter	07/14/08
Timothy C. Darrh v. DHHS/Value Options	07 DOJ 1239	Overby	07/07/08
David Alan Moore v. North Carolina Private Protective Services Board	08 DOJ 1264	Morrison	07/21/08
Gregory Alan Hooks v. NC Alarm Systems Licensing Board	08 DOJ 1265	Morrison	07/10/08
Jesse Adam Salmon v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 1270	Overby	09/15/08
Tina Ann Ward v. N.C. Sheriffs' Education and Training Standards Commission	08 DOJ 1273	Gray	08/29/08
P.J. Shelton v. NC Sheriffs' Education and Training Standards Commission	08 DOJ 1274	Brooks	10/10/08

DEPARTMENT OF LABOR

Sandra Leroux, Leroux Entertainment Corporation d/b/a Spectacular Events! V. DOL	08 DOL 0754	May	07/08/08
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DEPARTMENT OF TRANSPORTATION

Kevin Douglas v. Dept. of Justice Criminal Justice Standards, DMV License and Theft, Holly Springs Police Department	07 DOT 2221	Webster	05/12/08
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DEPARTMENT OF STATE TREASURER

Trevor Allan Hampton v. N.C. State Retirement Systems	07 DST 1493	Overby	09/08/08
Patricia V. Leonard v. State Treasurer/Retirement Systems Division	07 DST 1928	Lassiter	03/12/08

William S. Greene v. DST, Retirement Systems Division	08 DST 0235	Gray	07/16/08
Jerry Alan Reese v. DST, State and Local Finance Division and the Local Government Commission	08 DST 0256	Morrison	07/25/08

23:05 NCR 524

EDUCATION, STATE BOARD OF

Bradford Dale Gulley v. Depart. of Education Attorney Generals Office	07 EDC 1486	Webster	05/16/08
Lucretia Burrus v. State Board of Education	07 EDC 2210	Webster	05/16/08

CONTESTED CASE DECISIONS

Gregory Bates v. DPI, Licensure Section	07 EDC 2238	Gray	04/30/08
Heather S. Brame v. State Board of Education	07 EDC 2287	Joseph	05/07/08
Nancy L. Ashburn v. NC Department of Public Instruction	07 EDC 2357	Brooks	08/19/08
Sandra Chesser v. State Board of Education	08 EDC 0022	May	04/30/08
Terry L. Moore v. N.C. Department of Public Instruction	08 EDC 0386	Morrison	07/22/08
Len Stevenson Smith v. North Carolina Department of Public Instruction	08 EDC 0215	May	08/26/08
Hubert Thomas Byrum v. Office of State Superintendent	08 EDC 0619	Gray	06/04/08
Gary Alan Cooper v. N.C. State Board of Education	08 EDC 0920	Gray	08/01/08
Selena Blad v. NC Board of Education	08 EDC 1316	Brooks	09/17/08

DEPT. OF ENVIRONMENT AND NATURAL RESOURCES

Henry S. Cowell, III and Carolyn Dressler v. DENR, Div. of Coastal Management	06 EHR 1185	Brooks	05/30/08	23:05 NCR 501
Robin R. Moore v. DENR, Division of Waste Management	06 EHR 1479	Lassiter	03/24/08	
NC Coastal Federation v. DENR, Division of Coastal Management and Wind over Waves, LLC	07 EHR 0345	Lassiter	04/07/08	
John B. Chastain, Jr., W.B. Chastain v. N.C. Department of Environment and Natural Resources	07 EHR 0722	Brooks	06/26/08	
Terry Hill DAQ 2007-015 v. DENR, Division of Air Quality	07 EHR 0937	Morrison	04/08/08	
Frank Home Construction, Inc. v. Division of Water Quality	07 EHR 1061	Webster	05/12/08	
Durham Land Associates LLC v. County of Durham, Engineering Department	07 EHR 1140	Overby	08/20/08	
Durham Land Associates LLC v. County of Durham, Engineering Department	07 EHR 1141	Overby	08/20/08	
Dennis L. Jude v. NC Department of Environment and Natural Resources	07 HER 1238	Webster	08/20/08	
Martha and Charles Morton v. N.C. Department of Environment And Natural Resources	07 EHR 1297	Overby	06/02/08	
Kenneth & Mary Anne Sutton v. DENR, Division of Coastal Management	07 EHR 1316	Overby	05/09/08	
William Lewell Huff v. N.C. Department of Environment and Natural Resources	07 EHR 1579	Overby	06/02/08	
Stridemark, LLC v. North Carolina Department of Environment and Natural Resources, Division of Air Quality	07 EHR 1564	Webster	07/17/08	
Gleason James v. Appalachian District Health Department	07 EHR 2073	Brooks	09/05/08	
Frank Myers Investments, LLC v. DENR	07 EHR 2377	May	05/28/08	
W Russell Overman Martin County Water & Sewer District v. DENR Public Water Supply Section	08 EHR 0345	Gray	06/10/08	
Ray Poole's Park, Jean Poole v. DENR, Public Water Supply Section	08 EHR 0563	Joseph	05/16/08	
Joe S. Edge Sr. v. N.C. Department of Environment and Natural Resources	08 HER 0757	Gray	09/17/08	
Donald Lindsay v. Cherokee County Health Dept.	08 EHR 0764	Brooks	07/10/08	
Joel M. Walker v. Division of Water Quality Well Contractors Certification Commission	08 EHR 0985	Joseph	06/11/08	
Eddie Verdis Hood v. N.C. Department of Environment and Natural Resources	08 EHR 1073	Overby	07/30/08	
Research Triangle Institute v. Division of Waste Management, Hazardous Waste Section, DENR	08 EHR 1100	Overby	07/11/08	
Tracie Locklear, Ammie Brewer-James, Native Designs Hair & Tanning Salon v. DENR, Health Radiation Protection	08 EHR 1143	Gray	7/17/08	
Donna C Garrett v. Cherokee County Health Dept., Environmental Health Division	08 EHR 1246	Brooks	09/09/08	
Roray Kent Mishak, Town of China Grove v. NCDENR, Public Water Supply Section	08 EHR 1573	Brooks	09/08/08	

DEPARTMENT OF INSURANCE

Sandra Vanderbeek v. Teachers' and State Employees' Comprehensive Major Medical Plan	07 INS 1130	Overby	03/12/08
Nettie C Minshew v. North Carolina State Health Plan	07 INS 1319	Gray	09/08/08
Alesha D Carter v. State Health Plan	07 INS 1858	Lassiter	05/19/08

MISCELLANEOUS

Kevin Edral Douglas v. Wake County District Attorney, DMV	07 MIS 1976	Webster	05/12/08
Jeannie L Day v. City of Asheville Control, Brenda Sears Officer White	08 MIS 0895	Brooks	08/18/08
Promise Land Ministries Inc., Joel K. Wilson v. Mitchell County Tax Assessor and Board of Equalization	08 MIS 1447	May	09/17/08

OFFICE OF STATE PERSONNEL

CONTESTED CASE DECISIONS

Marsha A Early v. Durham County Department of Social Services	01 OSP 0279	Lassiter	04/02/08	
Cheryl Best v. Columbus County Department of Social Services	06 OSP 2206	Lassiter	09/10/08	
Scott Burgess v. N.C. Department of Crime Control and Public Safety, N.C. Highway Patrol	07 OSP 0052	Gray	07/16/08	
Divina P. Shields v. North Carolina State University	07 OSP 0317	Lassiter	07/11/08	
Jacqueline B. Maynard v. UNC	07 OSP 0575	Webster	04/08/08	
Warren R. Follum v. NCSU	07 OSP 0577	Webster	03/21/08	
Sharon P. House v. UNC	07 OSP 0630	Webster	04/08/08	
Pam Moses v. Macon County Health Department	07 OSP 0945	Overby	06/30/08	
Cassandra F. Barner v. Halifax County Department of Social Serv.	07 OSP 1186	Joseph	05/16/08	23:05 NCR 528
Michael Shelton Woody v. DENR, Division of Forest Resources	07 OSP 1255	Brooks	05/13/08	
Kellee M. Buck v. Dare County Department of Social Services	07 OSP 1385	Overby	05/27/08	
Dennis E. Hrynkow v. Dept. of Insurance	07 OSP 1400	Joseph	04/03/08	
Stacey M. Gasgue v. N.C. Department of Corrections	07 OSP 1479	Overby	06/09/08	
James Dobaly v. North Carolina Department of Health and Human Services	07 OSP 1873	Lassiter	07/02/08	
Adley K. Prager v. Dept. of Crime Control and Public Safety and Butner Public Safety	07 OSP 2011	Webster	05/29/08	
Charlene J. Shaw v. Peter Bucholz, Hoke Correctional Institution	07 OSP 2012	Joseph	04/07/08	
Jacqueline Burkes v. DOC, Hoke 4320, Mr. Peter Bucholz	07 OSP 2047	Joseph	04/07/08	
Charles Jones v. Bryan Beatty, Secretary of Crime Control & Public Safety and The Dept. of Crime Control & Public Safety (NC Highway Patrol)	07 OSP 2222	Morrison	06/05/08	23:01 NCR 147
Norman K. Goering v. Crime Control and Public Safety, Highway Patrol	07 OSP 2256	Joseph	07/29/08	23:05 NCR 547
Kimberly James v. UNC-Charlotte	08 OSP 0146	Webster	05/08/08	
Nancy Hester v. Guilford County AOC Pretrial Services	08 OSP 0224	Overby	06/19/08	
Ray Stanford Williams Jr. v. NC Department of Cultural Resources	08 OSP 0529	Morrison	08/19/08	
Laura L. Holliman v. Caledonia Correctional Inst.	08 OSP 0591	Gray	07/08/08	
Ashley K. Severson v. Greene County	08 OSP 0611	Joseph	07/29/08	
Sharon V Blackmon v. Office of Administrative Hearings	08 OSP 0624	Gray	09/19/08	
Richard D. Lincoln v. DOT	08 OSP 0801	Gray	05/27/08	
Robert M. Hewitt v. Morrison Correctional Institute	08 OSP 0971	Gray	06/26/08	
Kenyatta Burrus v. Craven County Clerk of Superior Court	08 OSP 1089	Overby	06/12/08	
Dexter J. Hill v. Department of Agriculture and Consumer Services	08 OSP 1167	Overby	07/08/08	
Rita McKeithan v. Stanly County Department of Social Services	08 OSP 1240	May	08/26/08	
Dianna Humphrey v. Caswell Center	08 OSP 1327	Lassiter	07/02/08	
Charles Godwin v. NC Department of Crime Control and Public Safety	08 OSP 1463	Lassiter	07/28/08	
Vincent Morton v. Cherry Hospital	08 OSP 1497	Webster	09/16/08	
Kyla Solomon v. Office of Citizen Services	08 OSP 1547	Lassiter	07/22/08	
Richard Manson v. NC A&T State University	08 OSP 1561	Brooks	09/25/08	
Richard T Ward v. NC DOT Ferry Division	08 OSP 1617	Lassiter	08/27/08	
Patrice A Bernard v. NC A&T	08 OSP 1724	Gray	09/18/08	

RESPIRATORY CARE BOARD

Angelique Thompson v. Respiratory Care Board	07 RCB 1176	Gray	03/13/08	23:01 NCR 153
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DEPARTMENT OF REVENUE

Parker Bark Company Inc. v. Department of Revenue	08 REV 1228	Overby	06/17/08	
Deandra A. Scott v. Department of Revenue	08 REV 1180	Overby	07/01/08	
Goretty Williams v. Department of Revenue	08 REV 1227	Overby	07/08/08	
Anthony Chad Bynum v. Department of Revenue	08 REV 1268	Overby	07/09/08	

OFFICE OF SECRETARY OF STATE

Richard C Garrard Jr. v. NC Department of Secretary of State	07 SOS 2080	Brooks	09/12/08	
Bennett Jeffrey Packer v. North Carolina Department of The Secretary of State	07 SOS 2241	May	06/09/08	
Hope Taylor (formerly Taylor-Guevara) v. North Carolina Department of The Secretary of State	07 SOS 2280	Joseph	05/21/08	
Robert C Garrard Jr. v. NC Department of Secretary of State	08 SOS 0523	Brooks	09/12/08	
Wendy Branch Miller v. SOS	08 SOS 1018	Lassiter	07/14/08	

UNC HOSPITALS

Charity Smith v. UNC Hospitals	08 UNC 0533	Gray	07/28/08	
Jimmy L. Holder v. UNC Hospitals	08 UNC 0589	May	07/29/08	
Barbara C. King v. UNC Hospitals	08 UNC 0805	May	07/29/08	
Eva Kali Green v. UNC Hospitals	08 UNC 0841	May	09/22/08	
Kaprina Wells v. UNC Hospitals	08 UNC 0860	Gray	07/28/08	

CONTESTED CASE DECISIONS

Rolie Adrienne Webb "Andi" v. UNC Hospitals	08 UNC 0881	Gray	06/11/08
Marcus M. McCullers v. UNC Hospitals	08 UNC 0928	Gray	07/30/08
Satarah K. Latiker v. UNC Hospitals	08 UNC 0952	May	08/21/08
Mary C. Gessell v. UNC Hospitals	08 UNC 0981	Joseph	09/18/08
Richard and Amy Whitt v. UNC Hospitals	08 UNC 1048	May	08/15/08
John G Sell v. UNC Hospitals	08 UNC 1334	Joseph	08/26/08

WELL CONTRACTORS CERTIFICATION COMMISSION

Charles P. Pool v. Well Contractors Certification Commission	08 WCC 0514	Gray	07/15/08
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WILDLIFE RESOURCES COMMISSION

Lisa Roddy v. Wildlife Resources Commission	08 WRC 0970	Brooks	06/24/08
Rickey Dale Logan	08 WRC 1229	Lassiter	07/28/08