

The **NORTH CAROLINA REGISTER**

IN THIS ISSUE

EXECUTIVE ORDER

IN ADDITION

**Department of Human Resources
Tax Review Board**

PROPOSED RULES

**Administration
Commerce
Environment, Health, and Natural Resources
Human Resources
Justice
Landscape Architects
Medical Examiners
Public Education**

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RRC OBJECTIONS

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RULES INVALIDATED BY JUDICIAL DECISION

CONTESTED CASE DECISIONS

ISSUE DATE: March 15, 1993

Volume 7 • Issue 24 • Pages 2624 - 2849



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the *North Carolina Administrative Code* (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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NORTH CAROLINA REGISTER
Publication Schedule
(August 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	*Earliest Effective Date
*****	*****	*****	*****	*****	*****	*****
08/03/92	07/13/92	07/20/92	08/18/92	09/02/92	09/20/92	11/02/92
08/14/92	07/24/92	07/31/92	08/29/92	09/13/92	09/20/92	11/02/92
09/01/92	08/11/92	08/18/92	09/16/92	10/01/92	10/20/92	12/01/92
09/15/92	08/25/92	09/01/92	09/30/92	10/15/92	10/20/92	12/01/92
10/01/92	09/10/92	09/17/92	10/16/92	10/31/92	11/20/92	01/04/93
10/15/92	09/24/92	10/01/92	10/30/92	11/14/92	11/20/92	01/04/93
11/02/92	10/12/92	10/19/92	11/17/92	12/02/92	12/20/92	02/01/93
11/16/92	10/23/92	10/30/92	12/01/92	12/16/92	12/20/92	02/01/93
12/01/92	11/06/92	11/13/92	12/16/92	12/31/92	01/20/93	03/01/93
12/15/92	11/24/92	12/01/92	12/30/92	01/14/93	01/20/93	03/01/93
01/04/93	12/09/92	12/16/92	01/19/93	02/03/93	02/20/93	04/01/93
01/15/93	12/22/92	12/31/92	01/30/93	02/14/93	02/20/93	04/01/93
02/01/93	01/08/93	01/15/93	02/16/93	03/03/93	03/20/93	05/03/93
02/15/93	01/25/93	02/01/93	03/02/93	03/17/93	03/20/93	05/03/93
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05/14/93	04/23/93	04/30/93	05/29/93	06/13/93	06/20/93	08/02/93
06/01/93	05/10/93	05/17/93	06/16/93	07/01/93	07/20/93	09/01/93
06/15/93	05/24/93	06/01/93	06/30/93	07/15/93	07/20/93	09/01/93
07/01/93	06/10/93	06/17/93	07/16/93	07/31/93	08/20/93	10/01/93
07/15/93	06/23/93	06/30/93	07/30/93	08/14/93	08/20/93	10/01/93
08/02/93	07/12/93	07/19/93	08/17/93	09/01/93	09/20/93	11/01/93
08/16/93	07/26/93	08/02/93	08/31/93	09/15/93	09/20/93	11/01/93
09/01/93	08/11/93	08/18/93	09/16/93	10/01/93	10/20/93	12/01/93
09/15/93	08/24/93	08/31/93	09/30/93	10/15/93	10/20/93	12/01/93
10/01/93	09/10/93	09/17/93	10/16/93	10/31/93	11/20/93	01/04/94
10/15/93	09/24/93	10/01/93	10/30/93	11/14/93	11/20/93	01/04/94
11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

EXECUTIVE ORDER NUMBER 3
TRANSFERRING THE "KEEP AMERICA BEAUTIFUL" PROGRAM
FROM THE OFFICE OF THE GOVERNOR
TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

IT BEING FOUND that the "Keep America Beautiful" Program can be more economically, efficiently, and effectively performed by that program being removed from the Office of the Governor and transferred to and relocated in the Department of Environment, Health, and Natural Resources ("DEHNR");

THEREFORE, pursuant to the authority and powers given to me as Governor by Article III, Section 5(10) of the Constitution and North Carolina General Statute 143A-8 and 143B-12, **IT IS ORDERED:**

Section 1. The State Coordinator position for the "Keep America Beautiful" Program located in the Office of the Governor (position number 30002-0000-0000-311), is hereby removed from that office and transferred to and relocated in DEHNR, subject to and under the direct supervision of the Office of Environmental Education. This shall be treated as a Type I transfer under N.C.G.S. 143A-6(a).

Section 2. The Governor's Office of Citizens Affairs, DEHNR, Office of State Personnel, and the Office of State Budget and Management shall do any action required to effect this transfer and relocation.

Section 3. Reports of this transfer and relocation shall be made as required by N.C.G.S. 143B-12(b). My Associate General Counsel is directed to do the same.

Section 4. This Order shall be effective immediately.

Done in the Capitol City of Raleigh, North Carolina, this the 23rd day of February, 1993.

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE TAX REVIEW BOARD

In the matter of:

The Proposed Assessments of corporate
income tax for the taxable years 1986,
1987, and 1988 by the Secretary of Revenue
against Benton Woods, Inc.

ADMINISTRATIVE

DECISION NUMBER: 268

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 25 November 1992, upon the petition of **Benton Woods, Inc.** for review of a Final Decision of the Deputy Secretary of Revenue entered 5 October 1990 sustaining proposed assessments of additional corporate income tax for the tax years 1986, 1987, and 1988. A copy of the Final Decision of the Deputy Secretary is attached hereto as Exhibit 1.

Findings of Fact

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, adopts the Findings of Fact contained in the Final Decision of the Deputy Secretary in this matter and makes the following additional Findings of Fact:

1. Each of the submerged corporations which were the source of the net economic losses disallowed were principally in the business of construction and land development, the same business which is the principle activity of the Petitioner.
2. The Petitioner had sound business reasons for merging the submerged corporations into the Petitioner, including the reduction of administrative and tax compliance burdens.
3. Ben R. Tillotson Jr., who holds all of the stock of the Petitioner, also held all of the stock of the submerged corporations at the time of the merger.
4. Mr. Tillotson, through the three submerged corporations and through the Petitioner, was and is in the business of construction (primarily residential) and land development.

Conclusions of Law

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, based on the Findings of Fact made by the Deputy Secretary and on its own Findings of Fact, makes the following Conclusions of Law:

1. G.S. 105-130.8 is patterned after the net operating loss carryover deduction found in the 1939 Internal Revenue Code. The North Carolina Supreme Court has required the Secretary of Revenue to apply the 1939 Internal Revenue Code and cases arising thereunder in resolving disputes arising under G.S. 105-130.8. See Distributors v. Shaw, Commissioner of Revenue, 247 N.C. 157, 100 S.E.2d. 334 (1957).
2. Pursuant to G.S. 105-130.8, the net economic losses claimed by the Petitioner may be used by the Petitioner to offset its income for the years at issue if the "continuity of business enterprise test" is met. See Libson Shops, Inc. v. Koehler, 353 U.S. 382, 1 L.Ed.2d 924, 77 S.Ct. 990 (1957). See also Fieldcrest Mills, Inc. v. Coble, 290 N.C. 586 (1976).

3. The Deputy Secretary erred in denying the net economic loss carryovers claimed by the Petitioner. The Petitioner is entitled to use these losses to offset its income for the following reasons: (1) the Petitioner is 100% owned by a single individual, Mr. Tillotson, who also owned 100% of each of the three submerged corporations, thus there is a complete continuity of ownership between the submerged corporations and the Petitioner; (2) there was a substantial business purpose for the merger of the three submerged corporate entities into the Petitioner, namely that the administrative and tax compliance burden of operating one corporation is less than that of operating three corporations; and (3) the three submerged corporations and the Petitioner were all involved in the same business, construction and land development. In the Board's view, the losses at issue meet the "continuity of business enterprise test". The losses at issue were generated by the same business enterprise that generated the income against which these losses were claimed.
4. The Board concurs with the Petitioner that the Deputy Secretary erred, on the facts presented here, in concluding as a matter of law that the Petitioner had the burden of proving that the Petitioner was using the identical assets owned by the submerged corporations. Instead, the Board focused on the business enterprise conducted by the submerged corporations and the Petitioner, concluding that the Petitioner was the successor to the submerged corporations in the same business enterprise that gave rise to the net economic losses carried forward.

Decision

IT APPEARING TO THE BOARD, as set forth above, that the net economic losses claimed by the Petitioner meet the continuity of business enterprise test in all respects;

IT IS THEREFORE ORDERED that the Petitioner is entitled to apply the net economic losses at issue in this matter against its income for the tax years 1986, 1987, and 1988, and that the Final Decision of the Deputy Secretary of Revenue in this matter is **REVERSED**.

Entered this the 16th day of February, 1993.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

William W. Redman Jr.
Chairman, Utilities Commission

Jeff D. Batts

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE TAX REVIEW BOARD

In the matter of:

The Proposed Assessments of Additional

Sales Tax for the period 1 May 1983

through 31 March 1989 by the Secretary

of Revenue against Samuel B. Somersett

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ADMINISTRATIVE

DECISION NUMBER: 269

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 25 November 1992, upon the petition of **Samuel B. Somersett** for review of a Final Decision of the Deputy Secretary of Revenue entered 14 December 1990 sustaining proposed assessments of additional sales tax for the period 1 May 1983 through 31 March 1989. At the hearing, counsel for the Department of Revenue made a motion to dismiss the petition on the grounds that the Petitioner's notice of intent was not timely filed with the Board as required by G.S. 105-241.1(a)(1). The Board, finding no evidence in the record as to the actual date upon which the Final Decision of the Deputy Secretary was mailed to the Petitioner, denies the motion to dismiss.

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law made by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary of Revenue is confirmed in every respect.

Entered this the 16th day of February, 1993.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

William W. Redman Jr.
Chairman, Utilities Commission

Jeff D. Batts

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE TAX REVIEW BOARD

In the matter of:

The Proposed Assessments of Additional
 Sales and Use Tax for the period 1 January
 1982 through 30 June 1987 by the Secretary
 of Revenue against Jeffrey W. Potter,
 William H. Potter, and J.W. Potter
 Associates a partnership.

ADMINISTRATIVE

DECISION NUMBER: 271

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 25 November 1992, upon the petition of **Jeffrey W. Potter, William H. Potter, and J.W. Potter Associates** a partnership, for review of a Final Decision of the Deputy Secretary of Revenue entered 17 April 1991 sustaining proposed assessments of additional sales and use tax for the period 1 January 1982 through 30 June 1987.

AND IT APPEARING TO THE BOARD that the findings of fact made by the Deputy Secretary of Revenue were fully supported by competent evidence of record, that the conclusions of law by the Deputy Secretary were fully supported by the findings of fact, and that the decision by the Deputy Secretary was fully supported by the conclusions of law;

IT IS THEREFORE ORDERED that the Final Decision of the Deputy Secretary Of Revenue is confirmed in every respect.

Entered this the 16th day of February, 1993.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
 State Treasurer

William W. Redman Jr.
 Chairman, Utilities Commission

Jeff D. Batts

STATE OF NORTH CAROLINA

BEFORE THE TAX REVIEW BOARD

COUNTY OF WAKE

In the matter of:)	
The Denial of Refunds for the months of)	
May through November, 1989 by the)	ADMINISTRATIVE
Secretary of Revenue against Precision)	DECISION NUMBER: <u>272</u>
Fabrics Group, Inc.)	
)	

THIS MATTER was heard before the undersigned duly appointed and acting members of the Tax Review Board at its regular meeting in the City of Raleigh on 25 November 1992, upon the petition of **Precision Fabrics Group**, for review of a Final Decision of the Deputy Secretary of Revenue entered 14 June 1991 denying in part the Petitioner's request for a refund of withholding tax late filing penalties. The Petitioner sought refund of \$98,017.81 representing 25% late filing penalties for the months of May through November, 1989. The Deputy Secretary reduced the penalties to 10% and refunded \$58,810.69. The Petitioner sought a refund of the remaining penalties paid.

Findings of Fact

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, adopts the Findings of Fact contained in the Final Decision of the Deputy Secretary in this matter and makes the following additional Finding of Fact:

1. The Petitioner's failure to timely file reports of North Carolina withholding tax for the months of May through November, 1989 was not the result of Petitioner's failure to exercise due diligence in moving to an independent accounting system. Instead, the failure was the result of the inadvertent neglect of a single individual who, instead of bringing the problem to the attention of management when it was discovered, paid the penalties and attempted to cover up the mistake.
2. Acting on the same set of facts, both the State of Virginia and the Internal Revenue Service refunded penalties paid by the Petitioner in full.
3. The Petitioner has shown reasonable cause for its failure to timely file reports of North Carolina withholding tax for the months of May through November, 1989.

Conclusions of Law

THE TAX REVIEW BOARD, having reviewed the Petition, briefs, and record filed in this matter, based on the Findings of Fact made by the Deputy Secretary and on its own Findings of Fact, makes the following Conclusion of Law:

1. The Board concludes as a matter of law, based on all the facts and circumstances present in this case, that the Petitioner has met its burden of showing that there was reasonable cause for the Petitioner's failure to timely file reports of North Carolina withholding tax for the months of May through November, 1989 and is entitled to a full refund of the penalties paid.

Decision

IT APPEARING TO THE BOARD, as set forth above, that the Petitioner met its burden of showing reasonable cause for its failure to timely file the reports at issue;

IT IS THEREFORE ORDERED that the Petitioner is entitled to a full refund of the penalties paid, to the extent not already refunded by the Final Decision of the Deputy Secretary of Revenue. The Final Decision of the Deputy Secretary imposing penalties of ten percent (10%) against the Petitioner is **REVERSED**.

Entered this the 16th day of February, 1993.

TAX REVIEW BOARD

Harlan E. Boyles, Chairman
State Treasurer

William W. Redman Jr.
Chairman, Utilities Commission

Jeff D. Batts

**NORTH CAROLINA DEPARTMENT OF HUMAN RESOURCES
DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES
and SUBSTANCE ABUSE SERVICES**

[DHR, Division of Mental Health, Developmental Disabilities and Substance Abuse Services has requested that a copy of this final rule (10 NCAC 45H .0202) be published in the *Register*.]

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

**CHAPTER 45 - COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES
AND SUBSTANCE ABUSE SERVICES**

SUBCHAPTER 45H - DRUG TREATMENT FACILITIES

SECTION .0200 - SCHEDULES OF CONTROLLED SUBSTANCES

.0202 SCHEDULE I

(a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated listed in this Rule. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth opposite it.

(b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

(1)	Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide)	9815
(2)	Acetylmethadol	9601
(3)	Allylprodine	9602
(4)	Alphacetylmethadol	9603
(5)	Alphameprodine	9604
(6)	Alphamethadol	9605
(7)	Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide: 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine)	9814
(8)	Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)	9832
(9)	Benzethidine	9606
(10)	Betacetylmethadol	9607
(11)	Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide)	9830
(12)	Beta-hydroxy-3-methylfentanyl (other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide)	9831
(13)	Betameprodine	9608
(14)	Betamethadol	9609
(15)	Betaprodine	9611
(16)	Clonitazene	9612
(17)	Dextromoramide	9613
(18)	Diampromide	9615
(19)	Diethylthiambutene	9616
(20)	Difenoxin	9168
(21)	Dimenoxadol	9617
(22)	Dimepheptanol	9618
(23)	Dimethylthiambutene	9619
(24)	Dioxaphetyl butyrate	9621
(25)	Dipipanone	9622
(26)	Ethylmethylthiambutene	9623

(27)	Etonitazene	9624
(28)	Etoxeridine	9625
(29)	Furethidine	9626
(30)	Hydroxypethidine	9627
(31)	Ketobemidone	9628
(32)	Levomoramide	9629
(33)	Levophenacymorphan	9631
(34)	3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide)	9813
(35)	3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide)	9833
(36)	1-methyl-4-phenyl-4-propionoxypiperidine (MPPP)	9661
(37)	1-(2-phenethyl)-4-phenyl-4-acetoxy-piperidine (PEPAP)	9663
(38)	Morpheridine	9632
(39)	N-[1-(2-thienyl) methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts and salts of isomers	9834
(40)	N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts and salts of isomers	9818
(41)	Noracymethadol	9633
(42)	Norleyorphanol	9634
(43)	Normethadone	9635
(44)	Norpipanone	9636
(45)	Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide)	9812
(46)	Phenadoxone	9637
(47)	Phenampromide	9638
(48)	Phenomorphane	9647
(49)	Phenoperidine	9641
(50)	Piritramide	9642
(51)	Proheptazine	9643
(52)	Properidine	9644
(53)	Propiram	9649
(54)	Racemoramide	9645
(55)	Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)	9835
(56)	Tilidine	9750
(57)	Trimeperidine	9646

(c) Opium Derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1)	Acetorphine	9319
(2)	Acetyldihydrocodeine	9051
(3)	Benzylmorphine	9052
(4)	Codeine methylbromide	9070
(5)	Codeine-N-Oxide	9053
(6)	Cyprenorphine	9054
(7)	Desomorphine	9055
(8)	Dihydromorphine	9145
(9)	Etorphine (except hydrochloride salt)	9056
(10)	Heroin	9200
(11)	Hydromorphanol	9301
(12)	Methyldesorphine	9302
(13)	Methyldihydromorphine	9304
(14)	Morphine methylbromide	9305
(15)	Morphine methylsulfonate	9306
(16)	Morphine-N-Oxide	9307
(17)	Myrophine	9308
(18)	Nicocodeine	9309

(19)	Nicomorphine	9312
(20)	Normorphine	9313
(21)	Pholcodine	9314
(22)	Thebacon	9315
(23)	Drotebanol	9335

(d) Hallucinogenic Substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of their salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation (for purposes of this Paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(1)	3,4-methylenedioxy amphetamine	7400
(2)	3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy) phenethylamine, N-ethyl MDA, MDE, and MDEA)	7404
(3)	5-methoxy-3,4-methylenedioxy-amphetamine	7401
(4)	3,4,5-trimethoxy amphetamine	7390
(5)	Bufotenine Some trade and other names: 3-(B-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N; N-dimethyltryptamine; mappine.	7433
(6)	Diethyltryptamine Some trade and other names: N,N-Diethyltryptamine; DET	7434
(7)	Dimethyltryptamine Some trade and other names: DMT	7435
(8)	3,4-methylenedioxymethamphetamine (MDMA) its optical, positional and geometric isomers, salts, and salts of isomers	7405
(9)	4-methyl-2,5-dimethoxy-amphetamine Some trade or other names: 4-methyl-2,5-dimethoxy-a-methylphenethylamine; "DOM" and "STP."	7395
(10)	Ibogaine Some trade and other names: 7-Ethyl-6,6B,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido(1,2':1,2)azepino (5,4-b) indole; tabernanthe iboga.	7260
(11)	Lysergic acid diethylamide Some trade or other names: LSD	7315
(12)	Mescaline	7381
(13)	N-ethyl-1-phenylcyclohexylamine	7455
(14)	1-(1-phenylcyclohexyl)pyrrolidine	7458
(15)	Parahexyl Some trade or other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d]pyran; Synhexyl.	7374
(16)	Peyote -- meaning all parts of the plant presently classified botanically as Lophophora Williamsii Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.	7415
(17)	N-ethyl-3-piperidyl benzilate	7482
(18)	N-hydroxy-3,4-methylenedioxyamphet-amine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA)	7402
(19)	N-methyl-3-piperidyl benzilate	7484

(20)	Psilocybin	7437
(21)	Psilocyn	7438
(22)	2,5-dimethoxyamphetamine Some trade and other names: 2,5-dimethoxy-a-methylphenethylamine; 2,5-DMA.	7396
(23)	4-bromo-2,5-dimethoxy-amphetamine Some trade or other names: 4-bromo-2,5-dimethoxy-a-methylphenethylamine; 4-bromo-2,5-DMA.	7391
(24)	4-methoxyamphetamine Some trade or other names: 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA.	7411
(25)	Thiophene analog of phencyclidine Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienyl analog of phencyclidine; TPCP, TCP.	7470
(26)	1-[1-(2-thienyl)cyclohexyl]pyrrolidine Some other names: TCPy	7473

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(1)	mecloqualone	2572
(2)	methaqualone	2565

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1)	Aminorex (Some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine, its salts, optical isomer, and salts of optical isomers)	1585
(2)	Fenethylamine	1503
(3)	(±) cis-4-methylaminorex [(±) cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine] (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline)	1590
(4)	Methcathinone (Some other names: 2-Methylamino-1-Phenylpropan-1-one; Ephedrone; Monomethylpropion; UR 1431, its salts, optical isomers, and salts of optical isomers)	1237
(5)	N,N-dimethylamphetamine [also known as N,N,α-trimethylbenzeneethanamine; N,N,α-trimethylphenethylamine]	1480
(6)	N-ethylamphetamine	1475

History Note: Statutory Authority G.S. 90-88; 90-89; 143B-147;

Eff. June 30, 1978;

Amended Eff. January 4, 1993; November 1, 1990; October 1, 1990; August 1, 1990.

TITLE 1 - DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to adopt rules cited as 1 NCAC 26C .0001 - .0008.

The proposed effective date of this action is June 1, 1993.

The public hearing will be conducted at 2:00 p.m. on March 30, 1993 at the Administration Building, Commission Room 5034, 116 West Jones Street, Raleigh, NC 27603-8003.

Reason for Proposed Action: To recognize North Carolina veterans who have served during war time.

Comment Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003, (919) 733-7232.

CHAPTER 26 - VETERANS AFFAIRS

SUBCHAPTER 26C - ISSUANCE OF THE NORTH CAROLINA SERVICES MEDAL

.0001 SERVICE REQUIREMENT

The veteran must have served in the Armed Forces on full time active duty during a period of war as defined by U.S. Code Title 38, paragraph 101(6)-(12).

Statutory Authority G.S. 143B-399(4a).

.0002 RESIDENCE REQUIREMENT

The residence requirement for award of the medal is a veteran who was a legal resident of North Carolina at time of entrance into the Armed Forces.

Statutory Authority G.S. 143B-399(4a).

.0003 VETERAN STATUS REQUIREMENT

The veteran must have been discharged or released from the Armed Forces under conditions other than Dishonorable.

Statutory Authority G.S. 143B-399(4a).

.0004 APPLICATION TIMETABLE

The veteran must apply for the medal within five years of the date these medals are made available, or five years from date of discharge or release from the Armed Forces.

Statutory Authority G.S. 143B-399(4a).

.0005 FEE

The award shall be self-financing. Those who wish to be awarded the medal shall pay a fee as set by the North Carolina Division of Veterans Affairs (NCDVA) to cover the expense of producing and awarding the medal.

Statutory Authority G.S. 143B-399(4a).

.0006 MINIMUM REQUIREMENT

No medal will be struck until a minimum of twenty-five thousand dollars (\$25,000) has been received to pay for the initial design, striking, and production fees of the first 500 medals.

Statutory Authority G.S. 143B-399(4a).

.0007 APPLICATION FORM

The NCDVA will develop an application form to be used to apply for the North Carolina Services Medals. The application must be submitted to the NCDVA with proof of eligibility and appropriate fees.

Statutory Authority G.S. 143B-399(4a).

.0008 NEXT-OF-KIN

The next-of-kin may apply for this medal if the eligible veteran is deceased.

Statutory Authority G.S. 143B-399(4a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration intends to amend rule cited as 1 NCAC 30D 0302.

The proposed effective date of this action is July

1, 1993.

The public hearing will be conducted at 2:00 p.m. on April 20, 1993 at the State Construction Office, Suite 450 (Education Building), 301 N. Wilmington Street, Raleigh, NC 27601-2827.

Reason for Proposed Action: *Improve the administration of contract maintenance by state agencies.*

Comment Procedures: *Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations by writing or calling David McCoy, Department of Administration, 116 West Jones Street, Raleigh, NC 27603-8003, (919) 733-7232.*

CHAPTER 30 - STATE CONSTRUCTION

SUBCHAPTER 30D - STATE BUILDING COMMISSION DESIGNER AND CONSULTANT SELECTION POLICY

SECTION .0300 - SELECTION OF DESIGNERS OR CONSULTANTS

.0302 PRE-SELECTION

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

- (1) General Procedure for All Projects: The Capital Projects Coordinator shall review with the using agency the requirements of the project. This step should normally take place prior to public advertisement in the Purchase Directory, because designers and consultants have a significant need to know in advance the program intent of a project in order to demonstrate their qualifications for the project in their letter of interest. The Capital Projects Coordinator shall receive all letters of

interest and other qualification information either directly or from the designated contact person. After a pre-selection priority list is prepared, the list will remain confidential except to the Secretary of the SBC. If fewer than three letters of interest are received on major projects, the project will be readvertised in the Purchase Directory. If fewer than three letters of interest are received following the re-advertisement, the Capital Projects Coordinator may proceed with the selection process using the data received or may advertise again.

- (2) Special Procedures for Minor Projects: The Capital Projects Coordinator shall again review with the using agency the requirements of the project and the qualifications of all firms expressing interest in a specific project. The Capital Projects Coordinator and a representative of the using agency shall meet with the representative from the State Construction Office for the evaluation of each firm and development of a list of three firms in priority order to be presented to the SBC. The Capital Projects Coordinator may institute the interview procedures, under major projects, where special circumstances dictate such need. The Capital Projects Coordinator shall submit to the Secretary of the SBC the list of three firms in priority order, including pre-selection information and written recommendations, to be presented to the SBC. The Capital Projects Coordinator shall state in the submission to the SBC that the established rules for public announcement and pre-selection have been followed or shall state full particulars if exceptions have been taken.
- (3) Special Procedures for Major Projects: The pre-selection committee shall review the requirements of a specific project and the qualification of all firms expressing interest in that project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The Capital Projects Coordinator shall state in his submission that the established rules for public announcement and pre-selection

have been followed or shall state full particulars if exceptions have been taken.

- (4) Special Procedures for Emergency Projects: On occasion, emergency design or consultant services may be required for restoration or correction of a facility condition which by its nature poses a significant hazard to persons or property, or when an emergency exists. Should this situation occur, in all likelihood there will not be sufficient time to follow the normal procedures described herein. The Capital Projects Coordinator on these rare occasions is authorized to declare an emergency, notify the State Construction Office and then obtain the services of a competent designer or consultant for consultation or design of the corrective action. In all cases, such uses of these emergency powers will involve a written description of the condition and rationale for employing this special authority signed by the head of the agency and presented to the SBC at its next normal meeting. Timeliness for obligation of funds or other non-hazardous or non-emergency situations do not constitute sufficient grounds for invoking this special authority.

- (5) Annual Contract: A Funded Agency or a Using Agency may require the services of designer(s) or consultant(s) for small miscellaneous projects on a routine basis. In such cases, designer(s) or consultant(s) for annual contracts will be selected in accordance with the above procedures for minor projects. In addition, no annual contract fee will exceed fifty thousand dollars (\$50,000.00) in total volume and no single fee shall exceed ten thousand dollars (\$10,000.00). Annual contracts may be extended for one additional year. However, if extended for an additional one-year period, the designer may not be selected for the next annual contract. Total annual fees will not exceed fifty thousand dollars (\$50,000.00) for first year or one hundred thousand dollars (\$100,000.00) for two-year period. If and when these fees are used to limit, the agency must readvertise.

Statutory Authority G.S. 143-135.25; 143-135.26.

TITLE 4 - DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Commerce, Division of Community Assistance intends to amend rules cited as 4 NCAC 19L .0103, .0301, .0401, .0403 - .0404, .0407 - .0408, .0501 - .0502, .0505, .0802, .0805, .0901 - .0903, .0906 - .0913, .1001 - .1004, .1007, .1011 - .1012, .1101, .1103 - .1104, .1302 - .1303, .1501 - .1505, .1603 - .1604; adopt 4 NCAC 19L .0914 and repeal rule cited as 4 NCAC 19L .0905.

The proposed effective date of this action is June 1, 1993.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Written requests for a Public Hearing must be received by March 30, 1993. Written requests should be sent to Bob Chandler, Director, Division of Community Assistance, 1307 Glenwood Avenue, Raleigh NC 27605.

Reason for Proposed Action: The proposed action is necessary to enable the Division of Community Assistance to facilitate the implementation of the Community Development Block Grant Program in aid of which the Rules were adopted.

Comment Procedures: Oral or written comments will be accepted until April 15, 1993. Written comments should be sent to Bob Chandler, Director, Division of Community Assistance, 1307 Glenwood Avenue, Raleigh, NC 27605. Oral comments should be directed to Bob Hinshaw (919) 733-2850.

CHAPTER 19 - DIVISION OF COMMUNITY ASSISTANCE

SUBCHAPTER 19L - NORTH CAROLINA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

SECTION .0100 - GENERAL PROVISIONS

.0103 DEFINITIONS

- (a) "Act" means Title I of the Housing and Community Development Act of 1974, P.L.

93-383, as amended.

(b) "Applicant" means a local government which makes application pursuant to the provisions of this Subchapter.

(c) "CDBG" means the State-administered Community Development Block Grant Program.

(d) "Chief Elected Official" of a local government means either the elected mayor of a city or the chairman of a county board of commissioners.

(e) "Community Development Program" means the annual program of projects and activities to be carried out by the applicant with funds provided under this Subchapter and other resources.

(f) "Department" means the North Carolina Department of ~~Economic and Community Development~~ Commerce.

(g) "Division" means the Department of Commerce's Division of Community Assistance.

(h) "HUD" means the U.S. Department of Housing and Urban Development.

(i) "Local Government" means any unit of general city or county government in the State.

(j) Low-income families are those with a family income of 50 percent or less of median-family income. Moderate-income families are those with a family income greater than 50 percent and less than or equal to 80 percent of median-family income. For purposes of such terms, the area involved and median income shall be determined in the same manner as provided for under the Act.

(k) "Low- and Moderate-Income Persons" means members of families whose incomes are within the income limits of low- and moderate-income families as defined in Paragraph (h) of this Rule.

(l) "Metropolitan Area" means a standard metropolitan statistical area, as established by the U.S. Office of Management and Budget.

(m) "Metropolitan City" means a city as defined by Section 102(a)(4) of the Act.

(n) "Project" means one or more activities addressing either:

- (1) community revitalization needs, or
- (2) economic development needs, or
- (3) development of housing for persons of low- and moderate-income, or
- (4) urgent needs of the applicant.

(o) "Recipient" means a local government that has been awarded a Community Development Block Grant and executed a Grant Agreement with the Department.

(p) "Scattered site" means acquisition, clearance, relocation, historic preservation and building

rehabilitation activities which benefit low or moderate income persons or eliminate specific conditions of blight or decay on a spot basis not located in a slum or blighted area.

(q) "Secretary" means the Secretary of Department of ~~Economic and Community Development~~ Commerce or his designee.

(r) "State" means the State of North Carolina.

(s) "Urban County" means a county as defined by Section 102(a)(6) of the Act.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.481-570.483.

SECTION .0300 - ELIGIBLE AND INELIGIBLE ACTIVITIES

.0301 ELIGIBLE ACTIVITIES

This Subchapter adopts by reference as eligible activities those activities described in the Housing and Community Development Act of 1974 as amended under Section 105 (a), "Eligible Activities," and in 24 CFR 570.482. Additional general guidance is found in 24 CFR 570.201-206. Copies of these sections of federal law and regulation are available for public inspection from the Division of Community Assistance.

Statutory Authority G.S. 143B-10; 143B-431; 42 U.S.C. 5305.

SECTION .0400 - DISTRIBUTION OF FUNDS

.0401 GENERAL

(a) The ~~Department~~ Division shall designate specific dates for submission of grant applications under each category except for Urgent Needs. Urgent Needs applications may be submitted at any time, but other grant application submission dates will be announced by the ~~Department~~ at least 45 days before the date applications are due Division.

(b) In cases where the ~~Department~~ Division makes a procedural error in the application selection process that, when corrected, would result in awarding a score sufficient to warrant a grant award, the ~~Department~~ Division may compensate that applicant with a grant in the next funding cycle.

(c) Applicants can apply for funding under the grant categories of Community Revitalization, ~~Economic Development~~, Housing Development, Interim Assistance, Urgent Needs, and Community Investment for Economic Opportunity. Applicants

shall not apply for Contingency funding. Contingency awards will be made to eligible applicants in Community Revitalization, ~~Economic Development~~, and Housing Development categories.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.0403 SIZE AND USE OF GRANTS MADE TO RECIPIENTS

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards made to any one recipient shall not exceed the following amount in each grant category: Community Revitalization - ~~one million dollars (\$1,000,000); Economic Development - six hundred thousand dollars (\$600,000)~~ six hundred thousand (\$600,000); Scattered Site, a subset of Community Revitalization - three hundred thousand dollars (\$300,000); Housing Development - two hundred fifty thousand dollars (\$250,000) or funds available; Urgent Needs - six hundred thousand dollars (\$600,000); Interim Assistance - seven hundred fifty thousand dollars (\$750,000) for projects designated to be completed within 36 months from the award date, and four million dollars (\$4,000,000) for projects designated to be completed within 18 months from the award date; Contingency - six hundred thousand dollars (\$600,000); and Community Investment for Economic Opportunity - ~~seventy-five up to one hundred fifty thousand dollars (\$75150,000).~~ Applicants shall not have a project or combination of projects, under active consideration for funding which exceeds one million ~~three hundred thousand~~ dollars (\$1,300,000), except for Interim Assistance and Urgent Needs projects. Applicants in the Community Revitalization category shall choose to apply for either a concentrated site award or a scattered site award, but not both from the same HUD allocation.

(b) No local government may receive more than a total of one million ~~three hundred thousand~~ dollars (\$1,300,000) in CDBG funds in the period that the state distributes its annual HUD allocation of CDBG funds; except that local governments may also receive up to six hundred thousand dollars (\$600,000) for a project that addresses Urgent Needs and up to four million dollars (\$4,000,000,) in Interim Assistance funds and funds for one demonstration project in addition to other grants awarded during the same time period.

(c) Community Revitalization basic category applicants may spend no more than 15 percent of their total grant amount to finance local option

activities. Local option activities are eligible activities which do not need to be directly related to proposed projects; however, job creation activities are not eligible local option activities. Local option activities will not be competitively rated by the ~~Department~~ Division, but may be limited to housing, water/sewer, and streets; each local option project must show that:

- (1) At least fifty-one percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

(d) The ~~Department~~ Division may review grant requests to determine the reasonableness and appropriateness of all proposed administrative and planning costs. Notwithstanding Rule .0910 of this Subchapter, grantees may not increase their approved planning and administrative budgets without prior ~~Departmental~~ Division approval. In no case, may applicants budget and expend more than 18 percent of the sum of funds requested and program income for administrative and planning activities for each project.

(e) Applicants may spend CDBG funds in those areas in which the applicant has the legal authority to undertake project activities.

(f) Grants to specific recipients will be provided in amounts commensurate with the size of the applicant's program. In determining appropriate grant amounts for each applicant, the ~~Department~~ Division may consider an applicant's need, proposed activities, all proposed administrative and planning costs, and ability to carry out the proposed activities.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483; 42 U.S.C. 5301.

.0404 GRANT CATEGORY ALLOCATION

(a) Each program year funds will be reserved for each grant category. Funds awarded to local governments will be reserved for each grant category as follows: Up to five percent of the grant will be awarded for Housing Development grants. In addition, up to five percent will be set aside for Urgent Needs grants and Contingency awards and up to twenty percent will be set aside for Economic Development grants each year. From time to time, the Division may set aside between one and two percent for demonstration

grants. The remaining funds will be distributed by the Division of ~~Community Assistance~~ to Community Revitalization grant applications.

(b) Awards will be made for Interim Assistance from funds available in the state's allocation in accordance with Rule .1504 of this Subchapter.

(c) Up to one million dollars (\$1,000,000) of funds that are recaptured from previous CDBG grants by the state may be used to make additional grants in the Housing Development category.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.0407 GENERAL APPLICATION REQUIREMENTS

(a) Local governments are required to submit applications in a manner prescribed by the ~~Department~~ Division in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application; thus applications must contain sufficient information for the ~~Department~~ Division to rate them against the selection criteria. In addition, the following may be considered: information from any source which regards the eligibility of the applicant or application, the legality or feasibility of proposed activities, the applicant's compliance with application procedures specified in this Subchapter, or the accuracy of the information presented in the application; evaluation of proposed projects by on-site review; and category-specific information described in Sections .0500, .0800, .1200, .1300, .1500, and .1600 of this Subchapter. All applicants are required to address their projects to one of the following grant categories: Community Revitalization (either concentrated needs or scattered site), ~~Economic Development~~, Housing Development, Interim Assistance, Urgent Needs, or Community Investment for Economic Opportunity. Applicants may apply in more than one grant category, apply for several projects in the same grant category, and have more than one project approved, providing the total grant application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in detail.

(b) Applications must be received by ~~Departmental~~ the Division's administrative offices in Raleigh before 5:00 p.m. on the submission date or sent by mail and postmarked on the submission date.

(c) Applicants must provide citizens with ade-

quate opportunity for meaningful involvement in the development of Community Development Block Grant applications. ~~The applicant shall provide adequate information to citizens and hold a public hearing at the initial stage of the planning process. Prior to the submission of the application the applicant must hold a second public hearing.~~ Specific citizen participation guidelines are described further in Rule .1002 of this Subchapter. If the ~~Department~~ Division is aware of an applicant's failure to meet these citizen participation requirements, the ~~Department~~ Division may not rate the application.

(d) The ~~Department~~ Division may submit all CDBG applications and environmental review records as required by the National Environmental Policy Act and the State Environmental Policy Act to the State Clearinghouse of the Department of Administration for review and comments. The ~~Department~~ Division may require each applicant to submit a written description of how the applicant proposes to address each comment received from the State Clearinghouse.

(e) The applicant shall certify to the ~~Department~~ Division that it will comply with all applicable federal and state laws, regulations, rules and Executive Orders. Copies of these federal and state requirements are available for public inspection from the Division of ~~Community Assistance~~.

(f) Applicants must comply with the Housing and Community Development Act of 1974 as amended, all applicable federal and state laws, regulations, rules, Executive Orders and guidelines issued by the ~~Department~~ Division.

(g) Application requirements described in this Rule .0407 do not apply to demonstration grants and Urgent Needs grants, except for Paragraphs (a), (d), (f) and (g).

(h) ~~Applications submitted for Economic Development projects under Section .1400 of this Subchapter may be rated or funded for up to 90 days from the date of original submission. In addition, for applications that met the requirements of .0407(e) and .1002 of this Subchapter at the time of original application submission and in which the original project has not been changed significantly, there shall be no additional public hearing requirements during the 90 days. The Department shall determine whether significant changes have been made in a proposed project. For multi-family rental housing activities, the applicant must state in the application the standards it has adopted for determining affordable rents for such activities.~~

(i) ~~Applications for CDBG assistance under the~~

~~Economic Development category must be submitted with adequate evidence that both public hearings were held in accordance with Rule .1002(b) of this Subchapter.~~

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a); 24 C.F.R. 570.483.

.0408 SPECIAL ALLOCATIONS FROM HUD

Periodically the Department may receive from HUD special allocations of CDBG funds that are separate from its annual funding allocation to meet specific community development needs and priorities. The ~~Department~~ Division will consult with local officials and hold at least one public hearing prior to the distribution of any special CDBG allocation. The provisions of 4 NCAC 19L shall apply to the administration of any special allocation, except where otherwise required by a federal statute or regulation applicable to the special allocation.

Statutory Authority G.S. 143B-10; 143B-431; 42 U.S.C. 5301.

SECTION .0500 - COMMUNITY REVITALIZATION PROJECTS

.0501 DESCRIPTION

(a) The Community Revitalization category includes activities in which a majority of funds is directed towards improving, preserving or developing residential areas. All eligible CDBG activities may be undertaken for the purpose of community revitalization.

- (1) Applications for funding may involve single or multiple activities, addressing one or more needs in the area except for scattered site subcategory which addresses one need.
- (2) All community revitalization activities, except for scattered site activities, must be carried out within project areas of concentrated need, ~~unless the applicant's jurisdiction does not include a project area of concentrated need. Applicants must justify their choice of concentrated or non-concentrated need project areas.~~
- (3) Community Revitalization funds are distributed to eligible units of local government on a competitive basis. Community Revitalization projects will be evaluated against other Community

Revitalization project proposals.

(b) The Community Revitalization category also includes a subcategory for scattered site housing activities which are directed towards the prevention or elimination of slums or blight. Scattered site projects are limited to housing rehabilitation, acquisition, disposition, clearance, and relocation activities.

- (1) Scattered site activities may be carried out in any location throughout the applicant's jurisdiction and need not be carried out in an area of concentrated need.
- (2) No local funds are required or expected to be contributed to scattered site housing rehabilitation projects.
- (3) Scattered site funds are distributed to eligible units of local government on a competitive basis. Scattered site projects will be evaluated against other scattered site project proposals.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

.0502 ELIGIBILITY REQUIREMENTS

(a) Applications for Community Revitalization basic category funds must show that:

- (1) At least 51 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight.

Applications that do not meet these eligibility requirements will not be rated or funded. In designing projects which meet these requirements, applicants must appropriately ensure that activities do not benefit moderate-income persons to the exclusion of low-income persons.

(b) Applicants for scattered site subcategory funds must show that:

- (1) All rehabilitation activities benefit 100 percent low and moderate income persons; and
- (2) CDBG funds proposed for acquisition, clearance, and disposition of vacant units will address the national objective of preventing or eliminating slums or blight.

(bc) Applicants shall have the capacity to administer a CDBG program. The ~~Department~~ Division may examine the following areas to determine

capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant programs, and the applicant's fiscal accountability as demonstrated in other state or federal programs or local government financial reports; and
- (2) the rate of expenditure of funds and accomplishments in previously funded CDBG programs.

Applicants that show a lack of capacity will not be rated or funded.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301; 24 C.F.R. 570.483.

.0505 SELECTION CRITERIA

Projects will be evaluated and rated against each of five selection criteria. These criteria, and their maximum scores are as follows: in accordance with the annual statement of program design as approved by HUD.

	Points
Severity of Need	200
Treatment of Need	100
Benefit to Low and Moderate income Persons	300
Local Commitment	300
Appropriateness and Feasibility	100
Total	1000

- (1) ~~Severity of Need (200 points). Severity of need shall measure the degree of need and shall give priority to projects identifying the most severe needs. Applicants shall discuss and identify all housing, street, water, sewer and drainage needs in the proposed project area. Housing and non-housing needs will be measured separately.~~
- (2) ~~Treatment of Need (100 points). Treatment of Need measures the effectiveness and completeness of the treatment proposed. Up to 80 points will be awarded for complete and effective treatment of identified needs of a proposed project area. Up to 20 points will be awarded for innovative treatment of identified project needs. No more than 15 percent of the proposed projects will be awarded innovative treatment points.~~
- (3) ~~Benefit to Low and Moderate income Persons (300 points). The percentage of CDBG funds directly benefiting low and moderate income persons will be used as a measure of this criterion. Program costs related to administration and planning will not be considered in this analysis.~~
 - (a) ~~In measuring the benefit of housing activities, 3 points of benefit will be given for every percentage of low income benefit; 2 points will be given for every percentage of moderate income benefit. One hundred percent of moderate income benefit is equivalent to 200 points; 100 percent of low income benefit is equivalent to 300 points of benefit.~~
 - (b) ~~In measuring benefit for non-housing activities, 3 points of benefit will be given for each percentage of low and moderate income benefit.~~
 - (c) ~~Benefit for projects that propose housing and non-housing activities will be measured by a weighted average of the benefit scores calculated in (a) and (b) of this Paragraph.~~
- (4) ~~Local Commitment (300 points). Points in this category will be determined by two measures. Local funds will be measured, up to 200 points, by a weighted formula based on ability to pay. Other local commitments, including non-local funds and policy initiatives and implementations, will be awarded~~

up to 200 points. A combined maximum for this category is 300 points.

- (5) ~~Appropriateness and Feasibility (100 points). Up to 80 points will be awarded for appropriateness and feasibility. An additional 20 points will be awarded for innovation in appropriateness and feasibility. No more than 15 percent of the proposed projects will be awarded innovative points for appropriateness and feasibility.~~

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(1); 24 C.F.R. 570.483.

SECTION .0800 - URGENT NEEDS/CONTINGENCY PROJECTS

.0802 ELIGIBILITY REQUIREMENTS

Urgent Needs grant applicants must ~~pass~~ certify to all three of the following eligibility requirements:

- (1) the need addressed by the application must have arisen during the preceding 18-month period and represent an imminent threat to public health or safety; and
- (2) the need addressed by the application must represent a unique and unusual circumstance that does not occur frequently in a number of communities in the state; and
- (3) the applicant does not have sufficient local resources, and state or federal resources are not available to alleviate the urgent need.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(b)(3); 24 C.F.R. 570.483.

.0805 SELECTION CRITERIA

Selection of Urgent Needs grant recipients will be based upon availability of funds and eligibility requirements as presented in Rule .0802 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(1); 24 C.F.R. 570.483.

SECTION .0900 - GRANT ADMINISTRATION

.0901 GRANT AGREEMENT

(a) Upon approval of the application by the ~~Department of Economic and Community Development Division~~, a written grant agreement will be executed between the recipient and the ~~Department~~ Division. These Rules, subsequent guidelines prepared by the ~~Department~~ Division, the approved application, and any subsequent amendments to the approved application shall become a part of the grant agreement.

(b) The grant agreement in its original form and

all modifications thereto shall be kept on file in the office of the recipient in accordance with Rule .0911 of this Section.

(c) The ~~Department~~ Division may condition the grant agreement until the recipient demonstrates compliance with all applicable laws and regulations. In the case of ~~Economic Housing Development and Community Investment for Economic Opportunity~~ projects, the grant agreement may be conditioned until legally binding commitments have been obtained from all participating entities.

(d) Neither CDBG nor non-CDBG funds involved in a project may be obligated, nor may any conditioned project activities begin until the ~~Department~~ Division releases in writing any and all applicable conditions on the project. Recipients may incur certain costs prior to release of conditions with prior ~~Departmental~~ Division approval in accordance with Rule .0908.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.0902 METHOD OF ADMINISTRATION

(a) Recipients may delegate to statutorily authorized subrecipients the responsibility of undertaking or carrying out any specified community development activities. All entities so designated under this Paragraph by recipients to undertake or carry out community development activities pursuant to this Subchapter shall be considered subrecipients.

(b) Recipients may contract with any person, association, or corporation in undertaking specified community development activities. All contracts shall be made in conformance with the procurement standards set forth in Rule .0908 of this Section. Rule .0908 does not apply to recipients in the selection of subrecipients.

(c) Subrecipients undertaking or carrying out community development activities shall do so in conformance with Rule .0903, METHOD OF PAYMENT; Rule .0904, ESCROW ACCOUNTS; ~~Rule .0905, LUMP SUM DRAWDOWNS;~~ Rule .0906, FINANCIAL MANAGEMENT SYSTEMS; Rule .0907, PROGRAM INCOME; Rule .0908, PROCUREMENT STANDARDS; Rule .0909,

PROPERTY MANAGEMENT STANDARDS; and Rule .0911, RECORDKEEPING.

Authority G.S. 143B-10; 143B-431; 153A-376(b); 160A-456(b); 24 C.F.R. 570.488-.489.

.0903 METHOD OF PAYMENT

(a) Advance payments will be made by the Department to recipients when the following conditions are met:

- (1) The recipient has demonstrated to the Secretary, initially through certification in a form prescribed by the Department and subsequently through performance, that procedures have been established to insure a maximum of three days time elapsing between the receipt of funds to it and its disbursement of such funds; ~~except as provided under Rule .0905 LUMP SUM DRAWDOWN.~~
- (2) The recipient's financial management system meets standards for fund control and accountability prescribed in Rule .0906 FINANCIAL MANAGEMENT SYSTEMS.
- (3) No payment to the recipient from the Department shall be for an amount less than ~~five thousand one hundred~~ one hundred dollars (\$5,000100.00).
- (4) Recipients that receive an advance payment of up to five thousand dollars (\$5,000) may maintain a cash balance in excess of three days.
- (5) All requests for advance payments are required to meet immediate disbursing needs. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursement by the recipient except as described in Paragraph (a)(4) of this Rule.

(b) Recipients who do not meet or adhere to the conditions in Paragraph (a) of this Rule will not receive advance payments. Those recipients will receive grant payments on a reimbursement basis.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5304(g).

.0905 LUMP SUM DRAWDOWN FOR PROPERTY REHABILITATION

(a) ~~General.~~ Subject to the conditions of this Rule, recipients of grants under this Subchapter may draw funds in a single lump sum to establish a rehabilitation fund in one or more private finan-

~~cial institutions for the purpose of financing the rehabilitation of privately owned properties as a part of the recipient's Community Development Program.~~

(b) ~~Definitions.~~

- (1) ~~"Rehabilitation Fund" means an account established with CDBG funds drawn down in a lump sum from the Department for use in a rehabilitation financing program under terms of an agreement between the recipient and the depository private financial institution pursuant to the requirements of this Section.~~
- (2) ~~"Private Financial Institution" means a depository (including banks, savings and loan associations, credit unions and other financial institutions), in which deposits are federally insured, and which is a party to such an agreement.~~
- (3) ~~"Private Funds" means the funds of the private financial institution. Private funds include funds held in trust for the benefit of bondholders or noteholders of the CDBG recipient or its agency where such bond or note proceeds are to be used in connection with the rehabilitation program.~~
- (4) ~~"Rehabilitation" means the activities eligible for rehabilitation of properties pursuant to Rule .1009, including the acquisition of properties for rehabilitation by private entities organized for profit or on a not for profit basis, and the rehabilitation of commercial and industrial buildings and structures pursuant to Paragraph (14) of Rule .0301, of this Subchapter.~~

(c) ~~Requirement for agreement.~~ A written agreement for the deposit of CDBG funds to establish a rehabilitation fund shall be executed by the recipient and participating private financial institution(s) after Departmental approval. The agreement specifically describes the obligations and responsibilities of the parties and the terms and conditions on which such funds are to be deposited and used consistent with the requirements of this Rule. The agreement shall authorize the use of the rehabilitation fund only in connection with grants and loans made within a period of two years from the date of the agreement. The description of the proposed use of deposited funds in the agreement shall include a statement on the intended use of loan repayments and interest earned.

(d) ~~Uses of rehabilitation fund.~~ The rehabilita-

tion fund may be used for the following purposes:

- (1) to make direct rehabilitation loans or grants to property owners;
- (2) to pay interest subsidies, or establish a fund for payment of subsidies, on rehabilitation loans made by private financial institutions with private funds;
- (3) to guarantee the repayment of rehabilitation loans made to property owners by private financial institutions with private funds;
- (4) to serve as collateral for financing actually extended to the recipient (or recipient's agency) where such financing is used to make rehabilitation loans or grants;
- (5) to fund reserves and/or pay issuance or administrative costs in connection with the issuance of bonds or notes by the recipient or its agency, where such bond or note proceeds are to be used to fund habilitation or grants;
- (6) for the payment of reasonable administrative fees and charges of the private financial institution related to the provision of financing for the rehabilitation of private property; or
- (7) other uses as may be approved by the Department consistent with the objectives of this Rule.

(e) Rehabilitation loans made with private funds. Where the rehabilitation fund or other CDBG assistance is used to subsidize or guarantee the payment of rehabilitation loans made with private funds, or is used to provide a supplemental loan or grant to the borrower of the private funds, the rehabilitation loans made with such private funds are subject to the same requirements as are applicable to direct loan or grant assistance provided for the rehabilitation of private property under this Subchapter.

(f) Time limit on start. The use of deposited funds for rehabilitation financing assistance (e.g., first loan is made, subsidized or guaranteed) must start within 45 days of the deposit and substantial disbursements must begin within 180 days of the deposit. Should use of deposited funds not start within 45 days, and substantial disbursements not begin within 180 days, the recipient may be required by the Department to return all or part of the deposited funds.

(g) Return of unused deposits. At the termination of the period of the agreement, all unobligated funds (funds of the rehabilitation fund that have not been encumbered or disbursed) then on deposit

shall be returned to the Department unless the recipient has been or is being authorized by the Department to extend the agreement for an additional period. In addition, the recipient shall reserve the right to withdraw from the rehabilitation fund any unobligated amounts required by the Department in the exercise of corrective or remedial actions authorized under Rule .1104, Paragraph (e).

(h) Interest earned on the rehabilitation fund. Interest earned on the rehabilitation fund shall be used pursuant to the terms and conditions of the agreement consistent with the uses authorized under Paragraph (e) of this Section.

(i) Request for Departmental review and approval of lump sum drawdown. Departmental review and approval of a request for a lump sum drawdown is required prior to drawdown. Departmental review can be carried out any time during the program year. All requests for drawdowns shall include:

- (1) a copy of the written agreement described in Paragraph (e) of this Rule; and
- (2) a narrative describing the purpose for establishing a rehabilitation fund and the benefits that will result from such fund.

(j) The Department shall review all lump sum drawdown requests before approving the requests. These reviews will include the following factors:

- (1) the financial impact of the lump sum drawdown on the Community Development Program and the beneficiaries of the program;
- (2) the appropriateness of the use of the rehabilitation fund in meeting the recipient's program objectives;
- (3) conformance of the lump sum drawdown agreement with minimum federal requirements (24 C.F.R. 570.513); and
- (4) conformance of the lump sum drawdown agreement with all Rules in this Subchapter.

Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304(g); 24 C.F.R. 570.489. 24 C.F.R. 570.494.

.0906 FINANCIAL MANAGEMENT SYSTEMS

Recipient financial management systems shall provide for accurate, current and complete disclosure of the financial results of each grant program in accordance with reporting requirements set forth

in G.S. 159, Subchapter III, the Local Government Budget and Fiscal Control Act. Recipients shall meet the following requirements:

- (1) All grant funds shall be expended in accordance with a budget ordinance or project ordinance adopted under G.S. 159-8 and G.S. 159-13.2 respectively;
- (2) A recipient may deposit or invest all or part of the cash balance of any grant fund; however, all interest earned shall be returned to the Department in accordance with Rule .0907(c) of this Section;
- (3) Investment deposits shall be secured as provided in G.S. 159-31(b);
- (4) The recipient shall designate as its official depositories one or more banks or trust companies in the State in accordance with G.S. 159-31(a);
- (5) All budgetary accounting for appropriations of grant funds shall be in accordance with the procedures for incurring obligations and disbursements as set forth in G.S. 159-28;
- (6) Each recipient shall establish an accounting system in accordance with G.S. 159-26;
- (7) The recipient's finance officer, and each officer, employee, or agent who handles or has in his custody more than one hundred dollars (\$100.00) of grant funds at any time, or who handles or has access to the recipient's inventories, shall be bonded in accordance with G.S. 159-29;
- (8) Each recipient shall maintain records that identify adequately the source and application of funds for grant-supported activities. These records shall contain information pertaining to federal awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;
- (9) A system for procedures for procurement and property management shall be provided in accordance with Rule .0908 and Rule .0909 of this Section;
- (10) All cash receipts must be deposited with, or to the credit of, the finance officer. This includes program revenues, reimbursements of travel, vendor payments or other items previously recorded as expenditures, and all other grant monies from the Department;
- (11) Recipients must develop a systematic method to assure timely and appropriate resolution of audit findings and recom-

mendations;

- (12) Recipients shall require subgrantees to adopt the standards set forth in this Rule;
- (13) Recipients shall comply with the Office of Management and Budget Circular A-87, entitled Cost Principles for State and Local government. In applying OMB A-87 the term "federal agency" shall mean the Department;
- (14) Recipients shall record the receipt and expenditure of project revenues from taxes, special assessments, levies, fines, etc., in accordance with ~~Paragraph (d) of Rule .0905~~ generally accepted accounting principles.

Authority G.S. 14-234; 143B-10; 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.496; 42 U.S.C.A. 5304(b),(d),(e).

.0907 PROGRAM INCOME

(a) Definition. Program Income is defined as gross income earned by the recipient from grant supported activities. Such earnings may include, but not be limited to, sale of property, interest received from a loan program, and the return of sales taxes on purchases made during the program. Receipts derived from the operation of a public work or facility, the construction of which was assisted by this program, do not constitute program income.

(b) Unless the grant agreement provides otherwise, recipients shall have no obligation to the Department with respect to royalties received as a result of copyrights or patents produced under the grant or other agreement. Recipients must, however, follow the procedures set forth in Rule .0909 PROPERTY MANAGEMENT STANDARDS.

(c) All interest earned on grant funds prior to distribution shall be returned to the Department, except as follows:

- (1) as may be required by Rule .0904 ~~and Rule .0905~~ of this Subchapter; or
- (2) recipients may keep one hundred dollars (\$100.00) per year for administrative expenses in accordance with 24 CFR ~~Part 85.21(i)~~ 570.489(c)(2).

(d) Recipients shall record the receipt and expenditure of revenues (such as taxes, special assessments, levies, fines, etc.) as a part of grant project transactions when such revenues are specifically earmarked for a grant project in accordance with the grant agreement.

(e) Unless otherwise required, program income generated by a pre-1986 grant may be retained by

the recipient. Program income is identified by the grant year in which the activities which generated the program income were funded. Pre-1986 program income shall be added to funds committed to a current project and used for activities approved in the project's application. Pre-1986 program income shall be expended prior to requesting additional funds from the Department or shall be used in future CDBG projects.

(f) Program Income generated by grants made in 1986 or afterwards shall be returned to the Department except when:

- (1) the recipient shall propose at the time of application or at the time the program income is anticipated, a use or uses for the projected program income, and
- (2) the Department determines that, at the time of the proposal, the use of the projected program income meets federal requirements prohibiting the state from recapturing the program income; or
- (3) the recipient, designated at the time of the preliminary grant award as a "severely distressed county" pursuant to G.S. 105-130.40(c), or a city in such a county, wishes to retain the program income to establish a local economic development revolving loan fund. Any activities that are eligible under Title I of the federal Housing and Community Development Act of 1974, as amended (P.L. 93-383), and that meet at least one of the three national objectives of the Housing and Community Development Act may be undertaken. If the designation, pursuant to G.S. 105-130.40(c), as a "severely distressed county" is removed from a county, projects having received at least a preliminary grant award prior to the removal of the designation may continue to retain program income resulting from that grant as provided in this subsection Subchapter. Provisions of 4 NCAC 19L .0913 apply at the time of closeout.

(g) Income after closeout and not subject to Rule .0907(e) and (f) of this Subchapter.

- (1) Except as may be otherwise provided under the terms of the grant agreement or any closeout agreement, program income of \$10,000 or more received annually subsequent to the CDBG Program closeout shall be used for any

eligible activity pursuant to Rule .0301 of this Subchapter, ~~provided that the recipient has another ongoing CDBG program under this Subchapter.~~ Recipients must receive Departmental Division approval in writing prior to obligation of program income under this Paragraph to determine if the proposed use is plainly appropriate to meeting the recipient's needs and objectives; and

- (2) ~~If the recipient has no other active grant program under this Subchapter,~~ Accurate records shall be kept on program income of \$10,000 or more received annually subsequent to grant closeout ~~shall be treated as miscellaneous income, and used for any eligible activity pursuant to Rule .0301 of this Subchapter.~~

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; 42 U.S.C.A. 5304(b)(4).

.0908 PROCUREMENT STANDARDS

(a) Local governments shall follow the procurement standards established in the Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments (24 C.F.R., Part 85) and HUD implementing regulations contained in 24 CFR 570.489(g), which explicitly prohibit cost plus a percentage of cost and percentage of construction cost methods of contracting.

(b) Recipients ~~shall not may~~ incur costs with written approval of the Division for the procurement of supplies, equipment, construction and services ~~until such time as before~~ the Grant Agreement between the recipient and the ~~Department~~ Division has been executed. In the case of program amendments, recipients may not incur costs for the procurement of supplies, equipment, construction and services that are the subject of the program amendment until the program amendment has been approved in writing by the ~~Department~~ Division. Recipients ~~may, however, that~~ incur certain costs prior to execution of the grant agreement ~~or approval of the program amendment if prior approval by the Department has been obtained~~ must ensure that the activities are eligible and meet requirements of 24 CFR Part 58, Environmental Review.

(c) Recipients must also comply with the North Carolina General Statutes applicable to the procurement of supplies, equipment, construction and services. Relevant state laws include:

- (1) Conflict of Interest, G.S. 14-234 (cities and counties);
- (2) Public Building Contracts, G.S. 143-128 through 135 (cities and counties); and
- (3) Model payment and performance bond, G.S. 44A-25 through 33 (cities and Counties).

(d) Additional regulations governing property acquisition are found in this Subchapter under Rule .1003 ACQUISITION AND RELOCATION; Rule .0907 PROPERTY MANAGEMENT STANDARDS; Rule .1001 EQUAL OPPORTUNITY; and Rule .1006 LABOR STANDARDS.

(e) The requirements of the Office of Management and Budget Circular No. A-87, Cost Principles for State and Local Governments, shall apply to the procurement of materials and services funded in whole or in part with CDBG funds.

Authority G.S. 14-234; 143-128 through 143-135; 143B-431; 153A-158; 153A-163 through 153A-165; 159-15; 42 U.S.C.A. 5304(b)(4); 24 C.F.R. 570.489.

.0909 PROPERTY MANAGEMENT STANDARDS

This Rule prescribes uniform standards governing the ~~utilization~~ use and disposition of property acquired in whole or in part with Community Development Block Grant funds.

- (1) Definitions.
 - (a) "Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
 - (b) "Personal property" means any kind of property except real property. It may be tangible - having physical existence, or intangible - having no physical existence, such as patents, inventions, and copyrights.
 - (c) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of one thousand dollars (\$1,000.00) or more per unit.
 - (d) "Expendable personal property" refers to all tangible personal property other than nonexpendable property.
 - (e) "Acquisition cost of purchased nonexpendable personal property" means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary

apparatus necessary to make the property useable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty, or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the regular accounting practices.

- (2) Real Property.
 - (a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the original grant as long as needed;
 - (b) The recipient shall obtain prior approval by the ~~Department~~ Division for the use of the real property in other projects when the recipient determines that the property is no longer needed for the original grant purposes. Use in other projects will be limited to those under other federal and state grant programs, or programs that have purposes consistent with those authorized for support by the Department.
 - (c) When the real property is no longer needed as provided in (a) and (b) of this Paragraph, the recipient shall request disposition instructions from the ~~Department~~ Division, according to the following rules:
 - (i) The recipient may be permitted to retain title after it compensates the program budget in an amount computed by applying the CDBG percentage of participation in the cost of the original project to the current fair market value of the property.
 - (ii) The recipient may be directed to sell the property under guidelines provided by the ~~Department~~ Division.
- (3) Nonexpendable Personal Property. Title to nonexpendable personal property whose acquisition cost is borne in whole or part by Community Development Block Grant funds shall be vested in the recipient subject to the following restrictions:
 - (a) Use. The recipient shall use the property as long as there is a need for such property to accomplish the objectives of the Housing and Community Development Act of 1974, as amended, whether or not the recipient is supported by

- funds appropriated under this Act.
- (b) Disposition. When the recipient no longer needs the property as provided in this Rule, the property may be used in accordance with the following standards:
- (i) Nonexpendable personal property with a unit acquisition cost of less than one thousand dollars (\$1,000) may be retained by the recipient for other programs or sold by the recipients without reimbursement to the program budget.
 - (ii) Nonexpendable personal property with a unit acquisition cost of one thousand dollars (\$1,000) or more may be retained by the recipient for other uses provided that compensation is made as program income in accordance with Rule .0907. The amount of compensation shall be computed by applying the percentage of CDBG participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property then it shall dispose of the property in accordance with State law and proceeds shall be considered as program income.
- (c) Property records shall be maintained accurately and shall include:
- (i) a description of the property;
 - (ii) manufacturer's serial number, model number, federal stock number, national stock number, or other identification number;
 - (iii) source of the property including grant or other agreement number;
 - (iv) acquisition date;
 - (v) percentage of CDBG participation in the cost of the project for which the property was acquired;
 - (vi) location, use, and condition of the property and the date the information was reported;
 - (vii) unit acquisition cost; and
 - (viii) ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Department for its share.
- (d) A physical inventory of property shall be taken annually to verify the existence, current utilization and continued need for the property. The results shall be reconciled with the property records at least once every two years. Any differences between the quantities determined by the physical inspections and those shown in the accounting records shall be investigated to determine the causes of the differences.
- (e) Adequate maintenance procedures shall be implemented to keep the property in good condition.
 - (f) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.
 - (g) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.
- (4) Expendable Personal Property. Title to expendable personal property shall vest in the recipient upon acquisition. If there is a residual inventory of such property exceeding one thousand dollars (\$1,000) in total aggregate fair market value, upon termination or completion of the grant and if the property is not needed for any other federally sponsored project or program, the recipient shall retain the property for use on nonfederally sponsored activities, or sell it, but must in either case, compensate the program for its share. The amount of compensation will be computed in the same manner as nonexpendable personal property.
- (5) Intangible Property.
- (a) Inventions and patents. If any program produces patentable items, patent rights, processes, or inventions, in the course of work sponsored by the Department, such fact shall be promptly and fully reported to the Department. Unless there is a prior agreement between the recipient and the Department on disposition of such items, the Department shall determine whether protection on the invention or discovery shall be sought. The Department will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall

be allocated and administrated in order to protect the public interest consistent with "Government Patent Policy" (President's memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and Statement of Government Patent Policy as printed in 36 FR 16889); and

- (b) Copyrights. Except as otherwise provided in the terms and conditions of the agreement, the author or the recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of or under a Departmental agreement, but the Department shall reserve a royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for government purposes.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(b)(4), (d)(2), (e); 24 C.F.R. 570.489; 24 C.F.R. 570.489.

.0910 PROGRAM AMENDMENTS

(a) Community development program amendments. Recipients shall request prior Departmental Division approval for all program amendments when:

- (1) The recipient proposes to change the approved project budget amount for any activity by more than 10 percent of the total project amount;
- (2) The recipient proposes to add or delete any activity or activities, change project locations, or change the scope of the program or class of beneficiaries of previously approved activities; and
- (3) The cumulative effect of a number of smaller changes involving the approved activities exceeds 10 percent of the total project amount. In such instances, the recipient shall include in its request for an amendment documentation describing the smaller changes previously made, as well as those being proposed. After the amendment is approved by the Department Division, the accrual of smaller changes begins again.

(b) Citizen Participation. Recipients proposing amendments and other changes to the approved application which require prior Departmental Division approval pursuant to Paragraph (a) of this Rule shall hold one public hearing in accordance

with Paragraph (f) of Rule .1002, CITIZEN PARTICIPATION.

(c) Citizen objections to the amendment. Persons wishing to object to the approval of an amendment by the Department Division shall make such objection in writing to the Department Division in accordance with Paragraph (f) of Rule .1002 CITIZEN PARTICIPATION.

(d) Budget ordinance amendment. Any amendment to the grant program that involves a financial transaction shall comply with the provisions set forth in G.S. 159-15, Amendments to the Budget Ordinance.

(e) All requests for program amendments that require prior Departmental Division approval shall be submitted to the Department Division and include the following:

- (1) copy of the current budget and proposed changes;
- (2) detailed narrative description of the proposed changes and their effect upon the approved project;
- (3) maps showing any change in location;
- (4) signature of approval by the recipient's chief elected official on a form prescribed by the Department Division; and
- (5) other information appropriate for evaluating the proposed amendment.

(f) All requests for program amendments that require prior Departmental Division approval may be submitted by the Department Division to the appropriate agency or agencies for clearinghouse review. Procedures for this review shall be in accordance with Rule .1012 of this Subchapter.

(g) All records of program amendments shall be kept on file in accordance with Rule .0911 of this Section.

(h) Departmental Division Review of Amendments. In approving or denying proposed amendments pursuant to Paragraph (a) of this Rule .0910, the Department Division may consider the following factors:

- (1) amendments which include new or significantly altered activities may be rated in accordance with the selection criteria applicable at the time the original application was rated;
- (2) whether the proposed amendment activities can be completed within the scheduled duration of the project;
- (3) feasibility of the proposed amendment; and
- (4) appropriateness of the proposed amendment.

Authority G.S. 143B-10; 143B-431; 159-15; 159-34; 42 U.S.C.A. 5304(a)(2), (d)(2); 24 C.F.R. 570.489.

.0911 RECORDKEEPING

(a) The Secretary of the Department of ~~Economic and Community Development~~ Commerce, the Secretary of the Department of Housing and Urban Development, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of recipients or their subgrantees and contractors pertaining to funds provided under this Subchapter for the purpose of making surveys, audits, examinations, excerpts and transcripts.

(b) All Community Development Program records that are public under G.S. 132 shall be made accessible to interested individuals and groups during normal working hours.

(c) Financial records, supporting documents and all other reports and records required under this Subchapter, and all other records pertinent to the Community Development Program shall be retained by the recipient for a period of three years from the date of the closeout of the program, except as follows:

- (1) Records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later;
- (2) Records for nonexpendable property which was acquired with Federal grant funds shall be retained for three years after its final disposition;
- (3) Records for any displaced person shall be retained for three years after he/she has received final payment;
- (4) Records pertaining to each real property acquisition shall be retained for three years after settlement of the acquisition, or until disposition of the applicable relocation records in accordance with Subparagraph (3) of this Section, whichever is later; and
- (5) If a litigation, claim or audit is started before the expiration of the three year period, the records shall be retained until all litigations, claims, or audit findings involving the records have been resolved.

(d) All records shall be sufficient to determine compliance with the requirements and primary objectives of the Community Development Block Grant Program and all other applicable laws and regulations. All accounting records shall be

supported by source documentation and shall be in compliance with Rule .0906 of this Section.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(d)(2), (e); 24 C.F.R. 570.490.

.0912 AUDIT

(a) The recipient's financial management systems shall provide for audits to be made by the recipient or at the recipient's direction, in accordance with the following:

- (1) The recipient shall provide for an audit of its CDBG program on an annual basis in accordance with the annual independent audit procedures set forth in G.S. 159-34;
- (2) The CDBG program audit shall be performed in conjunction with the regular annual independent audit of the recipient and shall contain an examination of all financial aspects of the CDBG program as well as a review of the procedures and documentation supporting the recipient's compliance with applicable statutes and regulations;
- (3) CDBG program funds may only be used to pay for the CDBG portion of the audit costs;
- (4) The recipient shall submit the Annual Audit Report to the ~~Department~~ Division, including the information identified in Paragraph (b) of this Rule, along with an Annual Performance Report as required by Rule .1101 of this Subchapter; and
- (5) The ~~Department~~ Division may require separate closeout audits to be prepared by the recipient in accordance with Paragraph .0913 (e) of this Section.

(b) Audits shall comply with the ~~Requirements~~ set forth in this Paragraph:

- (1) Audits will include, at a minimum, an examination of the systems of internal control, systems established to insure compliance with laws and regulations affecting the expenditure of grant funds, financial transactions and accounts, and financial statements and reports of recipient organizations;
- (2) Financial statements shall include footnotes, comments which identify the statements examined, the period covered, identification of the various programs under which the recipient received CDBG funds, and the amount of

- the awards received;
- (3) Audits shall be made in accordance with the GENERAL ACCOUNTING OFFICE STANDARDS FOR AUDIT OF GOVERNMENTAL ORGANIZATIONS, PROGRAMS, ACTIVITIES AND FUNCTIONS, THE GUIDELINES FOR FINANCIAL AND COMPLIANCE AUDITS OF FEDERALLY ASSISTED PROGRAMS, any compliance supplements approved by the Federal Office of Management and Budget (OMB), and generally accepted auditing standards established by the American Institute of Certified Public Accountants;
 - (4) The audit shall include the auditor's opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, state the nature of the qualification;
 - (5) The auditors' comments on compliance and internal control should:
 - (A) Include comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses;
 - (B) Identify the nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of State or Federal laws and regulations that could have a material effect on the financial statements and reports;
 - (C) Contain an expression of positive assurance with respect to compliance with requirements for tested items and negative assurance for untested items;
 - (D) Comment on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies;
 - (E) Comment on corrective action taken or planned by the recipient;
 - (6) Work papers and reports shall be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the ~~Department~~ Division of the need to extend the retention period. The audit ~~workpapers~~ work papers shall be made available upon request to the ~~Department~~ Division and the General Accounting ~~office~~ Office or its designees;
 - (7) If during the course of the audit, the auditor becomes aware of irregularities in the recipient organization the auditor shall promptly notify the ~~Department~~ Division and recipient management officials about the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets;
 - (8) Selection of an independent auditor shall be in accordance with Rule .0908 of this Section.
 - (c) A "single audit," in which the regular independent auditor will perform an audit of all compliance aspects for all federal grants along with the regular financial audit of the recipient, is permissible. Where feasible, the recipient shall use the same auditor so that the audit will include the financial and compliance work under a single plan in the most economical manner.
 - (d) Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts awarded with CDBG funds. Recipients shall take the following affirmative action to further this goal:
 - (1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in P.L. 95-507 are used to the fullest extent practicable;
 - (2) Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged firms;
 - (3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms;
 - (4) Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;
 - (5) Encourage contracting with consortiums of small or disadvantaged audit firms when a contract is too large for an individual small or disadvantaged audit firm; and

- (6) Use the services and assistance, as appropriate, of the Small Business Administration, and the Minority Business Development Agency of the U.S. Department of Commerce in the solicitation and utilization of small or disadvantaged audit firms.

(e) All records, data, audit reports and files shall be maintained in accordance with Rule .0909 of this Section, unless otherwise stated in this Rule.

(f) The provisions of this Rule do not limit the authority of the Department to make audits of recipients' organizations.

Authority G.S. 143B-10; 143B-431; 159-34; 42 U.S.C.A. 5304(d)(2),(e); 24 C.F.R. 570.492.

.0913 GRANT CLOSEOUTS

(a) Initiation of closeout. The Department Division will advise the recipient to initiate closeout procedures when the Department Division determines, in consultation with the recipient, that there are no impediments to closeout and that the following criteria have been met or will be met shortly:

- (1) All costs to be paid with grant funds have been incurred with the exception of closeout costs such as payment for the final audit and any unsettled third-party claims against the recipient. Costs are incurred when goods and services are received and/or contract work is performed. With respect to activities (such as rehabilitation of privately owned properties) which are carried out by means of revolving loan accounts, loan guarantee accounts, or similar mechanisms, costs shall be considered as incurred at the time funds for such activities are drawn from the Department and initially used for the purposes described in the approved Community Development Program. The phrase "initially used for the purposes described in the approved Community Development Program" means the payment of such funds for work actually performed and is not intended to mean the initial deposit(s) of funds into the revolving loan account, loan guarantee account, or similar mechanism (such as loan or grant escrow account);
- (2) The recipient shall submit to the Department Division within 90 days after

the date of completion of the grant all financial, performance, and other reports required as a condition of the grant. The Department Division may grant extensions when requested by the recipient;

- (3) With respect to any grant for which an Annual Performance Report is required pursuant to Rule .1101, for purposes of the closeout, and has not been submitted or updated, the failure of a recipient to submit or update as required will not preclude the Department Division from effecting a grant closeout when such action is determined to be in the best interest of the Department Division. The failure or refusal by a recipient to comply with such requirement shall be taken into account in the performance determination by the Department Division in reviewing any future grant applications from the recipient. Any excess grant amount which is otherwise authorized to be retained by the recipient shall be refunded to the Department Division in the event of a recipient's failure to furnish the Annual Performance Report or update it as required under this Rule;
- (4) Other responsibilities of the recipient under the grant agreement and closeout agreement, applicable laws and regulations appear to have been carried out satisfactorily, or the Department Division has no further interest in keeping the grant agreement open for the purpose of securing performance. A final review of the recipient's compliance with the grant agreement and any closeout agreement, applicable laws and regulations will be made during the final audit or Department Division review in lieu of the final audit pursuant to Paragraph (e) of this Rule.
 - (b) Program Income. The recipient shall account for any program income in accordance with Rule .0907 of this Section.
 - (c) Disposition of nonexpendable personal property. The recipient shall account for any nonexpendable personal property acquired with grant funds in accordance with Rule .0909 of this Section entitled PROPERTY MANAGEMENT STANDARDS and Rule .0907 of this Section entitled PROGRAM INCOME.
 - (d) Disposition of real property. Disposition of

real property shall be in accordance with the requirements of Rules .0909 and .0907 of this Section.

(e) Audit. Upon notification from the ~~Department~~ Division to initiate closeout procedures, the recipient shall arrange for a final audit to be made of its grant accounts and records in accordance with Rule .0912 of this Section, and any other audit requirements of the Department hereafter in effect. The ~~Department~~ Division may determine that, due to the nature of the recipient's program or the relatively small amount of funds which have not been audited, a final audit is not required. In such instances, the ~~Department~~ Division will notify the recipient that the Department will perform necessary review of documentation and activities to determine that claimed costs are valid program expenses and that the recipient has met its other responsibilities under the grant agreement.

(f) Certificate of completion and final cost. Upon resolution of any findings in the final audit or, if the final audit is waived, after the ~~Department~~ Division has performed the review of documentation described in Paragraph (e) of this Rule, the recipient shall prepare a certificate of completion and final cost, on a form prescribed by the ~~Department~~ Division, and submit it to the ~~Department~~ Division.

(g) Refund of excess grant funds. Recipients shall refund to the Department any cash advance in excess of the final grant amount, as shown on the certificate of completion approved by the ~~Department~~ Division. However, recipients may request ~~Departmental~~ Division approval to use any excess grant funds to complete additional eligible activities where at least fifty-one percent of the funds benefit low- and moderate-income persons. ~~Departmental~~ Division approval must be obtained prior to such use of excess funds.

(h) Termination of grant for mutual convenience. Grant assistance provided under this part may be cancelled, in whole or in part, by the ~~Department~~ Division or the recipient, prior to the completion of the approved Community Development Program, when both parties agree that the continuation of the program no longer is feasible or would not produce beneficial results commensurate with the further expenditure of funds. The ~~Department~~ Division shall determine whether an environmental review of the cancellation is required, and if a review is required it shall be performed by the recipient. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The recipient

shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department shall allow full credit to the recipient for the noncancelable obligations properly incurred by the recipient in carrying out the program prior to termination. The closeout policies and procedures contained in this Rule shall apply in all such cases except where the total grant is cancelled in its entirety, in which event only the provisions of Paragraph (f) and (g) of this Rule shall apply.

(i) Termination for cause. In cases in which the Secretary terminates the recipient's entire grant, or the remaining balance thereof, in accordance with Rule .1103 of this Subchapter, provisions of Paragraphs (f) and (g) of this Rule shall apply.

(j) The recipient shall hold a public hearing prior to closeout of the CDBG program to assess the performance of the recipient in accordance with Rule .1002 of this Subchapter.

(k) All records of the closeout process shall be maintained in accordance with Rule .0911 of this Section.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489.

.0914 CONFLICT OF INTEREST

Except for procurement procedures set out in Rule .0908, recipients shall meet the requirements of HUD implementing regulations contained in 24 CFR 570.489(h). For the purposes of this Rule, the following definitions apply:

- (1) "family ties" means spouse, parents, children, brother, sister, grandparents, grandchildren and the step, half, and in-law relationships;
- (2) "business ties" means an officer, employee, agent, or any stockholder or shareholder holding at least 10 percent ownership of any firm, contract, or subcontract which benefits from funding assistance under the grant agreement.

Authority G.S. 143B-431; 143B-10; 24 C.F.R. 570.489.

SECTION .1000 - COMPLIANCE REQUIREMENTS

.1001 EQUAL OPPORTUNITY AND NONDISCRIMINATION

No person shall on the grounds of race, color, national origin, or sex, religion, handicap or

familial status be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under this Subchapter.

(1) Recipients shall meet the requirements of:

- (a) The Civil Rights Act of 1964 (P.L. 88-352) and specifically Title VI which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity which receives federal funds;
- (b) The Civil Rights Act of 1968 (P.L. 90-284) as amended, and specifically Title VIII which requires recipients to administer all programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take action to affirmatively further fair housing in the sale and rental of housing, the financing of housing, and the provision of brokerage services;
- (c) Section 109 of the Housing and Community Development Act of 1974, as amended (P.L. 93-383) which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under this Subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et. seq.) or with respect to any otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), shall also apply to any such program or activity;
- (d) Executive Order 11063, as amended by Executive Order 12259, Leadership and Coordination of Fair Housing in Federal Programs, requiring that programs and activities relating to housing and urban development be administered in a manner to affirmatively further the goals of Title VIII of the Civil Rights Act of 1968;

(e) Executive order 11246, as amended, which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal and federally assisted construction contracts, and that affirmative action will be taken in all aspects of personnel negotiations; and

(f) Section 3, of the Housing and Urban Development Act of 1968, (P.L. 90-448) as amended, which requires that to the greatest extent feasible, opportunities for training and employment arising in connection with the planning and carrying out of any project assisted under any federal block grant program be given to lower-income residents of the project area unit of local government, metropolitan area or nonmetropolitan county in which the project is located and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in, the same metropolitan area or nonmetropolitan county as of the project.

(2) Recipients shall meet the implementing requirements of:

- (a) Regulations under Title VI of the Civil Rights Act of 1964, 24 C.F.R., Part 1 and 2;
- (b) Equal Employment Opportunity under HUD Contracts and HUD Assisted Construction, 24 C.F.R. Part 130;
- (c) Employment Opportunities for Businesses and Lower Income Persons In Connection With Assisted Projects, 24 C.F.R. 135; and
- (d) HUD implementing regulations contained in 24 C.F.R. Part 107.

(3) Local government recipients shall meet the requirements of Title II of the Americans with Disabilities Act of 1990 (P.L. 101-336) and its implementing regulations (28 CFR Part 35).

(34) Recipients shall maintain records and data and document compliance efforts as required by the laws and regulations in this Rule including data on the racial, ethnic, and gender characteristics of persons who are applicants for, partici-

pants in, or beneficiaries of the program and shall comply with Rule .0911 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489; 24 C.F.R. 570.490; 24 C.F.R. 570.496; 42 U.S.C.A. 1982; 42 U.S.C.A. 2000d et seq.; 42 U.S.C. 5309.

.1002 CITIZEN PARTICIPATION

(a) Each applicant and recipient shall provide citizens with an adequate opportunity for meaningful involvement on a continuing basis and for participation in the planning, implementation and assessment of the program. Each applicant and recipient shall provide adequate information to citizens, hold public hearings, provide for timely responses to citizens' complaints, and certify that it is following a detailed Citizen Participation Plan as in (b) through (h) of this Rule. All public hearings shall be held by the governing board of the applicant or recipient.

(b) Citizen participation in the application process.

(1) Each applicant for CDBG funds shall:

- (A) Solicit and respond in a timely manner to views and proposals of citizens, particularly low- and moderate-income persons, members of minority groups, and residents of blighted areas where activities are proposed. Applicants shall respond in writing to written citizen comments. Responses shall be made within ten calendar days of receipt of the citizen comment.
- (B) Provide technical assistance to facilitate citizen participation, where requested. The technical assistance shall be provided to groups representative of persons of low- and moderate-income that request such assistance in developing proposals. The level and type shall be determined by the applicant.
- (C) Provide adequate notices of public hearings in a timely manner to all citizens and in such a way as to make them understandable to non-English speaking persons. Hearings must be held at times and locations convenient to potential or actual beneficiaries and with accommodations for the handicapped. A notice of the public hearing shall be published at least once in

the nonlegal section of a newspaper having general circulation in the area. The notice shall be published not less than ten days nor more than 25 days before the date fixed for the hearing. The notice of public hearing to obtain citizens' views after the application has been prepared, but prior to the submission of the application to the Department Division, shall contain a description of the proposed project(s) including the proposed project location, activities to be carried out, and the total costs of activities.

- (D) Schedule hearings to obtain citizens' views and to respond to citizen proposals at times and locations which permit broad participation, particularly by low- and moderate-income persons, members of minority groups, handicapped persons, and residents of blighted neighborhoods and project areas.
 - (E) Conduct one public hearing during the planning process to allow citizens the opportunity to express views and proposals prior to formulation of the application.
 - (F) Conduct one public hearing after the application has been prepared but prior to submission of the application to the Department Division.
- (2) Submitting objections to the Department Division.
- (A) Persons wishing to object to the approval of an application by the Department Division shall submit to the Department Division their objections in writing. The Department Division will consider objections made only on the following grounds:
 - (i) The applicant's description of the needs and objectives is plainly inconsistent with available facts and data.
 - (ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant, and
 - (iii) The application does not comply with the requirements of this Subchapter or other applicable laws.
 - (B) All objections shall include an identification of the requirements not met.

In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the objection shall include the facts and data upon which the objection is based.

(c) Citizen Participation Plan. Recipients shall develop and adopt, by resolution of their governing board, a written citizen participation plan developed in accordance with all provisions of this Rule and which:

- (1) provides for and encourages citizen participation with particular emphasis on participation by persons of low- and moderate-income who are residents of slum and blight areas and of areas in which CDBG funds are proposed to be used;
- (2) provides citizens with reasonable and timely access to local meetings, information, and records relating to the recipient's proposed and actual use of funds;
- (3) provides for technical assistance to groups representative of persons of low- and moderate-income that request such assistance in accordance with Part (b)(1)(B) of this Rule;
- (4) provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program in accordance with Paragraphs (b), (f), and (g) of this Rule;
- (5) provides a procedure for developing timely written responses to written complaints and grievances within ten calendar days of receipt of the complaint. The procedure shall include all provisions of Paragraph (d) of this Rule; and
- (6) identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(d) The recipient shall develop and adopt a written complaint procedure to respond to citizen complaints involving the CDBG program. The complaint procedure shall be applicable through the life of the grant and available to the general public. It shall specify that the recipient will respond in writing to written citizen complaints

within ten calendar days of receipt of the complaint. The procedure shall include a phone number for further information or clarification on the complaint procedure and shall identify any local procedures or appeals process that would normally be used by the recipient to address citizen complaints. The complaint procedure shall also state that if a citizen lodging a complaint is dissatisfied with the local response, then that person may direct the complaint to the North Carolina ~~Department of Economic and Community Development~~ Division of Community Assistance.

(e) Citizen participation during program implementation. Citizens shall have the opportunity to comment on the implementation of a Community Development Program throughout the term of the program. Recipients shall solicit and respond to the views and proposals of citizens in the same manner as in Part (b)(1)(A) of this Rule.

(f) Citizen participation in the program amendment process.

(1) Recipient procedures.

(A) Recipients proposing amendments which require prior ~~Departmental~~ Division approval in accordance with Rule .0910 of this Subchapter will be required to conduct one public hearing prior to submission of the amendment to the ~~Department~~ Division in the same manner as in Part (b)(1)(C) of this Rule.

(B) Each recipient shall respond to citizen objections and comments in the same manner as in Part (b)(1)(A) of this Rule.

(2) Submitting Objections to the ~~Department~~ Division.

(A) Persons wishing to object to the approval of an amendment by the ~~Department~~ Division shall make such objection in writing. The ~~Department~~ Division will consider objections made only on the following grounds:

- (i) The recipient's description of needs and objectives is plainly inconsistent with available facts, and data,
- (ii) The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the recipient, and
- (iii) The amendment does not comply with the requirements of this Section or other applicable laws and regulations.

- (B) All objections shall include an identification of the requirements not met. In the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the objection shall include the facts and data upon which the objection is based.

(g) Citizen participation in the program closeout process.

- (1) Recipients shall conduct one public hearing to assess program performance during the grant closeout process and prior to the actual closeout of the grant in the same manner as in Part (b)(1)(C) of this Rule.
- (2) Recipients shall continue to solicit and respond to citizen comment in the same manner as in Part (b)(1)(A) of this Rule until such time as the grant program is closed.

(h) Persons may submit written comments to the ~~Department~~ Division at any time concerning the applicant's or recipient's failure to comply with the requirements contained in this Subchapter.

(i) All records of public hearings, citizens' comments, responses to comments and other relevant documents and papers shall be kept in accordance with Rule .0911 of this Subchapter. All program records shall be accessible to citizens in accordance with Rule .0911(b) of this Subchapter.

Statutory Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(a)(2); 24 C.F.R. 570.486.

.1003 ACQUISITION AND RELOCATION

(a) The purpose of this Rule is to insure that owners of real property to be acquired under the provisions of this Subchapter are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in governmental land acquisition; and to insure that persons displaced as a result of CDBG-assisted projects are treated equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole. Recipients shall follow the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), Sections 104(d) and 106(d)(5)(A) of Title I of the Housing and Community Development Act of

1974, as amended, and HUD implementing regulations (24 C.F.R. ~~Part 42~~) 570.488 and 570.496(a). ~~the~~ The following definitions shall apply:

- (1) "HUD" means the Department.
- (2) "Federal agency" means the Department.
- (3) "State agency" means the recipient of CDBG funds as defined in this Subchapter.

(b) The recipient may provide relocation payments and assistance for individuals, families, businesses, non profit organizations and farm operations displaced by an activity that is not subject to the Uniform Act. The recipient also may provide relocation payments and other assistance at levels above those established under the Uniform Act. All such relocation assistance not required by the Uniform Act must be determined by the recipient to be appropriate to its community development program. The recipient shall adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments; and assistance within each class of displacees.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5301 and 5304(b)(4); 24 C.F.R. 570.488.

.1004 ENVIRONMENTAL REVIEW

Applicants and recipients shall comply with the policies of the National Environmental Policy Act of 1969 and all other applicable provisions of Federal and State law which further the purposes of such act (as specified in 24 C.F.R. Part 58).

- (1) Applicants and recipients shall assume the responsibilities for environmental review, decision-making, and other actions which would otherwise apply to the Secretary, under NEPA and other provisions of law which further the purposes of NEPA in accordance with section 104(f)(4) of Title I of the Housing and Community Development Act of 1974, as amended and the implementing regulations at 24 C.F.R. Part 58.
- (2) Applicants and recipients shall meet the requirements of the following Federal laws and regulations:
 - (a) The National Environmental Policy Act of 1969 ("NEPA", 42 U.S.C. 4321 et seq., P.L. 91-190) which establishes national policy, goals, and procedures for protecting, restoring and enhancing environmental quality;

- (b) Environmental Review Procedures for Title I Community Development Block Grant Programs, (24 C.F.R. Part 58), which sets forth the procedures for carrying out the environmental responsibilities under NEPA;
 - (c) Executive Order 11988, Floodplain Management, May 24, 1977 (42 F.R. 26951 et seq.);
 - (d) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 F.R. 26961 et seq.);
 - (e) The Coastal Zone Management Act of 1972, (16 U.S.C. 1451 et seq.), as amended;
 - (f) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349), as amended, particularly concerning sole source aquifers;
 - (g) The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as amended;
 - (h) The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.), as amended;
 - (i) The Clean Air Act (42 U.S.C. 7401 et seq.);
 - (j) The Fish and Wildlife Coordination Act of 1958 as amended, (16 U.S.C. 661 et seq.);
 - (k) The Federal Water Pollution Control Act (P.L. 92-500);
 - (l) HUD environmental criteria and standards (24 C.F.R. Part 51), and the Council on Environmental Quality Standards at 40 C.F.R. Part 1500-1508;
 - (m) The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.) as amended;
 - (n) Procedures for the Protection of Historic and Cultural Properties, 36 CFR 800;
 - (o) Executive Order 11593, Protection and Enhancement of the Cultural Environment. May 13, 1971 (36 F.R. 8921 et seq.);
 - (p) The Reservoir Salvage Act of 1960 (16 U.S.C. 469 et seq.); as amended by the Archaeological and Historic Preservation Act of 1974; and
 - (q) The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), as amended.
- (3) Applicants and recipients shall submit adequate information in a form prescribed by the ~~Department~~ Division on

- the environmental impact of each project so that the ~~Department~~ Division can determine project compliance with the requirements of the North Carolina Environmental Policy Act of 1971 (SEPA) (G.S. 113A-1). A determination by the ~~Department~~ Division that the project complies with the requirements of SEPA will be made before the Department will release funds to the recipient.
- (4) The applicant and recipient shall meet the requirements of the following State laws and rules where they are applicable to the provisions of this Subchapter:
- (a) Chapter 113A of the General Statutes of North Carolina, entitled Pollution Control and Environment;
 - (b) G.S. 143-215.108 which designates the Environmental Management Commission as the issuing authority for air quality permits;
 - (c) G.S. 143-215.1 which governs water pollution permits and designates the Environmental Management Commission as the issuing authority;
 - (d) G.S. 121-12, Protection of Properties on the National Register, which requires consideration of project impact on any property listed in the National Register; and
 - (e) G.S. 70-1 through 70-3, Indian Antiquities laws, which urges private landowners to refrain from excavation and other actions leading to the destruction of Indian archaeological sites on their property. It also requires local governments to report the discovery of artifacts and refrain from further excavation or construction when excavating or constructing on public lands.
- (5) It is the responsibility of the recipient to obtain all air pollution and water pollution permits for a CDBG program pursuant to Paragraph (4) of this Rule.
- (6) All records and data shall be maintained pursuant to Rule .0911 of this Subchapter.

Authority G.S. 143-215.1; 143-215.108; 143B-10; 143B-431; 24 C.F.R. Part 58; 24 C.F.R. 570.487; 42 U.S.C.A. 4321 through 4370; 42 U.S.C.A. 5304(b)(4).

.1007 ARCHITECTURAL BARRIERS

All buildings or facilities (other than privately

owned residential structures) designed, constructed or altered with CDBG funds shall be made accessible and useable to the physically handicapped.

- (1) Recipients must comply with the following ~~federal laws and regulations~~:
 - (a) Architectural Barriers Act of 1968 (P.L. 90-480). This act requires recipients to insure that buildings constructed or altered with CDBG funds (except private residential structures) are readily accessible to the physically handicapped.
 - (b) Minimum Guidelines and Requirements for Accessible Design 36 C.F.R. Part 1190. These regulations establish guidelines for implementing the federal acts described in Subparagraph (a) of this Paragraph. The regulations provide technical standards which must be met by recipients.
 - (c) Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities or the Uniform Federal Accessibility Standards.
- (2) Recipients must comply with provisions of the North Carolina Building Code, Volume I, Chapter 11-X. These provisions describe minimum standards recipients must meet in constructing or altering building and facilities, to make them assessible to and useable by the physicaly handicapped.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.487; 29 U.S.C.A. 792; 36 C.F.R. Part 1190; 42 U.S.C.A. 4151 through 4157; 42 U.S.C.A. 5304 (b)(4); 28 C.F.R. 35.15.

.1011 LEAD-BASED PAINT

(a) The recipient must comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4824 4831(b)), 24 C.F.R. Part 570.608, 24 C.F.R. 570.487(c), and 24 C.F.R. Part 35, including provisions of the above:

- (1) prohibiting the use of lead-based paint;
- (2) requiring elimination of lead-based paint hazards; and
- (3) requiring notification of the hazards of lead-based poisoning to purchasers and tenants of housing constructed prior to 1978 which was acquired or rehabilitated with CDBG assistance.

(b) All construction contracts as described in this Rule shall contain a provision prohibiting the use of lead based paint.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(b)(4); 42 U.S.C.A. 4821 through 4846.

.1012 CLEARINGHOUSE REVIEW

(a) Applications for funding under this Subchapter may be submitted by the ~~Department~~ Division to the appropriate state clearinghouse agencies. The state agencies shall have 30 days from the receipt of the application to review the application and give comments to the ~~Department~~ Division and the applicant.

(b) Comments containing any findings of inconsistency with state or local plans, significant adverse urban impacts, noncompliance with environmental laws, failure to provide equal opportunity or other comments that require a response may result in disapproval or conditional approval of the application by the ~~Department~~ Division. Applicants must consider all findings and submit to the ~~Department~~ Division a written statement indicating what action they plan to take as a result of these findings.

(c) Program amendments which must receive ~~Departmental~~ Division approval pursuant to Rule .0910 Paragraph (a), may be submitted to clearinghouse review in accordance with Paragraph (a) of this Rule.

(d) All clearinghouse comments and responses shall be kept in accordance with Rule .0911 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489.

SECTION .1100 - PERFORMANCE

.1101 REPORTING

(a) Recipients shall submit an Annual Performance Report at the close of each fiscal year concurrently with the annual audit of the program required by Rule .0912 of this Subchapter. Failure to provide the APR and audit within 60 days of the end of the fiscal year may be grounds for withholding further grant payments until the APR and audit have been submitted. A performance report may also be required of the recipient prior to the grant closeout pursuant to Rule .0913 of this Subchapter.

(b) The Annual Performance Report and any other performance report required prior to the grant closeout shall contain completed copies of all forms and narratives requested by the Department.

(c) Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such

cases, the recipient shall inform the Department as soon as the following types of conditions become known:

- (1) Problems, delays, or adverse conditions which will materially affect the ability to attain program objectives; prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any Departmental assistance needed to resolve the situation.
- (2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(d) For both construction and nonconstruction grants, recipients shall notify the Department promptly whenever the amount of CDBG authorized funds is expected to exceed the needs of the recipient by more than five thousand dollars (\$5,000) or five percent of the Community Development grant, whichever is greater. ~~This notification will not be required when applications for additional funding are submitted for continuing grants.~~

(e) Recipients shall submit such reports as may be necessary, pursuant to the rules and regulations under Title VI, Civil Rights Act of 1964; Title VIII, Civil Rights Act of 1968; Section 3 of the Housing and Urban Development Act of 1968; Section 109 of the Housing and Community Development Act of 1974, as amended; Executive Order 11246, as amended; and Executive Order 11063.

(f) Recipients will be required to report data annually as specified by the Division for the state's Comprehensive Housing Affordability Strategy (CHAS).

(fg) Recipients shall submit other reports as outlined in this Subchapter or as may be further required by the ~~Department~~ Division.

Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(b)(4); 24 C.F.R. Part 91; 24 C.F.R. 570.490-491.

.1103 MONITORING BY THE DIVISION

(a) The Secretary shall, in addition to the annual audit, evaluate programs conducted under this Subchapter and their effectiveness in meeting the objectives of the CDBG Program.

(b) The Secretary may conduct such evaluation using ~~Departmental~~ Division personnel, or by contract or other arrangement with public or private agencies. The evaluations will consist of site visits as frequently as practical to:

- (1) Review ~~P~~program accomplishments and management control systems as outlined in Paragraph (d) of this Rule; and
- (2) Provide such technical assistance as may be required.

(c) Recipients may be required to supply data or make available such records as are necessary for the accurate completion of these evaluations, including, but not limited to the following:

- (1) the approved CDBG application and any amendments thereto;
- (2) reports prepared by the recipient including the performance report described in Rule .1101;
- (3) records maintained by the recipient pursuant to Rule .0911;
- (4) results of the ~~Department~~ Division's monitoring of recipient performance;
- (5) audit reports;
- (6) records of drawdowns; and
- (7) records of comments and complaints by citizens and/or other organizations, or litigation.

(d) Review criteria:

- (1) Substantial progress. The ~~Department~~ Division will review a recipient's performance to determine the recipient's progress in carrying out approved activities and will take into account such factors as expenditure of funds, obligation of funds, award of third party contracts, and other measures of progress. The ~~Department~~ Division will compare a recipient's progress with that of other recipients of comparable size with similar activities and grant amounts. If a recipient's progress lags substantially behind that of other similar recipients, further reviews may be conducted to determine the reasons for a lack of progress.
- (2) Conformance with approved program. The ~~Department~~ Division will review a recipient's performance to determine whether the activities undertaken during the period under review conform substantially to the Community Development Program described in the application, including any amendments approved by the ~~Department~~ Division.

- (3) Compliance. The ~~Department~~ Division will review a recipient's performance to determine whether the program carried out complies with the requirements of the Act, this Subchapter, and other applicable laws and regulations.
- (4) Continuing Capacity. The ~~Department~~ Division will review a recipient's performance to determine whether the recipient has a continuing capacity to carry out the approved program in a timely manner.

Statutory Authority G.S. 143B-10; 143B-431; 42 U.S.C.A. 5304(d)(2), (e); 24 C.F.R. 570.492.

.1104 REMEDIES

(a) When the Secretary determines on the basis of a review of a recipient's performance that the objectives of the program, as well as the objectives as described in its application, have not been met, the Secretary may take one or more of the actions authorized in Paragraph (b) of this Rule. In each instance, the action taken will be designed to first, prevent a continuance of the deficiency (lack of progress, nonconformance, noncompliance, lack of continuing capacity); second, mitigate any adverse effects or consequences of the deficiency to the extent possible under the circumstances; and third, prevent a recurrence of the same or similar deficiencies.

(b) The action that the Department or Division may take in response to a negative review of a recipient's performance include:

- (1) Require the recipient to submit additional information:
 - (A) concerning the administrative, planning, budgeting, management and evaluation functions to determine any reasons for lack of progress;
 - (B) explaining any actions being taken to correct or remove the causes for delay;
 - (C) documenting that activities undertaken were not in conformance with the approved program or were in non-compliance with applicable laws or regulations; and
 - (D) demonstrating that the recipient has a continuing capacity to carry out the approved program in a timely manner.
- (2) Require the recipient to submit progress schedules for completing approved activities;

- (3) Issue a letter of warning that advises the recipient of the deficiency and puts the recipient on notice that more serious sanctions will be taken if the deficiency is not corrected or is repeated;
- (4) Instruct the recipient that a certification will no longer be acceptable and that additional information or assurances will be required;
- (5) Instruct the recipient to suspend, discontinue or not incur costs for the affected activity;
- (6) Instruct the recipient to reprogram funds from affected activities to other eligible activities; provided, that such action shall not be taken in connection with any substantial violation of Rule .1004 Environmental Requirements;
- (7) Instruct the recipient to reimburse the recipient's program account or the Department in any amounts improperly expended;
- (8) Change the method of payment from advance payment to a reimbursement basis;
- (9) Condition the approval of a succeeding year's application if there is substantial evidence of a lack of progress, nonconformance, noncompliance, or a lack of continuing capacity. In such cases, the reasons for the conditional approval and the actions necessary to remove the condition shall be as specified by the ~~Department~~ Division; and
- (10) Reduce the recipient's annual grant by up to the amount conditionally approved where such condition or conditions have not been satisfied.

(c) When the Secretary determines, on the basis of a review of a recipient's performance that objectives of the program as described in its application have not been met, the Secretary may reduce, withhold funds or withdraw the grant, except for funds already expended on otherwise eligible activities which may not be recaptured or deducted from future grants.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.492.

SECTION .1300 - HOUSING DEVELOPMENT PROJECTS

.1302 ELIGIBILITY REQUIREMENTS

- (a) Applications for Housing Development funds

must show that:

- (1) At least 51 percent of the CDBG funds proposed for each activity will benefit low- and moderate-income persons; and
- (2) CDBG funds proposed for each activity will address the national objective of benefiting low- and moderate-income persons, or aid in the prevention or elimination of slums or blight. Applicants that do not meet these requirements will not be rated or funded.

(b) Applicants shall have the capacity to administer a Community Development Block Grant Program. The ~~Department~~ Division may examine the following areas to determine capacity:

- (1) audit and monitoring findings on previously funded Community Development Block Grant Programs, and the applicant's fiscal accountability as demonstrated in other state or federal Programs or local government financial reports; and
- (2) the rate of expenditure of funds in previously funded Community Development Block Grant Programs.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.483.

.1303 SELECTION CRITERIA

Selection criteria will be announced by the ~~Department~~ Division at least 45 days prior to accepting applications for this category. The ~~Department~~ Division may accept applications for development grants periodically.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.489.

SECTION .1500 - INTERIM ASSISTANCE

.1501 DESCRIPTION

The Interim Assistance grant category includes activities directed toward the development of affordable housing units and ~~activities eligible activities in which a majority of funds are directed toward promoting the creation or retention of jobs principally for persons of low and moderate income under Rule .1401 of this Subchapter.~~ All program income resulting from the CDBG expenditure, as determined at the time of the grant application, must be returned to grant recipients or to the Department as provided under Rule .0907 of this Subchapter.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1502 ELIGIBILITY REQUIREMENTS

(a) Applications for Interim Assistance must demonstrate that the project shall be completed and program income at least equal to the grant award returned to the Department or the recipient within the approved project period not to exceed 36 months of the grant award in accordance with Rule .0907 of this Subchapter.

(b) Projects which are designed to provide assistance for the creation of jobs must comply with the requirements of ~~Rule .1402 4 NCAC 01K .0302 of this Subchapter.~~

(c) Projects which are designed to develop affordable housing for low- and moderate-income persons must maintain rents for low- and moderate-income families at affordable levels, as determined by use of the HUD; Housing Development Action Grant formula.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1503 SELECTION CRITERIA

Criteria shall be announced by the ~~Department~~ Division at least 60 days prior to its acceptance of applications in this category.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1504 FUNDS AVAILABLE

The amount of funds from the current allocation used for 36 month Interim Assistance grants shall be based upon the aggregate drawdown rate of funds awarded from the allocation received from HUD three years prior to the current allocation. Specifically, it shall be limited to 75 percent of the percentage of funds not ~~drawdown drawn down~~ from the allocation received from HUD three years prior to the current allocation as of June 30 of the current year. Up to 50 percent of the current allocation may be used for Interim Assistance projects which will be completed in less than 18 months.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1505 PRELIMINARY AWARDS

The ~~Department~~ Division shall announce preliminary grant awards after review and evaluation of Interim Assistance applications. A grant agree-

ment shall not be extended to a recipient until the recipient demonstrates to the Department Division that it has received from the developer an irrevocable letter of credit or comparable instrument guaranteeing that the amount of CDBG dollars provided in assistance to the developer will be returned to the recipient at the completion of the project. A preliminary award may be withdrawn by the Department Division if an acceptable instrument has not been provided to and approved by the Department Division within 90 days from the date of the preliminary award. If a recipient that has received a preliminary award demonstrates that special circumstances warrant, the Department Division may grant an extension of time for providing the instrument subject to any conditions deemed appropriate. In no case shall the time for providing the instrument exceed six months from the preliminary grant award date.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

SECTION .1600 - COMMUNITY INVESTMENT FOR ECONOMIC OPPORTUNITY

.1603 SELECTION CRITERIA

Projects will be evaluated ~~against three selection criteria as follows: in accordance with the annual statement of program design as approved by HUD.~~

- (1) ~~The percentage of CDBG funds directly benefitting low and moderate income persons, and the economic distress of the county where the project is located.~~
- (2) ~~The level of need for the project and its feasibility of success, including:~~
 - (a) ~~a review of the extent of the need and the project's impact on this need;~~
 - (b) ~~accessibility of the existing similar programs available to low and moderate income persons;~~
 - (c) ~~ability of the non-profit entity to repay the loan, and~~
 - (d) ~~the long term viability of the organization.~~
- (3) ~~Leveraging:~~
 - (a) ~~ratio of other funds to CDBG funds;~~
 - (b) ~~strength of commitment of other funds.~~

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

.1604 PRELIMINARY AWARDS

- (a) Preliminary grant awards will be announced

after review and evaluation of an application. A Grant Agreement shall not be extended to a locality until a Legally Binding Commitment with the participating non-profit entity has been executed, and approved by ~~DCA~~ the Division. The Legally Binding Commitment shall incorporate project-specific implementation requirements reflecting key project elements; including activities necessary for the project to proceed and goals to be met.

(b) The Legally Binding Commitment must be submitted to and approved by ~~DCA~~ the Division within 90 days of the preliminary award announcement. A preliminary award may be withdrawn if a Legally Binding Commitment is not approved within the 90-day period. If special circumstances warrant, an extension of time for executing the Legally Binding Commitment subject to acceptable assurances and a timetable from all parties involved may be granted. In no case shall the time for executing a Legally Binding Commitment exceed six months from the preliminary grant award date.

Authority G.S. 143B-10; 143B-431; 24 C.F.R. 570.482.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26D .0012.

The proposed effective date of this action is June 1, 1993.

Reason for Proposed Action: This rule clarifies the phrase "date of payment" and addresses Medicaid claims for which payment was denied.

Comment Procedures: Written comments concerning this amendment must be submitted by April 15, 1993, to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603 ATTN: Clarence Ervin, APA Coordinator. A fiscal impact statement is available upon written request from the same address.

Editor's Note: An agency may not adopt a rule that differs substantially from the text of a pro-

posed rule published in the Register, unless the agency publishes the text of the proposed different rule and accepts comments on the new text for at least 30 days after the publication of the new text.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26D - LIMITATIONS ON AMOUNT: DURATION: AND SCOPE

.0012 TIME LIMITATION

(a) To receive payment, claims must be filed either received for processing:

- (1) Within 365 days of the date of service for services other than inpatient hospital, home health or nursing home services; or
- (2) Within 365 days of the date of discharge for inpatient hospital services and the last date of service in the month for home health and nursing home services not to exceed the limitations as specified in 42 C.F.R. 447.45; or
- (3) Within 180 days of the Medicare or other third party payment, or within 180 days of final denial, when the date of the third party payment or denial exceeds the filing limits in Paragraphs (1) or (2) of this Rule ~~except that the time limit may not be waived under this paragraph when the claim is denied because it was not submitted to the third party timely, the service was not a covered service by the third party, the individual was not enrolled with the third party or the claim was paid or denied at an earlier date. , if it can be shown that:~~

(A) A claim was filed with a prospective third-party payor within the filing limits in Subparagraph (1) or (2) of this Rule; and

(B) There was a possibility of receiving payment from the third party payor with whom the claim was filed; and

(C) Bona fide and timely efforts were pursued to achieve either payment or final denial of the third-party claim.

(b) Providers must file requests for payment adjustments or requests for reconsideration of a denied claim no later than 18 months after the date of payment or denial of a claim. ~~or adjustments will not be made~~

(c) The time limitation specified in Paragraph (a) of this Rule may be waived by the Division of Medical Assistance when a delay in an eligibility determination, has made it impossible for the provider to file the claim within the 365 days provided for in (a) of this Rule correction of an administrative error in determining eligibility, application of court order or hearing decision grants eligibility with less than 60 days for providers to submit claims for eligible dates of service, provided the claim is received for processing within 180 days after the date the county department of social services approves the eligibility.

(d) In cases where claims or adjustments were not filed within the time limitations specified in (a) and (b) of this Rule, and the provider shows failure to do so was beyond his control, he may request a reconsideration review by the Director of the Division of Medical Assistance. The Director of Medical Assistance is the final authority for reconsideration reviews. If the provider wishes to contest this decision, he may do so by filing a petition for a contested case hearing in conformance with G.S. 150B-23.

Authority G.S. 108A-25(b); 42 C.F.R. 447.45.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the N. C. Alarm Systems Licensing Board intends to amend rule cited as 12 NCAC 11 .0106.

The proposed effective date of this action is June 1, 1993.

The public hearing will be conducted at 11:00 a.m. on March 30, 1993 at the SBI Conference Room, 3320 Old Garner Road, Raleigh, NC 27626.

Reason for Proposed Action: Allow the Board to review experience claimed by an applicant when he is not in possession of a valid license or registration.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments until

April 15, 1993. Written comments must be delivered to or mailed to: James F. Kirk, Alarm System Licensing Board, 3320 Old Garner Road, P. O. Box 29500, Raleigh, NC 27626.

CHAPTER 11 - NORTH CAROLINA ALARM SYSTEMS LICENSING BOARD

SECTION .0100 - ORGANIZATION AND GENERAL PROVISIONS

.0106 DETERMINATION OF EXPERIENCE

(a) Experience requirements shall be determined in the following manner: one year's experience = 1,000 hours.

(b) The Board ~~shall not~~ may consider any experience claimed by the applicant if gained while not in possession of a valid license or registration while such license was required by existing or previously existing laws of the United States, any State, or any political subdivision thereof.

Statutory Authority G.S. 74D-5.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0306.

The proposed effective date of this action is December 1, 1993.

The public hearing will be conducted at 7:00 p.m. on May 20, 1993 at the Cleveland County Community College, Student Activity Center, Rooms 1139 and 1140, 137 S. Post Road, Shelby, NC.

Reason for Proposed Action: To reclassify Sandy Run Creek including tributaries in Cleveland and Rutherford Counties (Broad River Basin) for use as a raw water supply source. The proposed water supply classification is WS-II.

Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be

submitted in writing prior to, during or within 30 days after the hearing or may be presented verbally at the hearing. Verbal statements may be limited at the discretion of the hearing officer. Submittal of written copies of verbal statements is encouraged.

Fiscal Note: This Rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on February 20, 1993, OSBM on February 20, 1993, N.C. League of Municipalities on February 20, 1993, and N.C. Association of County Commissioners on February 20, 1993.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

.0306 BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:
Buncombe County
Cleveland County
Gaston County
Henderson County
Lincoln County
McDowell County
Polk County
Rutherford County
- (2) North Carolina Department of Environment, Health, and Natural Resources:
 - (A) Mooresville Regional Office
919 North Main Street
Mooresville, North Carolina
 - (B) Asheville Regional Office
Interchange Building
59 Woodfin Place
Asheville, North Carolina

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

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

- (1) March 1, 1977;
- (2) February 12, 1979;
- (3) August 12, 1979;
- (4) April 1, 1983;

- (5) February 1, 1986;
- (6) August 3, 1992-;
- (7) December 1, 1993.

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

(e) The Schedule of Classifications and Water Quality Standards for the Broad River Basin was amended effective December 1, 1993 as follows: Sandy Run Creek (Index No. 9-46) and all tributaries from source to a point 1.4 miles upstream from Cleveland County SR 1003 were reclassified from Class C to Class WS-II and WS-II CA.

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Division of Environmental Management intends to adopt rule cited as 15A NCAC 2L .0114 and amend rules cited as 15A NCAC 2L .0102 - .0104; .0106 - .0107; .0109 - .0113; .0201 - .0202.

The proposed effective date of this action is September 1, 1993.

The public hearings will be conducted at 7:00 p.m. on the following dates and locations:

April 1, 1993
Onslow County Courthouse
Old Courthouse
625 Court Street
Jacksonville, N.C.

April 5, 1993

Martin County Community College
College Auditorium
Kehukee Park Road
Williamston, N.C.

April 7, 1993

Ground Floor Hearing Room
Archdale Building
512 N. Salisbury St.
Raleigh, N.C.

April 20, 1993

Rowan-Cabarrus Community College
Teaching Auditorium
Jake Alexander Blvd. and I-85
Salisbury, N.C.

April 21, 1993

UNC-ASHEVILLE
Carmichael Lecture Hall
1 University Heights
Asheville, N.C.

Reason for Proposed Action: The proposed amendments to 15A NCAC 2L will amend the Groundwater Classifications and Standards regarding policy, RS designation, corrective action, compliance boundary, delegation, monitoring, reports, variance, groundwater classifications, and water quality standards. The adoption of 15A NCAC 2L .0114 will establish notification requirements under this Subchapter.

Comment Procedures: Notice is hereby given of a series of public hearings to be held by the Division of Environmental Management, on behalf of the Environmental Management Commission (EMC), to consider amendments to 15A NCAC 2L, Groundwater Classification and Standards. The purpose of the proposed amendments is to improve the processes required to be followed in cleaning up groundwater contamination and providing protection for groundwater that is being used, or may potentially be used for drinking water. To accomplish this objective, definitions have been added, some clean up activities have been restricted to persons licensed by professional boards, and requirements for designation of RS (Restricted) groundwaters are clarified and extended to include monitoring and notice requirements. Corrective action requirements are rewritten to include minimum cleanup requirements, information that must

be included in cleanup plans, requirements for the use of best available technology, procedures for requesting alternative cleanup levels, and provisions that would allow for the natural degradation of contaminants when evidence is submitted that this cleanup approach can be effective and is protective of groundwater that is or may be used for drinking water. In addition, revisions are proposed in the compliance boundary rule that would exempt small residential ground absorption systems from water well location restrictions and compliance boundary requirements, and that would maintain consistency with new rules for the permitting of agricultural waste management sites. Other proposed rule changes include requirements for providing notice of corrective action to the Health Director in the County where a contamination plume has occurred, and the addition and revision of standards to incorporate recent toxicological knowledge.

In developing these rules, concern was expressed that considerable judgement must be exercised in enforcement regarding the determination of the impact of contamination on groundwater that may be a potential source of drinking water. Consideration was also given to the use of Maximum Contaminate Levels (MCLs) for cleanup standards instead of continuing the use of Groundwater Standards for both groundwater protection and contaminate cleanup. Comments were received regarding the adequacy of requirements for notice to parties that might be impacted by a proposed cleanup activity. In addition, comments were also received regarding the decision-making criteria the Director must use in approving cleanup plans.

The EMC is interested in all comments from the public or interested parties regarding the proposed amendments and alternatives to these amendments and is particularly interested in comments and public opinion regarding the impact of these rule changes on the use of groundwater as existing or potential sources of drinking water for public or private use.

THESE PROPOSED AMENDMENTS REPRESENT A SIGNIFICANT CHANGE FROM PRESENT PRACTICE SINCE THEY WOULD NOT ALWAYS REQUIRE THE APPLICATION OF BEST AVAILABLE TECHNOLOGY TO RESTORE GROUNDWATER TO THE LEVEL OF THE STANDARD. NEW APPROACHES PROPOSED INCLUDE THE USE OF ALTERNATIVE CLEANUP LEVELS AND NATURAL REMEDIATION PROCESSES WHEN

THESE PROCESSES ARE DETERMINED BY THE DIVISION TO BE PROTECTIVE OF PUBLIC HEALTH.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS OR PARTIES MAKE THEIR VIEWS AND OPINIONS KNOWN, preferably in writing, TO THE EMC WHETHER THEY ARE IN FAVOR OR OPPOSED TO ANY OR ALL OF THE PROPOSED AMENDMENTS TO THE GROUNDWATER CLASSIFICATION AND STANDARDS. PUBLIC COMMENT IS VITALLY IMPORTANT BECAUSE THE EMC MAY ADOPT MORE OR LESS STRINGENT AMENDMENTS IF THE EMC DETERMINES THAT THE FINAL ADOPTED RULES ARE A LOGICAL OUTGROWTH OF THE NOTICE AND PUBLIC COMMENT.

All persons interested in these matters are invited to attend the public hearings noticed herein. Written comments may be presented at the public hearing or submitted through April 23, 1993. Please submit comments to Mr. David Hance, Division of Environmental Management, Groundwater Section, P.O. Box 29535, Raleigh, NC 27626-0535, (919) 733-3221.

Please notify Mr. Hance prior to the public hearing if you desire to speak. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Oral presentations greater than three minutes in length are requested to be submitted in writing.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2L - GROUNDWATER CLASSIFICATION AND STANDARDS

SECTION .0100 - GENERAL CONSIDERATIONS

.0102 DEFINITIONS

The definition of any word or phrase used in these rules shall be the same as given in G.S. 143-212 and G.S. 143-213 except that the following words and phrases shall have the following meanings:

- (1) "Bedrock" means any consolidated rock encountered in the place in which it was formed or deposited and which cannot be readily excavated without the use of explosives or power equipment.

- (2) "Commission" means the Environmental Management Commission as organized under Chapter 143B of the General Statutes.
- (3) "Compliance boundary" means a boundary around a disposal system at and beyond which ~~water~~ groundwater quality standards may not be exceeded and only applies to facilities which have received a permit issued under the authority of G.S. 143-215.1 or G.S. 130A. ~~or for disposal systems permitted by the Department of Human Resources.~~
- (4) "Corrective action plan" means a plan for eliminating sources of groundwater contamination and achieving groundwater quality restoration or both. A corrective action plan may propose remediation by the degradation and natural attenuation of contaminants as well as by conventional or innovative technologies.
- (5) (4) "Director" means Director of the Division of Environmental Management.
- (6) "Division" means the Division of Environmental Management.
- (7) "Exposure pathway" means a course taken by a contaminant by way of a transport medium after its release to the environment.
- (8) "Free product" means a non-aqueous phase liquid which may collect on the water table, within the saturated zone or in surface water.
- (9) (5) "Fresh groundwaters" means those groundwaters having a chloride concentration equal to or less than 250 milligrams per liter.
- (10) (6) "Groundwaters" means those waters in the saturated zone of the earth.
- (11) (7) "Hazardous substance" means any substance as defined by Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).
- (12) "Licensed geologist" means a person who has been duly licensed as a geologist in accordance with the requirements of G.S. 89E.
- (13) "Natural remedial processes" means those natural processes acting to restore groundwater quality, including dilution, filtration, sorption, ion-exchange, chemical transformation and biodegradation.
- (14) "Practical Quantitation Level" means the lowest quantitation level of a given material that can be reliably achieved among laboratories within the specified limits of precision and accuracy of a given analytical method during routine laboratory operating conditions.
- (8) ~~"Limit of Detectability" means the method detection limit established for the U.S. EPA approved test procedure providing the lowest method detection limit for the substance being monitored.~~
- (15) (9) "Natural conditions" means the physical, biological, chemical and radiological conditions which occur naturally.
- (16) (10) "Potable waters" means those waters suitable for drinking, by humans.
- (17) "Professional Engineer" means a person who has been duly registered and licensed as a professional engineer in accordance with the requirements of G.S. 89C.
- (18) "Receptor" means any groundwater, surface water, human, or structure, other than a monitoring well, which is or may be affected by a contaminant from a contaminated site.
- (19) "Responsible party" means:
 - (a) a person who is wholly or partially responsible for actions causing or contributing to the violation of groundwater quality standards.
 - (b) a subsequent purchaser of property which is the source of groundwater quality standard violations and who purchased the property with knowledge of the contamination, or
 - (c) an adjoining property owner who obstructs the implementation of corrective action that would prevent further contamination.
- (20) (11) "Review boundary" means a boundary around a permitted disposal facility, midway between a waste boundary and a compliance boundary at which groundwater monitoring is required.
- (21) (12) "Saline groundwaters" means those groundwaters having a chloride concentration of more than 250 mg/l.
- (22) (13) "Saturated zone" means that part of the subsurface below the water table in which all the interconnected voids are filled with water under pressure at or greater than atmospheric. It does not include the capillary fringe.
- (23) (14) "Suitable for drinking" means a quality of water which does not contain

substances in concentrations which, either singularly or in combination if ingested into the human body, may cause death, disease, behavioral abnormalities, congenital defects, genetic mutations, or result in an incremental lifetime cancer risk in excess of 1×10^{-6} , or render the water unacceptable due to aesthetic qualities, including taste, odor or appearance.

- (24) "Time of travel" means the time required for contaminants in groundwater to move a unit distance.
- (25) ~~(15)~~ "Waste boundary" means the perimeter of the permitted waste disposal area.
- (26) ~~(16)~~ "Water table" means the surface of the saturated zone below which all interconnected voids are filled with water and at which the pressure is atmospheric.

Statutory Authority G.S. 143-214.1; 143-215; 143B-282.

.0103 POLICY

(a) The rules established in this Subchapter are intended to maintain and preserve the quality of the groundwaters, prevent and abate pollution and contamination of the waters of the state, protect public health, and permit management of the groundwaters for their best usage by the citizens of North Carolina. It is the policy of the Commission that the best usage of the groundwaters of the state is as a source of drinking water. These groundwaters generally are a potable source of drinking water without the necessity of significant treatment. It is the intent of these Rules to protect the overall high quality of North Carolina's groundwaters ~~and to enhance and restore the quality of degraded groundwaters~~ to the level established by the standards; and to enhance and restore the quality of degraded groundwaters where feasible and necessary to protect human health and the environment, or to ensure their suitability as a future source of drinking water.

(b) It is the intention of the Commission to protect all groundwaters to a level of quality at least as high as that required under the standards established in Rule .0202 of this Subchapter. In keeping with the policy of the Commission to protect, maintain, and enhance groundwater quality within the State of North Carolina, the Commission will not approve any disposal system subject to the provisions of G.S. 143-215.1 which would result in:

- (1) the significant degradation of groundwaters of which the existing

quality is better than the assigned standard, unless found to be economically and socially justifiable, or

- (2) a violation of a water groundwater quality standard beyond ~~the boundaries of the property on which the source of pollution is located, or a designated compliance boundary, or~~
- (3) the impairment of existing groundwater uses or an adverse impact on the public health, safety or welfare.

(c) Violations of groundwater quality standards resulting from groundwater withdrawals which are in compliance with water use permits issued pursuant to G.S. 143-215.15, shall not be subject to the corrective action requirements of Rule .0106 of this Subchapter.

(d) No person shall conduct or cause to be conducted, any activity which causes the concentration of any substance to exceed that specified in Rule .0202 of this Subchapter, except as authorized by the rules of this Subchapter.

(e) Work performed pursuant to the rules of this Subchapter which involves site assessment, the interpretation of subsurface geologic conditions, preparation of conceptual corrective action plans or any work requiring detailed technical knowledge of site conditions which is submitted to the Director, shall be performed by persons, firms or professional corporations who are duly licensed to offer geological or engineering services by the appropriate occupational licensing board. Work which involves design of remedial systems or specialized construction techniques shall be performed by persons, firms or professional corporations who are duly licensed to offer engineering services. Corporations that are authorized by law to perform engineering or geological services and are exempt from the Professional Corporation Act, G.S. 55B, may perform these services.

Statutory Authority G.S. 143-214.1; 143-214.2; 143-215.3(e); 143-215.3(a)(1); 143B-282.

.0104 RESTRICTED DESIGNATION (RS)

(a) The Director is authorized to designate GA or GSA groundwaters as RS under any of the following circumstances:

- (1) Where, as a result of man's activities, groundwaters contain concentrations of substances in excess of the groundwater quality standards established under this Subchapter, and ~~remedial termination of corrective action to restore groundwater quality has been required, or approved~~

by the Director, or where the Director has approved a corrective action plan, or alternate cleanup levels, relying solely or in part upon natural remedial processes and, in either case, the groundwaters can be made potable by using readily available and economically reasonable technology.

(2) Where a statutory variance has been granted as provided in Rule .0113 of this Subchapter.

(3) Where the area impacted is served by a public water system.

(b) Groundwaters occurring within an area defined by a compliance boundary in a waste disposal permit are deemed to be designated RS.

(c)(b) The RS designation serves as a warning that groundwater so designated may not be suitable for use as a drinking water supply without significant treatment. The boundaries of areas designated RS may be approximated in the absence of analytical data sufficient to define the extent of groundwater degradation: dimension of the area, at right angles to the direction of groundwater flow, into which the contaminants have the potential to migrate. The designation is temporary and will be removed by the Director upon a determination that the quality of the groundwater so designated has been restored to the level of the applicable standards or when reclassified GC.

(d) The person responsible for groundwater contamination leading to the RS designation shall establish and implement a groundwater monitoring system sufficient to detect changes in groundwater quality within the designated area. Monitoring shall be continued periodically until the applicable groundwater quality standards have been achieved. If during the monitoring period, contaminant concentrations increase, additional remedial action may be required, as determined by the Director.

(e) The Division shall give public notice in accordance with the following requirements of the intent to designate any groundwater RS except those defined in Paragraph (b) of this Rule:

- (1) Notice shall be published one time in a newspaper having general circulation in the geographic area of the RS designation at least 30 days prior to any proposed final action. In addition, notice shall be provided to the local County Health Director and the chief administrative officer of the political jurisdiction in which the contamination occurs.
- (2) The notice shall set forth at least the following:

- (A) name, address, and phone number of the agency issuing the public notice;
 - (B) the location and extent of the designated area;
 - (C) a brief description of the action or actions which resulted in the degradation of groundwater in the area;
 - (D) actions or intended actions taken to restore groundwater quality;
 - (E) the significance of the RS designation;
 - (F) conditions applicable to removal of the RS designation;
 - (G) address and phone number of the state agency premises at which interested parties may obtain further information.
- (3) The Director shall consider all requests for a public hearing, and if he determines that there is significant public interest he shall issue public notice and hold a public hearing in accordance with G.S 143-215.4(b) and .0113(e) of this Rule.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-282(2).

.0106 CORRECTIVE ACTION

(a) ~~The goal of actions taken to restore groundwater quality shall be restoration to the level of the standards, or as close thereto as is economically and technologically feasible.~~ Where groundwater quality has been degraded, the goal of any required corrective action shall be restoration to the level of the groundwater quality standards specified in Rule .0202 of this Subchapter, or as closely thereto as is economically and technologically feasible.

(b) Any person conducting or controlling an activity which results in the discharge of a waste or hazardous substance or oil to the groundwaters of the State, or in proximity thereto, shall take immediate action to terminate and control the discharge, mitigate any hazards resulting from exposure to the pollutants and notify the Department Division of the discharge.

(c) Any person conducting or controlling an activity which results in an increase in the concentration of a substance in excess of the groundwater standard:

- (1) as the result of activities, other than agricultural operations, not permitted by the State, shall immediately notify the Division of the increases; take prompt action to eliminate the source or

sources of contamination; submit a report to the Director assessing the cause, significance and extent of the violation; and submit a implement an approved corrective action plan and schedule for eliminating the source of contamination and for restoration of groundwater quality; and implement an approved plan in accordance with a schedule established by the Director, or his designee. In establishing a schedule the Director, or his designee shall consider any reasonable schedule proposed by the person submitting the plan. A report shall be made to the Health Director of the county or counties in which the contamination occurs in accordance with the requirements of Rule .0114(a) in this Subchapter.

(2) as a result of activities conducted under the authority of a permit issued by the State, shall, where such concentrations are detected:

(A) at or beyond a review boundary, demonstrate, through predictive calculations or modeling, that natural site conditions, facility design and operational controls will prevent a violation of standards at the compliance boundary; or submit a plan for alteration of existing site conditions, facility design or operational controls that will prevent a violation at the compliance boundary, and implement that plan upon its approval by the Director, or his designee.

(B) at or beyond a compliance boundary, shall assess the cause, significance and extent of the violation of groundwater quality standards and submit the results of the investigation, a plan, and proposed schedule for groundwater quality restoration corrective action to the Director, or his designee. The permittee shall implement the plan as approved by and in accordance with a schedule established by the Director, or his designee. In establishing a schedule the Director, or his designee shall consider any reasonable schedule proposed by the permittee.

(d) Corrective action required following discovery of the unauthorized release of a contaminant to the surface or subsurface of the land, and prior to

or concurrent with the assessment required in Paragraph (c) of this Rule, shall include, but is not limited to:

- (1) Prevention of fire, explosion or the spread of noxious fumes;
- (2) Abatement, containment or control of the migration of contaminants;
- (3) Removal, or treatment and control of any primary pollution source such as buried waste, waste stockpiles or surficial accumulations of free products;
- (4) Removal, treatment or control of secondary pollution sources which would be a potential continuing source of pollutants to the groundwaters such as contaminated soils and non-aqueous phase liquids. Contaminated soils which threaten the quality of groundwaters must be treated, contained or disposed of in accordance with applicable rules and procedures established by the Division. The treatment or disposal of contaminated soils shall be conducted in a manner that will not result in a violation of groundwater quality standards and North Carolina Hazardous Waste Management rules.

(e) The site assessment conducted pursuant to the requirements of Subparagraph (c)(1) of this Rule, shall consider or address:

- (1) The source and cause of contamination;
- (2) Any imminent hazards to public health and safety and actions taken to mitigate them in accordance with Paragraph (d) of this Rule;
- (3) All groundwater receptors and significant exposure pathways;
- (4) The horizontal and vertical extent of soil and groundwater contamination and all significant factors affecting contaminant transport; and
- (5) Geological and hydrogeological features influencing the movement, chemical, and physical character of the contaminants.

Reports of site assessments shall be submitted to the Division as soon as practicable or in accordance with a schedule established by the Director, or his designee. In establishing a schedule the Director, or his designee shall consider any reasonable proposal by the person submitting the report.

(f) Corrective action plans for restoration of groundwater quality, submitted pursuant to Paragraph (c) of this rule shall include:

- (1) A description of the proposed corrective action and reasons for its selection.
- (2) Specific plans, including engineering details where applicable, for restoring groundwater quality.
- (3) A schedule for the implementation and operation of the proposed plan.
- (4) A monitoring plan for determining the effectiveness of the proposed corrective action and the movement of the contaminant plume.

(g)(d) In the evaluation of corrective remedial action plans, the Director, or his designee shall consider the extent of any violations, the extent of any threat to human health or safety, the extent of damage or potential adverse impact to the environment, technology available to accomplish restoration, and the potential for degradation of the contaminants in the environment, the time and costs estimated to achieve groundwater quality restoration, and the public and economic benefits to be derived from groundwater quality restoration, and the probable consequences of alternate actions.

(h) A corrective action plan must be implemented using the best available technology for restoration of groundwater quality to the level of the groundwater quality standards specified in Rule .0202 of this Subchapter unless:

- (1) an alternate cleanup level has been established by the Director pursuant to Paragraph (i) of this Rule, or,
- (2) natural remediation has been approved by the Director in accordance with the provisions of Paragraph (k) of this Rule.

(i) An alternate cleanup level to a standard established in Rule .0202 of this Subchapter may be approved by the Director if sufficient information is presented to support a determination by the Director that:

- (1) an alternate cleanup level will be protective of human health and the environment based on evidence that the contaminant will not adversely impact any existing or foreseeable receptor, either due to site specific conditions or an approved remedial action involving engineering control of the contaminant; such evidence could include, but is not limited to:
 - (A) travel time and natural attenuation capacity of subsurface materials are such that the standards specified in Rule .0202 of this Subchapter at a

location no closer than one year time of travel upgradient of an existing or foreseeable receptor are protected.

- (B) a physical barrier to groundwater migration exists or will be installed by the responsible party sufficient to result in preservation of the groundwater standard specified in Rule .0202 of this Subchapter at a location no closer than one year time of travel upgradient of an existing or foreseeable receptor; or,

- (2) new toxicological information has become available which the Division of Epidemiology determines would justify cleanup to a standard different from those specified in Rule .0202 of this Subchapter.

(j) A request for an alternate cleanup level shall be submitted to the Director and shall include:

- (1) a description of site specific conditions;
- (2) the technical basis for the request;
- (3) a discussion of and rationale for the request;
- (4) sufficient evidence to support a determination by the Director that an alternate cleanup level would be consistent with all other environmental laws;
- (5) any other information requested by the Director to thoroughly evaluate the request; and
- (6) evidence that public notice of the request has been provided in accordance with Rule .0114(b) of this Subchapter.

(k) The Director may be requested to approve a corrective action plan dependent upon natural processes of degradation and attenuation of contaminants. Evidence and other information submitted in support of the request shall include:

- (1) sufficient evidence to support a determination by the Director that:
 - (A) all sources of contamination and free product have been removed or controlled pursuant to Paragraph (d) of this Rule; and
 - (B) The contaminants present exist in concentrations that do not currently and are not calculated to migrate to any existing or foreseeable receptor above applicable standards;
- (2) evidence of the contaminant's degradation and attenuation capacity;
- (3) identification and discussion of site-specific characteristics indicating that conditions are adequate to support

- (4) contaminant degradation or attenuation; a groundwater monitoring program sufficient to track the degradation and attenuation of contaminants within and down gradient of the plume and to detect contaminants prior to their reaching any existing or foreseeable receptor at least one year's time of travel upgradient of the receptor and no greater than the distance the groundwater at the contaminated site could travel in five years.
- (5) written documentation of projected groundwater use in the contaminated area based on current state or local government planning efforts;
- (6) copies of written notice, to all property owners and all occupants within or contiguous to the area underlain by the pollution plume, and under which it is expected to migrate, stating that fact;
- (7) evidence that all necessary access agreements needed to monitor groundwater quality pursuant to (4) above have been or can be obtained; and
- (8) evidence that public notice of the request has been provided in accordance with Rule .0114(b) of this Subchapter.

If at any time the Director determines that a contaminant, being monitored under a natural remediation program, has the potential to migrate to any existing or foreseeable receptor above applicable groundwater standards, or if contaminant concentrations are not decreasing, the responsible party shall implement an active groundwater corrective action plan in accordance with a schedule established by the Director.

(l) The Director may consider a request to allow the termination of corrective action. The request must include:

- (1) A demonstration by the party making the request that continuance of corrective action would not result in a significant reduction in the concentration of contaminants. At a minimum this demonstration must include a showing that the asymptotic slope of the contaminants curve of decontamination is less than a ratio of 1:40 over a term of one year based on quarterly sampling.
- (2) A discussion of the duration of the corrective action, the total project's cost, projected annual cost for continuance and evaluation of the success of the corrective action.

- (3) An evaluation of alternate treatment technologies which could result in further reduction of contaminant levels with projected capital and annual cost.
 - (4) Effects, including health and safety impacts, on groundwater users if contaminant levels remain at levels existing at the time corrective action is terminated.
 - (5) Evidence that public notice of the request has been provided in accordance with Rule .0114(b) of this Subchapter.
- (e) ~~The Director may authorize the discontinuance of remedial action to restore groundwater quality to the level of the standard upon a demonstration by the responsible party to the Director that continuance would not result in significant reduction in the concentration of contaminants. In the consideration of a request to discontinue remedial actions, the Director shall consider the duration and degree of success of remedial efforts, the feasibility of other treatment techniques which could result in further reduction of contaminant levels, and the effect on groundwater users if contaminants remain at levels existing at the time of termination of remedial action. the termination of the corrective action, or amend the corrective action plan after considering all the information in the request. Upon termination of corrective action, a groundwater monitoring program shall be required sufficient to track the degradation and attenuation of contaminants at a location of at least one year's time of travel upgradient of any existing or foreseeable receptor. The monitoring program shall remain in effect until there is sufficient evidence that the contaminant concentrations have been reduced to the level of the standards.~~

(m)(f) ~~Upon a determination by the Director that continued remedial corrective actions action would result in no significant reduction in contaminant concentrations, the responsible party shall petition for a variance or a reclassification of the impacted groundwaters, and the impacted groundwaters can be made potable by treatment using readily available and economically reasonable technology, the Director may designate the remaining area of degraded groundwater RS. Where the remaining degraded groundwaters cannot be made potable by such treatment, the Director may consider a request for reclassification.~~

(n) If at any time the Director determines that new technology is available that would remediate the contaminated groundwater to the standards specified in Rule .0202, the Director may require the responsible

party to implement an active groundwater corrective action plan in accordance with a schedule established by the Director.

(o)(g) Where groundwater quality standards are exceeded as a result of the application of pesticides or other agricultural chemicals, the Director shall request the Pesticide Board or the Department of Agriculture to assist the Division of Environmental Management in determining the cause of the violation. If the violation is determined to have resulted from the use of pesticides, the Director shall request the Pesticide Board to take appropriate regulatory action to control the use of the chemical or chemicals responsible for, or contributing to, such violations, or to discontinue their use.

Statutory Authority G.S. 143-215.2; 143-215.3(a)(1); 143B-282.

.0107 COMPLIANCE BOUNDARY

(a) For disposal systems individually permitted prior to December 30, 1983, the compliance boundary is established at a horizontal distance of 500 feet from the waste boundary or at the property boundary, whichever is closer to the source.

(b) For disposal systems individually permitted on or after December 30, 1983, a compliance boundary shall be established 250 feet from the waste boundary, or 50 feet within the property boundary, whichever point is closer to the source.

(c) The boundary shall be established by the Director, or his designee at the time of permit issuance. Any sale or transfer of property which affects a compliance boundary shall be reported immediately to the Director, or his designee. For disposal systems which are not governed by Paragraphs (e) or (f) of this Rule, the compliance boundary affected by the sale or transfer of property will be re-established consistent with Paragraphs (a) or (b) of this Rule, whichever is applicable.

(d) Except as provided in Paragraph (g) of this Rule, For disposal systems permitted or re-permitted after January 1, 1993, no water supply wells shall be constructed or operated within the compliance boundary of a disposal system individually permitted or re-permitted after January 1, 1993.

(e) Except as provided in Paragraph (g) of this Rule, For disposal systems permitted or re-permitted after January 1, 1993, a permittee shall not transfer land within an established compliance boundary of a disposal system permitted or re-permitted after January 1, 1993 unless:

(1) the land transferred is serviced by a

community water system as defined in 15A NCAC 18C, the source of which is located outside the compliance boundary; and

- (2) the deed transferring the property:
 - (A) contains notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; and
 - (B) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which prohibits the construction and operation of water supply wells within the compliance boundary; and
 - (C) contains a restrictive covenant running with the land and in favor of the permittee and the State, as a third party beneficiary, which grants the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes.

(f) If at the time a permit is issued or reissued after January 1, 1993, the permittee is not owner of the land within the compliance boundary, it shall be a condition of the permit issued or renewed that the landowner of the land within the compliance boundary, if other than the permittee, and except as provided in Paragraph (g) of this Rule, execute and file in the Register of Deeds in the county in which the land is located, an easement running with the land which:

- (I) contains:
 - (A) either a notice of the permit, including the permit number, a description of the type of permit, and the name, address and telephone number of the permitting agency; or
 - (B) a reference to a notice of the permit with book and page number of its recordation if such notice is required to be filed by statute;
- (2) prohibits the construction and operation of water supply wells within the compliance boundary; and
- (3) reserves the right to the permittee and the State to enter on such property within the compliance boundary for groundwater monitoring and remediation purposes. The easement may be terminated by the Director when its purpose has been fulfilled or

the need for the easement no longer exists. Under those conditions the Director, at the request of the landowner, may file with the appropriate Register of Deeds, a document terminating the easement.

(g) The requirements of Paragraphs (d), (e) and (f) of this Rule are not applicable to ground absorption treatment systems serving four or fewer single family dwellings or multiunit dwellings of four or fewer units.

(h)(g) The boundary shall form a vertical plane extending from the water table to the maximum depth of saturation.

(i)(h) For ground absorption sewage treatment and disposal systems which are permitted under 15A NCAC 18A .1900, the compliance boundary shall be established at the property boundary.

(j)(i) Penalties authorized pursuant to G.S. 143-215.6A(a)(1) will not be assessed for violations of water groundwater quality standards within a compliance boundary unless the violations are the result of violations of permit conditions or negligence in the management of the facility.

(k)(j) The Director shall require:

- (1) that permits for all activities governed by G.S. 143-215.1 be written to protect the quality of groundwater established by applicable standards, at the compliance boundary;
- (2) that necessary groundwater quality monitoring shall be conducted within the compliance boundary; and
- (3) that a violation of standards within the compliance boundary resulting from activities conducted by the permitted facility be remedied through clean-up, recovery, containment, or other response when any of the following conditions occur:
 - (A) a violation of any standard in adjoining classified waters groundwaters occurs or can be reasonably predicted to occur considering hydrogeologic conditions, modeling, or other available evidence;
 - (B) an imminent hazard or threat to the public health or safety exists; or
 - (C) a violation of any standard in groundwater occurring in the bedrock other than limestones found in the Coastal Plain sediments, unless it can be demonstrated that the violation will not adversely impact, or have the potential to adversely impact a water

supply well.

Statutory Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143B-282.

.0109 DELEGATION

(a) The Director is delegated the authority to enter into consent special orders under G.S. 143-215.2 for violations of the water groundwater quality standards except when a public meeting is required as provided in 15A NCAC 2H .1203.

(b) The Director is delegated the authority to prepare a proposed special order to be issued by the Commission without the consent of the person affected and to notify the affected person of that proposed order and of the procedure set out in G.S. 150B-23 to contest the proposed special order.

(c) The Director, or his designee shall give public notice of proposed consent special orders as specified in 15A NCAC 2H .1203.

Statutory Authority G.S. 143-215.2; 143-215.3(a)(1); 143-215.3(a)(4).

.0110 MONITORING

(a) ~~Any person subject to the provisions of G.S. 143-215.1~~ Except where exempted by statute or this Subchapter, any person who causes, permits or has control over any discharge of waste, or groundwater cleanup program, shall install and implement a monitoring system, at such locations, and in such detail, as the Director, or his designee may require to evaluate the effects of the discharge upon the waters of the state, including the effect of any actions taken to restore groundwater quality, as well as the efficiency of any treatment facility. The monitoring plan shall be prepared under the responsible charge of a Professional Engineer or Licensed Geologist and bear the seal of the same.

(b) Monitoring systems shall be ~~operated~~ constructed in a manner that will not result in the contamination of adjacent groundwaters of a higher quality.

(c) Monitoring shall be conducted and results reported in a manner and at a frequency specified by the Director, or his designee.

Statutory Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143-215.65; 143-215.66; 143B-282.

.0111 REPORTS

(a) ~~Any person subject to the provisions of G.S. 143-215.1 and to the requirements for corrective action specified in Rule .0106 of this Subchapter~~

shall submit to the Director, in such detail as the Director may require, a written report that describes:

- (1) the results of the investigation specified in Paragraphs (c)(1) and (c)(2)(B) of Rule .0106, including but not limited to:
 - (A) ~~(a)~~ a description of the sampling procedures followed and methods of chemical analyses used; and
 - (B) ~~(b)~~ all technical data utilized in support of any conclusions drawn or determinations made.
- (2) the results of the predictive calculations or modeling, including a copy of the calculations or model runs and all supporting technical data, used in the demonstration required in Paragraph (c)(2)(A) of Rule .0106; and
- (3) the proposed methodology and timetable associated with the ~~restoration of groundwater quality~~ corrective action for those situations identified in Paragraphs (c)(1) and (c)(2)(B) of Rule .0106.

(b) The report shall be prepared under the responsible charge of a Professional Engineer or Licensed Geologist and bear the seal of the same as specified in Rule .0106(c)(2)(B).

Statutory Authority G.S. 143-215.1(b); 143-215.3(a)(1); 143-215.65; 143B-282.

.0112 ANALYTICAL PROCEDURES

Tests or analytical procedures to determine compliance or noncompliance with the ~~water~~ groundwater quality standards established in Rule .0202 of this Subchapter will be in accordance with:

- (1) The following methods or procedures for substances where the selected method or procedure provides a method detection limit value at or less than the standard:
 - (a) Standard methods for the Examination of Water and Wastewater, ~~16th~~ 17th Edition, ~~1985~~ 1989, including any subsequent amendments and editions published jointly by American Public Health Association, American Water Works Association and Water Pollution Control Federation;
 - (b) Methods for Chemical Analysis of Water and Waste, 1979, U.S. Environmental Protection Agency publication number EPA-600/4-79-020, as revised

March 1983;

- (c) Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods, 3rd Edition, 1986, U.S. Environmental Protection Agency publication number SW-846;
 - (d) Test Procedures for the Analysis of Pollutants Under the Clean Water Act, Federal Register Vol. 49, No. 209, 40 CFR Part 136, October 26, 1984;
 - (e) Methods or procedures approved by letter from the Director upon application by the regulated source.
- (2) A method or procedure approved by the Director for substances where the standard is less than the ~~limit of detectability~~ practical quantitation level.

Statutory Authority G.S. 143-215.3(a)(1); 143B-282.

.0113 VARIANCE

(a) The Commission, on its own initiative or pursuant to a request under G.S. 143-215.3(e), may grant variances to ~~water quality standards and the compliance boundary. the rules of this Subchapter. Persons subject to the provisions of G.S. 130A-294 may apply for a variance under this Section.~~

(b) Requests for variances are filed by letter from the applicant to the Environmental Management Commission. The application should be mailed to the chairman of the Commission in care of the Director, Division of Environmental Management, Post Office Box ~~27687~~, 29535 Raleigh, N.C. ~~27611~~ 27626-0535.

(c) The application should contain the following information:

- (1) Applications filed by counties or municipalities must include a resolution of the County Board of Commissioners or the governing board of the municipality requesting the variance from ~~water~~ groundwater quality standards which apply to the area for which the variance is requested.
- (2) A description of the past, existing or proposed activities or operations that have or would result in a discharge of contaminants to the groundwaters.
- (3) Description of the proposed area for which a variance is requested. A detailed location map, showing the orientation of the facility, potential for groundwater contaminant migration, as

well as the area covered by the variance request, with reference to at least two geographic references (numbered roads, named streams/rivers, etc.) must be included.

- (4) Supporting information to establish that the variance will not endanger the public health and safety, including health and environmental effects from exposure to the groundwater contaminants. (Location of wells and other water supply sources including details of well construction within 1/2 mile of site must be shown on a map).
- (5) Supporting information to establish that standards cannot be achieved by providing the best available technology economically reasonable. This information must identify specific technology considered, changes in quality of the contaminant plume as demonstrated through predictive calculations ~~approved by the Director~~, and technological constraints which limit groundwater quality restoration to the level of the standard.
- (6) Supporting information to establish that compliance would produce serious hardship on the applicant.
- (7) Supporting information that compliance would produce serious hardship without equal or greater public benefit.
- (8) A copy of any Special Order that was issued in connection with the contaminants in the proposed area and supporting information that applicant has complied with the Special Order.
- (9) A list of the names and addresses of any property owners within the proposed area of the variance as well as any property owners adjacent to the site covered by the variance.

(d) Upon receipt of the application, the Director will review it for completeness and request additional information if necessary. When the application is complete, the Director shall give public notice of the application and schedule the matter for a public hearing in accordance with G.S. 143-215.4(b) and the procedures set out ~~below~~ in Paragraph (e) of this Rule.

(e) Notice of Public Hearing:

- (1) Notice of public hearing on any variance application shall be circulated in the geographical areas of the proposed variance by the Director at least 30

days prior to the date of the hearing:

- (A) by publishing the notice one time in a newspaper having general circulation in said county;
 - (B) by mailing to the North Carolina Department of Human Environment, Health, and Natural Resources, Division of ~~Health Services~~, Environmental Health and appropriate local health agency;
 - (C) by mailing to any other federal, state or local agency upon request;
 - (D) by mailing to the local governmental unit or units having jurisdiction over the geographic area covered by the variance;
 - (E) by mailing to any property owner within the proposed area of the variance, as well as any property owners adjacent to the site covered by the variance; and
 - (F) by mailing to any person or group upon request.
- (2) The contents of public notice of any hearing shall include at least the following:
- (A) name, address, and phone number of agency holding the public hearing;
 - (B) name and address of each applicant whose application will be considered at the meeting;
 - (C) brief summary of the proposed standard variance or modification of the perimeter of compliance being requested;
 - (D) geographic description of a proposed area for which a variance is requested;
 - (E) brief description of the activities or operations which have or will result in the discharge of contaminants to the groundwaters described in the variance application;
 - (F) a brief reference to the public notice issued for each variance application;
 - (G) information regarding the time and location for the hearing;
 - (H) the purpose of the hearing;
 - (I) address and phone number of premises at which interested persons may obtain further information, request a copy of each application, and inspect and copy forms and related documents; and
 - (J) a brief description of the nature of the

hearing including the rules and procedures to be followed. The notice shall also state that additional information is on file with the Director and may be inspected at any time during normal working hours. Copies of the information on file will be made available upon request and payment of cost or reproduction.

(f) All comments received within 30 days following the date of the public hearing shall be made part of the application file and shall be considered by the Commission prior to taking final action on the application.

(g) In determining whether to grant a variance, the Commission shall consider whether the applicant has complied with any Special Order, or Special Order by Consent issued under G.S. 143-215.2.

(h) If the Commission's final decision is unacceptable, the applicant may file a petition for a contested case in accordance with Chapter 150B of the General Statutes. If the petition is not filed within 60 days, the decision on the variance shall be final and binding.

(i) A variance shall not operate on a defense to an action at law based upon a public or private nuisance theory or any other cause of action.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.3(a)(3); 143-215.3(a)(4); 143-215.3(e); 143-215.4.

.0114 NOTIFICATION REQUIREMENTS

(a) Any person subject to the requirements of Rule .0106(c)(1) of this Subchapter shall submit to the Health Director of the county or counties, and the chief administrative officer of the political jurisdiction in which the groundwater contamination has occurred, a report that describes:

- (1) The area extent of the contaminant plume;
- (2) The chemical constituents in the groundwater which exceed the standards described in Rule .0202 of this Subchapter;
- (3) Actions taken and intended to mitigate threats to human health;
- (4) The location of any wells installed for the purpose of monitoring the contaminant plume and the frequency of sampling.

The report described in this Rule shall be submitted no later than five days after submittal of the completed report assessing the cause, significance

and extent of the violation as required by Rule .0106(c).

(b) Any person requesting from the Director an alternate cleanup level, approval of a natural remediation program or permission to terminate active groundwater remediation shall notify the Health Director of the county or counties, and the chief administrative officer of the political jurisdiction in which the contaminant plume occurs, and all property owners and all occupants within or contiguous to the area underlain by the pollution plume, and under which it is expected to migrate, of the nature of the request and reasons supporting it. Notification shall be made by certified mail concurrent with the submittal of the request to the Director. A final decision by the Director may not be made within 30 days of receipt of the request.

(c) Any person authorized by the Director to cleanup to an alternate cleanup level, rely on a natural remediation program or to terminate active groundwater remediation shall notify parties specified in Paragraph (b) of this Rule of the Director's decision. Notification shall be made by certified mail within 30 days of receipt of the Director's decision.

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1); 143B-282(2)b.

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS

.0201 GROUNDWATER CLASSIFICATIONS

The classifications which may be assigned to the groundwaters will be those specified in the following series of classifications:

- (1) Class GA ~~waters~~ groundwaters; usage and occurrence:
 - (a) Best Usage. Existing or potential source of drinking water supply for humans.
 - (b) Conditions Related to Best Usage. This class is intended for those groundwaters in which chloride concentrations are equal to or less than 250 mg/l, and which are considered suitable for drinking in their natural state, but which may require treatment to improve quality related to natural conditions.
 - (c) Occurrence. In the saturated zone.
- (2) Class GSA ~~waters~~ groundwaters; usage and occurrence:
 - (a) Best Usage. Existing or potential source of water supply for potable mineral water and conversion to fresh

waters.

- (b) Conditions Related to Best Usage. This class is intended for those groundwaters in which the chloride concentrations due to natural conditions is in excess of 250 mg/l, but which otherwise may be considered suitable for use as potable water after treatment to reduce concentrations of naturally occurring substances.
- (c) Occurrence. In the saturated zone.
- (3) Class GC ~~waters~~ groundwaters: usage and occurrence:
 - (a) Best Usage. The best usage of GC groundwaters is as a source source of water supply for purposes other than drinking, including other domestic uses by humans.
 - (b) Conditions Related to Best Usage. This class includes those groundwaters that do not meet the quality criteria ~~of waters having a higher classification for GA or GSA groundwaters of waters having a higher classification~~ and for which efforts to ~~restore in situ to a higher classification~~ improve groundwater quality would not be technologically feasible, or not in the best interest of the public. Continued consumption of waters of this class by humans could result in adverse health affects.
 - (c) Occurrence. Groundwaters of this class may be defined in the saturated zone, as determined by the Commission on a case by case basis.

Statutory Authority G.S. 143-214.1; 143B-282(2).

.0202 GROUNDWATER QUALITY STANDARDS

(a) The ~~water~~ groundwater quality standards for the protection of the groundwaters of the state are those specified in this Rule. They are the maximum allowable concentrations resulting from any discharge of contaminants to the land or waters of the state, which may be tolerated without creating a threat to human health or which would otherwise render the groundwater unsuitable for its intended best usage. ~~Where groundwater quality standards have been exceeded due to man's activities, restoration efforts shall be designed to restore groundwater quality to the level of the standard or as closely thereto as is practicable.~~

(b) The ~~maximum allowable concentrations~~ groundwater quality standards for contaminants

specified in Paragraphs (g) and (h) of this Rule shall be as listed, except that:

- (1) Where the ~~maximum allowable concentration of standard for~~ a substance is less than the ~~limit of detectability practical quantitation limit~~, the ~~substance shall not be permitted in detectable concentrations. detection of that substance at or above the practical quantitation limit shall constitute a violation of the standard.~~
- (2) Where two or more substances exist in combination, the Director shall consider the effects of chemical interactions as determined by the Division of Epidemiology and may establish maximum concentrations at values less than those established in accordance with Paragraphs (c) and (g) of this Rule. In the absence of information to the contrary, the carcinogenic risks associated with carcinogens present shall be considered additive and the toxic effects associated with non-carcinogens present shall also be considered additive.
- (3) Where naturally occurring substances exceed the established standard, the standard will be the naturally occurring concentration as determined by the Director.
 - (c) Except for tracers used in concentrations which have been determined by the Division of Epidemiology to be protective of human health, and the use of which has been permitted by the Division, Substances substances which are not naturally occurring and for which no standard is specified shall not be permitted in detectable concentrations in Class GA or Class GSA groundwaters. Any person may petition the Director to establish an interim maximum allowable concentration for an unspecified substance, however, the burden of demonstrating those concentrations of the substance which correspond to the levels described in Paragraph (d) of this Rule rests with the petitioner. The petitioner shall submit all toxicological and epidemiological data, study results, and calculations necessary to establish a standard in accordance with the procedure prescribed in Paragraph (d) of this Rule. Within three months after the establishment of an interim maximum allowable concentration for a substance by the Director, the Director shall initiate action to consider adoption of a standard for that substance.
 - (d) Maximum allowable concentrations Groundwater quality standards for substances in Class GA

and Class GSA ~~waters~~ groundwaters are established as the lesser of:

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

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

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

(f) ~~Water~~ Groundwater quality standards specified in Paragraphs (g) and (h) of this Rule and interim maximum allowable concentrations established pursuant to Paragraph (c) of this Rule shall be reviewed on a biennial basis. Appropriate modifications to established standards will be made in accordance with the procedure prescribed in Paragraph (d) of this Rule where modifications are considered appropriate based on data published subsequent to the previous review.

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

- (1) acetone: 0.7
- (2) ~~(1)~~ acrylamide (propenamide): 0.00001
- (3) ~~(2)~~ arsenic: 0.05
- (4) ~~(3)~~ barium: 1-0 2.0
- (5) ~~(4)~~ benzene: 0.001
- (6) ~~(5)~~ bromoform (tribromomethane): 0.00019
- (7) ~~(6)~~ cadmium: 0.005
- (8) ~~(7)~~ carbofuran: 0.036

- (9) ~~(8)~~ carbon tetrachloride: 0.0003
- (10) ~~(9)~~ chlordane: 2.7×10^{-5}
- (11) ~~(10)~~ chloride: 250.0
- (12) ~~(11)~~ chlorobenzene: 0-3 0.05
- (13) ~~(12)~~ chloroform (trichloromethane): 0.00019
- (14) ~~(13)~~ 2-chlorophenol: 0.0001
- (15) ~~(14)~~ chromium: 0.05
- (16) ~~(15)~~ cis-1,2-dichloroethene: 0.07
- (17) ~~(16)~~ coliform organisms (total): 1 per 100 milliliters
- (18) ~~(17)~~ color: 15 color units
- (19) ~~(18)~~ copper: 1.0
- (20) ~~(19)~~ cyanide: 0.154
- (21) ~~(20)~~ 2, 4-D (2,4-dichlorophenoxy acetic acid): 0.07
- (22) ~~(21)~~ 1,2-dibromo-3-chloropropane: 2.5×10^{-5}
- (23) ~~(22)~~ dichlorodifluoromethane (Freon-12; Halon): 0-00019 1.4
- (24) 1,1 dichloroethane: 0.7
- (25) ~~(23)~~ 1,2-dichloroethane (ethylene dichloride): 0.00038
- (26) ~~(24)~~ 1,1-dichloroethylene (vinylidene chloride): 0.007
- (27) ~~(25)~~ 1,2-dichloropropane: 0.00056
- (28) di-n-butyl (or dibutyl) phthalate (DBP): 0.7
- (29) diethylphthalate (DEP): 5.0
- (30) di(2-ethylhexyl) phthalate (DEHP): 0.003
- (31) ~~(26)~~ p-dioxane (1,4-diethylene dioxide): 0.007
- (32) ~~(27)~~ dioxin: 2.2×10^{-10}
- (33) ~~(28)~~ dissolved solids (total): 500
- (34) ~~(29)~~ endrin: 0-0002 0.002
- (35) ~~(30)~~ epichlorohydrin (1-chloro-2,3-epoxypropane): 0.00354
- (36) ~~(31)~~ ethylbenzene: 0.029
- (37) ~~(32)~~ ethylene dibromide (EDB; 1,2-dibromoethane): 0-05-x-10⁻⁵ 4.0 x 10⁻⁷
- (38) ~~(33)~~ ethylene glycol: 7.0
- (39) ~~(34)~~ fluoride ~~fluoride~~: 2.0
- (40) ~~(35)~~ foaming agents: 0.5
- (41) ~~(36)~~ gross alpha (adjusted)particle activity (including radium-226—but excluding radon radium-226 and uranium): 15 pCi/l
- (42) ~~(37)~~ heptachlor: 7-6-x-10⁻⁵ 8.0 x 10⁻⁶
- (43) ~~(38)~~ heptachlor epoxide: 3-8-x-10⁻⁵ 4.0 x 10⁻⁶
- (44) heptane: 2.1
- (45) ~~(39)~~ hexachlorobenzene (perchlorobenzene): 0.00002
- (46) ~~(40)~~ n-hexane: 14-3 0.42

- (47) (41) iron: 0.3
- (48) (42) lead: ~~0.05~~ 0.015
- (49) (43) lindane: ~~2.65×10^{-5}~~ 2.0×10^{-4}
- (50) (44) manganese: 0.05
- (51) (45) mercury: 0.0011
- (52) (46) metadichlorobenzene (1,3-dichlorobenzene): 0.62
- (53) (47) methoxychlor: ~~0.4~~ 0.035
- (54) (48) methylene chloride (dichloromethane): 0.005
- (55) (49) methyl ethyl ketone (MEK; 2-butanone): 0.17
- (56) (50) methyl tert-butyl ether (MTBE): 0.2
- (57) (51) nickel: ~~0.15~~ 0.1
- (58) (52) nitrate: (as N) 10.0
- (59) (53) nitrite: (as N) 1.0
- (60) (54) orthodichlorobenzene (1,2-dichlorobenzene): 0.62
- (61) (55) oxamyl: 0.175
- (62) (56) paradichlorobenzene (1,4-dichlorobenzene): ~~0.0018~~ 0.075
- (63) (57) pentachlorophenol: ~~0.22~~ 0.0003
- (64) (58) pH: 6.5 - 8.5
- (65) (59) radium-226 and radium-228 (combined): 5 pCi/l
- (66) (60) selenium: ~~0.04~~ 0.05
- (67) (61) silver: ~~0.05~~ 0.018
- (68) (62) styrene (ethenylbenzene): ~~1.4×10^5~~ 0.1
- (69) (63) sulfate: 250.0
- (70) (64) tetrachloroethylene (perchloroethylene; PCE): 0.0007
- (71) (65) toluene (methylbenzene): 1.0
- (72) (66) toxaphene: 3.1×10^{-5}
- (73) (67) 2, 4, 5,-TP (Silvex): ~~0.04~~ 0.05
- (74) (68) trans-1,2-dichloroethene: 0.07
- (75) (69) 1,1,1-trichloroethane (methyl chloroform): 0.2
- (76) (70) trichloroethylene (TCE): 0.0028
- (77) trichlorofluoromethane: 2.1
- (78) (71) vinyl chloride (chloroethylene): 1.5×10^{-5}
- (79) (72) xylenes (o-, m-, and p-): ~~0.4~~ 0.53
- (80) (73) zinc: ~~5.0~~ 2.1

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

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

(i) Class GC Waters.

- (1) The concentrations of substances which, at the time of classification exceed

~~water quality standards, the standards applicable to Class GA or GSA groundwaters shall not be permitted caused to increase, nor shall the concentrations of other substances be caused to exceed the GA or GSA standards as a result of further disposal of contaminants to or beneath the surface of the land within the boundary of the area classified GC. For all other substances, concentrations shall not be caused or permitted to exceed the established standard.~~

- (2) The concentrations of substances which, at the time of classification, exceed ~~water quality standards shall not cause or contribute to the contravention of the standards applicable to GA or GSA groundwaters shall not be caused to migrate as a result of activities within the boundary of the GC classification, so as to violate the~~ groundwater or surface water quality standards in adjoining waters of a different class.
- (3) Concentrations of specific substances, which exceed the established standard at the time of classification, shall be listed in Section .0300 of this Subchapter.

Statutory Authority G.S. 143-214.1; 143B-282(2).

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Marine Fisheries Commission intends to adopt rules cited as 15A NCAC 3J .0401; 3M .0103, .0510; amend rules cited as 15A NCAC 3I .0001, .0010; 3J .0103, .0107; 3K .0101, .0304; 3L .0201; 3M .0508; 3Q .0107, .0202; 3R .0002, .0007 - .0008 and repeal rule cited as 15A NCAC 3K .0506.

The proposed effective date of this action is July 1, 1993.

The public hearings will be begin at 7:00 p.m. except the hearing scheduled April 3, 1993, in Manteo which will begin at 10:00 a.m. The hearing on April 5, 1993, at the Archdale Building, Raleigh, will begin as a joint hearing with the Wildlife Resources Commission on Rules 15A NCAC 3Q .0107 and 3Q .0202 only. After public

comments on these two rules have ceased, the Marine Fisheries Commission will continue the hearing on the remainder of the rules. The dates and locations of all hearings are as follows:

March 30, 1993

Duke University Marine Lab
Pivers Island
Beaufort, NC

March 31, 1993

Craven County Courthouse
Superior Court Room
Corner of Craven and Broad Street
New Bern, NC

April 1, 1993

Hyde County Courthouse
Swan Quarter, NC

April 2, 1993

Pasquotank County Courthouse
Court Room A
206 E. Main Street
Elizabeth City, NC

April 3, 1993

NC Aquarium
Airport Road
Manteo, NC

April 5, 1993

Archdale Building
512 North Salisbury St.
Raleigh, NC

April 6, 1993

Government Center
600 E. 4th St.
Charlotte, NC

April 7, 1993

Government Complex
Brunswick County
Highway 17
Bolivia, NC

April 8, 1993

New Hanover County Courthouse
Court Room 317
4th and Princess St.
Wilmington, NC

Business Session on May 5th, 1993, starting at 9:00 a.m. to decide on these proposed rules. This meeting will be conducted in Raleigh, NC; the exact location will be determined and announced at a later date.

Reasons for Proposed Actions:

ADOPTIONS:

15A NCAC 3J .0401 - ATLANTIC OCEAN - To grant proclamation authority to Fisheries Director to restrict commercial gear and activities in areas where it conflicts with recreational fishing.

15A NCAC 3M .0103 - MINIMUM SIZE LIMITS - To restrict taking of fish under four inches in length except under limited circumstances. This would allow protection of juvenile finfish.

15A NCAC 3M .0510 - EELS - To prohibit taking of eels less than six inches. Provide protection to juvenile eels.

AMENDMENTS:

15A NCAC 3I .0001 - DEFINITIONS - To define gill nets, seines and critical habitat areas. These terms are referred to throughout rules but not defined.

15A NCAC 3I .0010 - MILITARY RESTRICTED AREAS - To outline recommended restrictions in these areas and designate responsibility to the federal authorities. Some areas now are designated as places where fishermen might not want to put gear; amendment states that these areas are under federal authority and fishermen put themselves at risk when using them.

15A NCAC 3J .0103 - GILL NETS, SEINES; IDENTIFICATION, RESTRICTIONS - To add seines to proclamation authority granted to Fisheries Director. Gill nets being used as seines are not covered by this rule without the amendment.

15A NCAC 3J .0107 - POUND NETS - To prohibit use of pound nets in upper Neuse River. This area is used commercially for trawling and potting and is used heavily recreationally by camps, water skiers, sailboat clubs, and other recreational boaters.

15A NCAC 3K .0101 - PROHIBITED SHELLFISH AREAS/ACTIVITIES - To require tagging of shell-

The Marine Fisheries Commission will conduct a

fish from the harvest grounds to the consumer. This measure is a requirement of the U.S. Food and Drug Administration for inter-state shipments and is needed for protection of the general population from shellfish being harvested from polluted waters.

15A NCAC 3K .0304 - PROHIBITED TAKING - To restrict use of hand tongs in grassbeds and oyster rocks for protection of habitat critical to shellfish. Definition of grassbeds is included in amendment to 15A NCAC 3I .0001 and is deleted in this rule.

15A NCAC 3L .0201 - SIZE LIMIT AND CULLING TOLERANCE - To consistently define culling procedures on crabs as is already defined on oysters which has proved to hold up better in court proceedings.

15A NCAC 3M .0508 - STURGEON - To remove the effective date within the Rule. Sturgeon are showing some sign of recovery but protection for a longer period of time is needed.

15A NCAC 3Q .0107 - SPECIAL RULES, JOINT WATERS - To allow the restrictions on striped bass in the joint waters of the Roanoke River to be under the authority of the Wildlife Resources Commission.

15A NCAC 3Q .0202 - DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS - To correct inaccuracies in names of creeks off Pungo River.

15A NCAC 3R .0002 - MILITARY RESTRICTED AREAS - To clarify where military restricted areas are.

15A NCAC 3R .0007 - DESIGNATED POT AREAS - To allow the use of pots in deep water areas of Pamlico River and designated areas of Newport River and Bogue Sound; also to delete military restricted areas which are described as open areas for use of pots.

15A NCAC 3R .0008 - MECHANICAL METHODS PROHIBITED - To remove effective date within rule. These areas were closed for protection of grassbeds which is essential for growth of many juvenile species. The presence of grass in these areas has increased but protection for a longer period of time is needed.

REPEAL:

15A NCAC 3K .0506 - SOAKED OR SWELLED SCALLOPS PROHIBITED - Soaking scallops is a marketing problem; not a resource problem. U.S. Food and Drug Administration has procedures for measuring and required marking of water content in scallops.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, P.O. Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 8:30 a.m., April 16, 1993. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearings. At the conclusion of this JOINT HEARING, the Marine Fisheries Commission will hold a hearing on proposed changes in Fisheries Rules.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3I - GENERAL RULES

.0001 DEFINITIONS

(a) All definitions set out in Subchapter IV of Chapter 113 of the General Statutes apply in these Rules.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment. All fishing equipment used in coastal fishing waters except:
 - (A) Seines less than 12 feet in length;
 - (B) Spears;
 - (C) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 - (D) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
 - (E) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line; and
 - (F) Cast Nets.
- (2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net;
- (3) Mesh Length. The diagonal distance

- from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight;
- (4) Possess. Any actual or constructive holding whether under claim of ownership or not;
- (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air;
- (6) Use. Employ, set, operate, or permit to be operated or employed;
- (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net;
- (8) Gill Net. A net set vertically in the water for which the primary purpose is to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
- (9) Seine. A net set vertically in the water and pulled by hand or power for which the primary purpose is to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (10) ~~(8)~~ Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean;
- (11) ~~(9)~~ Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat;
- (12) ~~(10)~~ Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs;
- (13) ~~(11)~~ Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers and/or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams;
- (14) ~~(12)~~ Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters;
- (15) ~~(13)~~ Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means;
- (16) ~~(14)~~ Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper;
- (17) ~~(15)~~ Length of finfish. Determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin;
- (18) ~~(16)~~ Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) ~~(17)~~ Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, and/or temperature controls utilizing proven technology not found in the natural environment.
- (20) Critical habitat areas are those fragile estuarine and marine areas that support juvenile and adult populations of economically important seafood species, as well as forage species important in the food chain. Critical habitats include but are not limited to nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through extensive marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of important seafood species.
 - (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation

such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-d

- (B) Shellfish producing habitats are those areas in which economically important shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs and/or early larvae.
- (D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.

Statutory Authority G.S. 113-134; 143B-289.4.

.0010 MILITARY RESTRICTED AREAS

(a) Pursuant to Title 34 33 United States Code Section 3, the United States Army Corps of Engineers has adopted regulations which restrict access to and activities within certain areas of coastal and inland fishing waters. Federal Rules codified at 33 CFR 334.410 through 334.450 designate restricted and prohibited military areas, including locations within North Carolina coastal fishing waters, and

specify activities allowed in these areas. The North Carolina Marine Fisheries Commission does not have the authority to provide for fishing access to these areas. Therefore, such areas are automatically excluded from all rules promulgated by Commission and any proclamations issued by the Fisheries Director. Access to the military restricted areas and enforcement of the federal rules applicable therein is the sole responsibility of the respective federal military organization listed for each restricted area in the federal regulations. North Carolina fishermen should be warned that the unlawful use of military restricted areas for fishing or any other purpose will expose such trespassers to the risk of death or serious injury, and that federal The designated areas are used for military training which may include bombing with live ordnance. Fishermen who enter and fish within the areas should follow Federal Regulations to avoid exposure to undetonated ordnance, fragments from exploding ordnance and other dangerous activities. Federal law provides substantial penalties for violations of the federal regulations.

(b) The designated areas are shown on navigational charts and specifically described in the Coastal Pilot and the Code of Federal Regulations (CFR). The descriptions in 15A NCAC 3R .0002(a) show the general location of each such area, the Federal Regulation specifically describing the areas, the Federal Regulations stating the limitations on access to and use of each such area, and the designated military authority to contact for information about permits and/or for access to each such area.

~~(c) The Brant Island Range in Pamlico Sound has been used for live bomb delivery training since World War II and continues to be used for such training. Military safety studies confirm that the area adjacent to the target has many undetonated ordinances on the bottom. Because of the accompanying hazards, fishermen are strongly advised to restrict fishing activities within the Brant Island range.~~

~~(d) Because of the types of military training at the Piney Island range in Pamlico Sound, fishermen are strongly advised not to use fixed gear including, but not limited to, pots, pound nets, and gill nets in the area described in 15A NCAC 3R .0002(b).~~

Statutory Authority G.S. 113-134; 113-181; 113-182; 143B-289.4.

SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

.0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, and/or impose any or all of the following restrictions on the use of gill nets or seines:

- (1) Specify area.
- (2) Specify season.
- (3) Specify gill net mesh length except that the mesh length shall not be less than 2 1/2 inches.
- (4) Specify means/methods.
- (5) Specify ~~gill~~ net number and length.

(b) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean or any gill nets in internal waters unless such nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets which are not connected together at the top line shall be considered as individual nets, requiring two buoys at the end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets shall be yellow except that one additional identification buoy of any color or any combination of colors may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following:

- (1) Owner's N.C. motor boat registration number, or
- (2) Owner's U.S. vessel documentation name, or
- (3) Owner's last name and initials.

(c) It is unlawful to use gill nets:

- (1) Within 200 yards of any pound net which is in use except in Chowan River as provided in 15A NCAC 3J .0203(7);
- (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(d) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of Quick Flasher No. 54 in Alligator River at the southern entrance to the Intracoastal Waterway to the South Carolina line,

unless such net is used in accordance with the following conditions:

- (1) No more than two gill nets per boat may be used at any one time;
- (2) Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and
- (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.

(e) It is unlawful to use drift gill nets in violation of 15A NCAC 3J .0101(2) and Paragraph (e d) of this Rule.

(f) It is unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the South Carolina line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.

(g) It is unlawful to use gill nets, seines, or stop nets in the Atlantic Ocean within 300 yards of low mean water from the north side of Rich Inlet to the south side of Carolina Beach Inlet.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0107 POUND NETS

(a) It is unlawful to use pound or fyke nets in internal coastal fishing waters without the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net. Such identification must include one of the following:

- (1) For pound nets, the pound net permit number and the owner's last name and initials.
- (2) For fyke nets, the owner's N.C. motor-boat registration number, the owner's U.S. vessel documentation name, or the owner's last name and initials.

Any pound or fyke net or any part thereof found set in internal coastal fishing waters without proper identification will be in violation and may be removed and disposed of in accordance with law.

(b) It is unlawful to set pound nets, or any part thereof except location identification stakes at each end of proposed new locations without first obtaining a Pound Net Permit from the Fisheries Director. Within 60 days of application, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Permit for new locations, and may hold public meetings and approve or take other action which may include

the denial of Pound Net Permits, deemed necessary to avoid potential user conflicts and to protect traditional uses of the area including construction or use of piers. The Fisheries Director's final decision to approve, deny or modify the pound net permit application may be appealed by requesting in writing, within 20 days of notice of such action, an administrative hearing before the Marine Fisheries Commission. A Pound Net Permit for a new location may be issued following evaluation by the Fisheries Director and will expire 365 days from the date of issue.

(c) It is unlawful to set pound nets in previously registered or permitted locations without first obtaining a Pound Net Permit for each location from the Fisheries Director. Such permits will expire 365 days from the date of issue. Failure to obtain a Pound Net Permit annually, or abandonment of pound net sets without removal of all stakes, shall constitute a violation and be grounds for refusal of any Pound Net Permit. Application for renewal of Pound Net Permits must be filed not less than ten days prior to expiration and will not be processed unless filed by the prior registrant. When an objection to a renewal is filed during the term of the permit, the Fisheries Director shall review and may deny the permit renewal under the criteria for issuance of new Pound Net Permits. Failure to use a pound net site within 60 days of issuance of a Pound Net Permit shall also constitute a violation and be grounds for refusal and/or revocation of other Pound Net Permits. It is unlawful to abandon a pound net set without removal of all stakes.

(d) It is unlawful to use a pound net without leaving a marked navigational opening of at least 25 feet at the end of every third pound. Such openings shall be marked with yellow signs at least six inches square.

(e) It is unlawful to set a pound net, pound net stakes, or other related equipment in internal coastal fishing waters without yellow light reflective tape or devices on each pound. The light reflective tape or devices must be affixed to a stake of at least three inches in diameter on the offshore end of each pound, must cover a vertical distance not less than 12 inches, and must be visible from a vessel when approached from all directions.

(f) In Core Sound, the Fisheries Director shall by proclamation designate areas for the use of pound and fyke nets.

(g) In Neuse River, it is unlawful to set a pound net west of a line beginning at a point on the south shore at Great Neck Point 34° 57' 19" N -76° 42'

24" W; thence running 004° M to a point on the north shore at Wiggins Point 35° 00' 18" N - 76° 42' 43" W.

(h) ~~(g)~~ In Pamlico Sound, it is unlawful to set a pound net, pound net stakes, or any other related equipment without radar reflective metallic material and yellow light reflective tape or devices on each end of the pound net set. The radar reflective material and the light reflective tape or devices must be affixed to a stake of at least three inches in diameter, must cover a vertical distance of not less than 12 inches, and must be detectable by radar and light from a vessel when approached from all directions. Light reflective tape or devices may be affixed to the radar reflective material.

(i) ~~(h)~~ The Fisheries Director may, by proclamation, between August 1 and January 31, require escape panels in pound nets and may impose any or all of the following restrictions on the use of escape panels:

- (1) Specify size, number, and location.
- (2) Specify mesh length, but not more than six inches.
- (3) Specify time and/or season.
- (4) Specify areas.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0400 - FISHING GEAR, ATLANTIC OCEAN

.0401 ATLANTIC OCEAN

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the use of commercial fishing gear or practices:

- (1) Specify harvest days;
- (2) Specify season;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means/methods.

(b) Establish restrictions on commercial fishing gear or practices identified in (a) of this Rule from the Friday before Easter weekend through December 31 in the following areas:

- (1) Atlantic Ocean;
- (2) Within one-half mile of fishing piers open to the public;
- (3) State Parks, marinas, harbors, or navigation channels maintained and marked by state or federal agencies.

(c) The Fisheries Director shall hold a public meeting in the affected area before issuance of proclamations authorized by this Rule.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SUBCHAPTER 3K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 - SHELLFISH, GENERAL

.0101 PROHIBITED SHELLFISH AREAS/ACTIVITIES

(a) It is unlawful to possess, sell, or take oysters, clams or mussels from areas which have been designated as prohibited (polluted) by proclamation by the Fisheries Director except as provided in 15A NCAC 3K .0103, .0104, and .0401. The Fisheries Director shall issue such proclamations upon notice by the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have not been met. The Fisheries Director may reopen any such closed area upon notification from the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 3441 Arendell St., Morehead City, NC 28557; (919) 726-7021.

(b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops and mussels in order to protect the shellfish populations for management purposes or for public health purposes not specified in (a) of this Rule.

(c) It is unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina.

(d) It is unlawful to possess or sell oysters, clams, or mussels taken from the waters of North Carolina except as provided in 3K .0105 (a) (1) and (a) (2) without a harvest tag affixed to each container of oysters, clams or mussels. Harvest tags shall be affixed by the harvester and shall meet the following criteria:

- (1) Tags shall be identified as harvest tags. They shall be durable for at least ninety (90) days, water resistant, and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) Tags shall be securely fastened to the outside of each container in which shellstock is transported. Bulk shipments in one container and from the same source may have one tag with all required information attached. Harvesters who are also certified shellfish

dealers may use only their dealers tag if it contains the required information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.

(3) Tags shall contain legible information arranged in the specific order as follows:

- (A) The harvester's name, address and oyster, clam and scallop license number.
- (B) The date of harvest.
- (C) The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts.
- (D) Type and quantity of shellfish.
- (E) The following statement will appear in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0300 - HARD CLAMS (MERCENARIA)

.0304 PROHIBITED TAKING

(a) It is unlawful to take clams by any method, other than by hand tongs, hand rakes, or by hand, except as provided in Rules 15A NCAC 3K .0302 and .0303. Regardless of the areas which may be opened, it is unlawful to take clams by any method other than ~~hand tongs~~, hand rakes as described in 15A NCAC 3K .0102, or by hand in any live oyster bed, or in any established bed of submerged aquatic vegetation as defined in 15A NCAC 3I .0001 ~~which is defined as those marine and estuarine areas of North Carolina where eelgrass (Zostera marina), shoalgrass (Halodule wrightii), widgeon grass (Ruppia maritima), and smooth or salt water cordgrass (Spartina alterniflora) that may exist together or separately. These vegetation beds occur in both subtidal and intertidal zones, and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of and consists of entire plants (which during some seasons may be mostly underground) including the above ground leaves and the below ground rhizomes, together with the sediment in~~

which the plant grows.

(b) It is unlawful to possess clam trawls or cages aboard a vessel at any time, or have kick/deflector plates normally used in the mechanical harvest of clams affixed to a vessel at any time, except during the time period specified for a mechanical clam harvest season in internal waters in accordance with 15A NCAC 3K .0302(a). A period of 14 days before and after the season as specified will be allowed for the installation and removal of kick/deflector plates and clam trawls or cages. Vessels with permits for activities provided for in Rules 15A NCAC 3K .0104, .0107, .0303(a), and .0401 shall be exempt from this Rule during the times such activities are permitted.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0500 - SCALLOPS

.0506 SOAKED OR SWELLED SCALLOPS PROHIBITED

~~It is unlawful to possess, sell, or take part in the production of soaked or swelled scallops that have been shucked. It is unlawful to permit scallops to be placed in still or standing water.~~

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 3L - SHRIMP, CRABS, AND LOBSTER

SECTION .0200 - CRABS

.0201 SIZE LIMIT AND CULLING TOLERANCE

(a) It is unlawful to possess hard crabs ~~smaller~~ less than five inches from tip of spike to tip of spike except mature females and "peelers". ~~Crabs shall be culled where harvested and all crabs less than legal size shall be immediately returned to the waters from which taken. "Peelers" shall be separated from the entire catch before reaching shore or dock.~~ Tolerance of not more than 15 percent by number of any portion examined shall be allowed. In determining whether the proportion of undersize crabs exceeds the 15 percent tolerance limit, the Fisheries Director and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire quantity of crabs being graded, and in cases of violations, may require seizure and return to the waters, or other disposition as authorized by

~~law, of the entire quantity being graded, or of any portion thereof, if undersized crabs in excess of the tolerance limit are found.~~

(b) All crabs shall be culled by the catcher where harvested and all crabs less than legal size except mature females and "peelers" shall be immediately returned to the waters from which taken. "Peelers" shall be separated from the entire catch before reaching shore or dock.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SUBCHAPTER 3M - FINFISH

SECTION .0100 - FINFISH, GENERAL

.0103 MINIMUM SIZE LIMITS

It shall be unlawful to possess, sell, or purchase fish under four inches in length except:

(1) for use as bait in the crab pot fishery in North Carolina with the following provision: such crab pot bait shall not be transported west of U.S. Highway 17 and when transported, shall be accompanied by documentation showing the name and address of the shipper, the name and address of the consignee, and the total weight of the shipment.

(2) for use as bait in the finfish fishery with the following provisions:

(a) It shall be unlawful to possess more than 200 pounds of live fish or 100 pounds of dead fish.

(b) Such finfish bait may not be transported outside the State of North Carolina.

Tolerance of not more than five percent shall be allowed. Menhaden, herring, gizzard shad and live fish in aquaria other than those for which a minimum size exists are exempt from this Rule.

Statutory Authority G.S. 113-134; 113-185; 143B-289.4.

SECTION .0500 - OTHER FINFISH

.0508 STURGEON

It is unlawful to possess sturgeon in North Carolina. ~~This Rule will be effective until December 31, 1993.~~

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0510 EELS

It is unlawful to possess, sell or take eels less than six (6) inches in length.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 3Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

SECTION .0100 - GENERAL REGULATIONS: JOINT

.0107 SPECIAL RULES, JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 3Q .0106:

- (1) Striped bass:
 - (a) It is unlawful to possess any striped bass or striped bass hybrid taken by any means which is less than 18 inches long (total length).
 - (b) It is unlawful to possess more than three striped bass or striped bass hybrids taken by hook and line in any one day from joint waters.
 - (c) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as authorized by duly adopted rules of the Marine Fisheries Commission.
 - (d) It is unlawful to possess striped bass or striped bass hybrids in the joint waters of Albemarle, Currituck, Roanoke, and Croatan Sounds and their tributaries, excluding the Roanoke River, except during seasons as authorized by duly adopted rules of the Marine Fisheries Commission.
 - (e) ~~It is unlawful to possess striped bass or striped bass hybrids in~~ In the joint waters of the Roanoke River and its tributaries including Cashie, Middle and Eastmost Rivers, striped bass and hybrid striped bass fishing season, size limits and creel limits shall be the same

~~as those established except during seasons as authorized~~ by duly adopted rules of the Wildlife Resources Commission for adjacent inland fishing waters.

- (2) Lake Mattamuskeet:
 - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
 - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net or net stakes within 800 feet of the dam at Lock No. 1 on the Cape Fear River.

Statutory Authority G.S. 113-132; 113-134; 143B-289.4.

SECTION .0200 - BOUNDARY LINES: COASTAL-JOINT-INLAND FISHING WATERS

.0202 DESCRIPTIVE BOUNDARIES FOR COASTAL-JOINT-INLAND WATERS

Descriptive boundaries for Coastal-Joint-Inland Waters referenced in 15A NCAC 3Q .0201 are as follows:

(1) Beaufort County:	
Pamlico-Tar River	Inland Waters above Coastal Waters below N and S RR bridge at Washington
All Manmade tributaries, except Atlantic Intracoastal Waterway	J
Pungo River	Inland Waters above US 264 bridge at Leechville, Joint Waters below US 264 bridge at Leechville to Smith Creek, Coastal Waters below Smith Creek
Flax Pond Bay	C
Upper Dowery Creek	I
Lower Dowery Creek	I
George Best Creek	C
Toms Creek	C
Pantego Creek	I
Pungo Creek	Inland Waters above, Coastal Waters below NC 92 bridge
Vale Creek	I
Scotts Creek	I
Smith Creek	I
Woodstock (Little) Creek	I
Jordan Creek	I
Satterwaite Creek	I
Wright Creek	I
North Creek	J
St. Clair Creek	I
Mixons Creek	I
Bath Creek	I
Duck Creek	I
Mallards Creek	I
Upper Goose Creek	I
Broad Creek	I
Herring Run (Runyan Creek)	I
Chocowinity Bay	I
Calf Tree Creek	I
Hills Creek	I
Blounts Creek	I
Nevil Creek	I
Barris Creek	I
Durham Creek	I
Lees Creek	I
Huddles Cut	I
Huddy Gut	C
Hudies Gut	I

PROPOSED RULES

South Creek	I	Inland Waters above, Coastal Waters below Deephole Point
Tooleys Creek	I	
Drinkwater Creek	I	
Jacobs Creek	I	
Jacks Creek	I	
Whitehurst Creek	I	
Little Creek	I	
Short Creek	I	
Long Creek	I	
Bond Creek	I	
Muddy Creek	I	
Davis Creek	I	
Strawhorn Creek	I	
Lower Goose Creek	C	
Lower Spring Creek	I	
Peterson Creek	I	
Snode Creek	I	
Campbell Creek	I	Inland Waters above, Coastal Waters below Smith Creek
Smith Creek	I	
Hunting Creek	I	
(2) Bertie County:		
Albemarle Sound	C	
All Manmade Tributaries	J	
Roanoke River	I	Joint Waters below US 258 bridge to mouth
Quinine	I	
Wire Gut	I	
Apple Tree Creek	I	
Indian Creek	I	
Coniott Creek	I	
Conine Creek	J	
Old Mill Creek	I	
Cut Cypress Creek	I	
Broad Creek	I	
Thoroughfare	J	
Cashie River	I	Inland Waters above San Souci ferry Joint Waters below San Souci ferry to mouth
Cashoke Creek	I	
Moores Creek	I	
Broad Creek	I	
Grinnel Creek	I	
Middle River	J	
Eastmost River	J	
Mud Gut	I	
Black Walnut Swamp	I	
Salmon Creek	I	
Chowan River	I	Joint Waters from confluence to 300 yds below US 17 bridge

	Barkers Creek	I
	Willow Branch	I
	Keel (Currituck) Creek	I
(3)	Bladen County:	
	Cape Fear River	Inland Waters above Lock and Dam No. 1 Joint Waters below Lock and Dam No. 1 to old US 17-74-76 bridge at Wilmington
	Natmore Creek	I
(4)	Brunswick County:	
	Calabash River and Tributaries	C
	Saucepan Creek	C
	Flat Marsh	C
	Shallotte River	Inland Waters above, Coastal Waters below US-17-130
	Mill Dam Branch	C
	Squash Creek	C
	Mill Pond	C
	Charles Branch	Inland Waters above, Coastal Waters below NC 130 bridge
	Grisset Swamp	C
	Little Shallotte River and Tributaries	C
	Lockwood Folly River	Inland Waters above, Coastal Waters below NC 211 bridge at Supply
	Stanberry Creek	C
	Pompeys Creek	C
	Maple Creek	C
	Ruby's Creek	C
	Big Doe Creek	C
	Lennons Creek	C
	Mercers Mill Pond Creek	Inland Waters above, Coastal Waters below Mill
	Elizabeth River	C
	Ash Creek	C
	Beaverdam Creek	C
	Dutchman Creek	C
	Calf Gully Creek	C
	Jumpin Run	C
	Fiddlers Creek	C
	Cape Fear River	Joint Waters below Lock and Dam No. 1 to old US 17-74-76 bridge at Wilmington Coastal Waters below old US 17-74-76 bridge at Wilmington
	Carolina Power and Light Intake Canal	C

	Walden Creek	C
	Orton Creek	I
	Lilliput Creek	I
	Sandhill Creek	I
	Town Creek	I
	Mallory Creek	I
	Brunswick River	J
	Alligator Creek	I
	Jackeys Creek	I
	Sturgeon Creek	I
	Cartwheel Creek	I
	Indian Creek	I
	Hood Creek	I
	Northwest Creek	I
(5)	Camden County:	
	Albemarle Sound	C
	All Manmade Tributaries	J
	Pasquotank River	Inland Waters above, Joint Waters below US 158 bridge at Elizabeth City
	Raymond Creek	I
	Portohonk Creek	I
	Areneuse Creek	I
	North River	Inland Waters above, Joint Waters below a line from Long Creek to Green Island Creek
	Wading Gut	I
	Little Broad Creek	I
	Broad Creek	I
	Hunting Creek	I
	Abel Creek	I
	Back Landing Creek	I
	Public Creek	I
	Cow Creek	I
	Great Creek	I
	Indiantown Creek	I
(6)	Carteret County:	
	Neuse River	C
	Adams Creek	C
	Back (Black) Creek	C
	Cedar Creek	C
	Garbacon Creek	C
	South River	Inland Waters above, Coastal Waters below the Forks
	Big Creek	C
	Southwest Creek	C
	West Fork	I
	East Fork	I
	Eastman Creek	C
	Browns Creek	C
	North River and Tributaries	C
	Panther Cat Creek	C

	Cypress Creek	C
	Newport River	Inland Waters above, Coastal Waters below the Narrows
	Core Creek	C
	Harlowe Creek	C
	Bogue Sound and Tributaries	C
	White Oak River	Inland Waters above, Coastal Waters below Grants Creek
	Pettiford Creek	Inland Waters above, Coastal Waters below NC 58 bridge
	Little Hadnotts Creek	I
	Hadnotts Creek	Inland Waters above, Coastal Waters below NC 58 bridge
	Neds Creek	C
	Hunter Creek	I
(7)	Chowan County:	
	Albemarle Sound	C
	All Manmade Tributaries	J
	Yeopim River	Inland Waters above, Joint Waters below Norcum Point
	Queen Anne Creek	I
	Pollock Swamp (Pembroke Creek)	I
	Chowan River	Joint Waters from confluence to 300 yds below US 17 bridge
	Rocky Hock Creek	I
	Dillard (Indian) Creek	I
	Stumpy Creek	I
	Catherine (Warwick) Creek	I
(8)	Columbus County:	
	Cape Fear River	J
	Livingston Creek	I
	Waymans Creek	I
(9)	Craven County:	
	Neuse River	Inland Waters above Pitch Kettle Creek Joint Waters below Pitch Kettle Creek to US 17 bridge at New Bern Coastal Waters below US 17 bridge at New Bern
	Adams Creek	C
	Back Creek	C
	Courts Creek	I
	Long Branch	I
	Clubfoot Creek	C
	Gulden Creek	C
	Mitchell Creek	C
	Morton Mill Pond	I

PROPOSED RULES

	Hancock Creek	I
	Slocum Creek	I
	Scott Creek	I
	Trent River	Inland Waters above, Joint Waters below Wilson's Creek
	Brice Creek	I
	Wilson Creek	I
	Jack Smith Creek	I
	Bachelor Creek	I
	Dollys Gut	I
	Greens Thoroughfare	I
	Greens Creek	I
	Turkey Quarter Creek	I
	Pitch Kettle Creek	I
	Taylors Creek	I
	Pine Tree Creek	I
	Stumpy Creek	I
	Swift Creek	I
	Reels Creek	I
	Mill Creek	I
	Duck Creek	
	Upper Broad Creek	Inland Waters above, Coastal Waters below the Tidelands EMC power lines
(10)	Currituck County:	
	Albemarle Sound	C
	All Manmade Tributaries	J
	North River	Inland Waters above, Joint Waters below a line from Long Creek to Green Island Creek
	Duck Creek	I
	Barnett Creek	I
	Lutz Creek	I
	Goose Pond	I
	Deep Creek	I
	Narrow Ridges Creek	I
	Bump Landing Creek	I
	Taylor Bay	J
	Intracoastal Waterway from Taylor Bay to Coinjock Bay	J
	Indiantown Creek	I
	Currituck Sound	J
	All Manmade Tributaries	J
	Coinjock Bay	J
	Nelson (Nells) Creek	I
	Hog Quarter Creek	I
	Parkers Creek	I
	North Landing River	J
	Northwest River	I
	Gibbs Canal	I
	Tull Creek	I
	West Landing	I
(11)	Dare County:	

Alligator River	Joint Waters below Cherry Ridge Landing to US 64 bridge Coastal Waters below US 64 bridge
Whipping Creek	I
Swan Creek	I
Milltail Creek	I
Laurel Bay Lake (Creek)	I
East Lake	I
Albemarle Sound	C
All Manmade Tributaries	J
Kitty Hawk Bay	J
Peter Mashoes Creek	I
Tom Mann Creek	I
Croatan Sound	C
All Manmade Tributaries	J
Spencer Creek	I
Calahan Creek	I
Roanoke Sound	C
Buzzard Bay	J
Pamlico Sound	C
Stumpy Point Bay	C
All Manmade Tributaries	J
Long Shoal River	Inland Waters above, Coastal Waters below US 264 bridge
All Manmade Tributaries	J
Pains Bay	C
Pains Creek	Inland Waters above, Coastal Waters below US 264 bridge
Deep Creek	Inland Waters above, Coastal Waters below US 264 bridge
Currituck Sound	J
All Manmade Tributaries	J
Martin Point Creek	I
(12) Gates County:	
Chowan River	Joint Waters from confluence to 300 yds below US 17 bridge
Catherine (Warwick) Creek	I
Bennetts Creek	I
Beef Creek	I
Sarem Creek	I
Shingle (Island) Creek	I
Barnes Creek	I
Spikes Creek	I
Buckhorn Creek (Run Off Swamp)	I
Mud Creek	I
Somerton Creek	I
(13) Halifax County:	
Roanoke River	Inland Waters above US 258 bridge Joint Waters

		to mouth
	Kehukee Swamp	I
	Clarks Canal	I
(14)	Hertford County:	
	Chowan River	Joint Waters from confluence to 300 yds below US 17 bridge
	Keel (Currituck) Creek	I
	Snake Creek	I
	Swain Mill (Taylor Pond) Creek	I
	Goose Creek	I
	Wiccacon River	I
	Hodges Creek	I
	Catherine Creek	I
	Harris (Hares) Mill Creek	I
	Meherrin River	J
	Potecasi Creek	I
	Sallie Gut	I
	Mapleton Gut	I
	Liverman Creek	I
	Vaughan's Creek	I
	Banks Creek	I
	Toms Gut	I
	Sudd Grass Creek	I
	Forked Gut	I
	Riddicksville Gut	I
	Buckhorn Creek	I
	Warrens Gut	I
(15)	Hyde County:	
	Pamlico Sound	C
	Pungo River	Inland Waters above US 264 bridge at Leechville, Joint Waters below US 264 bridge at Leechville to Smith Creek, Coastal Waters below Smith Creek
	Rutman Creek	I
	Wilkerson Creek	I
	Atlantic Intracoastal Waterway from Wilkerson Creek to Alligator River at Winn Bay	J
	Horse Island Creek	I
	Tarkiln Creek	I
	Scranton Creek	Inland Waters above, Joint Waters below US 264 bridge Smith CreekI Fishing CreekI
	Slades Creek	C
	Fortesque Creek	C
	Rose Bay	C
	Neals Creek	C
	Deep Creek	C
	Reden Creek	C
	Rose Bay Creek	C

PROPOSED RULES

Rose Bay Canal	Inland Waters above, Joint Waters below SR 1305 bridge
Swan Quarter Bay	C
Oyster Creek	C
Juniper Bay	C
Juniper Bay Creek	J
Juniper Bay Creek Canal	I
Lake Mattamuskeet	I
Outfall Canal	Inland Waters above, Joint Waters below US 264 bridge
Lake Landing Canal	Inland Waters above, Joint Waters below US 264 bridge
Waupopin Canal	Inland Waters above, Joint Waters below SR 1311 bridge
All other Manmade Tributaries to Lake	
Mattamuskeet	I
Middletown Creek	C
Long Shoal River	Inland Waters above, Coastal Waters below US 264 bridge
All Manmade Tributaries	J
Broad Creek	C
Flag Creek	I
Cumberland Creek	I
Alligator River	Inland Waters above Cherry Ridge Landing, Joint Waters below Cherry Ridge Landing to US 64 bridge
Swan Creek and Lake	I
Alligator Creek	I
(16) Martin County:	
Roanoke River	J
Prices Gut	I
Rainbow Gut	I
Conoho Creek	I
Sweetwater Creek	I
Peter Swamp	I
Devils Gut	J
Upper Deadwater	J
Lower Deadwater	J
Gardner Creek	I
Roses Creek	I
Welch Creek	I
(17) New Hanover County:	
Cape Fear River	Joint Waters below Lock and Dam No. 1 to old US 17-74-76 bridge at Wilmington Coastal Waters below old US 17-74-76

PROPOSED RULES

		bridge at Wilmington
	Lords Creek	I
	Todds Creek	I
	Barnards Creek	I
	Greenfield Lake Outlet	I
	Tommer Creek	I
	Catfish Creek	I
	Northeast Cape Fear River	Inland Waters above, Joint Waters below NC 210 bridge
	Smiths Creek	I
	Ness Creek	I
	Dock Creek	I
	Fishing Creek	I
	Prince George Creek	I
	Sturgeon Creek	I
	Island Creek	I
(18)	Northampton County:	
	Roanoke River	Inland Waters above US 258 bridge Joint Waters below US 258 bridge
	Sandy Run (Norfleet Gut)	I
	Graveyard Gut	I
(19)	Onslow County:	
	Beasleys (Barlow) Creek	C
	Kings Creek	C
	Turkey Creek	C
	Mill Creek	C
	New River	Inland Waters above, Coastal Waters below US 17 bridge at Jacksonville
	Wheeler Creek	C
	Everett Creek	C
	Stones Creek	C
	Muddy Creek	C
	Mill Creek	C
	Lewis Creek	C
	Southwest Creek	Inland Waters above, Coastal Waters below Maple Hill (Maple) Landing
	Brinson Creek	I
	Northeast Creek	Inland Waters above, Coastal Waters below railroad bridge
	Wallace Creek	Inland Waters above, Coastal Waters below the first bridge upstream from the mouth
	Codels Creek	I
	French Creek	I
	Duck Creek	I

PROPOSED RULES

Freeman (Browns) Creek	C
Bear Creek	C
Queens Creek	Inland Waters above, Coastal Waters below Frazier's Landing
Parrotts Swamp	C
White Oak River	Inland Waters above, Coastal Waters below Grants Creek
Stevens Creek	C
Holland Mill (Mill Pond) Creek	C
Webbs Creek	Inland Waters above, Coastal Waters below railroad bridge
Freemans Creek	I
Calebs Creek	I
Grant's Creek	I
(20) Pamlico County:	
Pamlico River	Inland Waters above, Coastal Waters below R and S RR bridge at Washington
Lower Goose Creek	C
Dixons Creek	C
Patons Creek	C
Wilson Creek	C
Eastham Creek	Inland Waters above, Coastal Waters below end of SR 1236
Upper Spring Creek	C
Intracoastal Waterway from Upper Spring Creek to Gale Creek	C
Oyster Creek	C
Clark Creek	C
Middle Prong	C
James Creek	C
Pamlico Sound	C
Porpoise Creek	C
Drum Creek	C
Bay River	Inland Waters above, Coastal Waters below NC 55 bridge at Bayboro
Gale Creek	Inland Waters above, Coastal Waters below NC 304 bridge Chadwick CreekC
Bear Creek	C
Vandemere Creek	Inland Waters above, Coastal Waters below NC 304 bridge
Long Creek	C
Smith Creek	C
Chapel Creek	Inland Waters above, Coastal Waters below NC 304 bridge

PROPOSED RULES

Raccoon Creek	C
Trent Creek	Inland Waters above, Coastal Waters below NC 55 bridge
Thomas Creek	I
Masons Creek	C
Moore Creek	C
Rices Creek	C
Ball Creek	C
Cabin Creek	C
Riggs Creek	C
Spring Creek	C
Long Creek	C
Neuse River	Coastal Waters below US 17 bridge at New Bern
Swan Creek	C
Lower Broad Creek	C
Greens Creek	C
Pittman Creek	C
Burton Creek	C
Brown Creek	C
Spice Creek	C
Gideon Creek	C
Tar Creek	C
Parris Creek	C
Orchard Creek	C
Pierce Creek	C
Whitaker Creek	C
Smith Creek	J
Greens Creek	J
Kershaw Creek	J
Dawson Creek	Inland waters above, Coastal Waters below end of SR 1350
Tarkiln Creek	I
Gatlin Creek	I
Little Creek	I
Mill Creek	I
Beard Creek	Inland Waters above, Coastal Waters below end of SR 1117
Lower Duck Creek	I
Goose Creek	Inland Waters above, Coastal Waters below end of SR 1110
Upper Broad Creek	Inland Waters above, Coastal Waters below Tidelands EMC power line
(21) Pasquotank County:	
Albemarle Sound	C
All Manmade Tributaries	J
Little River	Inland Waters above, Joint Waters below a line from Manston

		Creek to Davis Creek
	Symonds Creek	I
	Manston Creek	I
	Big Flatty Creek	Inland Waters above, Joint Waters below a line from Long Point to Folly Creek
	Marsh Landing	I
	Folly Creek	I
	Pasquotank River	Inland Waters above, Joint Waters below US 158 bridge at Elizabeth City
	Little Flatty Creek	I
	New Begun Creek	Inland Waters above, Joint Waters below a line from the mouth of Paling Creek to the mouth of James Creek
	Paling Creek	I
	James Creek	I
	Charles Creek	I
(22)	Pender County:	
	Cape Fear River	J
	Thoroughfare	I
	Black River	Inland Waters above, Joint Waters below the point where the Thoroughfare joins the Black River
	Northeast Cape Fear River	Inland Waters above, Joint Waters below NC 210 bridge
	Cowpen Creek	I
	Long Creek	I
	Turkey Creek	I
	Old Creek	I
	Honey Creek	I
	Harrisons Creek	I
	Island Creek	I
	Topsail Sound and Tributaries	C
	Beasleys (Barlow) Creek	C
(23)	Perquimans County:	
	Albemarle Sound	C
	All Manmade Tributaries	J
	Yeopim River	Inland Waters above, Joint Waters below Norcum Point
	Yeopim Creek	I
	Perquimans River	Inland Waters above, Joint Waters below old US 17 bridge at Hertford
	Walter's Creek	I
	Mill Pond Creek	I

	Suttons Creek	I
	Jackson (Cove) Creek	I
	Muddy Creek	I
	Little River	Inland Waters above, Joint Waters below a line from Manston Creek to Davis Creek
	Deep Creek	I
	Davis Creek	I
(24)	Tyrrell County:	
	Albemarle Sound	C
	All Manmade Tributaries	J
	Scuppernong River	Inland waters above, joint Waters below First (Rider's) Creek
	First (Rider's) Creek	I
	Furlough Creek	I
	Alligator River	Inland Waters above Cherry Ridge Landing Joint Waters below Cherry Ridge Landing to US 64 bridge Coastal Waters below US 64 bridge
	Little Alligator River	I
	Second Creek	I
	Goose Creek	I
	The Frying Pan	J
	Gum Neck Landing Ditch	I
(25)	Washington County:	
	Albemarle Sound	C
	All Manmade Tributaries	J
	Roanoke River	Joint Waters below US 258 bridge to mouth
	Conaby Creek	I
	Mackeys (Kendrick) Creek	I
	Pleasant Grove Creek (Cherry Swamp)	I
	Chapel Swamp Creek	I
	Bull Creek	I
	Deep Creek	I
	Banton (Maybell) Creek	I
	Scuppernong River	I

Statutory Authority *G.S. 113-132; 113-134; 143B-289.4.*

**SUBCHAPTER 3R - DESCRIPTIVE
BOUNDARIES**

.0002 MILITARY RESTRICTED AREAS

(a) Designated military restricted areas referenced in 15A NCAC 31 .0010(b) and used for military training purposes are located as follows:

(1) Currituck Sound:

(a) (A) North Landing River; and

(b) (B) Northern part of Currituck Sound

(See 33 CFR 334.410 (a) (1) and (a) (2); Contact Commander Fleet Air Norfolk);

(2) Albemarle Sound:

(a) (A) Along north shore at the easternmost tip of Harvey Point (See 33 CFR 334.410 (b) (1) and (b) (2); Contact Commander Fleet Air Norfolk); and

(b) (B) Along south shore of Albemarle

Sound (See 33 CFR 334.410 (b) (1) and (b) (2); Contact Commander Fleet Air Norfolk);

(3) Pamlico Sound:

(a) ~~(A)~~ In the vicinity of Long Shoal (See 33 CFR 334.410 (c); Contact Commander Fleet Air Norfolk);

(b) ~~(B)~~ In the vicinity of Brant Island (See 33 CFR 334.420 (a) (1); Contact Commander Marine Corp Air Bases, East, Cherry Point); and

(c) ~~(C)~~ In the vicinity of Piney Island including waters of Rattan Bay, Cedar Bay and Turnagain Bay (See 33 CFR 334.420 (b); Contact Commander Marine Corps Air Bases, East, Cherry Point);

(4) Neuse River and tributaries, that portion of Neuse River within 500 feet of the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, extending from the mouth of Hancock Creek to a point approximately 6,000 feet west of the mouth of Slocum Creek, and all waters of Hancock and Slocum Creeks and their tributaries within the boundaries of the reservations (See 33 CFR 334.430 (a); contact Commanding General, United States Marine Corps Air Station, Cherry Point);

(5) Atlantic Ocean:

(a) ~~(A)~~ In the vicinity of Bear Inlet; and

(b) ~~(B)~~ East of New River Inlet (See 33 CFR 334.440 (a) and (d); Contact Commanding General, Marine Corps Base, Camp Lejeune);

(6) Brown's Inlet area between Bear Creek, Onslow Beach Bridge and the Atlantic Ocean (See 33 CFR 334.440 (e); Contact Commanding General, Marine Corps Base, Camp Lejeune);

(7) New River within eight sections:

(a) ~~(A)~~ Trap Bay Sector,

(b) ~~(B)~~ Courthouse Bay Sector,

(c) ~~(C)~~ Stone Bay Sector,

(d) ~~(D)~~ Stone Creek Sector,

(e) ~~(E)~~ Grey Point Sector,

(f) ~~(F)~~ Farnell Bay Sector,

(g) ~~(G)~~ Morgan Bay Sector, and

(h) ~~(H)~~ Jacksonville Sector (See 33 CFR 334.440(a); Contact Commanding General, Marine Corps Base, Camp Lejeune);

(8) Cape Fear River due west of the main ship channel extending from U.S. Coast

Guard Buoy No. 31A at the north approach channel to Sunny Point Terminal to U.S. Coast Guard Buoy No. 23A at the south approach channel to Sunny Point Army Terminal and all waters of its tributaries therein (See 33 CFR 334.450 (a); Contact Commander, Sunny Point Area Terminal, Southport).

~~(b) The areas included in the advisory against the use of fixed fishing gear at the Piney Island range, as referenced in 15A NCAC 31.0010(d) is Rattan Bay southeast of a line beginning at a point 35° 02' 41" N - 76° 29' 00" W, running 027° (M) to a point 35° 03' 28" N - 76° 28' 42" W, and including all of Rattan Bay which is within the Piney Island military range in southern Pamlico Sound.~~

Statutory Authority G.S. 113-134; 113-181; 113-182; 143B-289.4.

.0007 DESIGNATED POT AREAS

As referenced in 15A NCAC 3J .0301, it is unlawful to use pots north and east of the Highway 58 Bridge at Emerald Isle from May 1 through October 31, except in areas described below:

(1) In Albemarle Sound and tributaries.

(2) In Roanoke Sound and tributaries.

(3) In Croatan Sound and tributaries.

(4) In Pamlico Sound and tributaries, except the following areas and areas further described in Paragraphs (5), (6), and (7) of this Rule:

(a) In Wysocking Bay:

(i) Bound by a line beginning at a point on the south shore of Lone Tree Creek 35° 25' 05" N - 76° 02' 05" W running 239° (M) 1000 yards to a point 35° 24' 46" N - 76° 02' 32" W; thence 336° (M) 2200 yards to a point 35° 25' 42" N - 76° 03' 16" W; thence 062° (M) 750 yards to a point on shore 35° 25' 54" N - 76° 02' 54" W; thence following the shoreline and the Lone Tree Creek primary nursery area line to the beginning point;

(ii) Bound by a line beginning at a point on the south shore of Mt. Pleasant Bay 35° 23' 07" N - 76° 04' 12" W running 083° (M) 1200 yards to a point 35° 23' 17" N - 76° 03' 32" W; thence 023° (M) 2400 yards to a point 35° 24' 27" N - 76° 03' 12" W; thence 299° (M) 1100 yards to a

point on shore 35° 24' 38" N - 76° 04' 48" W; thence following the shoreline and the Browns Island and Mt. Pleasant Bay primary nursery area line to the beginning point; except pots may be set no more than 50 yards from the shoreline.

- (b) In Juniper Bay bound by a line beginning at a point on Juniper Bay Point 35° 20' 18" N - 76° 13' 22" W running 275° (M) 2300 yards to a point 35° 20' 15" N - 76° 14' 45" W; thence 007° (M) 2100 yards to Daymarker No. 3; thence 040° (M) 1100 yards to a point on shore 35° 21' 45" N - 76° 14' 24" W; thence following the shoreline and the Buck Creek primary nursery area line to the beginning point.
- (c) In Swanquarter Bay, bound by a line beginning at a point on the north shore of Caffee Bay 35° 21' 57" N - 76° 17' 44" W; running 191° (M) 800 yards to a point on the south shore 35° 21' 35" N - 76° 17' 45" W; thence following the shoreline to a point on shore 35° 21' 37" N - 76° 18' 22" W; thence running 247° (M) 1300 yards to a point 35° 21' 17" N - 76° 19' 03" W; thence 340° (M) 1350 yards to a point 35° 21' 51" N - 76° 19' 27" W; thence 081° (M) 1150 yards to a point on the north shore 35° 22' 02" N - 76° 18' 48" W; thence following the shoreline and the primary nursery area line to the beginning point.
- (d) In Deep Cove east of a line beginning at a point on the south shore 35° 20' 33" N - 76° 22' 57" W, running 021° (M) 1800 yards to a point on the north shore 35° 21' 55" N - 76° 22' 43" W and west of a line beginning at a point on the south shore 35° 20' 44" N - 76° 22' 05" W running 003° (M) 1400 yards to a point on the north shore 35° 21' 26" N - 76° 22' 11" W.

~~(e) In that area bound by a line beginning at Beacon No. 1 at the mouth of Deep Cove running 314° (M) 1400 yards to a point on shore 35° 20' 12" N - 76° 24' 18" W; thence 206° (M) 3250 yards to a point 35° 18' 40" N - 76° 24' 54" W; thence 128° (M) 2000 yards to a point 35° 18' 11" N - 76° 23' 51" W; thence 015° (M) through the "Dope Boat" Beacon 3250 yards to~~

~~the beginning point.~~

- ~~(e)~~ (f) Off Striking Bay bound by a line beginning at a point on the west shore of Striking Bay 35° 23' 20" N - 76° 26' 59" W running 190° (M) 1900 yards to a point 35° 22' 23" N - 76° 27' 00" W; thence 097° (M) 900 yards to Beacon No. 2; thence 127° (M) 1600 yards to a point 35° 21' 55" N - 76° 25' 43" W; thence following the shoreline to a point 35° 22' 30" N - 76° 25' 14" W; thence 322° (M) 2200 yards to a point 35° 23' 17" N - 76° 26' 10" W; thence following the shoreline to a point 35° 23' 19" N - 76° 26' 24" W; thence 335° (M) 900 yards to a point 35° 23' 40" N - 76° 26' 43" W; thence 059° (M) 500 yards to a point 35° 23' 30" N - 76° 26' 58" W; thence following the shoreline to the beginning point.
- ~~(f)~~ (g) In Rose Bay bound by a line beginning at a point southwest of Swan Point 35° 23' 56" N - 76° 23' 39" W running 288° (M) 1500 yards to a point on shore 35° 24' 03" N - 76° 24' 33" W; thence 162° (M) 1650 yards to a point 35° 23' 19" N - 76° 24' 04" W; thence 084° (M) 1350 yards to a point on shore 35° 23' 29" N - 76° 23' 17" W; thence following the shoreline to the beginning point.
- ~~(g)~~ (h) In Spencer Bay bound by a line beginning at a point on shore at Willow Point 35° 22' 26" N - 76° 28' 00" W running 059° (M) 1700 yards to a point 35° 22' 57" N - 76° 27' 13" W; thence 317° (M) 1500 yards to a point 35° 23' 25" N - 76° 27' 57" W; thence 243° (M) 1300 yards to a point on shore 35° 23' 02" N - 76° 28' 35" W; thence following the shoreline to the beginning point.
- ~~(h)~~ (i) In Big Porpoise Bay bound by a line beginning at a point on shore 35° 15' 58" N - 76° 29' 10" W running 182° (M) 750 yards to Sage Point 35° 15' 36" N - 76° 29' 06" W; thence 116° (M) 850 yards to a point 35° 15' 28" N - 76° 28' 36" W; thence 023° (M) 700 yards to a point on shore 35° 15' 48" N - 76° 28' 30" W; thence following the shoreline to the beginning point.
- ~~(j)~~ In that area north of the target ship beginning at a point 35° 14' 25" N - 76° 27' 05" W; running 071° (M) 2000

- yards to a point $35^{\circ} 14' 52''$ N - $76^{\circ} 26' 00''$ W; thence 168° (M) 1800 yards to a point $35^{\circ} 14' 03''$ N - $76^{\circ} 25' 39''$ W; thence 273° (M) 2000 yards to a point $35^{\circ} 13' 57''$ N - $76^{\circ} 26' 55''$ W; thence 350° (M) 1000 yards to the beginning point.
- (i) ~~(k) In Middle Bay Jones Bay area bound by a line beginning at Middle Bay Point $35^{\circ} 14' 49''$ N - $76^{\circ} 28' 41''$ W running 131° (M) 3550 yards to a point $35^{\circ} 13' 51''$ N - $76^{\circ} 26' 53''$ W; thence 214° (M) 2600 yards to a point $35^{\circ} 12' 43''$ N - $76^{\circ} 27' 34''$ W; thence 291° (M) 2700 yards to Sow Island; thence 181° (M) 2350 yards to a point $35^{\circ} 11' 51''$ N - $76^{\circ} 28' 57''$ W; thence 254° (M) 2000 yards to Red Daymarker No. 4; thence 024° (M) 3600 yards through Green Flasher No. 5 to Sow Island Point $35^{\circ} 13' 09''$ N - $76^{\circ} 29' 28''$ W; thence following the shoreline of Middle Bay to Big Fishing Point $35^{\circ} 14' 02''$ N - $76^{\circ} 29' 52''$ W; thence 008° (M) 1100 yards to a point on the north shore $35^{\circ} 14' 33''$ N - $76^{\circ} 29' 52''$ W; thence following the shoreline to a point $35^{\circ} 14' 46''$ N - $76^{\circ} 29' 14''$ W; thence no more than 75 yards from the shoreline to the beginning point. In Middle Bay bound by a line beginning at Middle Bay Point $35^{\circ} 14' 53''$ N - $76^{\circ} 28' 41''$ W; running 210° (M) 3650 yards to Sow Island Point $35^{\circ} 13' 09''$ N - $76^{\circ} 29' 28''$ W; thence following the shoreline of Middle Bay to Big Fishing Point $35^{\circ} 14' 05''$ N - $76^{\circ} 29' 52''$ W; thence 008° (M) 1100 yards to a point on the north shore $35^{\circ} 14' 31''$ N - $76^{\circ} 29' 52''$ W; thence following the shoreline to the point of beginning.~~
- (j) ~~(h) In Jones Bay bound by a line beginning at a point on Sow Island Point $35^{\circ} 13' 09''$ N - $76^{\circ} 29' 28''$ W running 204° (M) 2600 yards to Green Flasher No. 5; thence 322° (M) 2450 yards to a point $35^{\circ} 12' 48''$ N - $76^{\circ} 30' 58''$ W; thence 217° (M) 1200 yards to a point on shore $35^{\circ} 12' 20''$ N - $76^{\circ} 31' 16''$ W; thence 284° (M) 740 yards to a point on shore $35^{\circ} 12' 26''$ N - $76^{\circ} 31' 46''$ W; thence following the shoreline to a point $35^{\circ} 12' 36''$ N - $76^{\circ} 32' 01''$ W; thence 234 051° (M) 600 yards to~~
- a point $35^{\circ} 12' 52''$ N - $76^{\circ} 31' 45''$ W; thence parallel with the shoreline no more than 600 yards from shore to a point $35^{\circ} 13' 11''$ N - $76^{\circ} 32' 07''$ W; thence 038° (M) to a point 600 yards from the north shore $35^{\circ} 13' 39''$ N - $76^{\circ} 31' 54''$ W; thence parallel with the shoreline no more than 600 yards from shore to a point $35^{\circ} 13' 09''$ N - $76^{\circ} 30' 48''$ W; thence 009° (M) 600 yards to a point on shore $35^{\circ} 13' 26''$ N - $76^{\circ} 30' 47''$ W; thence following the shoreline to the beginning point.
- (k) ~~(m) In an area bound by a line beginning at Boar Point $35^{\circ} 12' 07''$ N - $76^{\circ} 31' 04''$ W running 106° (M) 2000 yards to Green Flasher No. 5; thence 200° (M) 2200 yards to a point $35^{\circ} 10' 56''$ N - $76^{\circ} 30' 10''$ W; thence 282° (M) 2350 yards to Bay Point $35^{\circ} 11' 02''$ N - $76^{\circ} 31' 35''$ W; thence following the shoreline to the beginning point.~~
- (n) ~~In an area at the mouth of Bay River bound by a line beginning at a point on Maw Point $35^{\circ} 08' 55''$ N - $76^{\circ} 32' 10''$ W running 020° (M) 1600 yards to Daymarker No. 1; thence 134° (M) 3800 yards to Neuse River Junction Quick Flasher; thence 236° (M) 1700 yards to Red Day Marker No. 2 PA; thence 314° (M) 2750 yards to the beginning point.~~
- (o) ~~The waters within a circular area with a radius of 1,000 yards having its center on the southern side of Brant Island at latitude $35^{\circ} 12' 30''$ N longitude $76^{\circ} 26' 30''$ W.~~
- (5) In Pamlico River west of a line from a point on Pamlico Point $35^{\circ} 18' 42''$ N - $76^{\circ} 28' 58''$ W running 009° (M) through Daymarker No. 1 and Willow Point Shoal Beacon to a point on Willow Point $35^{\circ} 22' 23''$ N - $76^{\circ} 28' 48''$ W pots may be used in the following areas:
- (a) In that area bound by a line beginning at a point on the line from Pamlico Point to Willow Point $35^{\circ} 19' 24''$ N - $76^{\circ} 28' 56''$ W running westerly parallel to the shoreline at a distance of no more than 1000 yards to Green Flasher No. 1 at the mouth of Goose Creek; a point $35^{\circ} 19' 24''$ N - $76^{\circ} 29' 09''$ W; thence running 218° (M) 900 yards to a point $35^{\circ} 19' 02''$ N - $76^{\circ} 29' 24''$ W 400 yards from shore; thence westerly

parallel to the shoreline at a distance of 100 yards to a point $35^{\circ} 19' 02''$ N - $76^{\circ} 29' 59''$ W; thence 006° (M) 950 yards to a point $35^{\circ} 19' 30''$ N - $76^{\circ} 30' 00''$ W; thence westerly parallel to the shoreline at a distance of 1000 yards to a point $35^{\circ} 20' 06''$ N - $76^{\circ} 32' 54''$ W; thence 198° (M) 550 yards to a point 400 yards from shore $35^{\circ} 19' 49''$ N - $76^{\circ} 32' 59''$ W; thence parallel to the shoreline at a distance of 400 yards to a point $35^{\circ} 19' 50''$ N - $76^{\circ} 33' 27''$ W; thence 008° (M) to a point 1000 yards from shore $35^{\circ} 20' 09''$ N - $76^{\circ} 33' 27''$ W; thence westerly parallel to the shoreline at a distance of 1000 yards to a point $35^{\circ} 20' 12''$ N - $76^{\circ} 33' 55''$ W; thence 191° (M) to a point 400 yards from shore $35^{\circ} 19' 55''$ N - $76^{\circ} 33' 56''$ W; thence westerly parallel to the shoreline at a distance of 400 yards to a point $35^{\circ} 20' 00''$ N - $76^{\circ} 34' 34''$ W; thence 004° (M) 600 yards to a point 1000 yards from shore $35^{\circ} 20' 19''$ N - $76^{\circ} 34' 35''$ W; thence westerly parallel to the shoreline at a distance of 1000 yards to Green Flasher No. 1; thence 248° (M) parallel to the ICWW to a point off Fulford Point $35^{\circ} 19' 59''$ N - $76^{\circ} 36' 41''$ W; thence 171° (M) to a point on Fulford Point $35^{\circ} 19' 41''$ N - $76^{\circ} 36' 34''$ W.

(b) All coastal waters and tributaries of Oyster Creek, James Creek, Middle Prong and Clark Creek.

(c) All coastal waters of Goose Creek:

(i) In that area bound by a line beginning at a point on Reed Hammock $35^{\circ} 20' 24''$ N - $76^{\circ} 36' 51''$ W running 171° (M) 300 yards to a point $35^{\circ} 20' 16''$ N - $76^{\circ} 36' 48''$ W; thence parallel with the shoreline no more than 300 yards from shore to a point $35^{\circ} 20' 09''$ N - $76^{\circ} 37' 10''$ W; thence 302° (M) 300 yards to a point on shore $35^{\circ} 20' 13''$ N - $76^{\circ} 37' 19''$ W.

(ii) In that area bound by a line beginning at a point on shore $35^{\circ} 19' 58''$ N - $76^{\circ} 37' 33''$ W; running 291° (M) 300 yards to a point $35^{\circ} 19' 57''$ N - $76^{\circ} 37' 21''$ W; thence parallel to the shoreline no more than 300 yards from shore to a point $35^{\circ} 18' 16''$ N - $76^{\circ} 37' 16''$ W; thence 292° (M) to a point on the north shore of Snode

Creek $35^{\circ} 18' 15''$ N - $76^{\circ} 37' 27''$ W.

(iii) In that area bound by a line beginning at a point at the mouth of Goose Creek $35^{\circ} 19' 59''$ N - $76^{\circ} 36' 41''$ W; running 348° (M) to Green Daymarker No. 5; thence south parallel to the shoreline no more than 300 yards from shore to a point $35^{\circ} 18' 12''$ N - $76^{\circ} 37' 07''$ W; thence 112° (M) to Store Point $35^{\circ} 18' 09''$ N - $76^{\circ} 36' 57''$ W.

(iv) Between the line from Store Point to Snode Creek and a line beginning at a point on Long Neck Point running 264° (M) through Beacon No. 15 to Huskie Point from the shoreline to no more than 150 yards from shore.

(v) All coastal waters southeast of the line from Long Neck Point through Beacon No. 15 to Huskie Point.

(vi) Campbell Creek - west of a line from a point on Huskie Point $35^{\circ} 17' 00''$ N - $76^{\circ} 37' 06''$ W running 004° (M) to Pasture Point $35^{\circ} 17' 20''$ N - $76^{\circ} 37' 08''$ W, to the Inland-Commercial line.

(d) All coastal waters bound by a line beginning on Reed Hammock $35^{\circ} 20' 24''$ N - $76^{\circ} 36' 51''$ W running 171° (M) to a point $35^{\circ} 20' 16''$ N - $76^{\circ} 36' 47''$ W; thence 100° (M) 800 yards to Red Daymarker No. 4; thence 322° (M) 1200 yards to a point $35^{\circ} 20' 40''$ N - $76^{\circ} 36' 48''$ W; thence westerly parallel to the shoreline at a distance of 300 yards to a point in Bond Creek $35^{\circ} 20' 40''$ N - $76^{\circ} 41' 37''$ W; thence 199° (M) to a point on the south shore of Muddy Creek $35^{\circ} 20' 18''$ N - $76^{\circ} 41' 34''$ W, including all waters of Muddy Creek up to the Inland-Coastal boundary line.

(e) Along the west shore of Bond Creek from Fork Point to the Coastal-Inland boundary line from the shoreline to no more than 50 yards from shore.

(f) All coastal waters of South Creek upstream of a line beginning at a point on Fork Point $35^{\circ} 20' 45''$ N - $76^{\circ} 41' 47''$ W running 017° (M) to a point on Hickory Point $35^{\circ} 21' 44''$ N - $76^{\circ} 41' 36''$ W.

(g) In that area bound by a line beginning at a point at the six foot depth contour

- south of Hickory Point 35° 21' 33" N - 76° 41' 39" W; thence easterly following the six foot depth contour to a point off the east end of Indian Island 35° 21' 42" N - 76° 38' 04" W; thence 270° (M) to a point on the east end of Indian Island 35° 21' 38" N - 76° 38' 36" W; thence following the shoreline of Indian Island to a point on the west end 35° 21' 37" N - 76° 39' 40" W; thence 293° (M) toward Daymarker No. 1 to a point at the six foot depth contour 35° 21' 46" N - 76° 40' 16" W; thence following the six foot depth contour in a westerly direction to a point off Long Point 35° 22' 42" N - 76° 42' 44" W; thence 233° (M) to a point on shore 35° 22' 24" N - 76° 43' 05" W.
- (h) Beginning at a point on shore near Long Point 35° 22' 29" N - 76° 43' 25" W, running 001° (M) to a point 300 yards offshore 35° 22' 39" N - 76° 43' 26" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35° 22' 39" N - 76° 43' 59" W; thence 209° (M) to a point on shore 35° 22' 30" N - 76° 44' 03" W.
- (i) Beginning at a point on shore 35° 22' 30" N - 76° 44' 27" W, running 355° (M) to a point offshore 35° 22' 40" N - 76° 44' 31" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35° 22' 53" N - 76° 45' 00" W; thence running 251° (M) to a point on shore 35° 22' 46" N - 76° 45' 14" W.
- (j) Beginning at a point on shore 35° 22' 54" N - 76° 45' 43" W; running 003° (M) to a point offshore 35° 23' 03" N - 76° 45' 43" W; thence westerly parallel to the shoreline at a distance of 300 yards to the intersection of a line beginning on the north shore at Gum Point 35° 25' 09" N - 76° 45' 33" W; running 210° (M) to a point on the south shore 35° 23' 28" N - 76° 46' 26" W.
- (k) All coastal waters west of a line beginning on the north shore at Gum Point 35° 25' 09" N - 76° 45' 33" W running 210° (M) to a point on the south shore 35° 23' 28" N - 76° 46' 26" W.
- (l) On the north side of Pamlico River bound by a line beginning at the intersection of the line from Gum Point to the south shore 500 yards from shore 35° 24' 55" N - 76° 45' 39" W running easterly parallel to the shoreline at a distance of 500 yards to a point at the six foot contour near Adams Point 35° 23' 08" N - 76° 35' 59" W.
- (m) All waters and tributaries of North Creek except the marked navigation channel.
- (n) In that area bound by a line beginning at a point at the six foot contour near Adams Point 35° 23' 08" N - 76° 35' 59" W running westerly following the six foot depth contour to a point off Wades Point 35° 23' 28" N - 76° 34' 09" W.
- (o) Pungo River:
- (i) Bound by a line beginning at Wades Point 35° 23' 16" N - 76° 34' 30" W running 059° (M) to a point at the six foot depth contour, 35° 23' 28" N - 76° 34' 09" W; thence northerly following the six foot depth contour to a point near Beacon No. 3 35° 25' 44" N - 76° 34' 46" W; thence 272° (M) 950 yards to a point on shore 35° 25' 41" N - 76° 35' 22" W.
- (ii) Bound by a line beginning at a point on shore 35° 25' 50" N - 76° 35' 37" W running 050° (M) 1150 yards to a point at 35° 26' 17" N - 76° 35' 10" W; thence northerly following the six foot depth contour to a point 35° 26' 54" N - 76° 36' 09" W; thence 314° (M) 350 yards to a point on shore 35° 27' 00" N - 76° 36' 20" W.
- (iii) Bound by a line beginning at a point on shore 35° 27' 14" N - 76° 36' 26" W running 077° (M) 800 yards to a point 35° 27' 23" N - 76° 36' 02" W; thence northerly following the six foot depth contour to a point off Windmill Point 35° 30' 50" N - 76° 38' 09" W; thence 076° (M) to a point 200 yards west of Daymarker No. 3 35° 31' 21" N - 76° 36' 37" W; thence 312° (M) to a point at the "Breakwater" 35° 31' 36" N - 76° 37' 05" W.
- (iv) All coastal waters bound by a line beginning at a point at the "Breakwater" 200 yards northeast of Beacon No. 6 35° 31' 47" N - 76° 36' 51" W running 132° (M) to a point 200 yards from Daymarker No. 4 35° 31'

- 31° N - 76° 36' 21" W; thence running 102° (M) to a point 35° 31' 28" N - 76° 35' 59" W; thence running 010° (M) to Beacon No. 1; thence running 045° (M) 700 yards to a point on shore 35° 32' 22" N - 76° 35' 42" W.
- (v) All coastal waters north and east of a line beginning at a point on shore west of Lower Dowry Creek 35° 32' 25" N - 76° 35' 07" W running 177° (M) 1950 yards to a point 200 yards north of Daymarker No. 11 35° 31' 31" N - 76° 35' 06" W; thence easterly parallel to the marked navigation channel at a distance of 200 yards to a point on the shore northwest of Wilkerson Creek 35° 33' 13" N - 76° 27' 36" W.
- (vi) All coastal waters south of a line beginning on shore south of Wilkerson Creek 35° 33' 02" N - 76° 27' 20" W running westerly parallel to the marked navigation channel at a distance of 200 yards to a point southeast of Daymarker No. 14 35° 31' 05" N - 76° 32' 34" W; thence running 208° (M) to a point on shore 35° 30' 28" N - 76° 32' 47" W.
- (vii) All coastal waters bound by a line beginning on shore east of Durants Point 35° 30' 29" N - 76° 33' 25" W running 347° (M) to a point southwest of Daymarker No. 12 35° 31' 08" N - 76° 33' 53" W; thence westerly parallel to the marked navigation channel at a distance of 200 yards to a point south of Beacon No. 10 35° 31' 08" N - 76° 35' 35" W; thence running 185° (M) to a point at the six foot depth contour between Beacon No. 8 and the eastern shore of Pungo River 35° 30' 08" N - 76° 35' 28" W; thence following the six foot depth contour to a point 35° 28' 09" N - 76° 33' 43" W; thence 127° (M) to a point on shore 35° 28' 00" N - 76° 33' 25" W; thence 159° (M) to a point at the six foot depth contour 35° 27' 40" N - 76° 33' 12" W including the waters of Slades Creek and its tributaries; thence 209° (M) to a point on shore 35° 27' 22" N - 76° 33' 21" W; thence 272° (M) to a point at the six foot depth contour 35° 27' 18" N - 76° 33' 53" W; thence southerly following the six foot depth contour to a point south of Sandy Point 35° 26' 35" N - 76° 33' 50" W; thence 087° (M) to a point on shore 35° 26' 38" N - 76° 33' 34" W.
- (viii) In that area bound by a line beginning at a point on shore 35° 26' 20" N - 76° 33' 18" W running 176° (M) to a point at the six foot depth contour 35° 26' 05" N - 76° 33' 13" W; thence southerly following the six foot depth contour throughout Fortescue Creek to a point off Fortescue Creek 35° 25' 44" N - 76° 32' 09" W; thence 145° (M) to a point on shore 35° 25' 36" N - 76° 32' 01" W.
- (ix) In that area bound by a line beginning at a point on shore 35° 25' 20" N - 76° 32' 01" W running 258° (M) to a point at the six foot depth contour 35° 25' 17" N - 76° 32' 18" W; thence following the six foot depth contour to a point 500 yards west of Currituck Point 35° 24' 30" N - 76° 32' 42" W; thence southeasterly parallel to the shoreline and including Abel Bay at a distance of 500 yards to a point at the intersection of the line from Pamlico Point to Willow Point 35° 22' 09" N - 76° 28' 48" W.
- (6) In Bay River west of a line beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 09" W running 022° (M) to a point on Bay Point 35° 11' 02" N - 76° 31' 34" W, pots may be used in the following areas:
- (a) In that area beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 09" W; running 018° (M) to Green Daymarker No. 1; thence 223° (M) to a point on shore in Fisherman Bay 35° 09' 18" N - 76° 32' 23" W.
- (b) In Fisherman Bay bound by a line beginning at a point on the shore west of Maw Point 35° 09' 18" N - 76° 33' 02" W; thence 351° (M) 3200 yards to lighted Beacon No. 3 in Bay River; thence 230° (M) 1200 yards to a point on the shore 35° 10' 24" N - 76° 34' 00" W.
- (c) In that area bound by a line beginning at a point on the east shore at the mouth of Bonners Bay 35° 10' 05" N - 76° 35' 18" W; thence 306° (M) 300

- yards to a point in Bay River, 35° 10' 10" N - 76° 35' 30" W; thence parallel to the shoreline no more than 300 yards from shore to a point in Bay River 35° 10' 40" N - 76° 34' 42" W; thence 188° (M) to a point on shore 35° 10' 27" N - 76° 34' 42" W.
- (d) In Bonner Bay bound by a line beginning at a point on the east shore 35° 10' 05" N - 76° 35' 18" W running 306° (M) 200 yards to a point 35° 10' 09" N - 76° 35' 25" W; thence parallel to the shoreline no more than 200 yards offshore to a point 35° 09' 16" N - 76° 35' 18" W; thence 097° (M) 200 yards to a point on shore 35° 09' 16" N - 76° 35' 13" W.
- (e) In Bonner Bay, Spring Creek and Long Creek south of a line beginning at a point on the east shore 35° 09' 16" N - 76° 35' 13" W running 274° (M) to a point on the west shore 35° 09' 14" N - 76° 35' 43" W.
- (f) In Bonner Bay bound by a line beginning at a point on the west shore 35° 09' 14" N - 76° 35' 44" W running 094° (M) 100 yards to a point 35° 09' 13" N - 76° 35' 39" W; thence parallel to the shoreline no more than 100 yards offshore to a point in Riggs Creek 35° 09' 15" N - 76° 36' 08" W; thence 142° (M) to a point on shore 35° 09' 13" N - 76° 36' 08" W.
- (g) In that area bound by a line beginning on the south shore of Bay River west of Bell Point 35° 09' 40" N - 76° 40' 00" W, running 314° (M) to a point 200 yards offshore 35° 09' 43" N - 76° 40' 06" W; thence no more than 200 yards from the shoreline to a point 35° 09' 53" N - 76° 36' 45" W; thence 102° (M) to a point 35° 09' 50" N - 76° 35' 54" W; thence 181° (M) to a point 35° 09' 36" N - 76° 35' 51" W; thence 237° (M) to a point in Riggs Creek 35° 09' 18" N - 76° 36' 12" W; thence 322° (M) to a point on shore at the mouth of Riggs Creek 35° 09' 21" N - 76° 36' 18" W.
- (h) In that area on the south side of Bay River bound by a line beginning at a point on shore at the confluence of Bay River and Trent Creek 35° 08' 27" N - 76° 43' 12" W running 016° (M) 150 yards to a point 35° 08' 31" N - 76° 43' 11" W; thence no more than 150 yards from shore to a point 35° 08' 57" N - 76° 40' 19" W; thence 116° (M) to a point on shore at Moores Creek 35° 08' 57" N - 76° 40' 14" W.
- (i) In Bay River and Trent Creek west of a line beginning at a point on the south shore 35° 08' 27" N - 76° 43' 12" W running 016° (M) to a point on the north shore 35° 08' 41" N - 76° 43' 09" W.
- (j) In that area on the north shore of Bay River bound by a line beginning at a point west of Vandemere Creek 35° 10' 53" N - 76° 39' 42" W running 135° (M) 150 yards to a point 35° 10' 52" N - 76° 39' 39" W; thence no more than 150 yards from shore to a point at the confluence of Bay River and Trent Creek 35° 08' 37" N - 76° 43' 10" W; thence to a point on the north shore 35° 08' 39" N - 76° 43' 09" W.
- (k) In Vandemere Creek northeast of a line beginning at a point on the east shore 35° 11' 04" N - 76° 39' 22" W running 315° (M) to a point on the west shore 35° 11' 12" N - 76° 39' 36" W.
- (l) In that area bound by a line beginning at a point at the mouth of Vandemere Creek 35° 11' 04" N - 76° 39' 22" W, running 216° (M) 200 yards to a point in Bay River 35° 10' 58" N - 76° 39' 25" W; thence parallel to the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4 35° 10' 40" N - 76° 36' 38" W; thence 344° (M) 200 yards to a point on shore 35° 10' 45" N - 76° 36' 42" W.
- (m) In that area bound by a line beginning at a point on Sanders Point 35° 11' 19" N - 76° 35' 54" W; running 067° (M) 200 yards to a point 35° 11' 23" N - 76° 35' 47" W; thence following the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4 35° 10' 40" N - 76° 36' 38" W; thence 344° (M) 200 yards to a point on the shore 35° 10' 45" N - 76° 36' 42" W.
- (n) In that area beginning at a point on shore 35° 11' 53" N - 76° 35' 54" W of a line running 170° (M) to a point 35° 11' 40" N - 76° 35' 51" W; thence parallel to the shoreline no more than

500 yards from shore to a point 35° 11' 57" N - 76° 35' 05" W; thence running 344° (M) to a point on shore at the mouth of Gales Creek 35° 12' 10" N - 76° 35' 12" W.

- (o) In that area bound by a line beginning at a point on shore at the mouth of Gale Creek 35° 12' 08" N - 76° 34' 52" W, running 278° (M) 200 yards to a point in Bay River 35° 12' 08" N - 76° 35' 02" W; thence running parallel to the shoreline at a distance of 200 yards to a point in Bay River 35° 11' 32" N - 76° 33' 24" W; thence running 352° (M) 200 yards to a point on shore at Dump Creek 35° 11' 39" N - 76° 33' 25" W.
- (p) In Gale Creek except the Intracoastal Waterway north of a line beginning at a point on the west shore 35° 12' 08" N - 76° 35' 12" W running 098° (M) to a point on the west shore 35° 12' 08" N - 76° 34' 52" W.
- (q) In an area bound by a line beginning at a point on the eastern shore at the mouth of Rockhole Bay 35° 11' 06" N - 76° 32' 11" W; thence 180° (M) 600 yards to a point in Bay River 35° 10' 49" N - 76° 32' 09" W; thence east with the five foot curve 1100 yards to a point 35° 10' 36" N - 76° 31' 30" W; thence 000° (M) 850 yards to a point on Bay Point 35° 11' 02" N - 76° 31' 34" W.
- (7) In the Neuse River and West Bay Area south and west of a line beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 09" W, running 137° (M) through the Maw Point Shoal Day Marker No. 2 and through the Neuse River Entrance Light to a point at the mouth of West Bay 35° 02' 09" N - 76° 21' 53" W, pots may be set in the following areas:
 - (a) All coastal fishing waters northwest of a line beginning at a point at the mouth of Slocum Creek 34° 57' 02" N - 76° 53' 42" W, running 029° (M) to a point at the mouth of Beards Creek 35° 00' 08" N - 76° 52' 13" W. Pots may also be set in coastal fishing waters of Goose Bay and Upper Broad Creek.
 - (b) In that area bound by a line beginning at a point on the north shore at Mill Creek 34° 59' 34" N - 76° 51' 06" W; thence running 223° (M) approximately

300 yards into the river to a point 34° 59' 25" N - 76° 51' 14" W; thence along the six foot depth curve southeast to a point at the rock jetty 34° 58' 06" N - 76° 49' 14" W; thence 016° (M) approximately 300 yards to a point on the shore 34° 58' 17" N - 76° 49' 12" W.

- (c) In that area bound by a line beginning at a point on the north shore approximately 500 yards west of Pierson Point 34° 58' 32" N - 76° 46' 38" W; thence running 171° (M) approximately 300 yards into the river to a point 34° 58' 24" N - 76° 46' 34" W; thence east and northeast along the six foot curve to a point in the river 34° 58' 47" N - 76° 45' 39" W; thence 330° (M) approximately 700 yards to a point on the shore 50 yards west of an existing pier 34° 59' 04" N - 76° 45' 54" W.
- (d) In that area bound by a line beginning at a point on the north shore east of Dawson Creek Bridge 34° 59' 34" N - 76° 45' 12" W; thence running 244° (M) approximately 500 yards to Day Marker No. 4 (entrance to Dawson Creek Channel); thence running east 117° (M) to a point 34° 59' 22" N - 76° 45' 19" W; thence east and northeast along the six foot curve to a point 50 yards west of Day Marker No. 3 (channel to Oriental) 35° 01' 02" N - 76° 41' 51" W; thence 303° (M) approximately 600 yards to a point on the eastern tip of Windmill Point 35° 01' 10" N - 76° 42' 08" W.
- (e) In Greens Creek (Oriental) west of a line at the confluence of Greens and Kershaw Creeks beginning at a point on the south shore 35° 01' 28" N - 76° 42' 55" W running 005° (M) to a point on the north shore 35° 01' 38" N - 76° 42' 54" W, no more than 75 yards from the shoreline east of this line to the Highway 55 bridge.
- (f) In that area bound by a line beginning at a point on Whittaker Point 35° 01' 37" N - 76° 40' 56" W; thence running 192° (M) approximately 500 yards to a point in the river 35° 01' 23" N - 76° 40' 57" W; thence along the six foot depth curve northeast to a point in the river off Orchard Creek 35° 03' 18" N - 76° 37' 53" W; thence 280° (M)

- approximately 900 yards to a point on the eastern tip of Cockle Point 35° 03' 20" N - 76° 38' 27" W.
- (g) In that area bound by a line beginning at a point on the north shore near the mouth of Orchard Creek 35° 03' 38" N - 76° 37' 54" W running 177° (M) approximately 400 yards to a point 35° 03' 27" N - 76° 37' 54" W; thence along the six foot depth curve to a point eastward; thence 174° (M) 600 yards to a point on the north shore 35° 03' 56" N - 76° 36' 42" W.
- (h) In that area bound by a line beginning at a point on the north shore approximately 400 yards south of Gum Thicket Creek 35° 04' 12" N - 76° 36' 11" W; thence running 132° (M) approximately 600 yards to a point 35° 03' 55" N - 76° 35' 48" W; thence along the six foot depth curve eastward to a point 35° 04' 10" N - 76° 34' 37" W; thence 304° (M) to a point on the shore 400 yards north of Gum Thicket Creek 35° 04' 38" N - 76° 35' 42" W.
- (i) In Lower Broad Creek east of a line running 188° (M) through Red Day Marker No. 4. No more than 150 yards from shore between a line running 188° (M) through Red Day Marker No. 4 and a line running 228° (M) through Green Marker No. 3. Pots may not be set in Burton Creek.
- (j) Piney Point Shoal Area, in that area bound by a line beginning at a point on the north side of a creek (locally known as Wadin or Persimmon Creek) 35° 07' 17" N - 76° 33' 26" W running 115° (M) approximately 300 yards to a point near the six foot depth curve 35° 07' 15" N - 76° 33' 16" W; thence south and southeast along the six foot depth curve to a point east of the old lighthouse 35° 05' 17" N - 76° 32' 42" W; thence 288° (M) through the old lighthouse to a point on shore north of Red Day Marker No. 2 at the mouth of Broad Creek 35° 05' 42" N - 76° 35' 18" W.
- (k) In that area bound by a line beginning at a point on the south shore of Maw Bay 35° 08' 32" N - 76° 32' 38" W; thence running 114° (M) to Maw Point Shoal Day Marker No. 2; thence 317° (M) to Maw Point 35° 08' 55" N - 76° 32' 11" W.
- (l) In that area east of Slocum Creek bound by a line beginning at a point 34° 57' 02" N - 76° 53' 42" W; thence running 029° (M) approximately 1100 yards to a point 34° 57' 32" N - 76° 53' 28" W; thence along the six foot curve to a point 34° 56' 34" N - 76° 49' 38" W; thence 176° (M) approximately 300 yards to a point 34° 56' 26" N - 76° 49' 35" W.
- (m) In that area bound by a line beginning at a point 34° 56' 22" N - 76° 49' 05" W, running 057° (M) approximately 1100 yards to Day Marker "2" off Cherry Point; thence 097° (M) approximately 200 yards to a point 34° 56' 42" N - 76° 48' 27" W; thence along the six foot curve to a point 34° 55' 10" N - 76° 45' 40" W; thence 187° (M) approximately 400 yards to a point on Temple Point 34° 54' 58" N - 76° 45' 40" W.
- (n) In that area southeast of a line beginning at a point at the mouth of Clubfoot Creek 34° 55' 20" N - 76° 45' 09" W running 076° (M) to a point on shore 34° 55' 37" N - 76° 44' 23" W.
- (o) In Clubfoot Creek south of a line beginning at a point on the east shore 34° 54' 30" N - 76° 45' 26" W, running 284° (M) to a point on the west shore 34° 54' 33" N - 76° 45' 43" W. Pots may be set 50 yards from shore north of this line.
- (p) In that area bound by a line beginning at the western tip of Great Island 34° 55' 47" N - 76° 44' 50" W; thence running 275° (M) approximately 500 yards to a point 34° 55' 46" N - 76° 45' 07" W; thence 029° (M) approximately 1400 yards to a point 34° 56' 24" N - 76° 44' 48" W; thence 120° (M) to a point 34° 56' 06" N - 76° 43' 59" W; thence 232° (M) to a point on Great Island 34° 55' 50" N - 76° 44' 17" W.
- (q) In that area bound by a line beginning at a point west of Long Creek 34° 55' 38" N - 76° 44' 18" W running 064° (M) to a point 34° 55' 57" N - 76° 43' 43" W; thence 138° (M) to a point on shore at the mouth of Great Neck Creek 34° 55' 50" N - 76° 43' 25" W.
- (r) In that area bound by a line beginning

- at a point at the mouth of Great Neck Creek $34^{\circ} 55' 50''$ N - $76^{\circ} 43' 25''$ W, running 318° (M) 750 yards to a point $34^{\circ} 56' 04''$ N - $76^{\circ} 43' 47''$ W; thence following the shoreline no more than 750 yards from shore to a point $34^{\circ} 56' 50''$ N - $76^{\circ} 43' 11''$ W; thence 116° (M) 750 yards to a point on shore at Courts Creek $34^{\circ} 56' 42''$ N - $76^{\circ} 42' 46''$ W.
- (s) In that area bound by a line beginning at a point on Courts Creek $34^{\circ} 56' 42''$ N - $76^{\circ} 42' 46''$ W, running 296° (M) 1000 yards to a point $34^{\circ} 56' 52''$ N - $76^{\circ} 43' 20''$ W; thence parallel with the shoreline no more than 1000 yards to a point $34^{\circ} 57' 53''$ N - $76^{\circ} 41' 59''$ W; thence 190° (M) 1000 yards to a point on shore $34^{\circ} 57' 24''$ N - $76^{\circ} 42' 00''$ W.
- (t) In that area bound by a line beginning at a point on shore, $34^{\circ} 57' 24''$ N - $76^{\circ} 42' 00''$ W, running 010° (M) 500 yards to a point $34^{\circ} 57' 38''$ N - $76^{\circ} 42' 00''$ W; thence running parallel to the shoreline no more than 500 yards from shore to a point $34^{\circ} 57' 33''$ N - $76^{\circ} 41' 00''$ W; thence 179° (M) to a point $34^{\circ} 57' 23''$ N - $76^{\circ} 40' 58''$ W; thence 260° (M) to a point on shore at the mouth of Adams Creek $34^{\circ} 57' 22''$ N - $76^{\circ} 41' 10''$ W.
- (u) In that area bound by a line beginning at a point on the northeast side of Adams Creek $34^{\circ} 57' 30''$ N - $76^{\circ} 40' 36''$ W; thence 278° (M) 225 yards offshore to a point $34^{\circ} 57' 30''$ N - $76^{\circ} 40' 45''$ W; thence 359° (M) to a point off Winthrop Point $34^{\circ} 58' 26''$ N - $76^{\circ} 40' 56''$ W; thence running 056° (M) to a point off Cedar Point $34^{\circ} 59' 07''$ N - $76^{\circ} 40' 04''$ W; thence 140° (M) to the shoreline on Cedar Point $34^{\circ} 58' 50''$ N - $76^{\circ} 39' 41''$ W.
- (v) In that area bound by a line beginning at a point on Cedar Point $34^{\circ} 58' 50''$ N - $76^{\circ} 39' 41''$ W, running 320° (M) 750 yards to a point $34^{\circ} 59' 05''$ N - $76^{\circ} 40' 01''$ W; thence parallel to the shoreline no more than 750 yards from shore to a point $34^{\circ} 59' 16''$ N - $76^{\circ} 39' 31''$ W; thence 167° (M) to a point on shore $34^{\circ} 58' 56''$ N - $76^{\circ} 39' 21''$ W.
- (w) In that area bound by a line beginning at a point on shore $34^{\circ} 58' 56''$ N - $76^{\circ} 39' 21''$ W running 347° (M) to a point $34^{\circ} 59' 03''$ N - $76^{\circ} 39' 24''$ W; thence parallel to the shoreline no more than 200 yards from shore to a point $34^{\circ} 59' 08''$ N - $76^{\circ} 38' 47''$ W; thence 184° (M) to a point on shore $34^{\circ} 59' 01''$ N - $76^{\circ} 35' 25''$ W.
- (x) In that area bound by a line beginning at a point west of Garbacon Creek $34^{\circ} 59' 01''$ N - $76^{\circ} 38' 43''$ W, running 004° (M) 750 yards to a point $34^{\circ} 59' 23''$ N - $76^{\circ} 38' 46''$ W; thence parallel with the shoreline no more than 750 yards from shore to a point off Browns Creek $35^{\circ} 00' 20''$ N - $76^{\circ} 33' 45''$ W; thence 172° (M) to the shoreline on the west side of Browns Creek $34^{\circ} 59' 57''$ N - $76^{\circ} 33' 35''$ W.
- (y) In that area bound by a line beginning at a point on shore at the mouth of Browns Creek $34^{\circ} 59' 55''$ N - $76^{\circ} 33' 29''$ W, running 352° (M) 750 yards to a point on $35^{\circ} 00' 22''$ N - $76^{\circ} 33' 34''$ W; thence parallel to the shoreline no more than 750 yards from shore to a point $35^{\circ} 03' 01' 56' 45''$ N - $76^{\circ} 28' 29' 56' 51''$ W; thence $436' 162^{\circ}$ (M) 750 yards to a point on shore north of Cedar Bay Point ~~Rattan Bay~~ $35^{\circ} 03' 01' 45' 22''$ N - $76^{\circ} 28' 29' 32' 34''$ W.
- (z) In that area bound by a line beginning on the north side of Rattan Bay at a point on the shoreline $35^{\circ} 03' 04' 45' 34''$ N - $76^{\circ} 28' 32' 10''$ W; thence running $346' 291^{\circ}$ (M) 600 yards offshore to a point $35^{\circ} 03' 04' 54' 39''$ N - $76^{\circ} 28' 52' 32''$ W; thence running parallel with the shoreline 600 yards offshore to a point $35^{\circ} 04' 09''$ N - $76^{\circ} 26' 44''$ W; thence 239° (M) 600 yards to a point on shore $35^{\circ} 04' 57''$ N - $76^{\circ} 27' 00''$ W.
- (aa) In Adams Creek:
- (i) Between a line running 080° (M) through Red Flasher No. 4 at the mouth of Adams Creek and a line beginning at a point on the south shore of Cedar Creek $34^{\circ} 55' 52''$ N - $76^{\circ} 38' 49''$ W, running 297° (M) to a point on the west shore of Adams Creek $34^{\circ} 56' 03''$ N - $76^{\circ} 39' 27''$ W, no more than 200 yards from shore.
- (ii) Between a line beginning at a point at

the mouth of Cedar Creek 34° 55' 52" N - 76° 38' 49" W; running 297° (M) to a point on the west shore of Adams Creek 34° 56' 03" N - 76° 39' 27" W, and a line beginning at a point on the east shore 34° 54' 55" N - 76° 39' 36" W; running 280° (M) to a point on the west shore 34° 54' 55" N - 76° 40' 01" W; no more than 300 yards from the west shore and 200 yards from the east shore.

- (iii) South of a line beginning at a point on the east shore 34° 54' 55" N - 76° 39' 36" W, running 280° (M) to a point on the west shore 34° 54' 55" N - 76° 40' 01" W, except in the marked navigation channel.

(bb) In South River:

- (i) Southeast of a line beginning at a point on the southwest shore 34° 58' 35" N - 76° 35' 25" W, running 049° (M) through Red Flasher No. 2 to a point on the northeast shore 34° 59' 07" N - 76° 34' 52" W, no more than 200 yards from the shoreline.
- (ii) That area bound by a line beginning at a point on the southwest shore 34° 58' 35" N - 76° 35' 25" W, running 049° (M) to Red Flasher No. 2; thence running 207° (M) to a point north of Hardy Creek 34° 58' 13" N - 76° 35' 22" W; thence following the shoreline to the point of beginning.

(cc) In Turnagain Bay:

- (i) Between a line running 077° (M) through Green Flasher No. 1 and a line beginning at a point on the east shore 34° 59' 04" N - 76° 29' 01" W; running 276° (M) to a point on the west shore 34° 59' 03" N - 76° 29' 28" W, no more than 300 yards on the east shore and 100 yards on the west shore.
- (ii) Between a line beginning at a point on the east shore 34° 59' 04" N - 76° 29' 01" W, running 276° (M) to a point on the west shore 34° 59' 03" N - 76° 29' 28" W, and a line beginning at a point on the east shore 34° 57' 56" N - 76° 29' 25" W, running 275° (M) to a point on the west shore 34° 57' 58" N - 76° 29' 44" W, no more than 150 yards from shore.

(dd) In Cedar Bay east of a line beginning at

a point 35° 00' 51" N - 76° 29' 42" W running 023° (M) to a point 35° 01' 09" N - 76° 29' 37" W, not more than 200 yards from the shoreline.

(dd)

(ee) In West Bay - North Bay area:

- (i) In that area bound by a line beginning at a point 35° 02' 32" N - 76° 22' 27" W; thence southwest 220° (M) to Marker No. 5 WB; thence southeast 161° (M) to a point in West Bay 35° 00' 34" N - 76° 21' 50" W; thence southwest 184° (M) to Deep Bend Point 34° 58' 36" N - 76° 21' 48" W; thence following the shoreline of West Bay and North Bay to a point 35° 02' 09" N - 76° 21' 53" W; thence 317° (M) to the beginning point.

- (ii) In West Bay bound by a line beginning at a point on shore 35° 03' 34" N - 76° 26' 24" W, running 033° (M) 100 yards to a point 35° 03' 38" N - 76° 26' 23" W; thence parallel to the shoreline no more than 100 yards from shore to a point 35° 00' 02' 06' 27" N - 76° 25' 26' 24' 00" W, running 278 310° (M) to a point on shore 35° 00' 02' 06' 30" N - 76° 25' 26' 28' 06" W.

- (iii) In West Bay bound by a line beginning at a point on shore at 35° 01' 24" N - 76° 26' 18" W, running 137° (M) 100 yards to a point 35° 01' 22" N - 76° 26' 12" W; thence parallel to the shore to a point 35° 00' 06" N - 76° 25' 28" W, running 098° (M) 500 400 yards to a point 35° 00' 06" N - 76° 25' 12" W; thence 171° (M) 2800 yards to a point 34° 58' 45" N - 76° 24' 42" W; thence 270° (M) 1400 yards to a point on shore 34° 58' 39" N - 76° 25' 22" W.

(ee)

(ff) In West Thorofare Bay and Merkle Bay south and southeast of a line beginning at a point in West Bay at Tump Point 34° 58' 42" N - 76° 22' 49" W; thence southwest 258° (M) to Marker F1 R15 ft. 3M 8 WB; thence southwest 203° (M) to Long Bay Point 34° 57' 52" N - 76° 24' 12" W.

(ff)

(gg) In Long Bay:

- (i) In that area bound by a line beginning at a point on the south side of Stump Bay in Long Bay 34° 57' 13" N - 76°

- 27' 12" W; running northeast 077° (M) across Stump Bay to a point 34° 57' 39" N - 76° 25' 51" W; thence 032° (M) to a point 34° 58' 39" N - 76° 25' 22" W, following the shoreline to the beginning point.
- (ii) Southwest of a line beginning on the west shore 34° 57' 13" N - 76° 27' 12" W, running 134° (M) to a point on the east shore at Swimming Point 34° 56' 46" N - 76° 26' 26" W.
- (iii) In the area bound by a line beginning at a point on shore at Swimming Point 34° 56' 46" N - 76° 26' 26" W, running 314° (M) 300 yards to a point 34° 56' 52" N - 76° 26' 33" W; thence parallel to the shoreline no more than 300 yards from shore to a point 34° 58' 03" N - 76° 24' 10" W; thence 203° (M) to Long Bay Point 34° 57' 52" N - 76° 24' 12" W.
- (gg) ~~(hh)~~ Raccoon Island, on the northeast shore between a point on the northwest shore 35° 04' 27" N - 76° 26' 16" W and a point on the southwest shore 35° 04' 00" N - 76° 25' 33" W from the shoreline no more than 150 yards from shore; on the south and west shores, no more than 50 yards from the shoreline.
- (8) Core Sound, Back Sound and the Straits and their tributaries.
- (9) North River:
- (a) In that area bound by a line beginning at a point on the shore on the east side of North River south of Goose Bay 34° 43' 35" N - 76° 34' 55" W; thence running 252° (M) to a point in the river 34° 43' 28" N - 76° 35' 14" W; thence running 355° (M) to a point in the river 34° 45' 20" N - 76° 35' 45" W; thence running 060° (M) to a point in the river 34° 45' 45" N - 76° 35' 04" W; thence running 165° (M) to a point on the shore at the mouth of South Leopard Creek 34° 45' 36" N - 76° 34' 59" W; thence with the shoreline to the point of beginning.
- (b) In that area bound by a line beginning at a point on the west side of North River near Steep Point 34° 43' 40" N - 76° 37' 20" W; thence running 040° (M) to a point 34° 44' 35" N - 76° 36' 36" W; thence running 291° (M) 300 yards to a point 34° 44' 37" N - 76° 36' 45" W; thence running 219° (M) to a point 34° 44' 13" N - 76° 37' 05" W; thence running 307° (M) to a point 34° 44' 16" N - 76° 37' 12" W; thence running 018° (M) to a point 34° 45' 20" N - 76° 36' 56" W following the shoreline to the beginning point.
- (c) In that area of the North River marshes bound by a line beginning at Red Flasher No. "6" running 038° (M) along the southeast side of Steep Point Channel through Red Day Marker No. "8" to a point 34° 44' 08" N - 76° 36' 52" W; thence 125° (M) to a point 34° 43' 48" N - 76° 36' 08" W; thence 144° (M) to a point 34° 43' 30" N - 76° 35' 47" W; thence 188° (M) to a point 34° 42' 23" N - 76° 35' 47" W; thence 221° (M) to Red Flasher No. "56"; thence 278° (M) to a point 34° 42' 14" N - 76° 36' 43" W; thence 346° (M) to a point 34° 42' 45" N - 76° 36' 58" W; thence 008° (M) to a point 34° 43' 14" N - 76° 36' 58" W; thence 318° (M) to the beginning point.
- (d) In the area north of a line beginning on the east shore at 34° 46' 11" N - 76° 35' 13" W; thence running 270° (M) to a point on the west shore at 34° 46' 11" N - 76° 37' 01" W.
- (10) Newport River:
- (a) In that area bound by a line beginning at a point on the south shore 34° 45' 30" N - 76° 43' 10" W; thence running 026° (M) to a point on the north shore of Newport River 34° 46' 33" N - 76° 42' 46" W; thence with the shoreline to Beacon No. 24 in Core Creek; thence south with the Intracoastal Waterway to a point near Newport Marshes 34° 44' 56" N - 76° 45' 38" W; thence 274° (M) to Crab Point 34° 44' 54" N - 76° 42' 12" W; thence with the shoreline to the beginning point.
- (b) In that area bound by a line beginning at a point on the shore on the south side of Russell's Creek 34° 45' 28" N - 76° 39' 46" W running 278° (M) 1000 yards to Quick Flasher Beacon No. 29 in the Intracoastal Waterway; thence running 173° (M) 1700 yards with the shoal to a point 34° 44' 37" N - 76° 40' 06" W; thence 195° (M) 1050 yards to a point on Gallant Point 34° 44' 06" N - 76° 40' 11" W; thence east

and north with the shoreline to the beginning point.

- (c) In the mouth of Harlowe Creek north of a line beginning at a point near White Rock 34° 46' 28" N - 76° 43' 28" W, running 089° (M) to a point 34° 46' 33" N - 76° 42' 46" W.
- (11) Bogue Sound:
 - (a) In that area bound in the west by a line beginning at a point 34° 42' 40" N - 76° 49' 00" W on the south shore of Bogue Sound at Archer Point (~~locally known as McGinnis Point~~) running 008 014° (M) to Channel Marker No. 37 at 34° 41' 15" N - 77° 00' 43" W and in the east by the a point in Bogue Sound 34° 43' 12" N - 76° 49' 24" W ~~thence running 099° (M) to Atlantic Beach Bridge 34° 43' 08" N - 76° 44' 12" W; thence 119° (M) to a point on the shore at Tar Landing Bay 34° 42' 30" N - 76° 42' 12" W; thence 191° (M) to a point on Bogue Banks 34° 42' 00" N - 76° 42' 15" W; thence with the shoreline to the beginning point.~~
 - (b) In that area north of the Intracoastal Waterway beginning at the Atlantic Beach Bridge and running parallel with the Intracoastal Waterway the Highway 58 Bridge, to Channel Marker (Beacon) No. 39 at Bogue (Guthrie Point).
 - ~~(c) In that area on the north side of the Intracoastal Waterway from the Old Ferry Channel to the Highway 58 bridge.~~
- (12) Designated primary nursery areas in all coastal fishing waters which are listed in 15A NCAC 3R .0003, except Burton Creek off Lower Broad Creek in Pamlico County.
- (13) West and south of the Highway 58 Bridge at Emerald Isle from May 1 through October 31 in areas and during such times as the Fisheries Director shall designate by proclamation.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0008 MECHANICAL METHODS PROHIBITED

(a) It is unlawful to use mechanical methods to take oysters in Pamlico Sound, within the area bounded by a line beginning at a point on the

north side of Swash Inlet 34° 58' 50" N - 76° 09' 13" W; thence running 272° (M) 5,420 yards to a point in Wainwright Channel 34° 59' 30" N - 76° 12' 22" W immediately east of the northern tip of Wainwright Island; thence 019° (M) 2,000 yards to red 4 second interval flashing beacon "2CS" 35° 00' 16" N - 76° 12' 12" W; thence 033° (M) 2,900 yards to 4 second interval flashing beacon "HL" 35° 01' 35" N - 76° 11' 27" W; thence 043° (M) 14,450 yards to a point in Pamlico Sound 35° 07' 06" N - 76° 06' 54" W; from which point green 4 second interval flashing beacon "3" on Royal Shoal bears 005° (M) 6,000 yards; green 6 second interval flashing beacon "5" on Royal Shoal bears 325° (M) 6,220 yards; and a yellow 6 second interval flashing beacon on Royal Shoal bears 257° (M) 3,000 yards; thence 078° (M) 7,800 yards to green 2.5 second interval flashing beacon "9" 35° 08' 26" N - 76° 02' 30" W in Nine Foot Shoal Channel; thence 067° (M) 3,640 yards to red 4 second interval flashing beacon "14BF" 35° 09' 21" N - 76° 00' 39" W in Big Foot Slough Channel; thence 078° (M) 26,260 yards to a quick-flashing beacon 35° 14' 00" N - 75° 45' 50" W; southwest of Oliver Reef; thence 033° (M) 6,100 yards to 2.5 second interval flashing beacon "1" 35° 16' 46" N - 75° 44' 16" W in Rollinson Channel; thence 079° (M) 13,920 yards to red 4 second interval flashing beacon "2" 35° 19' 02" N - 75° 36' 19" W in Cape Channel; thence 038° (M) 8,800 yards to green 4 second interval flashing beacon "1" at 35° 22' 48" N - 75° 33' 36" W in Avon Channel; thence 027° (M) 11,900 yards to a point on Gull Island at 35° 28' 27" N - 75° 31' 21" W; thence 012° (M) 15,400 to 4 second interval flashing beacon "ICC" 35° 36' 00" N - 75° 31' 12" W at Chicamacomico Channel; thence 331° (M) 8,600 yards to a point in Pamlico Sound at 35° 39' 21" N - 75° 34' 24" W; thence 013° (M) 7,250 yards to a point in Pamlico Sound at 35° 42' 57" N - 75° 34' 09" W; thence 045° (M) 7,200 yards to a point on the shore of Hatteras Island at 35° 45' 54" N - 75° 31' 06" W; thence running southward with the shoreline of Hatteras Island to a point 35° 11' 30" N - 75° 44' 48" W on the southwest end of Hatteras Island; thence 269° (M) 2,380 yards across Hatteras Inlet to a point 35° 11' 18" N - 75° 46' 15" W on the northeast end of Ocracoke Island; thence southwest with the shoreline of Ocracoke Island to a point 35° 03' 54" N - 76° 00' 54" W on the southwest end of Ocracoke Island; thence 268° (M) 2,220 yards across Ocracoke Inlet to a point 35° 03' 42" N - 76° 02' 15" W on the northeast end of Portsmouth Island;

thence running southwest with the shoreline of Portsmouth Island and Core Banks to a point on the north side of Swash Inlet 34° 58' 50" N - 76° 09' 13" W, to the point of the beginning, except on private bottom by permit. ~~This closure area will be in effect until October 1, 1993.~~

(b) It is unlawful to use mechanical methods to take oysters in Core Sound and tributaries southwest of a line beginning at a point on the north side of Swash Inlet 34° 58' 50" N - 76° 09' 13" W, and running 292° (M) to a point off Hog Island Reef 35° 00' 06" N - 76° 14' 52" W and in Back Bay, North Bay, the Straits, Back Sound, North River, Newport River, Bogue Sound and White Oak River, except on private bottom by permit.

(c) It is unlawful to use mechanical methods to take oysters in any of the coastal waters of Onslow, Pender, New Hanover, and Brunswick Counties, except on private bottom by permit.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNHR - Commission for Health Services intends to amend rule cited as 15A NCAC 13B .0501 and adopt rules cited as 15A NCAC 13B .1601 - .1604, .1621 - .1628, .1630 - .1637 and .1680.

The proposed effective date of this action is October 9, 1993.

March 30, 1993

2:00 p.m.

First Floor Conference Room
Interchange Building
59 Woodfin Place
Asheville, NC

March 31, 1993

1:30 p.m.

Highway Building
One South Wilmington Street
First Floor Auditorium
Raleigh, NC

April 1, 1993

10:00 a.m.

Willis Building Auditorium

Regional Development Institute
E.C.U. Campus
Corner of First and Read Streets
Greenville, NC

Reason for Proposed Action: These rules are proposed to implement the new and revised Federal criteria, published October 9, 1991 under the authority of Subtitle D of the Resource Conservation and Recovery Act (RCRA). In 1979, the U.S. EPA published 40 CFR Part 257 establishing the criteria for classifying all sanitary landfills. 40 CFR Part 257 is the basis for the State's permitting program for sanitary landfills set forth in Section .0500; the revised 40 CFR Part 257 excludes municipal solid waste landfills (MSWLFs), which are subject to a new Part 258. Rule .0501 is proposed for amendment to reflect the change to Part 257 and new Section .1600 - Requirements for Municipal Solid Waste Landfill Facilities is proposed for adoption to implement a permitting program for the new Part 258 criteria. Following State approval, the action will qualify the Division's program to receive "Approved State" status from the U.S. EPA and implement standards which meet North Carolina's specific needs. Without approval of this action, the regulated community will be subject to inflexible federal requirements, increased expenditure of local funds and complications of the existing permit approval process. In addition, current rules do not meet the requirements of existing State law [G.S. 130A-294(b)] which requires "rules shall be consistent with applicable federal law."

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Brad Rutledge, Solid Waste Section, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-0692. If you desire to speak at the public hearing, notify Brad Rutledge at least 3 days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

This rule affects the expenditures or revenues of local funds. A fiscal note was submitted to the Fiscal Research Division on February 25, 1993, OSBM on February 25 1993, N.C. League of Municipalities on February 25, 1993, and N.C. Association of County Commissioners on February 25, 1993.

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

SECTION .0500 - DISPOSAL SITES

.0501 APPROVED DISPOSAL METHODS

(a) The disposal of solid waste shall be by the following approved methods or any combination thereof:

- (1) Sanitary landfill;
- (2) Land clearing and inert debris landfill;
- (3) Incineration; or
- (4) Disposal by other sanitary methods which may be developed and demonstrated to be capable of fulfilling the basic requirements of these Rules and which have been approved by the Division.

(b) The requirements of this Section shall not apply to municipal solid waste landfill units, which are defined under and subject to the requirements of Section .1600 of this Subchapter.

Statutory Authority G.S. 130A-294.

SECTION .1600 - REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES (MSWLFs)

.1601 PURPOSE, SCOPE, AND APPLICABILITY

(a) Purpose. The purpose of this Section is to regulate the siting, design, construction, operation, closure and post-closure of all municipal solid waste landfill facilities, MSWLFs.

(b) Scope. This Section describes the performance standards, application requirements, and permitting procedures for all municipal solid waste landfill facilities. The requirements of this Section are intended to:

- (1) Establish the State standards for MSWLFs to provide for effective disposal practices and protect the public health and environment.
- (2) Coordinate other State Rules applicable to landfills.
- (3) Facilitate the transition for existing landfill facilities which continue to operate MSWLF units.

(c) Applicability. New and existing landfill facilities including a MSWLF unit(s) must conform to the requirements of this Section as follows:

- (1) Municipal solid waste landfill units which did not receive solid waste after October 9, 1991 must comply with the Solid Waste Permit, the Conditions of Permit, and Rule .0510.
- (2) MSWLF units that received solid waste after October 9, 1991 but stop receiving waste before October 9, 1993 must comply with the Solid Waste Permit, the Conditions of Permit, and Rule .0510. The cap system must be installed within six months of last receipt of wastes and must meet the criteria set forth in Subparagraph (c)(1) of Rule .1627 of this Section. Owners or operators of MSWLF units that fail to complete cover installation by this date will be subject to all of the requirements applicable to existing MSWLFs.
- (3) All MSWLF units permitted by the Division prior to October 9, 1993 that receive waste on or after October 9, 1993 must comply with the requirements of this Section.
- (4) MSWLF units failing to satisfy the requirements of this Section constitute open dumps, which are prohibited under Section 4005 of RCRA. Closure of open dumps that receive household waste shall meet the requirements of the Division.

(d) The owner or operator of a MSWLF facility must comply with any other applicable Federal and State laws, rules, regulations, or other require-

ments.

Statutory Authority G.S. 130A-294.

.1602 DEFINITIONS

This Rule contains definitions for terms that appear throughout this Section; additional definitions appear in the specific Rules to which they apply.

- (1) "Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with Rule .1627 of this Section.
- (2) "Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with Rule .1627 of this Section.
- (3) "Aquifer" means a geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs.
- (4) "Base liner system" means the liner system installed on the MSWLF unit's foundation to control the flow of leachate.
- (5) "Cap system" means a liner system installed over the MSWLF unit to minimize infiltration of precipitation and contain the wastes.
- (6) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.
- (7) "Landfill Facility" means all contiguous land and structures, other appurtenances, and improvements on the land within the legal description of the site included in or proposed for the Solid Waste Permit. Existing facilities are those facilities which were permitted by the Division prior to October 9, 1993. Facilities permitted on or after October 9, 1993 are new facilities.
- (8) "Existing MSWLF unit" means any municipal solid waste landfill unit that is receiving solid waste as of October 9, 1993. Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.
- (9) "Ground water" means water below the

land surface in a zone of saturation.

- (10) "Household waste" means any solid waste derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).
- (11) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.
- (12) "Landfill unit" means a discrete area of land or an excavation that receives solid waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257. Such a landfill may be publicly or privately owned.
- (13) "Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.
- (14) "Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.
- (15) "Liner system" means an engineered environmental control system which can incorporate filters, drainage layers, compacted soil liners, geomembrane liners, piping systems, and connected structures.
- (16) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives household waste, and is not a land application unit, surface impoundment, injection well, or waste pile, as defined under 40 CFR Part 257. Such a landfill may be publicly or privately owned. A MSWLF unit may also

be permitted to receive other types of non-hazardous solid waste. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

- (17) "New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to October 9, 1993.
- (18) "Open burning" means the combustion of solid waste without:
 - (a) Control of combustion air to maintain adequate temperature for efficient combustion.
 - (b) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and
 - (c) Control of the emission of the combustion products.
- (19) "Project engineer" means the official representative of the permittee who is licensed to practice engineering in the State of North Carolina, who is responsible for observing, documenting, and certifying that activities related to the quality assurance of the construction of the solid waste management facility conforms to the Division approved plan, the permit to construct and the Rules specified in this Section. All certifications must bear the seal and signature of the professional engineer and the date of certification.
- (20) "Run-off" means any rainwater that drains over land from any part of a facility.
- (21) "Run-on" means any rainwater that drains over land onto any part of a facility.
- (22) "Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.
- (23) "Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

Statutory Authority G.S. 130A-294.

.1603 GENERAL APPLICATION REQUIREMENTS AND PROCESSING

(a) Application required.

- (1) New facilities. Any person proposing to establish a new or expanded facility including a new MSWLF unit(s) must apply for a new permit as set forth in Rule .1621.
- (2) Existing facilities. Owners and operators of existing MSWLF units must:
 - (A) Submit a closure and post closure plan as set forth in Rule .1627 of this Section on or before April 9, 1994; and
 - (B) Apply for a permit renewal as set forth in Rule .1621 of this Section if applicable.

(b) Application format guidelines. All applications and plans required by this Section must be prepared in accordance with the following guidelines:

- (1) The initial application must:
 - (A) Contain a cover sheet, stating the project title and location, the applicant's name, and the engineer's name, address, signature, date of signature and seal; and
 - (B) Contain a statement defining the purpose of the submittal signed and dated by the applicant.
- (2) The text of the application must:
 - (A) Be submitted in a three ring binder;
 - (B) Contain a table of contents or index outlining the body of the application and the appendices;
 - (C) Be paginated consecutively;
 - (D) Identify revised text by noting the date of revision on the page.
- (3) Drawings. The drawings for all landfill facilities must be submitted using the following format:
 - (A) The sheet size with title blocks must be 22 inches by 34 inches or 24 inches by 36 inches.
 - (B) The cover sheet must include the project title, applicant's name, sheet index, legend of symbols, and the engineer's name, address, signature, date of signature, and seal.
 - (C) Where the requirements do not explicitly specify a minimum scale, maps and drawings shall be prepared at a scale which adequately illustrates the subject requirement(s).
- (4) Number of copies. An applicant must submit a minimum of five copies of each original application document and

any revisions to the Division. The Division may request additional copies as necessary.

(c) Permitting and public information procedures. New permits, permit renewals, and major modifications of permits as described in Rule .1604(c) including modifications for corrective action remedy selection as described in Rule .1636 of this Section, shall be subject to the requirements of this Paragraph.

(1) Review of the Permit Application. The Division shall review every permit application for completeness. Upon completing the review, the Division shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Division shall list the information necessary to make the application complete. The Division shall notify the applicant that the application is complete upon receiving the required information. After the application is completed, the Division may request additional information from an applicant, when necessary to clarify, modify, or supplement previously submitted material.

(2) Draft Permits.

(A) Once an application is complete, the Division shall tentatively decide whether the permit should be issued or denied.

(B) If the Division decides the permit should be denied, a notice to deny shall be sent to the applicant. Reasons for permit denial shall be in accordance with Rule .0203(e) of this Subchapter.

(C) If the Division tentatively decides the permit should be issued, a draft permit shall be prepared as set forth in Part .1604(b) of this Rule.

(D) A draft permit shall contain (either expressly or by reference) all applicable terms and conditions from Rule .1621 of this Section.

(E) All draft permits shall be subject to the procedures of Subparagraphs (3), (4), (5), (6), (7) and (8) of this Paragraph, unless otherwise specified in those Subparagraphs.

(3) Fact Sheets.

(A) A fact sheet shall be prepared for every draft permit or notice to deny the permit.

(B) The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit to include, when applicable:

(i) A brief description of the type of facility or activity which is the subject of the draft permit;

(ii) The type and quantity of wastes which are proposed to be or are being disposed of;

(iii) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the permit application;

(iv) A description of the procedures for reaching a final decision on the draft permit, including:

(I) The beginning and ending dates of the comment period under Subparagraph (4) of this Paragraph and the address where comments will be received;

(II) Procedures for requesting a public hearing; and

(III) Any other procedures by which the public may participate in the final decision; and

(v) Name and telephone number of a person to contact for additional information.

(C) The Division shall send this fact sheet to the applicant and, upon request to any other person.

(4) Public Notice of Permit Actions and Public Comment Period.

(A) Scope.

(i) The Division shall give public notice that the following actions have occurred:

(I) A draft permit has been prepared; or

(II) A public hearing has been scheduled under Subparagraph (6) of this Paragraph; or

(III) A notice of intent to deny a permit has been prepared under Part (2)(B) of this Paragraph.

(ii) No public notice is required when a request for a permit modifica-

- tion is denied.
- (iii) Written notice of denial shall be given to the permittee.
- (iv) Public notices may describe more than one permit or permit action.
- (B) Timing.
- (i) Public notice of the preparation of a draft permit or a notice of intent to deny a permit shall allow at least 45 days for public comment.
- (ii) Public notice of a public hearing shall be given at least 15 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined.)
- (C) Methods. Public notice of activities described in Subpart (A)(i) of this Subparagraph shall be given by the following:
- (i) By posting in the post office and public places of the municipalities nearest the site under consideration; or
- (ii) By publication of a notice in a daily or weekly local newspaper of general circulation; and
- (iii) By any other method deemed necessary or appropriate by the Division to give actual notice of the activities to persons potentially affected.
- (D) Contents.
- (i) General Public Notices. All public notices issued under this Part shall contain the following minimum information:
- (I) Name, address and phone number of the office processing the permit action for which notice is being given;
- (II) Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit;
- (III) A brief description of the business conducted at the facility or activity described in the permit application including the size and location of the facility and type of waste accepted;
- (IV) A brief description of the comment procedures required by Subparagraphs (5) and (6) of this Paragraph, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled), and other procedures by which the public may participate in the final permit decision;
- (V) Name, address, and telephone number of a person from whom interested persons may obtain further information, including copies of draft permits and fact sheets;
- (VI) A description of the time frame and procedure for making a final determination on this facility application approval or disapproval;
- (VII) Any additional information considered necessary or proper as required by the Division.
- (ii) Public Notices for Public Hearing. In addition to the general public notice described in Subpart (i) of this Part, the public notice of a public hearing shall contain the following information:
- (I) Reference to the dates of previous public notices relating to the permit action;
- (II) Date, time, and place of the public hearing; and
- (III) A brief description of the nature and purpose of the public hearing, including the applicable rules and procedures; and
- (IV) A concise statement of the issues raised by the persons requesting the hearing.
- (5) Public Comments and Requests for Public Hearings. During the public comment period provided, any interested person may submit written comments on the draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be

- answered as provided in Subparagraph (9) of this Paragraph.
- (6) Public Hearings.
- (A) Public Hearing Criteria.
- (i) The Division shall hold a public hearing whenever on the basis of requests, a significant degree of public interest in a draft permit(s) is determined.
- (ii) The Division may also hold a public hearing at its discretion whenever such a hearing might clarify one or more issues involved in the permit decision.
- (iii) Public hearings held pursuant to this Rule shall be at a location convenient to the nearest population center to the subject facility.
- (iv) Public notice of the hearing shall be given as specified in Subparagraph (4) of this Paragraph.
- (B) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period under Subparagraph (4) of this Paragraph shall automatically be extended to the close of any public hearing under this Subparagraph. The hearing officer may also extend the comment period by so stating at the hearing.
- (C) A tape recording or written transcript of the hearing shall be made available to the public.
- (7) Reopening of the Public Comment Period.
- (A) If any data, information, or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit action, the Division may take one or more of the following actions:
- (i) Prepare a new draft permit, appropriately modified, under Subparagraph (2) of this Paragraph;
- (ii) Prepare a fact sheet or revised fact sheet under Subparagraph (3) of this Paragraph and reopen the comment period under Subparagraph (4) of this Paragraph; or
- (iii) Reopen or extend the comment period under Subparagraph (4) of

- this Paragraph to give interested persons an opportunity to comment on the information or arguments submitted.
- (B) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under Subparagraph (4) of this Paragraph shall define the scope of the reopening.
- (C) Public notice of any of the actions of this Subparagraph shall be issued under Subparagraph (4) of this Paragraph.
- (8) Final Permit Decision.
- (A) After the close of the public comment period under Subparagraph (4) of this Paragraph on a draft permit or a notice of intent to deny a permit, the Division shall issue a final permit decision. The Division shall notify the applicant and each person who has submitted a written request for notice of the final permit decision. For the purposes of this Subparagraph, a final permit decision means a final decision to issue, deny or modify a permit.
- (B) A final permit decision shall become effective upon the date of the service of notice of the decision unless a later date is specified in the decision.
- (9) Response to Comments.
- (A) At the time that a final permit decision is issued under Subparagraph (8) of this Paragraph, the Division shall issue a response to comments. This response shall:
- (i) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change; and
- (ii) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any public hearing.
- (B) The response to comments shall be made available to the public.

Statutory Authority G.S. 130A-294.

.1604 GENERAL REQUIREMENTS FOR MSWLF FACILITIES

(a) Permit Required. Permits issued by the Division for new and existing MSWLF facilities shall be subject to the general requirements set forth in this Rule.

(b) Terms of the Permit. The Solid Waste Management Permit shall incorporate requirements necessary to comply with this Subchapter and the North Carolina Solid Waste Management Act including, but not limited to, the provisions of this Paragraph.

(1) Division Approved Plan. Permits issued subsequent to the effective date of this Rule shall incorporate a Division approved plan.

(A) The scope of the Division approved plan shall be limited to the information necessary to comply with the requirements set forth in Paragraph (c) of Rule .1621.

(B) The Division approved plans shall be subject to and may be limited by the conditions of the permit.

(C) The Division approved plans for a MSWLF facility shall be described in the permit and shall include, but not be limited to, the following:

- (i) Facility plan;
- (ii) Engineering plan and Construction Quality Assurance Plan;
- (iii) Operation plan;
- (iv) Monitoring plan; and
- (v) Closure and post-closure plan.

(D) A closure and post-closure plan for an existing MSWLF unit submitted to and approved by the Division shall constitute the Division approved plan.

(2) Permit provisions. All disposal facilities must conform to the specific conditions set forth in the permit and the following general provisions. Nothing in this Subparagraph shall be construed to limit the conditions the Division may impose on a permit.

(A) Duty to Comply. The permittee must comply with all conditions of this permit, unless otherwise authorized by the Division. Any permit noncompliance, except as otherwise authorized by the Division, constitutes a violation of the Act and is grounds for enforcement action, or for permit revocation or modification.

(B) Duty to Mitigate. In the event of

noncompliance with the permit, the permittee shall take all reasonable steps to minimize releases to the environment, and shall carry out such measures as are reasonable to prevent adverse impacts on human health or the environment.

(C) Duty to Provide Information. The permittee shall furnish to the Division, any relevant information which the Division may request to determine whether cause exists for modifying or revoking this permit, or to determine compliance with this permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by this permit.

(D) Recordation Procedures. The permittee shall comply with the requirements of Rule .0204 in order for a new permit to be effective.

(E) Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(F) Permit Actions. This permit may be modified, revoked and reissued, or terminated for cause in accordance with G.S. 130A-23. The filing of a request by the permittee for a permit modification or termination, or a notification of planned changes or anticipated noncompliance, does not stay any existing permit condition.

(G) No Property Rights. This permit does not convey any property rights of any sort, or any exclusive privilege. This permit is not transferable.

(H) Construction.

(i) The permittee shall notify the Division and conduct a pre-construction meeting on-site prior to initiating construction activities. All responsible parties identified in the construction quality assurance plan shall be represented at this meeting.

(ii) If construction does not commence within 18 months from the issuance date of this permit, then

the permittee must obtain written approval from the Division prior to construction and comply with any conditions of said approval.

- (I) Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

- (J) Inspection and Entry. The permittee shall allow the Division, or an authorized representative, to:

- (i) Enter the permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this permit;
- (ii) Have access to a copy of any records required to be kept under the conditions of this permit;
- (iii) Inspect any facilities, equipment (including monitoring and control equipment), practices or operations regulated by the Division.
- (iv) Sample or monitor for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location; and
- (v) Make photographs for the purpose of documenting items of compliance or noncompliance at waste management units, or where appropriate to protect legitimate proprietary interests, require the permittee to make such photos for the Division.

- (K) Monitoring and Records.

- (i) Samples and measurements taken for the purpose of monitoring shall be representative of the

monitored activity. The permittee shall split any required samples with the Division upon request.

- (ii) The permittee shall retain records of all monitoring information required by the permit for the active life of the facility and for the post-closure care period. This period may be extended by the Division at any time.

- (iii) Records of monitoring information shall include:

- (I) The date, exact place, and time of sampling or measurements;

- (II) The individual(s) who performed the sampling or measurements;

- (III) The date(s) analyses were performed;

- (IV) The individual(s) who performed the analyses;

- (V) The analytical techniques or methods used (including equipment used); and

- (VI) The results of such analyses.

- (L) Reporting Requirements.

- (i) The permittee shall give notice to the Division as soon as possible of any planned physical alterations or additions to the permitted facility.

- (ii) Monitoring results shall be reported at the intervals specified in the permit.

- (iii) The permittee shall report orally within 24 hours from the time the permittee becomes aware of the circumstances of any release, discharge, fire, or explosion from the permitted landfill facility. Such reports shall be made to the Division representative at the appropriate regional office of the Department of Environment, Health, and Natural Resources.

- (iv) Where the permittee becomes aware that it failed to submit all relevant facts and corrected information in a permit application, or submitted incorrect information in a permit application or in any report to the Division, it shall promptly submit such facts or information.

(M) Survey for Compliance.

- (i) Within 60 days of the permittee's receipt of the Division's written request, the permittee shall cause to be conducted a survey of active or closed portions of their facility in order to determine if operations (e.g., cut and fill boundaries, grades) are being conducted in accordance with the approved design and operational plans. The permittee must report the results of such survey to the Division within 90 days of receipt of the Division's request.
- (ii) A survey may be requested by the Division:

- (I) If there is reason to believe that operations are being conducted in a manner that significantly deviates from the Division approved plans; or

- (II) As a periodic verification (but no more than annual) that operations are being conducted in accordance with the approved plans.

- (iii) Any survey performed pursuant to this Part must be performed by a registered land surveyor duly authorized under North Carolina law to conduct such activities.

(N) Waste Exclusions. The following wastes shall not be disposed of in a MSWLF unit:

- (i) white goods, polychlorinated biphenyls (PCB) wastes as defined in 40 CFR 761;

- (ii) used oil, batteries, whole tires; and

- (iii) yard trash.

(O) Additional Solid Waste Management Facilities. Construction and operation of additional solid waste management facilities at the landfill facility shall not impede operation of the MSWLF unit and must be approved by the Division.

(P) Existing facilities. Solid Waste Management Permits for disposal facilities issued by the Division prior to October 9, 1993 shall incorporate the following conditions.

- (i) All existing MSWLF units not designed and constructed with a

base liner system permitted by the Division shall meet the following requirements:

- (I) Waste disposal must be within the areal (horizontal) limits of the actual waste boundary established on or before October 8, 1993 and in a manner consistent with the effective Solid Waste Permit;

- (II) The operation plan shall be prepared and implemented as set forth in Rule .1625; and

- (III) The closure and post-closure plan approved by the Division as set forth in Rule .1627 shall be the Division approved plan.

- (ii) All existing MSWLF units constructed with a base liner system permitted by the Division prior to October 9, 1993 and explicitly approved for operation by the Division shall meet the following requirements:

- (I) Waste disposal shall be consistent with the effective Solid Waste Permit;

- (II) The permittee shall prepare a schedule establishing proposed dates for constructing any lateral expansion to the existing MSWLF unit and submit the schedule to the Division on or before December 1, 1993;

- (III) The operation plan shall be prepared and implemented as set forth in Rule .1625; and

- (IV) If no lateral expansion of the existing MSWLF unit is approved by the Division then the closure and post-closure plan approved by the Division as set forth in Rule .1627 of this Section shall be the Division approved plan.

- (V) Any lateral expansion shall require a permit renewal as set forth in Paragraph (c) of this Rule.

- (iii) Construction of a new MSWLF unit shall require a permit renewal as set forth in Paragraph (c) of this Rule.

(c) New Permits, major modifications, and

permit renewals. The issuance of new permits, major modifications and permit renewals as defined in this Paragraph shall conform to the requirements of Rule .1621 and shall be subject to the permitting requirements of Paragraph (c) of Rule .1603.

(1) New Permits. A new permit shall be required for a MSWLF facility according to the following criteria:

- (A) The MSWLF facility includes a new MSWLF unit not subject to permit renewal.
- (B) Any substantial change in the population or area to be served, or in the type, quantity or source of waste occurs or is proposed.
- (C) Transfer of ownership of the facility is proposed.
- (D) Major modifications are proposed which include revisions to the legal description of the MSWLF facility.

(2) Major modifications. Any change to the approved facility plan as required by Rule .1621(c)(1) for a facility permitted after October 9, 1993 shall be considered a major modification if the proposed change is of the scope and nature that the Division determines that public notice is necessary to allow participation in the Division's decision by persons who may be adversely affected by the proposed change.

(3) Permit renewals for existing facilities.

- (A) Any permit issued by the Division prior to October 9, 1993 to construct a new MSWLF unit or a lateral expansion of an existing MSWLF unit must apply for permit renewal.
- (B) Permit renewals are limited to MSWLF unit construction within the area approved for construction by the effective permit issued by the Division.

(d) Minor Modifications of Permit. The issuance of a minor modification of a permit shall conform to the requirements of Rule .1621 and shall not be subject to the permitting and public information requirements of Rule .1603(c). Any permit modification not processed as a major modification under Paragraph (c) shall be considered a minor modification. Any change to the approved facility plan for a facility permitted after October 9, 1993, not associated with the MSWLF disposal unit or support facilities shall be considered a minor modification.

(e) Permit amendments. New permits, permit renewals, or major modifications issued by the Division shall include an approved Facility Plan and an approval to construct a five-year phase of the MSWLF facility. Construction of subsequent phases of the MSWLF facility shall require an amendment to the permit. The permittee must file an amendment to permit application as set forth in Rule .1621 of this Section; the permit application must be submitted to the Division at least 180 days prior to the date scheduled for commencing construction.

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.1605 RESERVED FOR FUTURE CODIFICATION

.1606 RESERVED FOR FUTURE CODIFICATION

.1607 RESERVED FOR FUTURE CODIFICATION

.1608 RESERVED FOR FUTURE CODIFICATION

.1609 RESERVED FOR FUTURE CODIFICATION

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.1617 RESERVED FOR FUTURE CODIFICATION

.1618 RESERVED FOR FUTURE

CODIFICATION

.1619 RESERVED FOR FUTURE
CODIFICATION

.1620 RESERVED FOR FUTURE
CODIFICATION

.1621 PERMIT APPLICATION
REQUIREMENTS FOR MSWLF
FACILITIES

(a) Applicability. The permit application for a MSWLF facility includes three submittals: site plan; construction plan; and an application to operate. The application for a permit to construct must be submitted in two parts; a complete site plan application for a MSWLF facility must be submitted prior to the construction plan application. The permit to construct shall describe the subsequent requirements to qualify the constructed landfill unit for a permit to operate. Pre-application meetings with the Division are suggested.

(1) Permit renewal applications. Applications for permit renewal as defined in Subparagraph (c)(3) of Rule .1604 shall be exempt from the requirements of Paragraph (b) of this Rule, except for the location restrictions report as set forth in Part (4)(B); the report must be included in a complete construction plan application.

(2) Transition. Any site or construction plan application for a MSWLF facility submitted to the Division prior to April 9, 1993 shall be exempt from the requirements of Paragraph (b) of this Rule, except for the location restrictions report as set forth in Part (4)(B); the report must be included in a complete construction plan application.

(3) Application for major and minor modifications. A permittee proposing to modify the information included in the Division approved plans must submit an application which identifies the subject application requirement and provides complete information for the modification.

(4) Amendments to permit. Applications to construct a new phase of landfill development in accordance with the Division approved Facility Plan shall be exempt from the requirements of Paragraph (b).

(b) Site plan application. A complete site plan application must contain the information required

in this Paragraph.

(1) Regional characterization study. The regional study area includes the landfill facility and a two mile perimeter measured from the proposed boundary of the landfill facility. The study shall include a report and a regional map identifying the following:

- (A) general topography and features as illustrated on the most recent U.S.G.S. Topographic map, 7.5 Minute Series, horizontal scale of at least one inch equals 2000 feet;
- (B) proposed landfill facility location;
- (C) public water supply wells, surface water intakes, and service areas;
- (D) residential subdivisions;
- (E) waste transportation routes; and
- (F) public use airports and runways.

(2) Local characterization study. The local study area includes the landfill facility and a 2000 foot perimeter measured from the proposed boundary of the landfill facility. The study shall include an aerial photograph taken within one year of the site plan submittal, a report, and a local map. The map and photograph shall be at a scale of at least one inch equals 400 feet. The study must identify the following:

- (A) the entire property proposed for the disposal site and any on-site easements;
- (B) existing land use and zoning;
- (C) the location of private residences and schools;
- (D) the location of commercial and industrial buildings, and other potential sources of contamination;
- (E) the location of potable wells and available documentation regarding well completion and production rate;
- (F) historic sites; and
- (G) the existing topography and features of the disposal site including: general surface water drainage patterns and watersheds, 100-year floodplains, perennial and intermittent streams, rivers, and lakes.

(3) Geologic and Hydrogeologic Study. The study shall be prepared in accordance with the requirements set forth in Rule .1623 (a) of this Section.

(4) Proposed Facility Plan. The proposed facility plan must include the following

requirements:

- (A) Design concept. A conceptual design plan must be presented which:
 - (i) delineates the location of all land-fill unit(s), liquid storage facilities, additional solid waste management facilities, pipelines, and other structures proposed for construction at the landfill facility;
 - (ii) discusses the proposed waste stream for management at the facility, estimated total capacity, disposal rate, and the population and area of service;
 - (iii) incorporates the summary findings of the geologic and hydrogeologic report as set forth in subparagraph (a)(13) of Rule .1623;
 - (iv) describes the proposed environmental controls and engineering design, and proposed environmental monitoring systems; and
 - (v) contains a survey locating all property boundaries for the proposed landfill facility certified by an individual licensed to practice land surveying in the State of North Carolina.
- (B) Location Restrictions. A report shall be prepared demonstrating compliance with the criteria in Rule .1622; the report shall incorporate the design concept and discuss planned compliance with design and construction standards referenced in Rule .1622 of this Section.
- (C) Local government approvals for municipal solid waste landfills.
 - (i) If the proposed municipal solid waste landfill site is located within an incorporated city or town, or within the extraterritorial jurisdiction of an incorporated city or town, the approval of the governing board of the city or town shall be required. Otherwise, the approval of the Board of Commissioners having authority in the county which the site is located shall be required. Approval may be in the form of either a resolution or a vote on a motion. A copy of the resolution, or the minutes of the meeting where the

vote was taken shall be submitted to the Division as part of the site plan application.

- (I) Prior to Division approval, the jurisdictional local government where the landfill is to be located shall hold at least one public meeting to inform the community of the proposed waste management activities as described in the site plan application, including but not limited to: the surface and subsurface characteristics of the site, the conceptual design plan including proposed environmental controls and monitoring, and the population and area to be served as well as the type, quantity, and source of waste to be accepted at the facility.
- (II) For purposes of this Subpart, public notice shall include: a legal advertisement placed in a newspaper or newspapers serving the county; and provision of a news release to at least one newspaper, one radio station, and one TV station serving the county. Public notice shall include time, place, and purpose of the meetings required by this Subpart.
- (III) The local government where the landfill is to be located shall provide a public notice of the meeting at least 30 days prior to the meeting. Public notice shall be documented in the site plan application. A written transcript of the meeting, all written material submitted representing community concerns, and all other relevant written material distributed or used at the meeting shall be submitted as part of the site plan application.
- (IV) The complete permit application, written transcripts of all public meetings and any additional material submitted or used at the meetings, and any

additions or corrections to the applications, including any responses to notices of deficiencies shall be submitted to the closest local library in the county of the proposed site, with the request that the information be made available to the public until the permit decision is concluded.

(ii) A letter from the unit of local government having zoning jurisdiction over the site which states that the proposal meets all the requirements of the local zoning ordinance, or that the site is not zoned shall be submitted to the Division as part of the site plan application.

(iii) A letter from the unit of local government responsible for the implementation of a comprehensive solid waste management plan approved by the Division [in accordance with G.S. 130A-309.04(e)] setting forth a determination that the operation of the proposed municipal solid waste landfill is consistent with the approved solid waste management plan shall be submitted with the site plan application.

(c) Construction Plan. A complete construction plan application must contain the information required in this Paragraph and any additional information required by the Division relative to its review of the site plan application. Generally, the facility plan must describe complete development of the MSWLF facility; the engineering, construction quality assurance, operation, monitoring, and closure and post-closure plans detail one five-year phase of landfill construction. An amendment to permit application must update the plans for the next phase of landfill construction. Changes to the Division approved facility plan shall require modification to the permit; any minor modification to the facility plan may be submitted as part of an amendment to permit when the proposed change(s) are explicitly identified.

(1) Facility Plan. The facility plan shall include drawings and a report specifying comprehensive landfill facility development for the life of the facility including the following:

(A) Facility plan drawings must illustrate

landfill unit boundaries, phases of construction, estimated base grades, landfill contours at transitional and final capacities, liquid storage facilities, limits of construction activities, other facilities and structures, buffer zones, permanent features, roads, and other design features.

(B) The facility plan report must contain:

(i) calculated design capacities, specified disposal rates, types of waste specified for disposal, a specific service area, and equipment requirements;

(ii) a general description of the environmental control systems;

(iii) an analysis of leachate and stormwater management including: leachate generation estimates, system concepts, design parameters, and contingency and final disposal plans; and

(iv) a description of additional engineering features.

(2) Engineering Plan. An engineering plan shall be submitted for a phase of construction not to exceed approximately five years of design capacity. The plan must contain drawings and a report clearly defining the information proposed for the Division approved plan.

(A) Engineering drawings must clearly illustrate:

(i) Existing conditions; site topography, features, existing disposal areas, roads, buildings;

(ii) Grading plans; proposed limits of excavation, subgrade elevations, boring locations, intermediate grading for partial construction;

(iii) Base liner system; grades for top of composite liner, slopes, anchor configuration, liner penetration locations and details;

(iv) Leachate collection system; base elevations, piping system grade and inverts, cleanouts, valves, sumps, top of protective cover elevations, and details;

(v) Stormwater segregation system; location and detail of features;

(vi) Cap system; base and top elevations, landfill gas collection, infiltration barrier, surface water removal, protective and vegetative

- cover, and details;
- (vii) Temporary and permanent sedimentation and erosion control plans;
- (viii) Vertical separation requirements using boring data, cross sections, the maps prepared in accordance with Rules .1623 (b)(2)(E) and (F) of this Section, and the grading plans; and
- (ix) Additional details.
- (B) An engineering report must contain:
 - (i) an analysis of the facility design that conforms to the standards set forth in Rules .1622, .1624, and .1680 of this Section, and Paragraph (c) of Rule .1627.
 - (ii) a description of the materials and construction practices that conforms to the requirements set forth in Rule .1624 of this Section, and is consistent with the analysis of the facility design prepared in accordance this Part; and
- (3) Construction quality assurance plan (CQA). A CQA plan for construction of the MSWLF unit, liquid storage facility, and any related environmental control system components must conform to the requirements set forth in Rule .1624 of this Section and must contain:
 - (A) a description of responsibilities and authorities;
 - (B) a description of field and laboratory test methods, frequency of sampling, necessary calibrations and protocols, the appropriate acceptance and rejection criteria, procedures for test failures; and
 - (C) documentation and reporting requirements for CQA activities.
- (4) Operation Plan. An operation plan must contain drawings and a report clearly defining the information proposed for the Division approved operation plan as set forth in Rule .1625 of this Section.
- (5) Geologic and hydrogeologic study. A geologic and hydrogeologic study shall be submitted as set forth in Rule .1623 (b) of this Section.
- (6) Monitoring Plan. An environmental monitoring plan must include:

- (A) explosive gas monitoring which conforms to the requirements set forth in Rule .1626(4) of this Section;
- (B) leachate monitoring which conforms to the requirements set forth in Rule .1626(12) of this Section;
- (C) ground water and surface water monitoring which conforms to the requirements set forth in Rule .1623(b) of this Section;
- (7) Closure and Post Closure plan. A closure and post closure plan must conform to the requirements set forth in Rule .1627 of this Section.

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.1622 LOCATION RESTRICTIONS FOR MSWLF FACILITY SITING

MSWLF units must comply with the siting criteria set forth in this Rule. In order to demonstrate compliance with specific criteria, documentation or approval by agencies other than the Division of Solid Waste Management may be required. The scope of demonstrations including design and construction performance must be discussed in a site plan application and completed in the construction plan application.

- (1) Airport Safety.
 - (a) A new MSWLF unit shall be located no closer than 5,000 feet from any airport runway used only by piston-powered aircraft and no closer than 10,000 feet from any runway used by turbine-powered aircraft.
 - (b) Owners or operators proposing to site a new MSWLF unit or lateral expansion within a five-mile radius of any airport runway used by turbine-powered or piston-powered aircraft must notify the affected airport and the Federal Aviation Administration prior to submitting a permit application to the Division.
 - (c) The permittee of any existing MSWLF unit or a lateral expansion located within 5,000 feet from any airport runway used by only piston-powered aircraft or within 10,000 feet from any runway used by turbine-powered aircraft must demonstrate that the existing MSWLF unit does not pose a bird hazard to aircraft.
 - (d) For purposes of this Paragraph:
 - (i) Airport means a public-use airport open to the public without prior per-

mission and without restrictions within the physical capacities of the available facilities.

- (ii) Bird hazard means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(2) Floodplains.

- (a) New MSWLF units, existing MSWLF units, and lateral expansions shall not be located in 100-year floodplains unless the owners or operators demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment.

(b) For purposes of this Paragraph:

- (i) "Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.
- (ii) "100-year flood" means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.
- (iii) "Washout" means the carrying away of solid waste by waters of the base flood.

(3) Wetlands.

- (a) New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the Division:
 - (i) Where applicable under Section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that a practicable alternative to the proposed landfill facility is available which does not involve wetlands is clearly rebutted.
 - (ii) The construction and operation of the MSWLF unit will not:
 - (A) Cause or contribute to violations of any applicable State water quality standard;
 - (B) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water

Act;

- (C) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973; and
- (D) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary.
- (iii) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner/operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:
 - (A) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;
 - (B) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;
 - (C) The volume and chemical nature of the waste managed in the MSWLF unit;
 - (D) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;
 - (E) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and
 - (F) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.
- (iv) To the extent required under Section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by Subitem (3)(a)(i) of this Rule, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all

appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

- (v) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

- (b) For purposes of this Item, wetlands means those areas that are defined in 40 CFR 232.2(r).

(4) Fault Areas.

- (a) New MSWLF units and lateral expansions shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the Division that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

- (b) For the purposes of this Item:

- (i) "Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.
- (ii) "Displacement" means the relative movement of any two sides of a fault measured in any direction.
- (iii) "Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

(5) Seismic Impact Zones.

- (a) New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the Division that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

- (b) For the purposes of this Item:

- (i) "Seismic impact zone" means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.
- (ii) "Maximum horizontal acceleration in lithified earth material" means the

maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

- (iii) "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

(6) Unstable Areas.

- (a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

- (i) On-site or local soil conditions that may result in significant differential settling;
- (ii) On-site or local geologic or geomorphologic features; and
- (iii) On-site or local human-made features or events (both surface and subsurface).

- (b) For purposes of this Item:

- (i) "Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.
- (ii) "Structural components" means liners, leachate collection systems, final covers, run-on or run-off systems,

and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(iii) "Poor foundation conditions" means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

(iv) "Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(v) "Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(7) Cultural Resources. A new MSWLF unit or lateral expansion shall not damage or destroy an archaeological or historical site.

(8) State Nature and Historic Preserve. A new MSWLF unit or lateral expansion shall not have an adverse impact on any lands included in the State Nature and Historic Preserve.

(9) Water Supply Watersheds. A new MSWLF unit or lateral expansion shall not be located in the critical area of a water supply watershed or in the watershed for a stream segment classified as WS-I, according to 15 NCAC 2B .0200 - "Classifications and Water Quality Standards applicable to surface waters of North Carolina."

(10) Endangered and Threatened Species. A

new MSWLF unit or lateral expansion shall not jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Federal Endangered Species Act of 1973.

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.1623 GEOLOGIC AND HYDROGEOLOGIC INVESTIGATIONS FOR MSWLF FACILITIES

(a) Site Plan Application: A study is required to assess the geologic and hydrogeologic characteristics of the proposed site to determine: the suitability of the site for solid waste management activities; which areas of the site are most suitable for MSWLF disposal units; and the general ground-water flow paths and rates for the uppermost aquifer. The study must provide an understanding of the relationship of the site ground-water flow regime to local and regional hydrogeologic features, with special emphasis on the relationship of disposal units to ground-water receptors (especially drinking water wells) and to ground-water discharge features. Additionally, the scope of the study must include the general geologic information necessary to discuss compliance with the pertinent location restrictions described in Rule .1622 of this Section. The study must be submitted in a site plan application. This study must provide, at a minimum, the following information:

(1) A report on local and regional geology and hydrogeology based on research of available literature for the area. For sites located in piedmont or mountain regions, the report must include a fracture trace analysis and Rose Diagram based on an evaluation of structurally controlled features identified on a topographic map of the area.

(2) A discussion of field observations of the site that include information on the following:

(A) Topographic setting, springs, streams, drainage features, existing or abandoned wells, rock outcrops, (including trends in strike and dip), and other features that may affect site suitability or the ability to effectively monitor the site; and

(B) Ground-water discharge features. A more extensive hydrogeologic investi-

- gation may be required for a proposed site where the owner or operator does not control the property from any landfill unit boundary to the controlling, downgradient, ground-water discharge feature(s).
- (3) Borings for which the numbers, locations, and depths are deemed sufficient by the Division to provide an adequate understanding of the subsurface conditions and ground-water flow regime of the uppermost aquifer at the site. The number and depths of borings required will depend on the hydrogeologic characteristics of the site. At a minimum, there shall be an average of one boring for each ten acres of the proposed landfill facility, unless otherwise authorized by the Division. The distribution of the borings should be such that there is a greater concentration of borings in areas expected to be used for waste disposal and areas of greater geologic or hydrogeologic interest.
 - (4) A testing program for the borings which describes the frequency, distribution, and type of samples taken and the methods of analysis (standard ASTM test methods or methods approved by the Division) used to obtain, at a minimum, the following information:
 - (A) Standard penetration - resistance;
 - (B) Particle size analysis;
 - (C) Soil classification: Unified Soil Classification System;
 - (D) Formation descriptions; and
 - (E) Saturated hydraulic conductivity, porosity, and effective porosity for each lithologic unit of the uppermost aquifer.
 - (5) In addition to borings, other techniques may be used to investigate the subsurface conditions at the site, including but not limited to: geophysical well logs, surface geophysical surveys, and tracer studies.
 - (6) Stratigraphic cross-sections identifying hydrogeologic and lithologic units, and stabilized water table elevations.
 - (7) Water table information, including:
 - (A) Tabulations of water table elevations measured at the time of boring, 24 hours, and stabilized readings for all borings (measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow direction and rate);
 - (B) Tabulations of stabilized water table elevations over time in order to develop an understanding of seasonal fluctuations in the water table;
 - (C) An estimation of the long-term seasonal high water table based on stabilized water table readings, hydrographs of wells in the area, meteorological and climatological data, and any other information available; and
 - (D) A discussion of any natural or man-made activities that have the potential for causing water table fluctuations, including tidal variations, river stage changes, flood pool changes of reservoirs, high volume production wells, injection wells, etc.
 - (8) The horizontal and vertical dimensions of ground-water flow, including flow directions, rates, and gradients.
 - (9) Ground-water contour map(s) to show the occurrence and direction of ground-water flow in the uppermost aquifer, and any other aquifers identified in the hydrogeological study.
 - (10) A topographic map of the site locating soil borings with accurate horizontal and vertical control which are tied to a permanent onsite bench mark.
 - (11) Boring logs, well construction records, and piezometer construction records.
 - (12) Identification of other geologic and hydrologic considerations, including but not limited to: slopes, streams, springs, gullies, trenches, solution features, karst terrane, sinkholes, dikes, sills, faults, mines, ground-water discharge features, and ground-water recharge/discharge areas.
 - (13) A report summarizing the geological and hydrogeological evaluation of the site that includes the following:
 - (A) A description of the relationship between the uppermost aquifer of the site to locally and regionally recognized geologic and hydrogeologic features.
 - (B) A discussion of the ground-water flow regime of the site focussing on the relationship of waste disposal units to

ground-water receptors and to ground-water discharge features.

(C) A discussion of the overall suitability of the proposed site for solid waste management activities and which areas of the site are most suitable for MSWLF disposal units.

(D) A discussion of the ground-water flow regime of the uppermost aquifer at the site and the ability to effectively monitor the MSWLF units in order to ensure early detection of any release of hazardous constituents to the uppermost aquifer.

(b) Construction plan application study.

(1) A geological and hydrogeological study must be submitted in a construction plan application and must contain the information required by subparagraph (2) of this Paragraph. The number and depths of borings required shall be based on the geologic and hydrogeologic characteristics of the landfill facility. At a minimum, there shall be an average of one boring for each acre of the area of investigation; where the area of investigation shall be defined by the Division's review of the site plan application, and by the scope and purpose of the investigation as follows:

(A) The investigation shall provide adequate information to demonstrate compliance with the vertical separation and foundation standards set forth in subparagraphs (b)(4) and (b)(7) of Rule .1624 of this Section, and Paragraph (e) of Rule .1680 of this Section.

(B) The study must investigate the hydrogeologic characteristics of the uppermost aquifer for the proposed phase of landfill construction and any leachate surface impoundment or leachate disposal facility. The purpose of this investigation is to provide more detailed and localized data on the hydrogeologic regime for this area in order to design an effective ground-water monitoring system.

(2) The study must provide, at a minimum, the following information:

(A) This study must provide the information required in subparagraphs (a)(4) through (a)(12) of this Rule.

(B) All technical information necessary to determine the design of the monitoring system as required by Rule .1631(c) of this Section.

(C) All technical information necessary to determine the relevant point of compliance as required by Rule .1631(a)(2)(B) of this Section.

(D) Rock corings (for sites located in the piedmont or mountain regions) for which the numbers, locations, and depths are adequate to provide an understanding of the fractured bed-rock conditions and ground-water flow characteristics of at least the upper ten feet of the bedrock. Testing for the corings shall provide, at a minimum, the following information:

(i) Rock types;

(ii) Recovery values;

(iii) Rock Quality Designation (RQD) values;

(iv) Saturated hydraulic conductivity and secondary porosity;

(v) Rock descriptions, including fracturing and jointing patterns, etc.

(E) A ground-water contour map based on the estimated long-term seasonal high water table that is superimposed on a topographic map and includes the location of all borings and rock cores.

(F) A bedrock contour map (for sites located in piedmont or mountain regions) illustrating the contours of the upper surface of the bedrock that is superimposed on a topographic map and includes the location of all borings and rock cores.

(G) A three dimensional ground-water flow net that characterizes the ground-water flow regime for this area.

(H) A discussion of the ground-water flow regime for the area including ground-water flow paths, horizontal and vertical components of ground-water flow, flow direction, horizontal and vertical gradients, flow rates, ground-water recharge areas and discharge areas, etc.

(I) A ground-water monitoring plan including information on the proposed ground-water monitoring system(s), sampling and analysis requirements, and detection monitoring requirements

that fulfills the requirements of Rules .1630 through .1637 of this Section.

- (i) The Division may require the use of alternative monitoring systems in addition to ground-water monitoring wells at sites:
 - (I) where the owner or operator does not control the property from any landfill unit to the ground-water discharge feature(s); or
 - (II) sites with hydrogeologic conditions favorable to detection monitoring by alternative methods.
- (ii) The proposed monitoring plan must be certified by a Licensed Geologist or Professional Engineer to be effective in providing early detection of any release of hazardous constituents (from any point in a disposal cell or leachate surface impoundment) to the uppermost aquifer, so as to be protective of public health and the environment.
- (J) A surface water monitoring plan according to Rule .0602 of Section .0600.
- (K) A certification by a Licensed Geologist or Professional Engineer that all borings at the site that have not been converted to permanent monitoring wells will be properly abandoned according to the procedures for permanent abandonment of wells, as delineated in 15A NCAC 2C, Rule .0113(a)(2).

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.1624 CONSTRUCTION REQUIREMENTS FOR MSWLF FACILITIES

(a) This Rule establishes the performance standards and minimum criteria for designing and constructing a new MSWLF unit or lateral expansion of existing MSWLF units.

(b) New MSWLF units and lateral expansions shall comply with the following design and construction criteria:

- (1) Base liner system description. The base liner system is constructed on the landfill subgrade and shall be designed to efficiently contain, collect, and remove leachate generated by the

MSWLF unit. At a minimum, the components of the liner system shall consist of the following:

- (A) A composite liner. The composite liner is one liner which consists of two components; a geomembrane liner installed above and in direct and uniform contact with a compacted clay liner. The composite liner must be designed and constructed in accordance with Subparagraphs (8) and (9).
- (B) A leachate collection system (LCS). The LCS is constructed directly above the composite liner and shall be designed to effectively collect and remove leachate from the MSWLF unit. The secondary function of the LCS is to establish a zone of protection between the composite liner and the waste. The LCS must be designed and constructed in accordance with Subparagraphs (2), (10), (11), and (12).
- (2) Leachate collection system design.
 - (A) The leachate collection system shall be hydraulically designed to remove leachate from the landfill and ensure that the leachate head on the composite liner does not exceed one foot at the expected flow capacity resulting from a 24-hour, 25-year storm event. A means of quantitatively assessing the performance of the leachate collection system under uniform conditions must be provided in the engineering plan. Any assumptions used in the performance analysis must be reasonable and acceptable to the Division. The performance analysis must evaluate the flow capacities of the pipe network necessary to convey leachate to the storage facility or off-site transport location.
 - (B) The leachate collection system shall be designed to provide a zone of protection at least 24 inches thick separating the composite liner from landfilling activities.
 - (C) The leachate collection system shall include a drainage layer, a pipe network with clean-outs, and the necessary filters designed to prevent physical clogging and promote leachate collection and removal from the land-

- fill.
- (3) Horizontal separation requirements.
- (A) Property line buffer.
- (i) New MSWLF units at new facilities must establish a minimum 300-foot buffer between the MSWLF unit and all property lines.
- (ii) All MSWLF units at existing facilities must maintain a minimum 100-foot buffer between the MSWLF unit and all property lines.
- (B) Private residences and wells. All MSWLF units at new facilities must establish a minimum 500 foot buffer between the MSWLF unit and existing private residences and wells.
- (C) Surface waters. All MSWLF units at new facilities must establish a minimum 50-foot buffer between the MSWLF unit and any stream, river, or lake unless a demonstration is completed as set forth in Paragraph (3) of Rule .1622 of this Section.
- (D) Existing landfill units. An adequate buffer distance shall be established between a new MSWLF unit and any existing landfill units to establish a ground-water monitoring system as set forth in Rule .1631 of this Section.
- (4) Vertical separation requirements. A MSWLF unit must be constructed so that the post settlement bottom elevation of the base liner system is a minimum of four feet above the seasonal high ground-water table and bedrock. The nature of the materials establishing this separation shall be subject to Division approval.
- (5) Survey control. One permanent benchmark of known elevation measured from a U.S. Geological Survey benchmark must be established and maintained for each 25 acres of developed landfill, or part thereof, at the landfill facility. This benchmark must be the reference point for establishing vertical elevation control.
- (6) Location coordinates. The North Carolina State Plane (NCSP) Coordinates must be established and one of its points must be the benchmark of known NCSP coordinates.
- (7) Landfill subgrade. The landfill subgrade is the in-situ soil layer(s), constructed embankments, and select fill providing the foundation for construction of the unit. A foundation analysis must be performed to determine the structural integrity of the subgrade to support the loads and stresses imposed by the weight of the landfill and to support overlying facility components and maintain their integrity of the components. Minimum post-settlement slope for the subgrade shall be two percent. Safety factors should be adequately specified for facilities located in a Seismic Impact Zones.
- (A) Materials required. The landfill subgrade must be adequately free of organic material and consist of in-situ soils or a select fill if approved by the Division.
- (B) Construction requirements.
- (i) The landfill subgrade must be graded in accordance with the Division approved plans and specifications.
- (ii) MSWLF units may be required by the permit to notify the Division's hydrogeologist and inspect the subgrade when excavation is completed or if bedrock or other unpredicted subsurface conditions are encountered during excavation.
- (C) Certification requirements. At a minimum, the subgrade surface must be inspected in accordance with the following requirements:
- (i) before beginning construction of the base liner system, the project engineer must visually inspect the exposed surface to evaluate the suitability of the subgrade and document that the surface is properly prepared and that the elevations are consistent with the Division approved engineering plans;
- (ii) the subgrade must be proof-rolled using specified procedures and equipment; and
- (iii) the subgrade must be tested for density and moisture content at a minimum frequency specified in the Division approved plans.
- (8) Compacted clay liners. Compacted

clay liners are low permeability barriers designed to control fluid migration in a cap liner system or base liner system.

(A) Materials required. The soil materials used in constructing a compacted clay liner may consist of on-site or off-site sources, or a combination of sources; sources may possess adequate native properties or may require bentonite conditioning to meet the permeability requirement. The soil material must be free of particles greater than three inches in any dimension.

(i) For the base liner system, the compacted clay liner shall be constructed with a minimum thickness of 24 inches (0.61 m) and a permeability of no more than 1×10^{-7} cm/sec.

(ii) For the cap system, the compacted clay liner shall be constructed with a minimum thickness of 18 inches (0.46 m) and a permeability of no more than 1×10^{-5} cm/sec.

(B) Construction requirements. Construction methods for the compacted clay liner shall be based upon the type and quality of the borrow source and must be verified in the field by constructing test pad(s). The project engineer must ensure that the compacted clay liner installation conforms with the Division approved plans including following minimum requirements:

(i) A test pad shall be constructed prior to beginning installation of the compacted clay liner and whenever there is a significant change in soil material properties. The area and equipment, liner thickness, and subgrade slope and conditions must be representative of full scale construction. Acceptance and rejection criteria shall be verified for the tests specified in accordance with Subparagraph (C) of this Paragraph. For each lift, a minimum of three test locations shall be established for testing moisture content, density, and a composite sample for recompacted lab permeability. At least one shelby tube sample for lab permeability testing, or another

in situ test approved by the Division, shall be obtained per lift.

(ii) Soil conditioning, placement, and compaction shall be maintained within the range identified in the moisture-density-permeability relation developed in accordance with Subparagraph (C) of this Paragraph.

(iii) The final compacted thickness of each lift must be a maximum of six inches.

(iv) Prior to placement of successive lifts, the surface of the lift in place shall be scarified or otherwise conditioned to eliminate lift interfaces.

(v) The final lift shall be adequately protected from environmental degradation.

(C) Certification requirements. The project engineer must include in the construction quality assurance report a discussion of all quality assurance and quality control testing required in this Subparagraph. The testing procedures and protocols must be submitted in accordance with Subparagraph (c)(3) Rule .1621 and approved by the Division. The results of all testing must be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance with the Division approved plans including the following requirements:

(i) At a minimum, the quality control testing for accepting materials prior to and during construction of a compacted clay liner should include: particle size distribution analysis, Atterberg limits, triaxial cell laboratory permeability, moisture content, percent bentonite admixed with soil, and the moisture-density-permeability relation. The project engineer must certify that the materials used in construction were tested according to the Division approved plans.

(ii) At a minimum, the quality assurance testing for evaluating each lift of the compacted clay liner shall include: moisture content and density, and permeability testing. For each location the moisture content and density must be compared to the appropriate moisture-density-permeability relation. The project engineer must certify that the liner was constructed using the methods and acceptance criteria consistent with test pad construction and tested according to the Division approved plans.

(iii) Any tests resulting in the penetration of the compacted clay liner shall be repaired using bentonite or as approved by the Division.

(9) Geomembrane liners. Geomembrane liners are geosynthetic hydraulic barriers manufactured in sheets and installed by field seaming techniques.

(A) Materials required. The geomembrane liner material must have a demonstrated water vapor transmission rate of not more than 0.03 gm/m²-day. The liner material and any seaming materials must have chemical and physical resistance not adversely affected by environmental exposure, waste placement and leachate generation. The type of geomembrane must be acceptable to the Division.

(i) High density polyethylene geomembrane liners must have a minimum thickness of 60 mils.

(ii) The minimum thickness of any geomembrane approved by the Division must be greater than 30 mils.

(B) Construction requirements. The project engineer must ensure that the geomembrane installation conforms to the requirements of the manufacturer's recommendations and the Division approved plans including the following:

(i) the surface of the supporting soil upon which the geomembrane will be installed must be reasonably free of stones, organic matter, protrusions, loose soil, and any

abrupt changes in grade that could damage the geomembrane;

(ii) field seaming preparation and methods, general orientation criteria, and restrictive weather conditions;

(iii) anchor trench design;

(iv) critical tensile forces and slope stability;

(v) protection from environmental damage; and

(vi) physical protection from the materials installed directly above the geomembrane.

(C) Certification requirements. The project engineer must include in the construction quality assurance report a discussion of the approved data resulting from the quality assurance and quality control testing required in this Subparagraph. The testing procedures and protocols for field installation must be submitted in accordance with Subparagraph (c)(3) of Rule .1621 and approved by the Division. The results of all testing must be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance the Division approved plans including the following:

(i) quality control testing of the raw materials and manufactured product;

(ii) at a minimum, test seams shall be shall be made upon each start of work for each seaming crew, upon every four hours of continuous seaming, every time seaming equipment is changed or if significant changes in geomembrane temperature and weather conditions are observed;

(iii) nondestructive testing of all seams; and

(iv) field and independent laboratory destructive testing of seam samples.

(10) Leachate collection pipes. A leachate collection pipe network must be a component of the leachate collection system

and must be hydraulically designed to convey leachate from the MSWLF unit to an appropriately sized leachate storage or treatment facility or a point of off-site transport. Leachate collection piping must comply with the following:

(A) Materials required.

- (i) The leachate collection piping must have a minimum nominal diameter of six inches.
- (ii) The chemical properties of the pipe and any materials used in installation must not be adversely affected by waste placement or leachate generated by the landfill.
- (iii) The physical properties of the pipe must provide adequate structural strength to support the maximum static and dynamic loads and stresses imposed by the overlying materials and any equipment used in construction and operation at the landfill. Specifications for the pipe must be submitted in the engineering report.

(B) Construction requirements.

- (i) Leachate collection piping must be installed according to the Division approved plan.
- (ii) The location and grade of the piping network must provide access for periodic cleaning.
- (iii) The bedding material for the leachate collection pipe must consist of a coarse aggregate installed in direct contact with the pipe and the waste layer. The aggregate must be chemically compatible with the leachate generated and must be placed to provide adequate support to the pipe.

(C) Certification requirements. The project engineer must include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the material is placed according to the approved plans. The testing procedures and protocols for field installation must be submitted in accordance with Subparagraph (c)(3) of Rule .1621 and approved by the Division. The results of all testing must be included in the construction

quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance the Division approved plans including the following:

- (i) All leachate piping installed from the MSWLF unit to the leachate storage or treatment facility shall be watertight.
 - (ii) The seal where the piping system penetrates the geomembrane shall be inspected and non-destructively tested for leakage.
- (11) Drainage layers. Any soil, granular, or geosynthetic drainage nets used in the leachate collection system must conform to the following requirements:

(A) Materials required.

- (i) The chemical properties of the drainage layer materials must not be adversely affected by waste placement or leachate generated by the landfill.
- (ii) The physical and hydraulic properties of the drainage layer materials must promote lateral drainage of leachate through a zone of relatively high permeability or transmissivity under the predicted loads imposed by overlying materials.

(B) Construction requirements.

- (i) The drainage layer materials must be placed according to the Division approved plans and in a manner which prevents equipment from working directly on the geomembrane.
- (ii) The drainage layer materials must be stable on the slopes specified on the engineering drawings.

(C) Certification requirements. The project engineer must include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the drainage layer material is placed according to the approved plans. The testing procedures and protocols for field installation must be submitted in accordance with Subparagraph (c)(3) of Rule .1621 and

approved by the Division. The results of all testing must be included in the construction quality assurance report including documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance the Division approved plans.

- (12) Filter layer criteria. All filter collection layers used in the leachate collection system must be designed to prevent the migration of fine soil particles into a courser grained material, and permit water or gases to freely enter a drainage medium (pipe or drainage layer) without clogging.

(A) Materials required.

- (i) Graded cohesionless soil filters. The granular soil material used as a filter must have no more than five percent by weight passing the No. 200 seive and no soil particles larger than three inches in any dimension.
- (ii) Geosynthetic filters. Geosynthetic filter materials must demonstrate adequate permeability and soil particle retention, and chemical and physical resistance which is not adversely affected by waste placement, any overlying material or leachate generated by the landfill.

- (B) Construction requirements. All filter layers must be installed in accordance with the approved engineering plan and specifications. Geosynthetic filter materials shall not be wrapped directly around leachate collection piping.

- (C) Certification requirements. The project engineer must include in the construction quality assurance report a discussion of the quality assurance and quality control testing to ensure that the filter layer material is placed according to the approved plans. The testing procedures and protocols for field installation must be submitted in accordance with Subparagraph (c)(3) of Rule .1621 and approved by the Division. The results of all testing must be included in the construction quality assurance report including

documentation of any failed test results, descriptions of the procedures used to correct the improperly installed material, and statements of all retesting performed in accordance the Division approved plans.

- (13) Sedimentation and erosion control. Adequate structures and measures shall be designed and maintained to manage the run-off generated by the 25 year, 24 hour storm event, and conform to the requirements of the Sedimentation Pollution Control Law (15A NCAC 4).
- (14) Construction quality assurance (CQA) report. A report must be submitted to the Division within 45 days after the completion of landfill construction. This report must include at a minimum, the information prepared in accordance with the application requirements of Subparagraph (c)(3) of Rule .1621 containing results of all construction quality assurance and construction quality control testing required in this Rule including documentation of any failed test results, descriptions of procedures used to correct the improperly installed material and results of all retesting performed. In addition, the CQA report must contain as-built drawings noting any deviation from the approved engineering plans and must also contain a comprehensive narrative including but not limited to daily reports from the project engineer and a series of color photographs of major project features. The Division will review the submitted material for approval within 30 days after receipt.

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.1625 OPERATION PLAN FOR MSWLF FACILITIES

- (a) The operator of a MSWLF unit shall maintain and operate the facility according to the operation plan as set forth in this Rule.

- (1) Existing MSWLF units. The operation plan must be prepared as the information becomes available and must be completed on or before April 9, 1994. The operation plan must describe the existing phase of landfill development and must be consistent with the closure plan requirements set forth in Rule

.1627 (e)(3) of this Section. The operation plan shall be effective when completed and five copies are submitted to the Division in accordance with Rule .1627 of this Section. A complete operation plan must be on file at the facility and shall be subject to review and modification in accordance with the requirements of this Section.

- (2) New MSWLF units and lateral expansions. The initial operation plan must be submitted in accordance with Rule .1621 (c) of this Section. Each phase of operation shall be defined by an area which will contain approximately five years of disposal capacity.

(b) Operation Plan. The owner or operator of a MSWLF unit shall prepare an operation plan for each phase of landfill development. The plan shall include drawings and a report clearly defining the information proposed for the Division approved plan.

- (1) Operation drawings. Drawings shall be prepared for each phase of landfill development. The drawings shall be consistent with the engineering plan and prepared in a format which is useable for the landfill operator. The operation drawings shall illustrate the following:

- (A) existing conditions, including the known limits of existing disposal areas;
- (B) progression of construction cells for incremental or modular construction;
- (C) progression of operation, including initial waste placement, daily operations, transition contours, and final contours;
- (D) leachate and stormwater controls for active and inactive subcells;
- (E) special waste areas within the MSWLF unit;
- (F) buffer zones, noting restricted use; and
- (G) stockpile and borrow operations.

- (2) Operation report. The report shall provide a narrative discussion of the operation drawings and contain a description of the facility operation that conforms to the requirements of Rule .1626 of this Section.

- (3) The operation plan for an existing MSWLF unit must include:

- (A) the facility's programs set forth in Parts (1)(f), (2)(b), and (4)(b) of Rule

.1626; and

- (B) a Sedimentation and Erosion Control plan which incorporates adequate measures to control surface water run off and run on generated from the 25 year, 24 hour storm event.

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.1626 OPERATIONAL REQUIREMENTS FOR MSWLF FACILITIES

The owner or operator of any MSWLF unit must maintain and operate the facility in accordance with the requirements set forth in this Rule and the operation plan as described in Rule .1625 of this Section.

- (1) Waste Acceptance and Disposal Requirements.

- (a) A MSWLF shall only accept those solid wastes which it is permitted to receive. The landfill owner or operator shall notify the Division within 24 hours of attempted disposal of any waste the landfill is not permitted to receive, including waste from outside the area the landfill is permitted to serve.

- (b) No hazardous or liquid waste shall be accepted or disposed of in a MSWLF unit.

- (c) Spoiled foods, animal carcasses, abattoir waste, hatchery waste, and other animal waste delivered to the disposal site shall be covered immediately.

- (d) Asbestos waste that is managed in accordance with 40 CFR 61, which is hereby incorporated by reference including any subsequent amendments and additions, may be disposed of separate and apart from other solid wastes, at the bottom of the working face or in an area not contiguous with other disposal areas. Separate areas shall be clearly marked so that asbestos is not exposed by future land-disturbing activities. The waste shall be covered immediately with soil in a manner that will not cause airborne conditions. Copies of 40 CFR 61 are available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste, 401 Oberlin Road, Raleigh, N.C. at no cost.

- (e) Wastewater treatment sludges may only be accepted for disposal in accordance

with the following conditions:

- (i) Utilized as a soil conditioner and incorporated into or applied onto the vegetative growth layer but, in no case greater than six inches in depth.
 - (ii) Co-disposed if the facility meets all design requirements contained within Rule .1624, and approved within the permit, or has been previously approved as a permit condition.
- (f) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of hazardous and liquid wastes. This program must include, at a minimum:
- (i) Random inspections of incoming loads or other comparable procedures;
 - (ii) Records of any inspections;
 - (iii) Training of facility personnel to recognize hazardous and liquid wastes.
 - (iv) Development of a contingency plan to properly manage any identified hazardous and liquid waste. The plan must address identification, removal, storage and final disposition of the waste.
- (2) Cover material requirements.
- (a) Except as provided in Part (B) of this Subparagraph, the owners or operators of all MSWLF units must cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.
 - (b) Alternative materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the Division if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.
 - (c) Areas which will not have additional wastes placed on them for 12 months or more, but where final termination of disposal operations has not occurred, shall be covered with a minimum of one foot of intermediate cover.
- (3) Disease vector control.
- (a) Owners or operators of all MSWLF units must prevent or control on-site

populations of disease vectors using techniques appropriate for the protection of human health and the environment.

- (b) For purposes of this Item, "disease vectors" means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.
- (4) Explosive gases control
- (a) Owners or operators of all MSWLF units must ensure that:
 - (i) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and
 - (ii) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.
 - (b) Owners or operators of all MSWLF units must implement a routine methane monitoring program to ensure that the standards of Subitem (4)(a) of this Item are met. This program must be implemented on or before October 9, 1994.
 - (i) The type and frequency of monitoring must be determined based on the following factors:
 - (I) Soil conditions;
 - (II) The hydrogeologic conditions surrounding the facility;
 - (III) The hydraulic conditions surrounding the facility;
 - (IV) The location of facility structures and property boundaries.
 - (ii) The minimum frequency of monitoring shall be quarterly.
 - (c) If methane gas levels exceeding the limits specified in Subitem (4)(a) of this Item are detected, the owner or operator must:
 - (i) Immediately take all necessary steps to ensure protection of human health and notify the Division;
 - (ii) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and
 - (iii) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the

plan in the operating record, and notify the Division that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(iv) The Division may establish alternative schedules for demonstrating compliance with Subitem (4)(c)(ii) and (iii).

(d) For purposes of this Item, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

(5) Air Criteria

(a) Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the U.S. EPA Administrator pursuant to Section 110 of the Clean Air Act, as amended.

(b) Open burning of solid waste, except for the infrequent burning of land clearing debris generated on site or debris from emergency clean-up operations, is prohibited at all MSWLF units. Any such infrequent burning must be approved by the Division.

(c) Equipment shall be provided to control accidental fires or arrangements shall be made with the local fire protection agency to immediately provide fire-fighting services when needed.

(d) Fires that occur at a MSWLF require verbal notice to the Division within 24 hours and written notification shall be submitted within 15 days.

(6) Access and safety requirements.

(a) The MSWLF shall be adequately secured by means of gates, chains, berms, fences and other security measures approved by the Division to prevent unauthorized entry.

(b) An attendant shall be on duty at the site at all times while it is open for public use to ensure compliance with operational requirements.

(c) The access road to the site shall be of all-weather construction and maintained in good condition.

(d) Dust control measures shall be implemented when necessary.

(e) Signs providing information on dumping procedures, the hours during which the site is open for public use, the

permit number and other pertinent information shall be posted at the site entrance.

(f) Signs shall be posted stating that no hazardous or liquid waste can be received.

(g) Traffic signs or markers shall be provided as necessary to promote an orderly traffic pattern to and from the discharge area and to maintain efficient operating conditions.

(h) The removal of solid waste from a MSWLF is prohibited unless the owner operator approves and the removal is not performed on the working face.

(i) Barrels and drums shall not be disposed of unless they are empty and perforated sufficiently to ensure that no liquid or hazardous waste is contained therein, except fiber drums containing asbestos.

(7) Erosion and sedimentation control requirements.

(a) Adequate erosion control measures shall be practiced to prevent silt from leaving the MSWLF.

(b) Adequate erosion control measures shall be practiced to prevent excessive on-site erosion.

(c) Provisions for a vegetative ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days upon completion of any phase of MSWLF development.

(8) Drainage control and water protection requirements.

(a) Surface water shall be diverted from the operational area.

(b) Surface water shall not be impounded over or in waste.

(c) A separation distance of at least four feet shall be maintained between waste and the ground-water table.

(d) Solid waste shall not be disposed of in water.

(e) Leachate shall be contained on site or properly treated prior to discharge. An NPDES permit may be required prior to the discharge of leachate to surface waters.

(f) MSWLF units shall not:

(i) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, includ-

ing, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to Section 402.

- (ii) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act, as amended.

(9) Liquids restrictions.

- (a) Liquid waste as determined by the Paint Filter Liquids Test (Method 9095, S.W. - 846) may not be placed in MSWLF units unless the waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit is designed with a composite liner and leachate collection system. The owner or operator must have prior approval by the Division in accordance with the design requirements contained within Rule .1624.

- (b) For the purpose of this Item, "gas condensate" means the liquid generated as a result of gas recovery process(es) at the MSWLF unit.

(10) Recordkeeping requirements.

- (a) The owner or operator of a MSWLF unit must record and retain at the facility in an operating record the following information as it becomes available:

- (i) Inspection records, waste determination records, and training procedures required in Item (1) of this Rule;
- (ii) Amounts by weight of solid waste received at the facility to include source of generation;
- (iii) Gas monitoring results and any remediation plans required by Item (4) of this Rule;
- (iv) Any demonstration, certification, finding, monitoring, testing, or analytical data required by Rule .1630 thru .1637 of this Section;
- (v) Any monitoring, testing, or analytical data as required by Rule .1627 of this Section.
- (vi) Any cost estimates and financial assurance documentation required by Rule .1628 of this Section.

- (b) All information contained in the operating record must be furnished upon

request to the Division or be made available at all reasonable times for inspection by the Division.

- (c) The owner or operator must maintain a copy of the operation plan required by Rule .1625 of this Section at the facility.

(11) Spreading and Compacting requirements.

- (a) MSWLF units shall restrict solid waste into the smallest area feasible.
- (b) Solid waste shall be compacted as densely as practical into cells.
- (c) Appropriate methods such as fencing and diking shall be provided within the area to confine solid waste subject to be blown by the wind. At the conclusion of each day of operation, all windblown material resulting from the operation shall be collected and returned to the area by the owner or operator.

(12) Leachate management plan. The owner or operator of a MSWLF unit designed with a leachate collection system must establish and maintain a leachate management plan which, at a minimum, includes the following:

- (a) periodic maintenance of the leachate collection system;
- (b) maintaining records for the amounts of leachate generated;
- (c) leachate quality sampling;
- (d) approval for final leachate disposal; and
- (e) a contingency plan for extreme operational conditions.

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.1627 CLOSURE AND POST-CLOSURE REQUIREMENTS FOR MSWLF FACILITIES

(a) Existing MSWLF units. A landfill facility containing a MSWLF unit must prepare and submit to the Division a closure and post closure plan which conforms to the requirements of this Rule on or before April 9, 1994. The Division shall establish a review schedule for the closure and post closure plans which determines the adequacy of 50 percent of the plans by October 9, 1994 and 100 percent of the plans by October 9, 1996.

(b) New MSWLF units and lateral expansions. An application for a new permit, permit renewal, or an amendment to permit, must include a current closure and post closure plan which conforms to the requirements of this Rule.

(c) Closure criteria.

- (1) New and existing MSWLF units and lateral expansions must install a cap system that is designed to minimize infiltration and erosion. The cap system must be designed and constructed to:
 - (A) have a permeability less than or equal to the permeability of any base liner system or the in situ subsoils underlying the landfill, or the permeability specified for the final cover in the effective permit, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less;
 - (B) minimize infiltration through the closed MSWLF by the use of a low-permeability barrier that contains a minimum 18 inches of earthen material; and
 - (C) minimize erosion of the cap system and protect the low-permeability barrier from root penetration by use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.
- (2) The Division may approve an alternative final cover system if the owner or operator can adequately demonstrate the following:
 - (A) The alternative final cover system will achieve an equivalent or greater reduction in infiltration as the low-permeability barrier specified in Subparagraph (1) of this Paragraph; and
 - (B) The erosion layer will provide equivalent or improved protection as the erosion layer specified in Subparagraph (3) of this Paragraph.
- (3) Construction of the cap system for all MSWLF units shall conform to the requirements set forth in Subparagraphs (b)(8), (b)(9) and (b)(14) of Rule .1624 and the following requirements:
 - (A) post-settlement surface slopes shall be shall be a minimum of two percent and a maximum of 33 percent;
 - (B) a gas venting or collection system shall be installed below the low-permeability barrier to minimize pressures exerted on the barrier.
- (4) Prior to beginning closure of each MSWLF unit as specified in Subparagraph (5) of this Paragraph, an owner

or operator must notify the Division that a notice of the intent to close the unit has been placed in the operating record.

- (5) The owner or operator must begin closure activities of each MSWLF unit no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes or, if the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the Division if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.
- (6) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in Subparagraph (5) of this Paragraph. Extensions of the closure period may be granted by the Division if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and they have taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.
- (7) Following closure of each MSWLF unit, the owner or operator must notify the Division that a certification, signed by the project engineer verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.
- (8) Recordation.
 - (A) Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the Division that the notation has been recorded and a copy has

- been placed in the operating record.
- (B) The notation on the deed must in perpetuity notify any potential purchaser of the property that:
- (i) The land has been used as a landfill facility; and
 - (ii) Its use is restricted under the closure plan approved by the Division.
- (9) The owner or operator may request permission from the Division to remove the notation from the deed if all wastes are removed from the facility.
- (d) Post-closure criteria.
- (1) Following closure of each MSWLF unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under Subparagraph (2) of this Paragraph, and consist of at least the following:
 - (A) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;
 - (B) Maintaining and operating the leachate collection system in accordance with the requirements in Rules .1624 and .1626. The Division may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
 - (C) Monitoring the groundwater and surface water in accordance with the requirements of Rules .1631 through .1637 and maintaining the ground-water monitoring system, if applicable; and monitoring the surface water in accordance with the requirements of Rule .0602.
 - (D) Maintaining and operating the gas monitoring system in accordance with the requirements of Rule .1626 of this Section.
 - (2) The length of the post-closure care period may be:
 - (A) Decreased by the Division if the owner or operator demonstrates that the reduced period is sufficient to
 - protect human health and the environment and this demonstration is approved by the Division; or
 - (B) Increased by the Division if the Division determines that the lengthened period is necessary to protect human health and the environment.
 - (3) Following completion of the post-closure care period for each MSWLF unit, the owner or operator must notify the Division that a certification, signed by an independent registered professional engineer, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record.
 - (e) Closure and post-closure plan. Closure and post-closure plans for new and existing MSWLF units shall be submitted for approval as one document. The plan must demonstrate compliance with the applicable requirements of .1628, Financial Assurance, and the following requirements:
 - (1) Closure plan contents. The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during its active life in accordance with the cap system requirements in Paragraph (c) of this Rule, as applicable. The closure plan, at a minimum, must include the following information:
 - (A) A description of the cap system, designed in accordance with Paragraph (c) of this Rule and the methods and procedures to be used to install the cover;
 - (B) An estimate of the largest area of the MSWLF unit ever requiring a cap system as described under Paragraph (c) of this Rule at any time during the active life;
 - (C) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and
 - (D) A schedule for completing all activities necessary to satisfy the closure criteria set forth in Paragraph (c) of this Rule.
 - (2) Post-closure contents. The owner or operator of all MSWLF units must prepare a written post-closure plan that includes, at a minimum, the following information:
 - (A) A description of the monitoring and

maintenance activities required in Paragraph (d) for each MSWLF unit, and the frequency at which these activities will be performed;

(B) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(C) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the cap system, base liner system, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this Section. The Division may approve any other disturbance if the owner or operator demonstrates that disturbance of the cap system, base liner system, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(3) Existing MSWLF units. Closure and post-closure plans for existing MSWLF units shall conform to the following criteria:

(A) Final contours shall be consistent with the effective permit or may be reduced to reflect changes to the areal limits of the existing MSWLF unit.

(B) The remaining capacity of the existing MSWLF unit must be calculated from October 9, 1993. The method, data, and assumptions used to calculate the remaining capacity shall be clearly stated.

(C) If the remaining capacity calculated in Part (B) of this Subparagraph is less than three years, the final contours may be increased to provide three years of total remaining capacity. Capacity may be limited by the Division upon review of closure and post-closure plans in accordance with Rule .1627(a).

(D) The closure plan for any existing MSWLF unit shall include the following components:

(i) an operation plan prepared in accordance with Rule .1625 of this Section;

(ii) a ground-water monitoring plan prepared in accordance with Rules .1631 through .1637 of this Section;

(iii) financial assurance as set forth in Rule .1628 of this Section;

(iv) a report discussing compliance with the location restrictions for existing MSWLF units set forth in Rule .1622 of this Section;

(v) a local characterization study which identifies water supply intakes (ground and surface water) and underground utility lines within 2000 feet of any MSWLF unit, and the existing topography of the landfill facility which:

(I) delineates the known limits of landfill units,

(II) the area which stopped receiving waste before October 9, 1991; and

(III) any other potential sources of contamination.

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.1628 FINANCIAL ASSURANCE RULES

(a) Applicability and Effective Date.

(1) The requirements of this Rule apply to owners and operators of all MSWLF units that receive waste on or after October 9, 1993, except owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

(2) The requirements of this Rule are effective April 9, 1994.

(3) MSWLF units owned and operated by units of local government or public authorities may elect to use a Capital Reserve Fund as described in (e) (1) of this Rule.

(4) Owners and operators of all MSWLF units shall submit original cost estimates for closure and post closure in accordance with .1627 and this Rule; and, if necessary corrective action plans in accordance with .1637 and this Rule.

(5) Under this Rule, when documents are required to be placed in the operating record of a MSWLF unit, three copies shall be forwarded to the Division.

(6) When allowable mechanisms as speci-

fied in Paragraph (e) of this Rule are used in combination to provide financial assurance for closure, post closure or corrective action, no more than one allowable mechanism shall be provided by the same financial institution or its corporate entities.

(b) Financial Assurance for Closure.

(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF units permitted for operation and requiring a cap system as required under .1627(e)(1)(B) at any time during the active life in accordance with the closure plan. A copy of the closure cost estimate must be placed in the MSWLF's closure plan and the operating record.

(A) The cost estimate must equal the cost of closing the largest area of all MSWLF units permitted for operation requiring a cap system at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan as set forth in Rule .1627 (e)(1)(B) of this Section.

(B) During the active life of the MSWLF unit, the owner or operator must annually adjust the closure cost estimate for inflation.

(C) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(D) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. Prior to any reduction of the closure cost estimate by the owner or operator, a written justification for the reduction must be submitted to the Division. No reduction of

the closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval must be placed in the MSWLF's operating record.

(2) The owner or operator of each MSWLF unit must establish financial assurance for closure of the MSWLF unit in compliance with Paragraph (e) of this Rule. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with .1627(c) for final closure certification.

(c) Financial Assurance for Post-Closure Care.

(1) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under .1627 of this Section. The post-closure cost estimate used to demonstrate financial assurance in Subparagraph (2) of this Paragraph must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period and be placed in the operating record.

(A) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(B) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(C) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under Subparagraph (2) of this Paragraph if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.

(D) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under Subparagraph (b) of this Paragraph if the cost estimate exceeds the maximum costs of post-closure

care remaining over the post-closure care period. Prior to any reduction of the post closure cost estimate by the owner or operator, a written justification for the reduction must be submitted to the Division. No reduction of the post closure cost estimate shall be allowed without Division approval. The reduction justification and the Division approval must be placed in the MSWLFs' operating record.

- (2) The owner or operator of each MSWLF unit must establish, in a manner in accordance with Paragraph (e) of this Rule for the costs of post-closure care as required under Rule .1627 (d) of this Section. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with .1627(f)(3) of this Section.

(d) Financial Assurance for Corrective Action.

- (1) An owner or operator of a MSWLF unit required to undertake a corrective action program under Rule .1637 of this Section must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must notify the Division that the estimate has been placed in the operating record.

- (A) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with .1637(f) of this Part.
- (B) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under Paragraph (b) of this Rule if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.
- (C) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under Sub-

paragraph (2) of this Paragraph if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must notify the Division that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

- (2) The owner or operator of each MSWLF unit required to undertake a corrective action program under .1637 of this Section must establish, in a manner in accordance with .1628 (e) of this Rule, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with .1637(f) and (g) of this Section.

(e) Allowable Mechanisms.

- (1) The mechanisms used to demonstrate financial assurance under this Rule must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in Parts (A) through (I) of this Paragraph.

(A) Trust Fund.

- (i) An owner or operator may satisfy the requirements of this Part by establishing a trust fund which conforms to the requirements of this Paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement must be placed in the facility's operating record.
- (ii) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the

- case of corrective action for known releases. This period is referred to as the pay-in period.
- (iii) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in Part (I) of this Paragraph, divided by the number of years in the pay-in period as defined in Part (A)(ii) of this Paragraph. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE}-\text{CV}}{\text{Y}}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

- (iv) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in Part (I) of this Paragraph, divided by the number of years in the corrective action pay-in period as defined in Part (A)(ii) of this Paragraph. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB}-\text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in

period.

- (v) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this Paragraph (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of .1637 of this Section.
- (vi) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this Paragraph, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this Part and (1)(A) of this Paragraph, as applicable.
- (vii) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator must document in the operating record that reimbursement has been received.
- (viii) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this Rule or if no longer required to demonstrate financial responsibility in accordance with the requirements of (b)(2), (c)(2) or (d)(2) of this Rule.
- (B) Surety Bond Guaranteeing Payment or Performance.
- (i) An owner or operator may dem-

- onstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this Part. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this Paragraph. The bond must be effective before the initial receipt of waste or before the effective date of this Section, (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of .1637 of this Section. The owner or operator must place a copy of the bond in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.
- (ii) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in Paragraph (e)(I) of this Rule.
 - (iii) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.
 - (iv) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of Paragraph (e)(1) (A) of this Rule except the requirements for initial payment and subsequent annual payments specified in Paragraph (e)(1)(A)(ii), (iii), (iv) and (v) of this Rule.
 - (v) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the

trust fund must be approved by the trustee.

- (vi) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this Paragraph.
- (vii) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this Paragraph or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with Paragraph (b)(2), (c)(2) or (d)(2) of this Rule.

(C) Letter of Credit.

- (i) An owner or operator may satisfy the requirements of this Paragraph by obtaining an irrevocable standby letter of credit which conforms to the requirements of this Part. The letter of credit must be effective before the initial receipt of waste or before the effective date of this Section (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of .1637 of this Section. The owner or operator must place a copy of the letter of credit in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.
- (ii) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: name, and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(iii) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in Paragraph (e)(1)(A) of this Rule. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the letter of credit is canceled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(iv) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this Paragraph or if the owner or operator is released from the requirements of (b)(2), (c)(2) or (d)(2) of this Rule.

(D) Insurance.

(i) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this Part. The insurance must be effective before the initial receipt of waste or before the effective date of this Section, (April 9, 1994), whichever is later. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. The owner or operator must place a copy of the insurance policy in the operating record.

(ii) The closure or post-closure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care for the MSWLF

unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(iii) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in (e)(1)(A) of this Rule. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(iv) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator must document in the operating record that reimbursement has been received.

(v) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(vi) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic

renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the Division 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in Paragraph (e) of this Rule.

(vii) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(viii) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in Paragraph (e) of this Rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with the requirements of (b)(2), (c)(2) or (d)(2) of this Rule.

(E) Corporate Financial Test.

[Reserved]

(F) Local Government Financial Test.

[Reserved]

(G) Corporate Guarantee.

[Reserved]

(H) Local Government Guarantee.

[Reserved]

(I) Capital Reserve Fund.

(i) MSWLF units owned or operated by units of local government or public authority may satisfy the requirements of this Part by establishing a capital reserve fund

which conforms to the requirements of this Paragraph. The unit of local government or public authority must be an entity which has the authority to establish a capital reserve fund under authority of G.S. 159 and whose financial operations are regulated and examined by a State agency. The capital reserve fund must be established consistent with auditing, budgeting and government accounting practices as prescribed in G.S. 159 and by the Local Government Commission. A copy of the capital reserve fund ordinance or resolution and a copy of documentation of initial and subsequent year's deposits must be placed in the MSWLF's operating record.

(ii) Payments into the capital reserve fund must be made annually by the unit of local government or public authority over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a capital reserve fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period. The pay-in period shall not exceed December 31, 1997 for a MSWLF unit which does not comply with established design standards of .1624 of this Section.

(iii) For a capital reserve fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, divided by the number of years in the pay-in period as defined in Subpart (ii) of this Part. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CV}}{\text{Y}}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the capital reserve fund, and Y is the number of years remaining in the pay-in period.

- (iv) For a capital reserve fund used to demonstrate financial assurance for corrective action, the first payment into the capital reserve fund must be at least equal to one-half of the current cost estimate for corrective action, divided by the number of years in the corrective action pay-in period as defined in Subpart (ii) of this Part. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required capital reserve fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the capital reserve fund, and Y is the number of years remaining on the pay-in period.

- (v) The initial payment into the capital reserve fund must be made before the initial receipt of waste or before the effective date of this Section (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of .1637 of this Section.
- (vi) If the unit of local government or public authority establishes a capital reserve fund after having used one or more alternate mechanisms specified in this Paragraph, the initial payment into the capital

reserve fund must be at least the amount that the fund would contain if the capital reserve fund were established initially and annual payments made according to the specifications of this Part.

- (vii) The unit of local government or public authority authorized to conduct closure, post-closure care or corrective action activities may expend capital reserve funds to cover the remaining costs of closure, post-closure care, corrective action activities or for the debt service payments on financing arrangements for closure, post closure care or corrective action activities. Monies in the capital reserve fund can only be used for these purposes unless the fund is terminated in accordance with Paragraph (e)(1)(I)(viii) of this Rule. The unit of local government or public authority must document justifying expenditures and place a copy in the operating record.

- (viii) The capital reserve fund may be terminated by the unit of local government or public authority only if it substitutes alternate financial assurance as specified in this Paragraph or if no longer required to demonstrate financial responsibility in accordance with the requirements of (b)(2), (c)(2) or (d)(2) of this Rule.

- (J) Use of Multiple Financial Mechanisms. An owner or operator may satisfy the requirements of this Paragraph by establishing more than one financial mechanism per facility. The mechanisms must be as specified in Parts (A), (B), (C), (D), (E), (F), (G), (H) and (I) of this Paragraph, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be

combined if the financial statements of the two firms are consolidated.

(K) The language of the mechanisms listed in Parts (A), (B), (C), (D), (E), (F), (G), (H), and (I) of this Paragraph must ensure that the instruments satisfy the following criteria:

- (i) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;
- (ii) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;
- (iii) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements (April 9, 1994), or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of .1637 of this Section, until the owner or operator is released from the financial assurance requirements under Paragraphs (b)(2), (c)(2) and (d)(2) of this Rule.
- (iv) The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

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.1629 RESERVED FOR FUTURE CODIFICATION

.1630 APPLICABILITY OF GROUND-WATER MONITORING REQUIREMENTS

(a) The ground-water monitoring, assessment, and corrective action requirements under .1630 through .1637 of this Section apply to all MSWLF units.

(b) Owners or operators of MSWLF units must comply with the ground-water monitoring, assessment, and corrective action requirements under

.1630 through .1637 of this Section according to the following schedule:

- (1) New MSWLF units must be in compliance with the requirements before waste can be placed in the unit.
- (2) Lateral expansions to existing MSWLF units must be in compliance with the requirements before waste can be placed in the expansion area.
- (3) The effective date for existing MSWLF units to be in compliance with the requirements is October 9, 1993. Compliance must be demonstrated to the Division on or before October 9, 1994.

(c) Once established at a MSWLF unit, ground-water monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit.

(d) Ground-water monitoring plans, assessment plans, and corrective action plans shall be prepared under the responsible charge of a Licensed Geologist or Professional Engineer (in accordance with North Carolina General Statutes 89E and 89C, respectively).

(e) The North Carolina Groundwater Classifications and Standards (15A NCAC 2L) are incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina at no cost.

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.1631 GROUND-WATER MONITORING SYSTEMS

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer that:

- (1) Represent the quality of the background ground water that has not been affected by leakage from the unit. Normally determination of background water quality will be based on sampling of a well or wells that are hydraulically upgradient of the waste management area. However, the determination of background water quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

- (A) Hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; or
- (B) Hydrogeologic conditions do not allow the owner or operator to place a well in a hydraulically upgradient location; or
- (C) Sampling at other wells will provide an indication of background ground-water quality that is as representative as that provided by the upgradient well(s); and
- (2) Represent the quality of ground water passing the relevant point of compliance as approved by the Division. The downgradient monitoring system must be installed at the relevant point of compliance so as to ensure detection of ground-water contamination in the uppermost aquifer.
- (A) The compliance boundary shall be established no more than 250 feet from a waste boundary, and shall be at least 50 feet within the facility property boundary.
- (B) In determining the relevant point of compliance, the Division shall consider recommendations made by the owner or operator based upon consideration of at least the following factors:
 - (i) The hydrogeologic characteristics of the facility and surrounding land;
 - (ii) the volume and physical and chemical characteristics of the leachate;
 - (iii) the quantity, quality, and direction, of flow of ground water;
 - (iv) the proximity and withdrawal rate of the ground-water users;
 - (v) the availability of alternative drinking water supplies;
 - (vi) the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;
 - (vii) public health, safety, and welfare effects; and
 - (viii) practicable capability of the owner

or operator.

(b) Monitoring wells must be designed and constructed in accordance with the applicable North Carolina Well Construction Standards as codified in 15A NCAC 2C.

- (1) Owner or operators shall obtain approval from the Division for the design, installation, development, and decommission of any monitoring well or piezometer. Documentation shall be placed in the operating record and provided to the Division in a timely manner.
- (2) The monitoring wells and piezometers shall be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.
- (c) The number, spacing, and depths of monitoring systems shall be determined based upon site-specific technical information that shall include investigation of:
 - (1) Aquifer thickness, ground-water flow rate, and ground-water flow direction, including seasonal and temporal fluctuations in ground-water flow; and
 - (2) Unsaturated and saturated geologic units (including fill materials) overlying and comprising the uppermost aquifer; including but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.
- (d) The proposed monitoring plan must be:
 - (1) Certified by a Licensed Geologist or Professional Engineer to be effective in providing early detection of any release of hazardous constituents (from any point in a disposal cell or leachate surface impoundment) to the uppermost aquifer, so as to be protective of public health and the environment; and
 - (2) Approved by the Division. Upon approval by the Division, a copy of the approved monitoring plan must be placed on the operating record.
- (e) The Division may require the use of alternative monitoring systems in addition to ground-water monitoring wells at sites:
 - (1) where the owner or operator does not control the property from any landfill unit to the ground-water discharge feature(s); or
 - (2) sites with hydrogeologic conditions favorable to detection monitoring by

alternative methods.

(f) The owner or operator shall submit a monitoring system plan for approval by the Division:

- (1) For new MSWLF units, a monitoring system plan shall be submitted as part of the Construction Plan Application as required in Rule .1621. of this Section.
- (2) For existing MSWLF units, a revised monitoring system plan that conforms to the requirements of .1630 through .1637 of this Section shall be submitted as part of the Closure Plan.

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.1632 GROUND-WATER SAMPLING AND ANALYSIS REQUIREMENTS

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells. The ground-water sampling and analysis plan must be approved by the Division and the owner or operator shall place a copy of the approved plan in the operating record. The plan must include procedures and techniques for:

- (1) Sample collection;
- (2) Sample preservation and shipment;
- (3) Analytical procedures;
- (4) Chain of custody control; and
- (5) Quality assurance and quality control.

(b) The ground-water monitoring program shall include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground-water is sampled. The owner or operator must determine the rate and direction of groundwater flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

- (1) In order to accurately determine ground-water elevations for each monitoring well, the wells must have been

accurately surveyed by a North Carolina Registered Land Surveyor. The survey of the wells shall conform to at least the following levels of accuracy:

- (A) The horizontal location to the nearest 0.1 ft.
 - (B) The vertical control for the ground surface elevation to the nearest 0.01 ft.
 - (C) The vertical control for the measuring reference point on the top of the inner well casing to the nearest 0.01 ft.
- (2) In order to determine the rate of ground-water flow, the owner or operator must provide data for hydraulic conductivity and porosity for the formation materials at each of the well locations.

(e) The owner or operator must establish background ground-water quality in hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the MSWLF unit.

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures to be used.

(g) The owner/operator must select one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

- (1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.
- (2) A parametric analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.
- (3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and

the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

- (4) A control chart approach that gives control limits for each constituent.
- (5) Another statistical test method that meets the performance standards of this rule. The owner or operator must submit a justification for an alternative test method to the Division for approval. The justification must demonstrate that the alternative statistical test method meets the performance standards of this rule. If approved, the owner/operator must place a copy of the justification for an alternative test method in the operating record.

(h) Any statistical method chosen to evaluate ground-water monitoring data shall comply with the following performance standards, as appropriate:

- (1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator (or the Division) to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.
- (2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.
- (3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its

associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

- (4) If a tolerance interval or a prediction interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.
- (5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.
- (6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.
 - (i) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the MSWLF unit.
- (1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated to monitor the quality of ground water passing the relevant point of compliance to the background value of that constituent, according to the statistical procedures and performance standards specified in this Rule.
- (2) Within a reasonable period of time after

completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

(j) Within 14 days of completing the statistical analysis for the analytical data from ground-water samples, the owner or operator must submit to the Division a report that includes all information from the sampling event; including field observations relating to the condition of the monitoring wells, field data, laboratory data, statistical analysis, sampling methodologies, quality assurance and quality control data, information on ground-water flow direction, calculations of ground-water flow rate, for each well any constituents that exceed ground-water standards or show a statistically significant increase over background levels, and any other pertinent information related to the sampling event.

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.1633 DETECTION MONITORING PROGRAM

(a) Detection monitoring is required at MSWLF units at all ground-water monitoring wells that are part of the detection monitoring system as established in the approved monitoring plan. At a minimum, the detection monitoring program must include monitoring for the constituents listed in Appendix I of this Paragraph. 40 CFR Part 258 - "Appendix I Constituents for Detection Monitoring", is incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina at no cost.

(b) The monitoring frequency for all Appendix I detection monitoring constituents shall be at least semiannual during the life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the Appendix I constituents during the first semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events.

(c) If the owner or operator determines that there is a statistically significant increase over background for one or more of the constituents listed in Appendix I of this Rule at any monitoring

well at the compliance boundary, the owner or operator:

- (1) Must, within 14 days of this finding, report to the Division and place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels;
- (2) Must establish an assessment monitoring program meeting the requirements of this Section within 90 days except as provided for in .1633(c)(3).
- (3) The owner or operator may demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a Licensed Geologist or Professional Engineer and approved by the Division. A copy of this report must also be placed in the operating record. If a successful demonstration is made, documented, and approved by the Division, the owner or operator may continue detection monitoring. If after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required by this Section.

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.1634 ASSESSMENT MONITORING PROGRAM

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in Appendix I or whenever a violation of the North Carolina ground-water quality standards (15A NCAC 2L .0202) has occurred.

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in Appendix II of this Paragraph. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as the result of the complete Appendix II analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish back-

ground for the new constituents. The Division may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The Division may delete any of the Appendix II monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit. 40 CFR Part 258 - "Appendix II List of Hazardous Inorganic and Organic Constituents", is incorporated by reference including subsequent amendments and editions. Copies of this material may be inspected or obtained at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, 401 Oberlin Road, Raleigh, North Carolina at no cost.

(c) The Division may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by .1634(b), during the active life and post-closure care of the unit considering the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Ground-water flow rates;
- (4) Minimum distance of travel;
- (5) Resource value of the aquifer; and
- (6) Nature, fate, and transport of any detected constituents.

(d) After obtaining the results from the initial or subsequent sampling events required in .1634(b), the owner or operator must:

- (1) Within 14 days, submit a report to the Division and place a notice in the operating record identifying the Appendix II constituents that have been detected;
- (2) Within 90 days, and on at least a semi-annual basis thereafter, resample all wells of the approved detection monitoring system for the unit for all constituents listed in Appendix I and for those constituents in Appendix II that have been detected in response to .1634(b). A report from each sampling event must be submitted to the Division and placed in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during each of these sampling events;
- (3) Establish and report to the Division background concentrations for any constituents detected pursuant to

.1634(b) or .1634(d)(2); and

- (4) Obtain a determination from the Division to establish ground-water protection standards for all constituents detected pursuant to .1634(b) or .1634(d). The ground-water protection standards shall be established in accordance with .1634(h) or (i).

(e) If the concentrations of all Appendix II constituents are shown to be at or below background values, using the approved statistical procedures, for two consecutive sampling events, the owner or operator must report this information to the Division, and the Division may give approval to the owner or operator to return to detection monitoring.

(f) If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the approved ground-water protection standards, using the approved statistical procedures, the owner or operator must continue assessment monitoring.

(g) If one or more Appendix II constituents are detected at statistically significant levels above the approved ground-water protection standards in any sampling event, the owner or operator, must within 14 days of this finding, submit a report to the Division, place a notice in the operating record, and notify all appropriate local government officials.

(1) The owner or operator must also:

- (A) Characterize the nature and extent of the release by installing additional monitoring wells, as necessary;
 - (B) Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with .1634(d)(2);
 - (C) Notify all persons who own land or reside on land that directly overlies any part of the plume of contamination if contaminants have migrated off-site; and
 - (D) Within 90 days, initiate an assessment of corrective measures as required under .1635 of this Section; or
- (2) The owner or operator may demonstrate that a source other than a MSWLF unit caused the contamination, or the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be

certified by a Licensed Geologist or Professional Engineer and approved by the Division. A copy of the approved report must also be placed in the operating record. If a successful demonstration is made, the owner or operator must continue assessment monitoring, and may return to detection monitoring if the Appendix II constituents are at or below background and approval is given by the Division. Until a successful demonstration is made, the owner or operator must comply with .1634(g) including initiating an assessment of corrective measures.

(h) The owner or operator must obtain a determination from the Division on establishing a ground-water protection standard for each Appendix II constituent detected in the ground water. The ground-water protection standard shall be the most protective of the following:

- (1) For constituents for which a maximum contamination level (MCL) has been promulgated under the Section 1412 of the Safe Drinking Water Act codified under 40 CFR Part 141, the MCL for that constituent;
- (2) For constituents for which a water quality standard has been established under the North Carolina Rules Governing Public Water Systems, 15A NCAC 18C, the water quality standard for that constituent;
- (3) For constituents for which a water quality standard has been established under the North Carolina Groundwater Classifications And Standards, 15A NCAC 2L, .0202, the water quality standard for that constituent;
- (4) For constituents for which MCLs or water quality standards have not been promulgated, the background concentration for the constituent established from wells in accordance with .1631(a)(1); or
- (5) For constituents for which the background level is higher than the MCL or water quality standard or health based levels identified under .1634(i), the background concentration.

(i) The Division may establish an alternative ground-water protection standard for constituents for which neither an MCL or water quality standard has not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

- (1) The level is derived in a manner consistent with E.P.A. guidelines for assessing the health risks of environmental pollutants;
- (2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792) or equivalent;
- (3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) of 1×10^{-6} ;
- (4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For the purposes of this Rule, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under .1634(i) the Division may consider the following:

- (1) Multiple contaminants in the ground water;
- (2) Exposure threats to sensitive environmental receptors;
- (3) Other site-specific exposure or potential exposure to ground water.

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.1635 ASSESSMENT OF CORRECTIVE MEASURES

(a) Within 90 days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the ground-water protection standards, the owner or operator must initiate assessment of corrective action measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with the approved assessment monitoring program.

(c) The assessment of corrective measures shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under .1636, addressing at least the following:

- (1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, in-

cluding safety impacts, cross-media impacts, and control of exposure to any residual contamination;

- (2) The time required to begin and complete the remedy;
- (3) The costs of remedy implementation; and
- (4) The institutional requirements such as State and Local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

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.1636 SELECTION OF REMEDY

(a) Based on the results of the corrective measures assessment, the owner or operator must select a remedy that, at a minimum, meets the standards listed in .1636(b). Within 14 days of selecting a remedy, the permittee must submit an application to modify the permit describing the selected remedy to the Division for evaluation and approval. The application shall be considered a major modification and shall be subject to the processing requirements set forth in Rule .1604 (c) of this Section.

(b) Remedies must:

- (1) Be protective of human health and the environment;
- (2) Attain the approved ground-water protection standards;
- (3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and
- (4) Comply with standards for management of wastes as specified in .1637(d); and

(c) In selecting a remedy that meets the standards of .1636(b), the owner or operator must consider the following evaluation factors:

- (1) The long-term and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:
 - (A) Magnitude of reduction of existing risks;

(B) Magnitude of residual risks in terms of likelihood of further releases due to wastes remaining following implementation of a remedy;

(C) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(D) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(E) Time until full protection is achieved;

(F) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(G) Long-term reliability of the engineering and institutional controls; and

(H) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(A) The extent to which containment practices will reduce further releases; and

(B) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:

(A) Degree of difficulty associated with constructing the technology;

(B) Expected operational reliability of the technologies;

(C) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(D) Availability of necessary equipment and specialists; and

(E) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

- (5) The degree to which community concerns are addressed by a potential remedy.

(d) The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. This schedule must be approved by the Division. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in this Rule. The owner or operator must consider the following factors in determining the schedule of remedial activities:

- (1) Extent and nature of contamination;
- (2) Practical capabilities of remedial technologies in achieving compliance with the approved ground-water protection standards and other objectives of the remedy;
- (3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
- (6) Resource value of the aquifer including:
 - (A) Current and future uses;
 - (B) Proximity and withdrawal rate of users;
 - (C) Ground water quantity and quality;
 - (D) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to contaminants;
 - (E) The hydrogeologic characteristics of the facility and surrounding land;
 - (F) Ground water removal and treatment costs; and
 - (G) The costs and availability of alternative water supplies.
- (7) Practical capability of the owner or operator;
- (8) Other relevant factors.

(e) The Division may determine that active remediation of a release of an Appendix II constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the satisfaction

of the Division that:

- (1) The ground water is additionally contaminated by substances that have originated from a source other than a MSWLF unit and those substances are present in concentrations such that active cleanup of the release from the MSWLF unit would provide no significant reduction in risk to actual or potential receptors; or
- (2) The constituent or constituents are present in ground water that:
 - (A) Is not currently or reasonably expected to be a source of drinking water; and
 - (B) Is not hydraulically connected with water to which the hazardous constituents are migrating or are likely to migrate in concentrations that would exceed the approved ground-water protection standards; or
- (3) Remediation of the releases is technically impracticable; or
- (4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Division pursuant to .1636(e) shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground water, to prevent exposure to the ground water, or to remediate ground water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

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.1637 IMPLEMENTATION OF THE CORRECTIVE ACTION PROGRAM

(a) Based on the approved schedule for initiation and completion of remedial activities, the owner or operator must:

- (1) Establish and implement a corrective action ground-water monitoring program that:
 - (A) At a minimum, meets the requirements of an assessment monitoring program under .1634;
 - (B) Indicates the effectiveness of the corrective action remedy; and
 - (C) Demonstrates compliance with ground-water protection standards pursuant to .1637(e).
- (2) Implement the approved corrective

action remedy; and

- (3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

- (A) Time required to develop and implement a final remedy;
- (B) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
- (C) Actual or potential contamination of drinking water supplies or sensitive ecosystems;
- (D) Further degradation of the ground water that may occur if remedial action is not initiated expeditiously;
- (E) Weather conditions that may cause hazardous constituents to migrate or be released;
- (F) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and
- (G) Other situations that may pose threats to human health or the environment.

(b) The owner or operator or the Division may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of .1636(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques, as approved by the Division, that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under .1637(c).

(c) If the owner or operator or the Division determines that compliance with requirements under .1636(b) cannot be practically achieved with any currently available methods, the owner or operator must:

- (1) Obtain certification of a Licensed Geologist or Professional Engineer and approval from the Division that compliance with the requirements under .1636(b) cannot be practically achieved with any currently available methods;
- (2) Implement alternate measures to control

exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

- (3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

- (A) Technically practicable; and
- (B) Consistent with the overall objective of the remedy.

- (4) Submit a report justifying the alternative measures to the Division for approval prior to implementing the alternative measures. Upon approval by the Division, this report must be placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under .1636, or an interim measure required under .1637(a), shall be managed in a manner:

- (1) That is protective of human health and the environment; and
- (2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to .1636 shall be considered complete when:

- (1) The owner or operator complies with the approved ground-water protection standards at all points within the plume of contamination that lie beyond the compliance boundary.
- (2) Compliance with the approved ground-water protection standards has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded these standards for a period of three consecutive years using the statistical procedures and performance standards in .1632.
- (3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must submit a report to the Division documenting that the remedy has been completed in compliance with .1637(e). This report must be signed by the owner or operator and by a Licensed Geologist or Professional Engineer. Upon approval by the Division, this report must be placed in the operating record.

(g) When, upon completion of the certification, the Division determines that the corrective action remedy has been completed in accordance with .1637(e), the owner or operator shall be released

from the requirements for financial assurance for corrective action under Rule .1628(d) of this Section.

Statutory Authority G.S. 130A-294.

.1638 RESERVED FOR FUTURE
CODIFICATION

.1639 RESERVED FOR FUTURE
CODIFICATION

.1640 RESERVED FOR FUTURE
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.1679 RESERVED FOR FUTURE
CODIFICATION

.1680 LEACHATE STORAGE
REQUIREMENTS

(a) Applicability. All new leachate storage tanks and surface impoundments located at solid waste landfill facilities shall meet the requirements set forth in this Rule. Liquid treatment and disposal at a solid waste landfill facility is subject to the requirements of this Subchapter.

(b) Application requirements.

(1) Construction plan application. An application for a permit to construct a landfill facility which includes leachate storage facilities must contain the following:

- (A) a description of the liquid to be stored;
- (B) the estimated volume of liquid generated and a proposed recordkeeping system to record actual quantities stored;
- (C) a schedule for liquid removal;
- (D) a description of the final treatment and disposal of the liquid stored;
- (E) a description of the liquid storage facility design;
- (F) a contingency plan for managing unexpected surges in liquid quantities; and
- (G) a closure plan prepared in accordance with Paragraph (f) of this Rule.

(c) Aboveground or onground tank requirements.

- (1) Tanks may be constructed of concrete, steel, or other material approved by the

Division. Tanks must be supported on a well drained stable foundation which prevents movement, rolling, or settling of the tank.

(A) The exterior surfaces of all aboveground and onground steel storage tanks must be protected by a primer coat, a bond coat and two or more final coats of paint or have at least an equivalent surface coating system designed to prevent corrosion and deterioration.

(B) The interior of all aboveground and onground tanks must consist of a material, or must be lined with a material, resistant to the liquid being stored.

(2) All aboveground and onground tanks must have a secondary containment system which may consist of dikes, liners, pads, ponds, impoundments, curbs, ditches, sumps, or other systems capable of containing the liquid stored.

(A) The design volume for the secondary containment system must be 110 percent of the volume of either the largest tank within the containment system or the total volume of all interconnected tanks, whichever is greater.

(B) The secondary containment system must be constructed of a material compatible with the liquid being stored.

(3) A system must be designed to contain and remove storm water from the secondary containment area. Provisions must be included for the removal of any accumulated precipitation and be initiated within 24 hours or when 10 percent of the storage capacity is reached, whichever occurs first. Disposal must be in compliance with all applicable federal and State regulations.

(4) All aboveground and onground tanks must be equipped with an overflow prevention system which may include, but not be limited to: level sensors and gauges, high level alarms or automatic shutoff controls. The overflow control equipment must be inspected weekly by the facility operator to ensure it is in good working order.

(5) The operator of the facility shall inspect the exterior of all tanks for leaks, cor-

rosion, and maintenance deficiencies weekly. Interior inspection of tanks must be performed according to the Division approved plan. If the inspection reveals a tank or equipment deficiency which could result in failure of the tank to contain the liquid, remedial measures shall be taken immediately to eliminate the leak or correct the deficiency. Inspection reports shall be maintained and made available to the Division upon request for the lifetime of the liquid storage system.

- (6) All uncovered tanks must have a minimum two feet freeboard. Odor and vector control must be practiced when necessary.

(d) Underground tank requirements.

- (1) Underground tanks must be placed a minimum of two feet above the seasonal high ground-water table and a minimum of two feet vertical separation must be maintained between bedrock and the lowest point of the tank.
- (2) Tanks may be constructed of fiberglass reinforced plastic, steel that is cathodically protected, steel that is clad with fiberglass, or any other materials approved by the Division.
- (3) The secondary containment and continuous leak detection system must be installed in the form of a double-walled tank, designed as an integral structure so that any release from the inner tank is completely contained by the outer shell.
 - (A) The leak detection system shall be monitored at least weekly using methods specified by the operator and approved by the Division.
 - (B) Any tank system vulnerable to corrosion must be protected from both corrosion of the primary tank interior and the external surface of the outer shell.
 - (i) All resistant coatings applied to the primary tank interior must be chemically compatible with the liquid to be stored.
 - (ii) Cathodic protection systems, where installed, must be inspected at least weekly by the facility operator and any deficiencies must be corrected when discovered.

- (4) All underground tanks must be equipped with an overflow prevention system which may include, but not be limited to: level sensors and gauges, high level alarms or automatic shutoff controls. The overflow control equipment must be inspected weekly by the facility operator to ensure it is in good working order.

- (5) Inspection and leak detection monitoring reports shall be maintained and made available upon request for the lifetime of the liquid storage system.

(e) Surface impoundment requirements.

- (1) Any surface impoundment must be constructed so that the bottom elevation of liquid is a minimum of four feet above the seasonal high ground-water table and bedrock.
- (2) At a minimum, surface impoundments shall be designed and constructed with a liner system equivalent to the liner system for the landfill unit generating the liquid.
 - (A) A surface impoundment designed and constructed to store leachate from a new MSWLF unit shall include a composite liner which conforms to the requirements of Rule .1624; or
 - (B) an alternative liner system which is designed and constructed to achieve at least an equivalent containment efficiency. An equivalence demonstration shall be included in the permit application and must be approved by the Division.
- (3) Construction of the liner system components shall be consistent with the pertinent requirements set forth in Rule .1624(b)(8) and (9); and a construction quality assurance report must be prepared by the project engineer.
- (4) The top liner must be protected from degradation and damage.
- (5) A minimum of two feet of freeboard must be maintained in the surface impoundment. Odor and vector control must be practiced when necessary.
- (6) A ground-water monitoring system must be installed and sampled in a manner consistent with the ground-water monitoring requirements for MSWLF units as set forth in Rules .0631 through .0637, of this Section, or using an alternative monitoring system

- approved by the Division.
- (7) An operation plan shall be prepared and followed for operation of the surface impoundment.
- (f) Closure of leachate storage facilities.
- (1) The owner or operator of the liquid storage facility must prepare a written closure plan for the liquid storage facility and submit the plan with the permit application for the solid waste management facility.
- (2) The owner or operator must complete closure activities in accordance with the approved closure plan and within 180 days after liquid collection has ceased.
- (3) At closure, all solid waste must be removed from the tank or surface impoundment, connecting lines, and any associated secondary containment systems. All solid waste removed must be properly handled and disposed of according to federal and State requirements. All connecting lines must be disconnected and securely capped or plugged.
- (A) Underground tanks must be removed or thoroughly cleaned to remove traces of waste and all accumulated sediments and then filled to capacity with a solid inert material, such as clean sand or concrete slurry. If ground water surrounding the tank is found to be contaminated, the tank and surrounding contaminated soil must be removed and appropriately disposed. Other corrective actions to remediate the contaminant plume may be required by the Department.
- (B) Accessways to aboveground and onground tanks must be securely fastened in place to prevent unauthorized access. Tanks must either be stenciled with the date of permanent closure or removed. The secondary containment system must be perforated to provide for drainage.
- (C) For surface impoundments, all waste residues, contaminated system components (liners, etc.), contaminated subsoils, structures and equipment contaminated with waste must be removed and appropriately disposed. If the ground water surrounding the impoundment is contaminated, other corrective actions to remediate a

contaminant plume may be required by the Department. If the ground water surrounding the impoundment is found not to be contaminated, the liner system may remain in place if drained, cleaned to remove all traces of waste, and both liners punctured so that drainage is allowed. The impoundment is to be backfilled and regraded to the surrounding topography.

Statutory Authority G.S. 130A-294.

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 13C .0201 - .0204; 18C .0308, .1608, .2101 - .2102, .1402; 19A .0204; 19G .0103; 21D .0501, .0706; 25 .0201, .0213 adopt rules cites as 15A NCAC 21D .1201 - .1207 and repeal rules cited as 15A NCAC 21D .1102 - .1106.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted at 1:30 p.m. on March 31, 1993 at the Highway Building, One South Wilmington Street, First Floor Auditorium, Raleigh, NC.

Reason for Proposed Action:

15A NCAC 13C .0201 - .0204 - To enable the Department to prioritize a greater number of hazardous waste sites for future action. To correct outdated references to the Code of Federal Regulations. To add statutory citations to the history notes.

15A NCAC 18C .0308 - To benefit, during the review of plans and specifications for water supply facilities, from the information available about existing water usage data and trends; and about proposed actions to increase source and storage capacity in the near and distant future.

15A NCAC 18C .1402 - Reinstate previously deleted wording on community fluoridation.

15A NCAC 18C .1608 - To remove the impression that exemptions may be considered for Section .1500 only of the rules. G.S. 130A-321 provides broader authority to the Department Secretary for exemptions from the drinking water rules. Treatment techniques are located in sections of the rules other than .1500.

15A NCAC 18C .2101 - Changes to G.S. 130A-328 established January 1 through December 31 of each year as the permit year.

15A NCAC 18C .2102 - Existing authority in G.S. 130A-328 provides authorization for rules to administer the operating permit program. Lack of current information about ownership and address changes hampers permit fee collection effectiveness.

15A NCAC 19A .0204 - To clarify language to insure that the recommendations and guidelines, incorporated by reference, are the required control measures and/or related activities in each of the citations listed above. There will be no additional fiscal impact for state or local funds as a result of these amendments.

15A NCAC 19G .0103 - New federal regulations do not allow state to review rabies vaccines for efficacy but state law still requires approval.

15A NCAC 21D .0501 & .0706 - To reflect the changes in the food package.

15A NCAC 21D .1102 - .1106 - Because the funding source for nutrition services changed.

15A NCAC 21D .1201 - .1207 - For the administration of the new funding source for nutrition services.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to John P. Barkley, Department of Justice, P.O. Box 629, Raleigh, NC 27602-0629, (919)733-4618. If you desire to speak at the public hearing, notify John P. Barkley at least 3 days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed

to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 13 - SOLID WASTE MANAGEMENT

SUBCHAPTER 13C - INACTIVE HAZARDOUS SUBSTANCES AND WASTE DISPOSAL SITES

SECTION .0200 - PRIORITIZATION SYSTEM

.0201 PRIORITIZATION

(a) The Division shall review and evaluate relevant site data for all inactive hazardous substance or waste disposal sites and prioritize those sites using the priority system established in this Section.

(b) Only sites with confirmed contamination or known disposal of hazardous substances shall be scored on the inactive hazardous waste sites priority list. Contamination is confirmed if laboratory analyses show the presence of hazardous substances in groundwater, surface water, air, wastes, or soils at concentrations significantly above background levels. Concentrations are significantly above background if the levels detected are more than (4) ten times a detected level in the background, or (2) three times the detection limit when the background level is below the detection limit or the background concentration is unknown. Known disposal of hazardous substances shall be defined as:

- (1) on-site observations by government officials or their representatives of a release of hazardous substances to the environment;
- (2) acknowledgement by a current or previous owner or operator that hazardous

- (3) substances were disposed on the site; or documentation in the possession of government officials which indicates a release of hazardous substances to the environment.

(c) A site shall be prioritized based on conditions present at the time of evaluation. All prior removal actions shall be considered.

(d) A site shall be evaluated and receive a separate score in each of the following categories:

- (1) potential for groundwater migration,
- (2) potential for surface water migration,
- (3) potential for air migration, and
- (4) potential for direct contact.

(e) A total score for the site shall be determined by taking the square root of the sum of the squares of the scores in the four categories in Paragraph (d) and dividing by two. Prioritization shall be based upon the total score.

Statutory Authority G.S. 130A-310.2; 130A-310.12.

.0202 GROUNDWATER MIGRATION

(a) The potential for groundwater contamination is based upon route characteristics, waste containment, and waste characteristics. The score for groundwater migration shall be determined by multiplying the score determined for route characteristics in Paragraph (b) by the score determined for waste containment in Paragraph (c) then multiplying that result by the score determined for waste characteristics in Paragraph (d) and dividing that result by 14.82.

(b) A score for route characteristics shall be determined by adding the values assigned in Subparagraphs (b)(1) through (b)(4).

- (1) A value shall be assigned for depth to water table using either Table 1 if depth to water table is known or Table 2 if depth to water table is unknown. Depth to water table is measured vertically from the lowest point of the hazardous substances to the highest seasonal level of the water table.

Table 1

Depth	Assigned Value
> 150 feet	0
> 75 to 150 feet	2
> 20 to 75 feet	4
≤ 20 feet	6
Contaminant in groundwater	8
Contaminant in drinking supply	10

Table 2

Location	Assigned Value
Piedmont and Mountain	4
Coastal Plain	4
Alluvial Valley	6

- (2) A value shall be assigned for net precipitation using Table 3. Net precipitation shall be calculated

by subtracting the mean annual lake evaporation from the mean annual precipitation.

Table 3

Net Precipitation	Assigned Value
≤ -10 inches	0
> -10 to $+5$ inches	1
$> +5$ to $+15$ inches	2
$> +15$ inches	3

- (3) A value shall be assigned for hydraulic conductivity using Table 4 when data for hydraulic conductivity are available, ~~using the table entitled "Permeability of Geologic Materials" that is contained in 40 CFR 300, Appendix A, which is hereby adopted by reference in accordance with G.S. 150B-14(e), when hydraulic conductivity data are unavailable but soil and rock types are known, and using Table 5 when hydraulic conductivity data are unavailable and soil and rock types are unknown.~~ When hydraulic conductivity data are unavailable but soil and rock types are known, a value shall be assigned for hydraulic conductivity using the table entitled "Permeability of Geologic Materials" that is contained in 40 CFR 300, Appendix A, July 1, 1988, which is hereby incorporated by reference and does not include subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, Superfund Section, 401 Oberlin Road, Raleigh, North Carolina. Copies may be obtained from the Superfund Section at a cost of ten cents (\$.10) per page.

Table 4

Approximate Range of Hydraulic Conductivity	Assigned Value
$\leq 10^{-7}$ cm/sec	0
$> 10^{-7}$ to 10^{-5} cm/sec	1
$> 10^{-5}$ to 10^{-3} cm/sec	2
$> 10^{-3}$ cm/sec	3

Table 5

Location	Assigned Value
Triassic basin	1
Piedmont and Mountain	2
Mountain Alluvial Valley or Coastal Plain	3

- (4) A value shall be assigned for physical state using Table 6. Physical state is the state of hazardous substances at the time of disposal. If the site contains hazardous substances or wastes with more than one physical state, the hazardous substance or waste with the highest value shall be used.

Table 6

Physical State	Assigned Value
Solid, consolidated and stabilized	0
Solid, unconsolidated	1

or unstabilized	
Solid, powder or fine particles	2
Liquid, sludge or gas	3

(c) A score for containment shall be determined by using the table entitled "Containment Value for Ground Water Route," contained in 40 CFR 300, Appendix A, July 1, 1988, which is hereby ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(e) and does not include subsequent amendments and editions.~~

If the site has more than one type of containment, the containment with the highest value shall be used.

(d) A score for waste characteristics shall be determined by adding the values assigned in Subparagraphs (d)(1) and (d)(2). In determining a waste characteristics score, the substance with the highest combined toxicity/persistence and waste quantity values shall be used.

- (1) A value for toxicity and persistence shall be assigned using the section entitled "Toxicity and Persistence" contained in 40 CFR 300, Appendix A, July 1, 1988, which is hereby ~~adopted~~ incorporated by reference ~~in accordance with G.S. 150B-14(e) and does not include subsequent amendments and editions.~~
- (2) A value for hazardous waste quantity shall be assigned using Table 7 when waste quantity is known, and by assigning a value of five when waste quantity is unknown. Hazardous waste quantity is defined as the amount deposited, not how much would have to be removed to clean up the site. When necessary to convert data to a common unit, conversion shall be as follows: one drum equals seven cubic feet equals 50 gallons equals 500 pounds.

Table 7

Waste Quantity	Assigned Value
None	0
De minimus losses only	1
≤ 10 pounds	2
> 10 pounds to 100 pounds	3
> 100 pounds to 1000 pounds	4
> 1000 pounds	5
≤ 10 gallons	3
> 10 gallons to 100 gallons	4
> 100 gallons to 1000 gallons	5
> 1000 gallons	6
≤ 10 cubic feet	4
> 10 cubic feet to 100 cubic feet	5
> 100 cubic feet to 1000 cubic feet	6
> 1000 cubic feet	7
≤ 10 drums	5
> 10 drums to 100 drums	6
> 100 drums to 1000 drums	7
> 1000 drums	8

Statutory Authority G.S. 130A-310.2;130A-310.12.

.0203 SURFACE WATER MIGRATION

(a) The potential for surface water contamination is based upon route characteristics, waste containment, and waste characteristics. The score for surface water migration is determined by multiplying the score determined for route characteristics in Paragraph (b) by the score determined for waste containment in Paragraph (c) then multiplying that result by the score determined for waste characteristics in Paragraph (d) and dividing that result by 14.82.

(b) A score for route characteristics shall be determined by adding the values in Subparagraphs (b)(1) through (b)(4).

- (1) A value shall be assigned for facility slope and intervening terrain using the table entitled "Values for Facility Slope and Intervening Terrain," that is contained in 40 CFR 300, Appendix A, July 1, 1988, which is hereby ~~adopted incorporated~~ by reference ~~in accordance with G.S. 150B-14(e)~~ and does not include subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management, Superfund Section, 401 Oberlin Road, Raleigh, North Carolina. Copies may be obtained from the Superfund Section at a cost of ten cents (\$.10) per page.
- (2) A value shall be assigned for one-year 24-hour rainfall using Table 8. The amount of rainfall shall be determined using Figure 1, entitled "24-hour rainfall", in 40 CFR 300, Appendix A, July 1, 1988, which is hereby ~~adopted incorporated~~ by reference ~~in accordance with G.S. 150B-14(e)~~ and does not include subsequent amendments and editions.

Table 8

One-Year 24-hour Rainfall Amount	Assigned Value
(inches)	
≤ 2.5	0
> 2.5 to 3.0	1
> 3.0 to 3.5	2
> 3.5	3

- (3) A value shall be assigned for distance to nearest surface water using Table 9. Distance to the nearest surface water shall be determined by measuring the shortest distance from the hazardous substance (not the facility or property boundary) to the nearest downhill body of surface water that is on the course that run-off can be expected to follow.

Table 9

Distance	Assigned Value
> 2 miles	0
> 1 to 2 miles	2
> 1000 feet to 1 mile	4
> 200 feet to 1000 feet	6
≤ 200 feet or contaminant in surface water or sediment	8
Contaminant in surface water or sediment at a drinking water intake	10

- (4) A value for physical state shall be assigned as determined in Rule .0202(b)(4) of this Section.
- (c) A score for containment shall be determined by using the table entitled "Containment Values for Surface Water Route," contained in 40 CFR 300, Appendix A, July 1, 1988, which is hereby ~~adopted incorporated~~ by reference ~~in accordance with G.S. 150B-14(e)~~ and does not include subsequent amendments and editions. If the site has more than one type of containment, the containment with the highest value shall be used.
- (d) A score for waste characteristics shall be assigned as determined in Rule .0202(d) of this Section.

Statutory Authority G.S. 130A-310.2; 130A-310.12.

.0204 AIR MIGRATION

A score for air migration shall be determined by using Section 5.0 entitled "Air Route" contained in 40 CFR 300, Appendix A, July 1, 1988, which is hereby ~~adopted incorporated~~ by reference in

~~accordance with G.S. 150B-14(e)~~ and does not include subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Solid Waste Management,

Superfund Section, 401 Oberlin Road, Raleigh, North Carolina. Copies may be obtained from the Superfund Section at a cost of ten cents (\$.10) per page. However, Section 5.1 entitled "Observed Release" contained in 40 CFR 300, Appendix A, is not adopted by reference. A score for air migration shall be determined by multiplying the score determined for waste characteristics in Section 5.2 of 40 CFR 300, Appendix A, by the score determined for targets in Section 5.3 of 40 CFR 300, Appendix A, and dividing that result by 7.8.

Statutory Authority G.S. 130A-310.2; 130A-310.12.

SUBCHAPTER 18C - WATER SUPPLIES

SECTION .0300 - SUBMISSION OF PLANS: SPECIFICATIONS: AND REPORTS

.0308 TYPE AND FORM OF EXHIBITS

(a) Engineer's Report. The engineer's report (including any preliminary plans) shall contain the following information where applicable:

- (1) description of any existing water system related to the project;
- (2) identification of the municipality, community, or area to be served by the proposed water system;
- (3) the name and address of the owner;
- (4) a description of the nature of the establishments and of the area to be served by the proposed water system;
- (5) provisions for future extension or expansion of the water system.
- (6) a projection of future water demand or requirements for service;
- (7) any alternate plans for meeting the water supply requirements of the area;
- (8) financial considerations of the project including:
 - (A) any alternate plans;
 - (B) costs of integral units;
 - (C) total costs;
 - (D) operating expenses; and
 - (E) methods of financing costs of construction, operation and maintenance;
- (9) population records and trends, present and anticipated future water demands, present and future yield of source or sources of water supply;
- (10) character of source or sources of water supply, including:
 - (A) hydrological data;

- (B) stream flow rates;
 - (C) chemical, mineral, bacteriological, and physical qualities; and
 - (D) location and nature of sources of pollution; and
- (11) proposed water treatment processes including:
 - (A) criteria and basis of design of units,
 - (B) methods or procedures used in arriving at recommendations, and
 - (C) reasons or justifications for any deviations from conventional or indicated process or method.
 - (b) Plans. Plans for water supply systems shall consist of the following:
 - (1) title information including the following:
 - (A) name of the city, town, board, commission or other owner for whom the plans were prepared;
 - (B) the locality of the project;
 - (C) the general title of the set of drawings and prints;
 - (D) the specific title of each sheet;
 - (E) the date; and
 - (F) the scales used;
 - (2) a preliminary plat plan or map showing the location of proposed sources of water supply;
 - (3) a general map of the entire water system showing layout and all pertinent topographic features;
 - (4) detail map of source or sources of water supply;
 - (5) layout and detail plans for intakes, dams, reservoirs, elevated storage tanks, standpipes, pumping stations, treatment plants, transmission pipelines, distribution mains, valves, and appurtenances and their relation to any existing water system, and the location of all known existing structures or installations and natural barriers that might interfere with the proposed construction; and
 - (6) the north point.
 - (c) Specifications. Complete detailed specifications for materials, equipment, workmanship, test procedures and specified test results shall accompany the plans. The specifications shall include, where applicable:
 - (1) the design and number of chemical feeders, mixing devices, flocculators, pumps, motors, pipes, valves, filter media, filter controls, laboratory facili-

- ties and equipment, and water quality control equipment and devices;
- (2) provision for continuing with minimum interruption the operation of existing water supply facilities during construction of additional facilities;
- (3) safety devices and equipment; and
- (4) procedure for disinfection of tanks, basins, filters, wells and pipes.

(d) A supplier of water which has submitted a local water supply plan in accordance with G.S. 143-355(1) shall provide a copy to the Department.

Statutory Authority G.S. 130A-315; 130A-317; P.L. 93-523.

SECTION .1400 - FLUORIDATION OF PUBLIC WATER SUPPLIES

.1402 FORMAL APPLICATION

(a) Fluoride shall not be added to a community water system until a formal application has been submitted to and written approval is granted by the Secretary of the Department.

(b) Such approval will be considered upon written application and after adequate investigation has been made to determine if the policy adopted by the Division has been satisfied and the facilities, their accuracy and the proposed method of control are satisfactory and meet the requirements hereafter stated.

(c) The application shall include a resolution by the unit of local government or the governing body operating the community water system. The resolution shall state that the local board of health has approved the proposed fluoridation procedure.

Statutory Authority G.S. 130A-316.

SECTION .1600 - VARIANCES AND EXEMPTIONS

.1608 REQUIREMENTS FOR AN EXEMPTION

The Secretary may exempt any public water system in the state from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable rule of 15A-NCAC 18C-Section .1500 of this Subchapter upon a finding that:

- (1) Due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment

- technique requirement;
- (2) The public water system was in operation on the effective date of federal promulgation of such contaminant level or treatment technique requirement; and
- (3) The granting of the exemption will not result in an unreasonable risk to health.

Authority G.S. 130A-315; 130A-321; P.L. 93-523; 40 C.F.R. 142.

SECTION .2100 - OPERATING PERMITS

.2101 PERMITS

(a) Operating permits are required for all community water systems as of January 1, 1992.

(b) Permits shall be valid ~~for one year from the date of issuance~~ January 1 through December 31 of each year.

(c) Community water systems which are constructed or which begin operation after January 1, 1992 shall obtain a permit prior to providing water to any connections. The permit shall be effective on the date that water service to the first customer begins and shall be valid ~~for one year until December 31 of each year issued.~~ The annual fee shall be prorated on a monthly basis for permits obtained after January 1 of each year.

Statutory Authority G.S. 130A-328.

.2102 APPLICATION FOR PERMIT

(a) An application for the issuance or renewal of an operating permit for a community water system shall be made on forms provided by the Department. An application shall include the following information:

- (1) Name and identification number of the community water system;
- (2) Name, address and social security number or tax identification number of the supplier of water;
- (3) Name, address and certification number of the certified operator in responsible charge of the community water system;
- (4) Name of each certified laboratory which provides analyses of water samples; and
- (5) Population served by the community water system.

(b) The fee for issuance or renewal of an operating permit is set forth in G.S. 130A-328.

(c) Payment shall be made by check, payable to the Department of Environment, Health, and Natural Resources and shall accompany the appli-

cation.

(d) Applications for operating permits shall not be processed prior to the receipt of the required fees.

(e) An operating permit shall be renewed annually.

(f) The supplier of water who holds a current operating permit shall inform the Department of any change of address or transfer of ownership within 30 days of the change.

Statutory Authority G.S. 130A-328.

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

.0204 CONTROL MEASURES - SEXUALLY TRANSMITTED DISEASES

(a) Local health departments shall provide diagnosis, testing, treatment, follow-up, and preventive services for syphilis, gonorrhea, chlamydia, nongonococcal urethritis, mucopurulent cervicitis, chancroid, lymphogranuloma venereum, and granuloma inguinale. These services shall be provided upon request and at no charge to the patient.

(b) Persons infected with, exposed to, or reasonably suspected of being infected with gonorrhea, chlamydia, non-gonococcal urethritis, and mucopurulent cervicitis shall:

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service, ~~which~~ The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the HIV/STD Control Branch located at 225 N. McDowell Street, Cooper Building, Raleigh, N.C.

27611-7687 or a copy may be obtained free of charge by writing the HIV/STD Control Branch, P.O. Box 27687, Raleigh, N.C. 27611-7687, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;

- (3) Notify all sexual partners from 30 days before the onset of symptoms to completion of therapy that they must be evaluated by a physician or local health department.

(c) Persons infected with, exposed to, or reasonably suspected of being infected with syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid shall:

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service, The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures shall not be required;
- (3) Give names to a disease intervention specialist employed by the local health department or by the HIV/STD Control Branch for contact tracing of all sexual partners and others as listed in this Rule:

(A) for syphilis:

- (i) congenital - all immediate family members;
- (ii) primary - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions;
- (iii) secondary - all partners from six months before the onset of symptoms to completion of therapy and healing of lesions; and
- (iv) latent - all partners from 12 months before the onset of symptoms to completion of therapy and healing of lesions and, in addition, for women with late latent, spouses and children;

(B) for lymphogranuloma venereum:

- (i) if there is a primary lesion and no buboes, all partners from 30 days before the onset of symptoms to completion of therapy and healing of lesions; and
- (ii) if there are buboes all partners from six months before the onset of symptoms to completion of therapy and healing of lesions;
- (C) for granuloma inguinale - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions; and
- (D) for chancroid - all partners from ten days before the onset of symptoms to completion of therapy and healing of lesions.

(d) All persons evaluated or reasonably suspected of being infected with any sexually transmitted disease shall be tested for syphilis, encouraged to be tested confidentially for HIV, and counseled about how to reduce the risk of acquiring sexually transmitted disease, including the use of condoms.

(e) All pregnant women shall be tested for syphilis and gonorrhea early in pregnancy and in the third trimester. Pregnant women at high risk for exposure to syphilis and gonorrhea shall also be tested for syphilis and gonorrhea at the time of delivery.

(f) All newborn infants shall be treated prophylactically against gonococcal ophthalmia neonatorum in accordance with the STD Treatment Guidelines published by the U. S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for prophylactic treatment against gonococcal ophthalmia neonatorum.

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

SUBCHAPTER 19G - VETERINARY PUBLIC HEALTH

SECTION .0100 - VETERINARY PUBLIC HEALTH PROGRAM

.0103 APPROVED RABIES VACCINES

~~The following rabies vaccines are approved for use in animals in this State:~~

- (1) ~~Endurall R (Norden)~~
- (2) ~~Trimune (Ft. Dodge)~~
- (3) ~~Annumune (Ft. Dodge)~~
- (4) ~~Biorab 1 (Bio-Ceutie)~~
- (5) ~~Rabaine (Beecham)~~
- (6) ~~Endural-K (Norden)~~

- (7) ~~Rabguard TC (Norden)~~
- (8) ~~Cytorab (Wellecome)~~
- (9) ~~Rabvac 1 (Fromm)~~
- (10) ~~Trirab (Wellecome)~~
- (11) ~~Dura-Rab 1 (wildlife)~~
- (12) ~~IMRAB (Merieux)~~
- (13) ~~IMRAB 1 (Merieux)~~
- (14) ~~Rabaine 3 (Beecham)~~
- (15) ~~EPIRAB (Coopers Animal Health, Inc.)~~

Any animal rabies vaccine licensed by the United States Department of Agriculture is approved for use on animals in North Carolina.

Statutory Authority G.S. 130A-185.

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21D - WIC/NUTRITION

SECTION .0500 - WIC PROGRAM FOOD PACKAGE

.0501 ALLOWABLE FOODS

(a) The foods which may be provided to WIC program participants are specified in ~~7 C.F.R. 246.8 and 7 C.F.R. 246.10, which is adopted by reference in accordance with G.S. 150B-14(e).~~ incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health, Nutrition Services Section, 1330 Saint Mary's Street, Raleigh, North Carolina and may be obtained from Nutrition Services at no cost.

(b) The following exclusions from the food package have been adopted by the North Carolina WIC program and approved by the United States Department of Agriculture, Food and Nutrition service:

- (1) shredded cheese;
- (2) eggs other than grade A large or extra-large fresh ~~eggs and "cholesterol reducing";~~
- (3) infant cereal-fruit and cereal-formula combinations;
- (4) cheese in excess of four pounds per month, unless a physician documents the presence of lactose intolerance; or a postpartum woman who is breast feeding exclusively;
- (5) all formulas other than standard milk-based iron fortified infant formulas, unless a physician prescribes a

formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;

- (6) if the WIC program executes a sole source contract for an infant formula, that formula shall be specified in the vendor contract and on the food instrument, and all other formulas shall be excluded from the food package, unless a physician prescribes a different formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;
- (7) other foods determined by the state agency to be inappropriate for provision as supplemental foods through the WIC program as a result of their composition, packaging or promotion in a manner which is contrary to the purpose of the program as contained in .0601(a) of this Subchapter; ~~and~~
- (8) infant juice;
- (9) peanut butter other than plain, smooth, crunchy or whipped;
- (10) dried beans and peas other than mature and unflavored;
- (11) tuna other than chunk light in water;
and
- (12) carrots other than raw, canned or frozen.

Statutory Authority G.S. 130A-361.

SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

.0706 AUTHORIZED WIC VENDORS

(a) DEHNR Form 2768, WIC Vendor Agreement, shall outline the responsibilities of the vendor to the WIC program, and the local WIC agency's and state agency's responsibilities towards the authorized WIC vendor. In order for a food retailer or pharmacy to participate in the WIC program and be entitled to the rights and responsibilities of an authorized WIC vendor, a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.

(b) In order to participate in the WIC program, the vendor shall:

- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, regulations and policies and applicable law;
- (2) Accept WIC program food instruments in consideration for the purchase of eligible food items. Eligible food items are those food items which satisfy the requirements of 15A NCAC 21D .0501. The food items, specifications and product identification are described in the WIC Vendor Manual;
- (3) Provide all eligible food items as specified on the food instrument to WIC program participants, accurately determine the charges to the WIC program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the counter-signature by the participant, parent, guardian or proxy;
- (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current prices, or less than the current prices, for the eligible food items provided and shall not charge or collect

- sales taxes for the eligible items provided;
- (5) Accept WIC program food instruments only on a date between the "Date of Issue" and the "Participant Must Use By" date;
 - (6) Enter in the "Date Redeemed" box the month, day and year the WIC food instrument is accepted in consideration for the purchase of eligible food items;
 - (7) Accept WIC program food instruments only if they have been validated with a "WIC Agency Authorizing Stamp";
 - (8) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
 - (9) Not redeem food instruments in whole or in part for cash, unauthorized foods, other items of value to participants or a credit for past accounts;
 - (10) Clearly imprint the Authorized WIC Vendor Stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument;
 - (11) Clearly imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
 - (12) Promptly deposit WIC program food instruments in a state or national bank having an office in the State of North Carolina. All North Carolina WIC program food instruments must be received by the North Carolina State Treasurer within 60 days of the "Date of Issue" on the food instrument;
 - (13) Insure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the Authorized WIC Vendor Stamp;
 - (14) Maintain secure storage for the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
 - (15) Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);
 - (16) Maintain a minimum inventory of eligible food items in the store for purchase by WIC Program participants. All such foods shall be within the manufacturer's expiration date. The following items and sizes constitute the minimum inventory of eligible food items for stores classified 1 - 4:

<u>Food Item</u>	<u>Type of Inventory</u>	<u>Quantities Required</u>
Milk	Whole fluid: gallon and half gallon -and- Skim/lowfat fluid: gallon or half gallon Nonfat dry: quart package -or- Evaporated: 12 oz. can	Total of 6 gallons fluid milk Total of 5 quarts when reconstituted
Cheese	2 types: <u>8 or 16 oz.</u>	Total of 6 pounds
Cereals	4 types (minimum box size 12 oz.)	Total of 12 boxes
Eggs	Grade A, large or extra-large: white or brown	6 dozen
Juices	Orange juice must be available in 2 types. A second flavor must be available in 1 type. The types are: 12 oz. frozen, and 46 oz. canned	10-12 oz. frozen 10-46 oz. canned
Dried Peas and Beans or	2 types	3 one-pound bags

Peanut Butter	18 oz. jars	3 jars
Infant Cereal	2 cereal grains; 8-oz. boxes (one must be rice); <u>brand</u> <u>specified in Vendor</u> <u>Agreement</u>	6 boxes
Infant Formula	2 types; or 1 type contracted for by the WIC program and designated on the food instrument; <u>milk and soy-based as</u> <u>specified in Vendor</u> <u>Agreement</u> ; 13 oz. concentrate	62 cans <u>combination</u>
Tuna	<u>Chunk light in water;</u> <u>6-6.5 oz. can</u>	<u>4 cans</u>
Carrots	<u>Raw, canned or frozen</u>	<u>2 pounds</u>

For store classification 5, the following applies: Supply within 48 hours of verbal request by local WIC agency staff any of the following products: Nutramigen, Portagen, Pregestimil, Similac Special Care 24, Similac 60/40, Ensure, Ensure Plus, Osmolite, Sustacal HC, Sustacal, Isocal, Enrich, Enfamil Premature, PediaSure, Polycose and MCT Oil. All vendors (classifications 1 through 5) shall supply milk or soy based, 32 oz. ready-to-feed or powdered infant formula upon request.

- (17) Permit WIC program participant to purchase eligible food items without making other purchases;
- (18) Attend annual vendor training class on WIC procedures and regulations upon notification of class by the local agency;
- (19) Inform and train vendor's employees in WIC procedures and regulations;
- (20) Be accountable for actions of vendor's employees in utilization of WIC food instruments and provision of WIC authorized food items;
- (21) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with this agreement and state and federal WIC Program rules, regulations and policies; This includes, but shall not be limited to, allowance of access to WIC food instruments negotiated the day of the monitoring and vendor records pertinent to the purchase of WIC food items; vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC food items purchased, including invoices and copies of purchase orders;
- (22) Submit a current accurately completed copy of the WIC Program Approved Food Items Price List to the local agency when signing this agreement, six months thereafter, or on January 1, whichever is earlier, and within one week of any written request by the state or local agency;
- (23) Reimburse the state agency within 30 days of written notification for amounts paid by the state agency on WIC Program food instruments processed by the vendor which did not satisfy the conditions set forth of ~~Section 1 (a) through (m) above~~ in the Vendor Agreement and for amounts paid by the state agency on WIC food instruments as the result of the unauthorized use of the Authorized WIC Vendor Stamp;
- (24) Not seek restitution from the participant for reimbursements paid to the state agency or for WIC food instruments not paid by the state agency;
- (25) Notify the local agency when the vendor ceases operations or the ownership changes;
- (26) Return the Authorized WIC Vendor Stamp to the local agency upon termination of this agreement or suspension or termination from the WIC Program;
- (27) Not be employed, or have a spouse, child, or parent who is employed by the state or local WIC program, and not have an employee who is employed, or has a spouse, child, or parent who is

employed by the state or local WIC program. For purposes of the preceding sentence, the term "vendor" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a ten percent interest in the partnership, corporation, or other legal entity;

(28) Offer WIC participants the same courtesies as offered to other customers;

(29) Not charge or collect sales taxes for the eligible items provided.

(c) By signing the WIC Vendor Agreement, the local agency agrees to the following:

(1) Provide at a minimum annual vendor training classes on WIC procedures and regulations;

(2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations and policies, and applicable law. A minimum of ~~20~~ 50 percent of all authorized vendors shall be monitored at least once a year. Any vendor shall be monitored within one week of written request by the state agency;

(3) Provide vendors with the North Carolina WIC Vendor's Manual, all Vendor's Manual amendments, blank WIC Program Approved Food Items Price Lists, and the Authorized WIC Vendor Stamp indicated on the signature page of this agreement;

(4) Assist the vendor with problems or questions which may arise under this agreement or the vendor's participation in the WIC Program; and

(5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.

(d) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

(e) An authorized WIC vendor may be disqualified from the WIC program for violation of 15A NCAC 21D .0706(b) or violation of any other state and federal WIC program rules for a period not to exceed three years in accordance with the following:

(1) When a vendor commits a violation of the WIC program rules, he shall be assessed sanction points as set forth below:

(A) 2.5 points for stocking WIC approved foods outside of manufacturer's expiration date;

(B) 5 points for:

(i) failure to attend annual vendor training;

(ii) failure to submit price reports twice a year or within seven days of request by agency;

(iii) requiring participants to purchase specific brands when more than one WIC-approved brand is available;

(iv) providing unauthorized foods (as listed in the vendor agreement);

(v) allowing substitutions for foods listed on WIC food instrument(s);

(vi) failure to stock minimum inventory.

(C) 7.5 points for:

(i) failure to properly redeem (e.g., not completing date and purchase price on WIC food instrument(s) before obtaining participant's signature);

(ii) discrimination (separate WIC lines, denying trading stamps, etc.);

(iii) issuing rainchecks;

(iv) requiring cash purchases to redeem WIC food instrument(s);

(v) contacting WIC participants in an attempt to recoup funds for food instrument(s).

(D) 15 points for:

(i) charging more than current shelf price for WIC-approved foods more than once;

(ii) charging for foods in excess of those listed on WIC food instrument(s);

(iii) failure to allow monitoring of a store by WIC staff when required;

(iv) failure to provide WIC food instrument(s) for review when requested;

(v) failure to provide store inventory records when requested by WIC staff;

(vi) nonpayment of a claim made by the state agency;

(vii) tendering for payment any food instrument(s) accepted by any other store;

(viii) intentionally providing false information on vendor records (application, price list, WIC food instrument(s), monitoring forms);

(E) 20 points for:

(i) providing cash or credit for WIC food instrument(s);

- (ii) providing non-food items or alcoholic beverages for WIC food instrument(s);
- (iii) charging for food not received by the WIC participant;
- (2) All earned points are retained on the vendor file for a period of one year or until the vendor is disqualified as a result of those points. If a vendor commits a violation within six months of reauthorization after a disqualification period, ten points in addition to those earned from the violation shall be assigned; if a vendor commits a violation after six months, but within one year of the reauthorization date after a disqualification period, five points in addition to those earned from the violation shall be assigned.
- (3) If a vendor accumulates fifteen or more points, he shall be disqualified. The nature of the violation(s), the number of violations and past disqualifications, as represented by the points assigned in paragraphs (e)(1) and (2), are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points of the worst offense multiplied by eighteen days. Eighteen days shall be added to the disqualification period for each point over 15 points.
- (4) Notwithstanding disqualification pursuant to accumulated points, an authorized WIC vendor shall also be disqualified from the WIC program upon disqualification or imposition of a civil money penalty from another USDA, FNS Program for a period not to exceed that of the other disqualification, or for a period not to exceed that of the original disqualification period determined by the USDA, FNS Program before imposition of the civil money penalty.
- (5) An authorized WIC vendor shall be given 15 days written notice of any adverse action which affects his participation in the WIC Program. The vendor appeals procedure shall be in accordance with 15A NCAC 21D .0800.
- (f) The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph(b)(23) of this Rule.
- (g) North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law. Neither the vendor nor the state is under any obligation to renew this contract. Nonrenewal of a vendor contract is not an appealable action. If a contract is not renewed, the person may reapply and if denied, may appeal the denial.
- (h) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment for WIC food instruments accepted by a non-authorized WIC vendor, a current WIC vendor agreement need only be signed by the vendor and the state agency. The vendor may request such one-time payment directly from the state agency. The vendor shall sign a statement indicating that he has provided foods as prescribed on the food instrument, charged current shelf prices and verified the identity of the participant. For the purposes of effecting such a WIC vendor agreement, the vendor is exempt from the inventory requirement and the requirement for an on-site visit by the local WIC agency. Any WIC vendor agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question.

Statutory Authority G.S. 130A-361.

SECTION .1100 - TITLE XX FUNDING

.1102 ALLOCATION

~~Social Services Block Grant funds for nutrition services are allocated to local health departments on an annual basis and are subject to periodic review and redistribution.~~

Statutory Authority G.S. 130A-361.

.1103 TARGET POPULATION

~~Social Services Block Grant funds for nutrition services shall be used to reimburse for services provided to the following target population:~~

- ~~(1) chronic disease patients;~~
- ~~(2) persons of age 5 through 18 who are eligible for Early Prevention, Screening, Diagnosis and Treatment (EPSDT);~~
- ~~(3) women who are at nutritional risk because of the family planning method they are using; and~~
- ~~(4) persons in need of nutritional counseling due to alcohol or drug abuse.~~

Statutory Authority G.S. 130A-361.

.1104 FINANCIAL ELIGIBILITY

~~(a) Social Services Block Grant funds for nutrition services shall be used to reimburse for service~~

es provided to persons whose gross family income is less than 140 percent of federal poverty guidelines.

(b) ~~Once a person is determined to be financially eligible, that person shall remain financially eligible for 12 months unless there is a change in the family size or the family's financial resources or expenses during that period. If there is a change, financial eligibility shall be redetermined.~~

(c) ~~For the purpose of determining gross family income, the term "family" means family as defined in 10 NCAC 4C .0204.~~

Statutory Authority G.S. 130A-361.

.1105 COVERED SERVICE

~~Social Services Block Grant funds for nutrition services shall be used to reimburse for nutrition services provided to eligible individuals. For the purpose of this Section, the term "nutrition services" means helping individuals to improve and maintain their health, to correct health problems, and to prevent the occurrence of future health problems. Such services include nutrition assessment by a public health nutritionist to determine an individual's nutritional status and specific nutrition problems; developing a nutrition care plan which utilizes community resources to address a patient's nutrition needs; counseling to implement a nutrition care plan; to refer to other agencies, nutrition education programs and other professionals, and to provide individual instruction related to the patient's nutrition and dietary problems; and ongoing evaluation.~~

Statutory Authority G.S. 130A-361.

.1106 PAYMENT LIMITATIONS

~~Social Services Block Grant funds for nutrition services shall not be used for services which are available from the WIC program.~~

Statutory Authority G.S. 130A-361.

SECTION .1200 - MATERNAL AND CHILD HEALTH BLOCK GRANT NUTRITION PROGRAM

.1201 GENERAL

The Maternal and Child Health Block Grant Nutrition Program is administered by the Division of Maternal and Child Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, N.C. 27611-7687.

Statutory Authority G.S. 130A-361.

.1202 PROVIDER ELIGIBILITY

Local health departments are eligible to receive Maternal and Child Health Block Grant Nutrition Program funds from the division. All providers that contract for the receipt of MCH Block Grant Nutrition Program funds are required to provide services in accordance with Rules .1205 and .1207 of this Section.

Statutory Authority G.S. 130A-361.

.1203 ALLOCATION OF FUNDS

Maternal and Child Health Block Grant Nutrition Program funds for nutrition services are allocated to local health departments on an annual basis and are subject to periodic review and redistribution. Expansion of program services is based on availability of funding and requests from local health departments.

Statutory Authority G.S. 130A-361.

.1204 CLIENT ELIGIBILITY

In order to be eligible for Maternal and Child Health Block Grant Nutrition Program services, a person must be in the maternal and child health population, ineligible for WIC Program services, and have one or more of the medical/nutritional risk indicators listed in the "Maternal and Child Health Block Grant Nutrition Program Guidance". These guidelines shall be available from the Nutrition Services Section. Categorical and medical/nutritional eligibility must be documented in the client's health record.

Statutory Authority G.S. 130A-361.

.1205 SCOPE OF SERVICES

Maternal and Child Health Block Grant funds shall be used to reimburse for nutrition services provided to eligible individuals. Required services include:

- (1) a complete nutritional assessment of appropriate anthropometric, biochemical, clinical, eco-social, and dietary indicators; and
- (2) a plan of care based on the individual's nutritional needs; and
- (3) an individual counseling session.

Statutory Authority G.S. 130A-361.

.1206 SERVICE PROVIDER

QUALIFICATIONS

Maternal and Child Health Block Grant nutrition services must be provided by a Registered Dietitian, registered with the Commission on Dietetic Registration; or a Licensed Dietitian/Nutritionist, licensed by the North Carolina Board of Dietetic/Nutrition; or a Registry Eligible Dietitian (i.e., an individual who has a statement from the Commission on Dietetic Registration saying he is registry eligible; that is, eligible to sit for the examination to become a Registered Dietitian).

Statutory Authority G.S. 130A-361.

.1207 PAYMENT FOR REIMBURSABLE SERVICES

(a) Payments shall not be made for services which are available from the WIC Program.

(b) Maternal and Child Health Block Grant funds for nutrition services are reimbursable at a rate of \$35.00 per hour.

(c) Billable time is limited to activities outlined in the "Maternal and Child Health Block Grant Nutrition Program Guidance".

Statutory Authority G.S. 130A-361.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .0911, .1601, .1603, .1606, .1609, .1720, .2601, .2606 - .2607, .2618, .2638 - .2639, .2644, .2812, .3008; 25 .0201, .0213 adopt rules cites as 15A NCAC 18A .1721 - .1728, .2645; 25 .0217.

The proposed effective date of this action is July 1, 1993.

The public hearings will be conducted as follows:

1:30 p.m.

March 31, 1993

Highway Building
One South Wilmington Street
First Floor Auditorium
Raleigh, NC.

7:00 p.m.

April 14, 1993

Simpson Administration Building

Lecture Room
Asheville-Buncombe
Technical Community College
340 Victoria Road
Asheville, North Carolina
I-40 to Exit 50, follow signs to AB Tech

7:00 p.m.

April 15, 1993

Commissioner's Auditorium
Pitt County Office Building
Second Floor
1717 West 5th Street
Greenville, North Carolina

Reason for Proposed Action:

15A NCAC 18A .0911 - This amendment is being proposed pursuant to a rule-making petition submitted by the Cordgrass Bay Homeowners Association, Inc.

15A NCAC 18A .1601, .1603, .1606, .1609 - To be responsive to requests from local health departments to reduce workload by eliminating inspections of family foster homes that are not on community water or sewage systems. To also delete the requirement for ventilation to comply with the North Carolina Building Code because we have no authority to enforce it.

15A NCAC 18A .1720 - Determines the minimum separation distances between new wells and sources of contamination. It also has less stringent separation requirements for existing wells.

15A NCAC 18A .1721 - Contains requirements for well casing heights for new and existing wells.

15A NCAC 18A .1722 - Contains requirements for protection of the wellhead for existing and new wells.

15A NCAC 18A .1723 - Contains requirements for the protection and use of springs for existing and new establishments.

15A NCAC 18A .1724 - Contains requirements for the disinfection of wells and springs for initial use, repairs, maintenance, pump installation, or positive coliform samples.

15A NCAC 18A .1725 - Contains requirements for water quality for water supplies serving establishments inspected by local health departments.

15A NCAC 18A .1726 - Contains requirements for emergency water supply systems to allow emergency supplies when the usual supply for an establishment cannot be used.

15A NCAC 18A .1727 - Contains requirements for continuous disinfection of water supplies positive for total coliform.

15A NCAC 18A .1728 - Prohibits water with fecal coliform to be used and prohibits the use of cisterns.

15A NCAC 18A .2601 - To move the definition of "catered elderly nutrition site" from .2644 to .2601 "Definitions". To amend the definition of "pushcart" to allow food other than hot dogs to be served from pushcarts. To add the definitions of "athletic event food stand" and "organized athletic event" to aid individuals in the interpreting and understanding the new proposed rule, on "athletic event food stands".

15A NCAC 18A .2606 - To delete the grading of temporary food service facilities. To delete the grading provisions for temporary food service facilities.

15A NCAC 18A .2607 - To clarify the form in which plans should be submitted.

15A NCAC 18A .2618 - To require sanitization of food contact surfaces for non-potentially hazardous foods. To clarify the cleaning areas for large food containers, etc., that do not fit into sinks. To make North Carolina rules on chemical strengths conform the U.S. Food and Drug Administration Code.

15A NCAC 18A .2638 - .2639 - A restaurant chain has proposed a new concept for carts. The rule will clarify regulatory authority on this new method of food service.

15A NCAC 18A .2644 - To simplify this rule, as a definition of "catered elderly nutrition site", containing this language, is being placed in 15A NCAC 18A .2601.

15A NCAC 18A .2645 - To allow reduced equipment requirements where severely limited menus

are utilized and foods are not held over.

15A NCAC 18A .2812 & .3008 - To bring North Carolina's code into conformance with the U.S. Food and Drug Administration's model code interpretation.

15A NCAC 25 .0201, .0213 & .0217 - To require local health departments to have and maintain a Lead Investigation and Abatement Program in accordance with N. C. General Statute 130A-131.5. Also to reduce the frequency of inspections for Catered Elderly Nutrition Sites from 4/year to 1/year because of reduced amount of food preparation and handling at these sites.

Comment Procedures: All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Stacy Covil, Environmental Health Services Section, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2884. If you desire to speak at the public hearing, notify Stacy Covil at least 3 days prior to the public hearing. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or address proposed changes from staff pursuant to comments made during the public hearing process.

IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS, OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .0900 - CLASSIFICATION OF SHELLFISH GROWING WATERS

.0911 MARINAS: DOCKING FACILITIES: OTHER MOORING AREAS

Classification of shellfish growing waters with respect to marinas, docking facilities, and other mooring areas shall be done in accordance with the following:

- (1) All waters within the immediate vicinity of a marina shall be classified as prohibited to the harvesting of shellfish for human consumption. Excluded from this classification are boat ramp facilities and all other docking areas with less than 30 slips, having no boats over ~~24~~ 24 feet in length, ~~and~~ no boats with heads and no boats with cabins. Marinas permitted prior to the effective date of this rule may continue to have boats up to 21 feet in length with cabins.
- (2) Owners of marinas, except boat ramp facilities, conforming to the exclusion provisions in Item (1) of this Rule shall make quarterly reports to the Division. These reports shall include the following information:
 - (a) number of slips;
 - (b) number and length of boats;
 - (c) number and length of boats with cabins;
 - (d) number of boats with heads; and
 - (e) number of boats with "porta-potties."

Reports to the Division shall cover the occupancy of the marina on the fifth day of the first month of each quarter of the calendar year and shall be post marked on or before the fifteenth day of the reporting month.

- (3) ~~(2)~~ Additional waters beyond the marina may be classified as prohibited to shellfish harvesting. The minimum requirement for the additional prohibited area adjacent to the marina shall be based on the number of slips and the type of marina (open or closed system). The automatic prohibited area shall extend beyond the marina from all boat slips, docks, and docking facilities, according to the following:

Number of Slips in Marina	Size of Prohibited Area (Feet)	
	Open System	Closed System
11 - 25	100	200
26 - 50	150	275
51 - 75	175	325
76 - 100	200	400

Open system marinas exceeding 100 slips shall require an additional 25 feet for each 25 slips or portion thereof over 100. A closed system marina shall require 50 feet for each 25 slips or portion thereof over 100. Closed system private or residential marinas with more than 75 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater. Closed system commercial marinas with more than 50 slips shall require a prohibited area of the number of feet determined above, or 100 feet outside the entrance canal, whichever is greater.

- (4) ~~(3)~~ After the marina is put in use water quality impacts of marina facilities may require a change in classification. In determining if a change in classification is necessary, marina design, marina usage, dilution, dispersion, bacteriological, hydrographic, meteorological, and chemical factors will be considered.
- (5) ~~(4)~~ Areas, other than marinas, where boats are moored or docked shall be considered on a case-by-case basis with respect to sanitary significance relative to actual or potential contamination and classification shall be made as necessary.
- (6) ~~(5)~~ The cumulative impacts of multiple marinas, entrance canals, or other mooring areas, in close

proximity to each other are expected to adversely affect public trust waters. When these situations occur the Division will recommend closures exceeding those outlined in ~~Paragraph Item (2) (3)~~ of this Rule. The following guides will be used in determining close proximity:

- (a) marina entrance canals within 225 feet of each other;
- (b) open system marinas within 450 feet of each other (Mooring areas shall be considered open system marinas);
- (c) where closure areas meet or overlap; and
- (d) open system marinas within 300 feet of a marina entrance canal.

Statutory Authority G.S. 130A-230.

SECTION .1600 - SANITATION OF RESIDENTIAL CARE FACILITIES

.1601 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) ~~(4)~~ "Department of Environment, Health, and Natural Resources" means the Secretary, or his authorized representative.
- (2) ~~(5)~~ "Director" means the State Health Director.
- (3) "Family foster home" means a place of residence of a family, person or persons who are licensed to provide full time foster care services to children under the supervision of a county department of social services or a licensed private agency.
- (4) ~~(2)~~ "Manager" means the person in responsible charge of a residential care facility.
- (5) ~~(8)~~ "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (6) ~~(4)~~ "Residential care facility" means an establishment providing room or board and for which a license or certificate of payment must be obtained from the Department of Human Resources. However, the term shall not include a child day care facility or an institution as defined in 15A NCAC 18A .1300.
- (7) ~~(3)~~ "Resident" means a person, other than the manager, his immediate family,

and staff, residing in a residential care facility.

- (8) ~~(6)~~ "Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (9) ~~(7)~~ "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.

Statutory Authority G.S. 130A-235.

.1603 INSPECTIONS

Inspections of residential care facilities shall be made by a sanitarian at least once a year prior to the expiration of the license. For family foster homes, inspections are only required for those homes served by individual or non-community water supplies or on-site sewage systems. A copy of the inspection form shall be ~~left provided to~~ provided to the person in charge of the facility at the time of inspection. If conditions found at the time of the inspection are dangerous to the health of the residents, the ~~state licensing agency~~ Department of Human Resources shall be notified immediately by telephone or other direct means by the sanitarian.

Statutory Authority G.S. 130A-235.

.1606 GRADING

(a) The grading of residential care facilities shall be based upon the standards of construction and operation set out in Rules .1607 - .1621 of this Section; however, family foster homes are only required to comply with 1611(a) & (b) and .1613.

(b) The grade of the facility shall be classified as follows:

- (1) as approved if the demerit score is 20 or less and no six demerit point item is violated;
- (2) as provisional if any six demerit point

- item is violated, or if the demerit score is more than 20 but not more than 40; The duration of such classification shall not exceed seven days; provided, that a longer period may be established if construction or renovation is involved;
- (3) as disapproved if the demerit score is more than 40, if the conditions found are dangerous to the health of the residents, or if the conditions resulting in the provisional classification have not been corrected within the specified time.

Statutory Authority G.S. 130A-235.

.1609 LIGHTING AND VENTILATION

(a) All rooms shall be well lighted by natural or artificial means.

~~(b) Ventilation shall be provided and installed as required by the North Carolina State Building Code. Copies of the North Carolina State Building Code may be obtained from the North Carolina Department of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611.~~

~~(b)~~ (e) Ventilation equipment shall be kept clean and in good repair.

Statutory Authority G.S. 130A-235.

SECTION .1700 - PROTECTION OF WATER SUPPLIES

.1720 WATER SUPPLIES

~~(a) All water supplies for which requirements are established in Rules in 15A NCAC 18A shall be water supplies of a safe, sanitary quality supplied from a source located, constructed, maintained and operated in accordance with 15A NCAC 18C .0600 through .2600, "Rules Governing Public Water Supplies", or 15A NCAC 2C .0102, .0107, .0109, .0111, .0112, and .0113, "Well Construction Standards". All wells constructed prior to September 1, 1990 and not regulated under 15A NCAC 18C .0600 through .2600 shall comply with all of the requirements of 15A NCAC 2C .0102, .0107, .0109, .0111, .0112, and .0113, except that the following shall apply in the place of Rule .0107 (a)(1)(B), (a)(1)(C) and (a)(2) and shall be accepted as meeting the rules:~~

- ~~(1) the well is located at least 25 feet from any watertight sewage or liquid waste collection and disposal facility, such as ductile iron pipe; and~~
- ~~(2) the well may be located closer than 100 feet from any other sewage or liquid waste collection and disposal facility or any other source of existing or potential pollution or contamination, but shall be located at the maximum feasible distance from such facilities or sources and in no event less than 50 feet from such facilities or sources.~~

~~(b) Copies of 15A NCAC 2C may be obtained from the Division of Environmental Management and copies of 15A NCAC 18C may be obtained from the Division of Environmental Health. The address for both Divisions is P.O. Box 27687, Raleigh, NC 27611-7687.~~

~~(c) A spring used as a source of water supply shall be protected from contamination as follows:~~

- ~~(1) the spring and its surrounding area shall not be subject to flooding by surface water;~~
- ~~(2) an area of at least a 100 foot radius shall be free of sources of pollution or contamination and shall be fenced to surround the spring;~~
- ~~(3) a U shaped surface drainage diversion ditch shall be constructed at least 50 feet away from the~~

spring on the uphill side of the spring;

- ~~(4) a second U-shaped surface drainage diversion ditch shall be constructed adjacent to the spring and lined with concrete or tile;~~
- ~~(5) the spring shall be enclosed;~~
- ~~(6) the spring shall meet all applicable requirements of Paragraph (a) of this Rule;~~
- ~~(7) the spring shall be located at least 100 feet from any other sewage or liquid waste collection and disposal facility or any other source of existing or potential pollution or contamination;~~
- ~~(8) the spring enclosure shall be disinfected prior to initial use, or after any repairs, as follows:~~
 - ~~(A) the interior walls of the spring enclosure shall be washed and swabbed with chlorine solution of approximately 65 parts per million of chlorine or a similar disinfectant approved by the Department;~~
 - ~~(B) disinfectant shall be poured into the spring, the service pipe shall be plugged and water shall be retained in the spring storage for at least 12 hours, or, disinfectant shall be fed into the spring continuously for at least 12 hours;~~
 - ~~(C) the spring shall be allowed to flow to waste until no disinfectant odor or taste can be detected; and~~
 - ~~(D) a sample shall be collected for bacteriological analysis at least 24 hours after all disinfectant has been removed from the spring.~~

~~(d) If a water sample is positive for coliform organisms, the water supply shall not be considered safe or sanitary.~~

~~(e) If a water sample exceeds any of the maximum contaminant levels established in 15A NCAC 18C .0600 through .2600, "Rules Governing Public Water Supplies", the water supply shall not be considered safe and sanitary.~~

A water supply for which requirements are established in this Subchapter, shall be from a source located, constructed, maintained, and operated in accordance with this Section or from a community water supply approved by the Department pursuant to 15A NCAC 18C.

- (1) A well shall not be located in an area generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions or drainage ways.
- (2) A well constructed on or after July 1, 1993 shall be located at a minimum horizontal distance from:
 - (a) Septic tank or nitrification field; 100 ft.
 - (b) Other subsurface ground absorption waste disposal; 100 ft.
 - (c) Industrial or municipal sludge spreading or wastewater irrigation site; 100 ft.
 - (d) Watertight sewage or liquid-waste collection or transfer facility; 50 ft.
 - (e) Other sewage or liquid-waste collection or transfer facility; 100 ft.
 - (f) Animal feedlot or manure pile; 100 ft.
 - (g) Fertilizer, pesticide, herbicide or other chemical storage area; 100 ft.
 - (h) Non-hazardous waste storage, treatment or disposal lagoon; 100 ft.
 - (i) Sanitary landfill; 500 ft.
 - (j) Other non-hazardous solid waste landfill; 100 ft.
 - (k) Animal barn; 100 ft.
 - (l) Building foundation; 50 ft.
 - (m) Surface water body; 50 ft.
 - (n) Chemical or petroleum fuel underground storage tank regulated under 15A NCAC 2N:
 - (i) with secondary containment; 50 ft.
 - (ii) without secondary containment; 100 ft.
 - (o) Any other source of groundwater contamination. 100 ft.
- (3) For a well constructed prior to July 1, 1993, the minimum horizontal distances specified in (2)(a), (b), (d), and (l) of this Rule shall be reduced to no less than the following:
 - (a) Septic tank or nitrification field; 50 ft.
 - (b) Other subsurface ground absorption waste disposal system; 50 ft.
 - (c) Water-tight sewage or liquid-waste collection or transfer establishment; 25 ft.
 - (d) Building foundation. 25 ft.
- (4) A well serving an establishment regulated under 15A NCAC 18A prior to July 1, 1993 shall be required to meet only the following minimum horizontal distance requirements:

- (a) Septic tank or nitrification field; 50 ft.
- (b) Other subsurface ground absorption waste disposal system. 50 ft.
- (5) An establishment regulated under 15A NCAC 18A that has been closed for a year or more shall meet the horizontal distance requirements in item (3) of this section unless three consecutive bacteriological samples once a month have been collected and analyzed by the Department and the Rule requirements of .1725 (a) have been met. If all bacteriological samples are negative for coliform, the minimum horizontal distance requirements in item (4) of this section may be used.
- (6) An owner, licensee or permittee shall be prohibited from placing or having placed a source of contamination within the minimum horizontal distances in Items (1)-(5) of this Rule.
- (7) If different minimum horizontal distance requirements are set by the Division of Environmental Management pursuant to 15A NCAC 2C .0118 and .0119, those minimum horizontal distance requirements shall be used. The owner, licensee or permittees shall provide a written copy of the adjusted minimum horizontal distance requirements from the Division of Environmental Management to the local health department.

Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

.1721 WELL CASING

(a) For a well constructed after July 1, 1993, the well casing shall be terminated at least 12 inches above the land surface.

(b) For a well constructed prior to July 1, 1993, the well casing shall be terminated at least six inches above the land surface.

Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

.1722 WELL HEAD PROTECTION

(a) The base plate of a pump placed directly over the well shall be designed to form a watertight seal with the well casing or pump foundation.

(b) In an installation where the pump is not located directly over the well, the annular space between the casing and pump intake or discharge piping shall be closed with a watertight seal designed specifically for this purpose.

(c) The well shall be vented at the well head to allow for pressure changes within the well except when a suction lift type pump is used. Any vent pipe or tube shall be screened or otherwise designed to prevent the entrance of insects or other foreign materials.

(d) For a well constructed after July 1, 1993, a hose bib shall be installed at the well head for obtaining samples. In the case of offset jet pump installations, the hose bib shall be installed on the pressure side of the jet pump piping. A vacuum breaker shall be installed on the hose bib.

(e) For a well constructed after July 1, 1993, a continuous bond concrete slab or well house concrete floor extending at least three feet horizontally around the outside of the well casing shall be provided. The minimum thickness for the concrete

slab or floor shall be four inches. The slab or floor shall slope to drain away from the well casing.

Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

.1723 SPRINGS

(a) A spring serving an establishment regulated under 15A NCAC 18A and in use on or before July 1, 1993 shall be approved unless a violation of Rule .1725 is identified. If Rule .1725 of this Section is violated, the spring shall comply with all requirements of Paragraph (b) of this Rule.

(b) For a spring developed after July 1, 1993, to serve an establishment regulated under 15A NCAC 18A, the requirements of 2 NCAC 9C .0703, except Paragraphs (a), (b) and (f) shall apply. 2NCAC 9C .0703, except paragraphs (a)(b) and (f) are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Environmental Health Services Section, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from the Environmental Health Services Section at no cost.

(c) Springs approved pursuant to Paragraph (b) of this Rule shall not be connected to the establishment until compliance with this Section has been completed and the Department receives certification from an engineer licensed to practice in North Carolina that the spring has been constructed in accordance with the approved plans and specifications.

Statutory Authority G.S. 95-225; 130A-5(3);

130A-228; 130A-230; 130A-235; 130A-236;
130A-248; 130A-257.

.1724 DISINFECTION OF WATER SUPPLIES

(a) A water supply serving an establishment regulated under this Subchapter shall be disinfected upon completion of construction, maintenance, repairs, pump installation, or a report of a positive coliform sample as follows:

- (1) chlorine in sufficient quantities to produce a chlorine residual of at least 100 milligrams per liter (mg/l) shall be placed in the supply;
- (2) a chlorine solution shall be placed in the supply in such a manner as to contact any water-contact parts and materials above the normal water level;
- (3) a chlorine solution shall stand in the supply for a period of at least 24 hours; and,
- (4) the supply shall flow to waste until no disinfectant can be measured with a test kit that measures chlorine levels.

(b) A spring enclosure shall be disinfected upon completion of construction, maintenance, repairs, pump installation, or a report of a positive coliform sample as follows:

- (1) the interior walls of the spring enclosure shall be washed or swabbed with a chlorine solution of at least 100 milligrams per liter (mg/l) or greater of chlorine residual approved by the Department;
- (2) the disinfectant shall be poured into the spring, the service pipe shall be plugged, and water shall be retained in the spring storage for at least 24 hours, or, disinfectant shall be fed into the spring continuously for at least 24 hours; and
- (3) the spring shall flow to waste until no disinfectant can be measured with a test kit that measures chlorine levels.

Statutory Authority G.S. 95-225; 130A-5 (3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

.1725 WATER QUALITY

(a) Prior to use of a water supply, and after no disinfectant can be measured with a test kit to measure free chlorine residual, two consecutive bacteriological water samples taken at least 48 hours apart shall be collected by the Department

and submitted to the Division of Laboratory Services of the Department of Environment, Health, and Natural Resources or another laboratory certified pursuant to 15A NCAC 20D for analysis. The water supply shall not be used until at least two consecutive bacteriological samples have tested negative for coliform bacteria.

(b) The water supply shall be deemed unsafe for use under the following circumstances:

- (1) immediately unsafe upon confirmation of the presence of fecal coliform bacteria.
- (2) immediately unsafe upon determination by the Environmental Epidemiology Section of the Department that the presence of chemical constituents poses an imminent hazard.
- (3) unsafe for use upon confirmation of the presence of total coliform.
- (4) unsafe for use upon determination by the Environmental Epidemiology Section of the Department that the presence of chemical constituents poses a hazard to health.

(c) When a water sample is positive for coliform bacteria, two consecutive negative samples for coliform bacteria collected by the Department at least 48 hours apart shall be required prior to approval of the supply. There shall be no treatment procedures between the two consecutive negative samples.

(d) Follow-up samples shall be collected by the Department at least once every three months for one year following the previous positive sample.

Statutory Authority G.S. 95-225; 130A-5 (3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

.1726 EMERGENCY SUPPLY SYSTEMS

A water supply serving an establishment regulated under 15A NCAC 18A which is in violation of Rule .1725 of this Section may be replaced by an emergency supply system for a time period not to exceed three months provided the Public Water Supply Section determines that the emergency supply system meets all the following requirements:

- (1) The source of water used by the emergency supply is approved by the Public Water Supply Section of the Division of Environmental Health;
- (2) Containers, hoses, pumps, lines, or other means of conveyance used to transport the water is disinfected with a chlorine

solution of at least 100 mg/l of chlorine prior to being placed into use and after each transfer of water;

- (3) A chlorine residual of no less than 0.2 mg/l of free chlorine is maintained at all times and the owner, licensee, or permittee shall maintain a log to record the level of free chlorine residual at least twice a day while the facility is in operation; and
- (4) The emergency supply system is sampled for bacteriological analysis at least every other week by the Department and at least weekly by the owner, permittee, or licensee. All samples shall be submitted to the laboratory section of the Department or another laboratory certified by the Department for the analysis. A copy of all sample reports collected by the owner, permittee, or licensee shall be submitted to the local health department having jurisdiction within three days of receipt of the report.

Statutory Authority G.S. 95-225; 130A-5 (3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

.1727 CONTINUOUS DISINFECTION

(a) A supply which is in violation of Rule .1725(b)(3) of this Section may be used provided that the supply shall be continuously disinfected and a chlorine residual is maintained of at least 0.2 mg/l by use of equipment designed for this purpose. An operator shall be required for a water supply using continuous disinfection. The operator shall hold a valid certificate issued by the N.C. Water Treatment Facility Operators Certification Board.

(b) The owner, operator, or permittee shall provide to the Department a statement from the operator that a supply using continuous disinfection has a minimum chlorine residual of 0.2 mg/l and a chlorine contact time of at least 20 minutes.

(c) A disinfection device shall not be used to comply with a violation of Rule .1725 (b)(1) of this Section.

Statutory Authority G.S. 95-225; 130A-5 (3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

.1728 PROHIBITED SUPPLIES

(a) A supply in violation of Rule .1725(b)(1) of this Section shall be prohibited.

(b) Cisterns shall be prohibited.

Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

SECTION .2600 - SANITATION OF RESTAURANTS AND OTHER FOODHANDLING ESTABLISHMENTS

.2601 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- (1) "Approved" means determined by the Department to be in compliance with this Section. Food service equipment which meets National Sanitation Foundation standards or equal shall be considered as approved. ~~The National Sanitation Foundation standards are adopted by reference in accordance with G.S. 150B-14(c). These standards are available from the National Sanitation Foundation at P.O. Box 1468, Ann Arbor, Michigan 48106 and are also available for inspection at the Division of Environmental Health. Commercial Food Service Equipment Standards and Criteria are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment, Health, and Natural Resources, Division of Environmental Health, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from NSF International, P. O. Box 13014, Ann Arbor, Michigan 48113-0140, at a cost of three hundred and twenty five dollars (\$325.00). Food which complies with requirements of the North Carolina Department of Agriculture or United States Department of Agriculture and the requirements of this Section shall be considered as approved.~~
- (2) "Catered elderly nutrition site" means an establishment or operation where food is served, but not prepared on premises, operated under the guidelines of the N. C. Department of Human Resources, Division of Aging.
- (3) (2) "Department of Environment, Health, and Natural Resources" or "Department" means the North Carolina Department of Environment, Health, and Natural Resources. The term also means the autho-

- (4) rized representative of the Department.
- (4) ~~(3)~~"Drink stand" means those establishments in which only beverages are prepared on the premises and are served in multi-use containers, such as glasses or mugs.
- (5) ~~(4)~~"Eating and cooking utensils" means any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.
- (6) ~~(5)~~"Employee" means any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils, or who is employed at any time in a room in which food or drink is prepared or served.
- (7) ~~(6)~~"Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (8) ~~(7)~~"Food stand" means those food service establishments which prepare or serve foods and which do not provide seating facilities for customers to use while eating or drinking. Establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy are not included.
- (9) ~~(8)~~"Hermetically sealed container" means a container designed and intended to be secure against the entry of micro-organisms and to maintain the commercial sterility of its contents after processing.
- (10) ~~(9)~~"Local Health Director" means the administrative head of a local health department or his authorized representative.
- (11) ~~(10)~~"Mobile food unit" means a vehicle-mounted food service establishment designed to be readily moved.
- (12) ~~(11)~~"Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.
- (13) ~~(12)~~"Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.
- (14) ~~(13)~~"Private club" means a private club as defined in G.S. 130A-247(2).
- (15) ~~(14)~~"Pushcart" means a mobile piece of equipment or vehicle which serves prepares only hot dogs or serves food which has been prepared, preportioned and wrapped at a restaurant.
- (16) ~~(15)~~"Responsible person" means the individual present in a food service establishment who is the apparent supervisor of the food service establishment at the time of inspection. If no individual is the apparent supervisor, then any employee is the responsible person.
- (17) ~~(16)~~"Restaurant" means all establishments and operations where food is prepared or served at wholesale or retail for pay, or any other establishment or operation where food is prepared or served that is subject to the provisions of G.S. 130A-248. The term does not include establishments which only serve such items as dip ice cream, popcorn, candied apples, or cotton candy.
- (18) ~~(17)~~"Sanitarian" means a person authorized to represent the Department on the local or state level in making inspections pursuant to state laws and rules.
- (19) ~~(18)~~"Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (20) ~~(19)~~"Sewage" means the liquid and solid human body waste and liquid waste generated by water-using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (21) ~~(20)~~"Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.
- (22) ~~(21)~~"Temporary food stand" means those food or drink stands which operate for a period of 15 days or less, in connection with a fair, carnival, circus, public exhi-

bition, or other similar gathering.

- (23) ~~(22)~~ "Temporary restaurant" means a restaurant, as defined in ~~Paragraph Item~~ (16) of this Rule, that operates for a period of 15 days or less, in connection with a fair, carnival, circus, public exhibition, or other similar gathering.
- (24) "Athletic event food stand" means a foodservice establishment which operates in conjunction with organized athletic events.
- (25) "Organized athletic events" are sporting events such as football, basketball, baseball, softball, soccer, tennis or similar sporting events conducted by an organized league or organization and sponsored by a school, business, religious, civic, or charitable organization.

Statutory Authority G.S. 130A-248.

.2606 GRADING

(a) The sanitation grading of all restaurants, food stands, and drink stands, ~~temporary restaurants, and temporary food or drink stands~~ shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C. Permits shall be revoked for establishments receiving a score of less than 70 percent.

(b) The grading of restaurants, food stands, and drink stands, ~~temporary restaurants, and temporary food or drink stands~~ shall be based on the standards of operation and construction as set forth in Rules .2607 through .2644 of this Section.

(c) The posted numerical grade shall not be changed as a result of a food sampling inspection.

Statutory Authority G.S. 130A-248.

.2607 STANDARDS AND APPROVAL OF PLANS

(a) Plans, drawn to scale, and specifications, for new food service establishments shall be submitted for review and approval to the local health agency prior to initiating construction. Plans, drawn to scale, and specifications, shall also be submitted prior to construction of changes in the dimensions of food preparation areas, seating capacity or the addition of rooms to existing food service establishments. These plans shall include changes

related to the increase in dimensions of food preparation areas, seating capacity or the addition of rooms. Plans, drawn to scale and specifications, for prototype "franchised" or "chain" facilities shall also be submitted for review and approval to the Environmental Health Services Section, Division of Environmental Health.

(b) Construction shall comply with approved plans and specifications.

Statutory Authority G.S. 130A-248.

.2618 CLEANING OF EQUIPMENT AND UTENSILS

(a) All equipment and fixtures shall be kept clean. All cloths used by chefs and other employees in the kitchen shall be clean. Single-service containers shall be used only once.

(b) All multi-use eating and drinking utensils shall be thoroughly washed, rinsed, and subjected to an approved bactericidal treatment after each usage. The supply of eating and drinking utensils shall be adequate. All multi-use utensils except pizza pans and similar type pans (not used for table service) used in the storage, preparation, cooking, or serving of food or drink shall be cleaned and rinsed immediately after the day's operations, after each use, or upon completion of each meal as indicated. Pizza pans and similar type pans (not used for table service) which are continually subjected to high temperatures do not require cleaning after each use or day's use but shall be kept clean and maintained in good repair.

(c) ~~In addition to washing and rinsing multi-use utensils as indicated in (b) of this Rule, preparation surfaces which come in contact with potentially hazardous foods and not subjected to heat during routine cooking operations shall be sanitized. Examples of food contact surfaces which must be sanitized are utensils used in preparing cold salads and cold beverages, cutting board, table tops, knives, saws, and slicers. For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, and for those establishments which do not have dishwashing equipment, a spray on or wipe on sanitizer may be used. When spray on or wipe on sanitizers are used, the chemical strengths shall be twice those required for sanitizing multi-use eating and drinking utensils. Food contact surfaces which are not subjected to heat during routine cooking operations shall be cleaned and sanitized. Facilities for washing all food containers, utensils and equipment that will not fit in the utensil sink, shall be required. When food~~

containers and utensils are too large to be washed in the manual dish and utensil washing facility or dishwasher, the Department may approve a facility that it determines is specifically designed for and will accommodate the washing, rinsing, and sanitizing of large utensils.

(d) Hand dishwashing facilities shall consist of an approved three-compartment sink of adequate size and depth to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an integral part of and continuous with the sink. These drainboards shall be of a sufficient size to accommodate the drying of the washed utensils.

(e) Where the Department determines that the volume of dishes, glasses and utensils to be washed cannot be processed in a single warewashing facility, separate dish, glass or utensil washing facilities shall be required. Separate vegetable washing facilities shall be provided in establishments which wash raw vegetables except where plan review shows that volume and preparation frequency do not require separate vegetable washing facilities or where vegetables are purchased prewashed and packaged. Establishments which scale or eviscerate fish or wash raw poultry shall provide separate sinks with preparation space for these processes except where plan review shows that volume and preparation frequency do not require separate washing facilities.

(f) When dishwashing machines are used, the machines shall be approved and shall be fitted with drainboards of ample capacity on each side, and include a countersunk sink or other approved means for pre-cleaning, pre-flushing, or pre-soaking of the utensils in the dirty dish lane. Thermometers indicating the wash and rinse water temperatures shall be provided and kept in good repair.

(g) When dishwashing machines are used, the machines shall be approved on the basis of size, capacity, and type for the number of utensils to be washed. Under some conditions, as when volume is limited and time permits, glasses may be washed with power-driven brushes and passed through door-type machines, which are also used for dishwashing, for final rinse and bactericidal treatment. For this method, a motor-driven glass-washer and a single-vat sink may suffice.

(h) When only single-service eating and drinking utensils are used, at least an approved two-compartment sink shall be provided. This sink shall be of sufficient size to submerge, wash, rinse and sanitize utensils and shall have splash back protection and drainboards that are an inte-

gral part of and continuous with the sink. These drainboards shall be of sufficient size to accommodate the drying of the washed utensils.

(i) Facilities for the heating of water shall be provided. Capacity of hot water heating facilities shall be based on number and size of sinks, capacity of dishwashing machines, and other food service and cleaning needs. Hot water storage tanks shall provide a minimum of 130° F (54° C) hot water when water is not used for sanitizing; when hot water is used for sanitizing, a minimum storage temperature of 140° F (60° C) hot water is required.

(j) No article, polish, or other substance containing any cyanide preparation or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.

Statutory Authority G.S. 130A-248.

.2638 GENERAL REQUIREMENTS FOR PUSHCARTS AND MOBILE FOOD UNITS

(a) ~~Approval~~ A permit shall be granted by the local health department which provides sanitation surveillance for the restaurant from which the pushcart or mobile food unit is to operate, if the local health department determines that the pushcart or mobile food unit complies with ~~these Rules~~ this Section.

(b) The ~~written approval~~ permit shall be in the possession of the person operating the pushcart or mobile food unit. A grade card ~~Grade cards~~ shall not be posted.

(c) The local health department which issues ~~approval~~ the permit shall be provided by individuals receiving ~~approval~~ permits a list of counties and locations where each pushcart or mobile food unit will operate.

(d) Individuals receiving ~~approval~~ a permit to operate a pushcart or mobile food unit shall provide the local health department in each county in which food service operations are proposed, a list of locations where they will operate. Such lists must be kept current.

(e) Prior to initiating food service operations in a particular jurisdiction, the permittee or operator of the pushcart or mobile food unit shall submit to that particular jurisdiction such carts or units for inspection or reinspection to determine compliance with this Section.

(f) ~~Such carts~~ Pushcarts or mobile food units shall operate in conjunction with a permitted restaurant and shall report at least daily to the restaurant for supplies, cleaning, and servicing.

(g) All foods shall be obtained from approved sources and shall be handled in a manner so as to be clean, wholesome, and free from adulteration.

(h) All potentially hazardous foods shall be maintained at 45 ° F (7° C) or below or 140° F (60° C) or above, or as required in Rule .2609 of this Section. A metal stem-type thermometer accurate to $\pm 2^{\circ}$ F ($\pm 1^{\circ}$ C) shall be available to check food temperatures.

(i) Only single-service eating and drinking utensils shall be used in serving customers. Single-service items must be properly stored and handled.

(j) All garbage and other solid waste shall be stored and disposed of in an approved manner.

(k) Employees shall be clean as to their person and foodhandling practices. Clean outer clothing and hair restraints are required.

(l) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease, or who has a boil, infected wound, or an acute respiratory infection with cough and nasal discharge, shall work with a pushcart or mobile food unit in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces, with disease-causing organisms or transmitting the illness to other persons.

(m) All equipment and utensils shall be easily cleanable and kept clean and in good repair.

(n) The pushcart or mobile food unit shall be kept in a clean and sanitary condition and be free of flies, roaches, rodents, and other vermin.

Statutory Authority G.S. 130A-248.

.2639 SPECIFIC REQUIREMENTS FOR PUSHCARTS

(a) Only hot dogs shall be prepared, or handled, or served from on a pushcart; however, foods which have been prepared, preportioned and individually prewrapped at a restaurant may be served.

(b) Food and utensils on the cart exposed to the public or to dust or insects shall be protected by glass, or otherwise, on the front, top, and ends, and exposed only as much as may be necessary to permit the handling and serving of hot dogs.

(c) Toilet facilities, lavatory facilities, and running water are not required. Single-service towels are required.

(d) The permit applicant shall provide documentation to the Department which demonstrates the ability of all preportioned, individually prewrapped foods placed on the pushcart, to hold temperatures

under conditions approximating actual use, for the time periods specified by the permit applicant.

(e) Containers of preportioned, individually prewrapped food being held on the pushcart shall be marked or labeled with the time when placed on the pushcart.

(f) Preportioned, individually prewrapped food that remains after the specified time period has elapsed shall not be sold to the public.

(g) The permittee or operator shall not accept delivery of foods that are at a temperature between 45° F (7° C) and 140° F (60° C).

Statutory Authority G.S. 130A-248.

.2644 REQUIREMENTS FOR CATERED ELDERLY NUTRITION SITES

Catered Elderly Nutrition Sites ~~where food is served, but not prepared on premises, operated under the guidelines of the North Carolina Department of Human Resources, Division of Aging,~~ shall comply with all the requirements provided in Rules .2601 - .2633 of this Section with the following exceptions:

- (1) sites responsible for the cleaning of coffee and tea preparation pitchers and related utensils shall have at least a two-compartment domestic sink for these purposes that shall not be required to meet the standards in Rules .2617(d) and .2618~~(f)~~ (h); the sink shall be constructed of non-toxic, corrosion-resistant materials which are smooth and durable under conditions of actual use; and under this provision, all other service utensils shall be returned to the caterer for washing and sanitizing;
- (2) if refrigerated storage is limited to foods that do not require cooling or reheating, mechanical refrigeration equipment shall be required but shall be exempt from meeting the standards in Rule .2617(d);
- (3) the following shall apply in place of the requirements in Rule .2626 (b), (d) and (e):
 - (a) garbage receptacles shall be kept clean and in good repair, with tight-fitting lids;
 - (b) can liners shall be required for all garbage receptacles unless the site has approved can-wash facilities;
 - (c) mop or can-cleaning water shall not be disposed of in the utensil sink; all waste water from mopping, can-cleaning, and other cleaning operations shall be dis-

- posed of in a mop sink or another approved manner in accordance with Rule .2626(a) of this Section; and
- (d) dumpster lids shall be kept closed.

Statutory Authority G.S. 130A-248.

.2645 REQUIREMENTS FOR ATHLETIC EVENT FOOD STANDS

Athletic event food stands which operate occasionally in conjunction with athletic events shall comply with all the requirements provided in Rules .2601-.2633 of this Section with the following exceptions:

- (1) The establishment shall be constructed so that food, utensils, and equipment shall not be exposed to insects, dust, and other contamination. In Rule .2629 of this Section, the use of screens shall not be required if fans are provided and exclude insects.
- (2) In lieu of Rule .2618(h) of this Section at least a two-compartment domestic stainless steel sink which is large enough to submerge, wash, rinse and sanitize the cooking utensils, pots and pans shall be provided. One compartment shall be used for washing and the second compartment shall be used for rinsing and sanitizing. The second compartment shall be emptied and cleaned after rinsing and refilled to sanitize items in accordance with Rule .2619(a)(2) and (3); and .2619(b) of this Section. The sink shall have at least 18" drainboards on each end or an equivalent length of laminated counter top on each end for handling the dirty and clean items.
- (3) Existing painted brick or block walls which are not glazed, tiled, plastered or filled, but are smooth and washable shall be considered in compliance with Rule .2628(b), of this Section.
- (4) Only hot dogs, onions, and nachos and cheese shall be prepared in an athletic event food stand. Other foods from approved sources which are already cooked and individually wrapped, such as hamburgers, pizza or other foods that require no further preparation, may be delivered to and sold at the food stand. All cooked or portioned foods that have been prepared for use or sale shall be discarded, if not sold, at the end of the day. Chili and slaw may only be served

if purchased from an approved source and if temperatures are maintained in accordance with Rule .2609 of this Section. Customer self-service shall be limited to individually packaged condiments or pump or squirt dispensers.

- (5) Can cleaning facilities in Rule .2626(d) shall not be required if garbage can liners are used and garbage containers are kept clean.
- (6) Only single-service eating and drinking utensils shall be used in serving customers.
- (7) Domestic kitchen equipment may be used in lieu of the requirement of Rule .2617(d) of this Section. All refrigerators, hot food storage units or cooking equipment shall be capable of holding foods at a temperature of 45°F (7°C) or below or 140 degrees (60°C) or above.
- (8) Toilets shall not be required for customers.

Statutory Authority G.S. 130A-248.

SECTION .2800 - SANITATION OF CHILD DAY CARE FACILITIES

.2812 MANUAL CLEANING AND SANITIZING

(a) For manual washing, rinsing, and sanitizing of utensils and equipment, at least a three-compartment sink with drainboards shall be provided and used. Sink compartments shall be large enough to accommodate all foodservice utensils involved; and each compartment shall be supplied with hot and cold water.

(b) Drainboards of adequate size shall be provided for proper handling of soiled utensils prior to washing and cleaned utensils following sanitizing.

(c) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(d) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual washing, rinsing, and sanitizing shall be conducted in the following sequence:

- (1) Sinks shall be cleaned prior to use.
- (2) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is kept clean.
- (3) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.

(4) The food-contact surfaces of equipment and utensils shall be sanitized in the third compartment by:

- (A) Immersion for at least one minute in clean, hot water at a temperature of at least 170°F; or
- (B) Immersion for at least two minutes in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75°F (24°C); or
- (C) Immersion for at least two minutes in a clean solution containing at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); or
- (D) Immersion for at least two minutes in a clean solution containing at least 200 parts per million of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used.

(e) For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, a spray-on or wipe-on sanitizer shall be used. ~~When spray-on or wipe-on sanitizers are used, the chemical strengths shall be twice those required for sanitizing multi-use eating and drinking utensils.~~ Spray-on or wipe-on sanitizers shall be prepared daily and kept on hand for bactericidal treatment.

(f) When hot water is used for sanitizing, the following facilities shall be provided and used:

- (1) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F; and
- (2) A numerically scaled indicating thermometer, accurate to $\pm 3^\circ$ F, convenient to the sink for frequent checks of water temperature; and
- (3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.

(g) A suitable testing method or equipment shall be available, convenient, and regularly used to test chemical sanitizers to insure minimum prescribed strengths.

(h) After sanitization, all equipment and utensils

shall be air dried.

Statutory Authority G.S. 110-91.

SECTION .3000 - BED AND BREAKFAST INNS

.3008 FOOD SERVICE UTENSILS AND EQUIPMENT AND THEIR CLEANING

(a) Domestic kitchen equipment may be used.
 (b) Multi-use eating and drinking utensils shall be washed, rinsed, sanitized and air-dried after each usage. One of the following methods shall be used:

- (1) Utensils shall be washed, rinsed, and sanitized in a dishmachine which is constructed, operated and maintained in accordance with National Sanitation Foundation Standards or equal;
- (2) Utensils shall be washed, rinsed and sanitized by immersion in a three-compartment sink; or
- (3) Utensils shall be washed and rinsed in a domestic dishwasher and sanitized by immersion in a sink other than the handwash lavatory.

(c) If sanitization is accomplished by immersion, it shall be by one of the following methods:

- (1) immersion for at least one minute in clean hot water at least 170 degrees F (77 degrees C). A thermometer accurate to $+ 3$ degrees F (1.5 degrees C) shall be available and convenient to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170 degrees F (77 degrees C) in the third compartment at all times when utensils are being washed shall be provided. The heating device may be integral with the immersion compartment.
- (2) at least two minutes in a clean, tested solution containing:
 - (A) at least 50 parts per million of available chlorine of at least 75 degrees F (24 degrees C); or
 - (B) at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and a temperature of at least 75 degrees F (24 degrees C); or
 - (C) at least 200 parts per million of quaternary ammonium products and having a temperature of at least 75

degrees F (24 degrees C) provided that the product is labeled to show that it is effective in water having a hardness value of at least equal to that of the water being used.

(d) All eating, drinking, and food preparation utensils shall be air-dried and handled and stored in a manner to prevent contamination.

(e) All multi-use utensils except baking sheets and similar cooking utensils, not used for table service, that are used in the storage, preparation, or serving of food shall be cleaned and sanitized after each use. Baking sheets and similar cooking utensils, not used for table service, which are continually subjected to high temperatures do not require sanitizing after each use, but shall be kept clean and maintained in good repair.

(f) For utensils and equipment which are either too large or impractical to sanitize in the sink or dishwashing machine, a spray-on or wipe-on sanitizer may be used. ~~When spray-on or wipe-on sanitizers are used, the chemical strength shall be twice that required for sanitizing multi-use eating and drinking utensils.~~

(g) Food service equipment shall be easily cleanable and kept in good repair. All surfaces with which food or drink comes in contact shall consist of smooth, not readily corrodible, non-toxic material such as stainless steel, phenolic resin, marble slabs, or tight wood in which there are no open cracks or joints that will collect food particles and slime, and be readily accessible for cleaning. A separate lavatory, including hot and cold running water, and a combination supply faucet or tempered water shall be provided in the kitchen or an adjacent area. Soap and sanitary towels shall be provided. By January 1, 1995, potentially hazardous foods shall be kept in refrigeration units that meet National Sanitation Foundation standards or equal.

(h) All equipment and fixtures shall be kept clean. Cooking surfaces of equipment shall be cleaned at least once each day. Non-food contact surfaces of equipment shall be cleaned at such intervals as to keep them in a sanitary condition.

(i) No polish or substance containing cyanide or other poisonous materials shall be used for the cleaning or polishing of eating or cooking utensils.

(j) Disposable utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used and shall be handled in a sanitary manner. Disposable articles shall be made from non-toxic materials and shall be used only once.

(k) Storage facilities, including residential

kitchen cabinets, shall be kept clean and free of pests.

Statutory Authority G.S. 130A-248.

CHAPTER 25 - LOCAL STANDARDS

SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENTS

.0201 MANDATED SERVICES

The following is a list of mandated services required to be provided in every county of this state. The local health department shall provide or ensure the provision of these services:

- (1) Adult Health;
- (2) Home Health;
- (3) Dental Public Health;
- (4) Food, Lodging and Institutional Sanitation;
- (5) Individual On-Site Water Supply;
- (6) Sanitary Sewage Collection, Treatment and Disposal;
- (7) Grade-A Milk Sanitation;
- (8) Communicable Disease Control;
- (9) Vital Records Registration;
- (10) Maternal Health;
- (11) Child Health;
- (12) Family Planning;
- (13) Public Health Laboratory Support;
- (14) Lead Investigation and Abatement.

Statutory Authority G.S. 130A-9.

.0213 FOOD, LODGING/INST SANITATION/PUBLIC SWIMMING POOLS/SPAS

(a) A local health department shall provide food, lodging, and institutional sanitation and public swimming pools and spas services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

- (1) The frequency of inspections of food, lodging, and institutional facilities and public swimming pools and spas with the following being the minimum:

Type of Establishment	Frequency
Bed and breakfast homes	1/year
Bed and breakfast inns	1/6 months
<u>Catered Elderly Nutrition Sites</u>	<u>1/year</u>
Child day-care facilities	2/year
Institutions	2/year
Local confinement facilities	1/year
Lodging	1/year
Meat markets	4/year
Meat markets which are closed for a period of 60 days or more	1/3 months of operation (or part thereof)
Migrant housing water and sewage evaluation	1/year
Mobile food units	4/year
Private boarding schools and colleges	1/year
Public swimming pools and spas	1/operational season
Pushcarts	4/year
Residential care facilities	1/year
Restaurants	1/quarter
Schools	1/year
Summer camps	1/year

For the purpose of restaurant inspections, a food sampling inspection shall fulfill the requirement of an inspection provided a minimum of three distinct samples are taken from the restaurant. A maximum of one food sampling inspection per restaurant, per year, may be used to meet the quarterly inspection requirement for restaurants.

- (2) Provisions for investigating complaints and suspected outbreaks of illness associated with food, lodging, and institutional facilities, and public swimming pools. Corrective actions shall be taken in cases of valid complaints and confirmed outbreaks of illness.
- (3) Provisions for keeping records of activities described in Subparagraphs ~~Paragraphs~~ (a) (1) and (2) of this Rule.

(b) A local health department shall establish, implement, and maintain written policies for the provision of sanitation education for food service personnel and orientation and in-service training for sanitarians. The policies shall include the following minimum requirements for sanitarians providing food, lodging, and institutional sanitation services:

- (1) Initial field training for newly employed sanitarians;
- (2) CDC Homestudy Course 3010-G or its equivalent as approved by the Division of Environmental Health;
- (3) North Carolina State University Food Protection Short Course or its equivalent as approved by the Division of Environmental Health; and
- (4) Compliance with the Board of Sanitarian Examiners' requirements.

Statutory Authority G.S. 130A-9.

.0217 LEAD INVESTIGATION AND ABATEMENT

(a) A local health department shall provide lead investigation and abatement services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

- (1) Provisions for an investigation for sources of lead for children less than 6 years of age with a blood lead level of 25 micrograms per deciliter or higher;
- (2) Provisions for the reporting of lead hazards to the property owner and occupant;
- (3) Provisions for the review and approval of abatement plans submitted for approval of the local health department;
- (4) Provisions for the enforcement of abatement plans or orders by local employees delegated authority by the state;
- (5) Provisions for keeping records of activities described in Subparagraphs (a) (1), (2), (3) and (4) of this Rule.

(b) A local health department shall establish, implement, and maintain written policies for the provision of orientation and in-service training for employees providing lead investigation and abatement services. The policies shall include the following minimum requirements for employees providing lead investigation and abatement service:

- (1) Initial field training for newly employed individuals;
- (2) CDC Homestudy Course 3010-G or its' equivalent is approved by the Division of Environmental Health;
- (3) A Lead Investigation and Abatement Workshop as approved by the Division of Environmental Health;
- (4) Registration by the Board of Sanitarian Examiners.

Statutory Authority G.S. 130A-131.5.

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to adopt rule cited as 16 NCAC 1A .0006.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted at 9:30 a.m. on April 15, 1993 at the State Board Room, 7th Floor, Education Bldg., 301 N. Wilmington St., Raleigh, NC 27601-2825.

Reason for Proposed Action: Rule is needed to comply with G.S. 150B-21.

Comment Procedures: Any interested person may submit views either in writing prior to or at the hearing or orally at the hearing.

CHAPTER 1 - DEPARTMENT RULES

SUBCHAPTER 1A - ORGANIZATIONAL RULES

.0006 PETITIONS FOR RULE-MAKING

(a) Any person wishing to submit a petition requesting the adoption, amendment or repeal of a rule by the State Board of Education shall address a petition to Superintendent of Public Instruction, 301 North Wilmington Street, Raleigh, North Carolina 27601-2825. The container of the petition should clearly bear the notation: RULEMAKING PETITION RE: and then the subject area.

(b) The petition must contain the following information:

- (1) an indication of the subject area to which the petition is directed;
- (2) either a draft of the proposed rule or a summary of its contents;
- (3) reasons for proposal;
- (4) effect on existing rules or orders;
- (5) any data supporting the proposal;
- (6) effect of the proposed rule on existing practices in the area involved, including cost factors;
- (7) names or a description of those most likely to be affected by the proposed rule; and
- (8) name and address of petitioner.

(c) The Superintendent will transmit the petition to the State Board of Education within 60 days after receiving the petition. The State Board makes the decision whether to grant or deny the petition.

Statutory Authority G.S. 150B-21.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rules cited as 16 NCAC 6C .0202 and .0310.

The proposed effective date of this action is July 1, 1993.

The public hearing will be conducted: 16 NCAC 6C .0202 - 10:00 a.m. and 16 NCAC 6C .0310 - 11:00 a.m. on April 15, 1993 at the State Board Room, 7th Floor, Education Bldg., 301 N. Wilmington Street, Raleigh, NC 27601-2825.

Reason for Proposed Action:

16 NCAC 6C .0202: Amendment provides optional method for approval of teacher education programs.

16 NCAC 6C .0310: Amendment increases minimum knowledge requirements for beginning teachers.

Comment Procedures: Any interested person may submit views either in writing prior to or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6C - PERSONNEL

SECTION .0200 - TEACHER EDUCATION

.0202 APPLICATION FOR APPROVAL; CRITERIA

(a) Each IHE which seeks SBE approval for any teacher education program must file with the Department a preliminary application in the form prescribed by the SBE.

(b) The IHE will engage in self-study in accordance with the existing NCATE/state protocol agreement.

(c) When the IHE has completed all preparation phases of the self-study, the Department shall send a visitation committee to verify the reports for all specialty areas for which approval is sought.

(d) The SBE shall notify IHEs which are denied approval of the reasons for denial. The IHE may reapply after it has corrected the conditions which led to the denial of approval.

(e) Each approved IHE shall continually review its programs. The SBE will annually monitor student performance based upon required examinations and progression toward continuing certification. The IHE may request or the SBE may conduct a re-evaluation at any time.

(f) During the final year of the current approval period, the IHE shall arrange for a re-approval committee visit.

(g) Approved IHEs shall make annual reports of such information as the SBE requests.

(h) The SBE must approve any revisions to approved programs.

(i) The SBE must approve each teacher education program before an IHE may recommend its graduates for certification. In making recommendations to the SBE and in determining the approval status of an IHE teacher education program and its specialty area program, such as mathematics or science, the state evaluation committee and the SBE, respectively, will weigh the following criteria:

- (1) SACS accreditation of the IHE;
- (2) either:

(A) full accreditation or accreditation with stipulations of the professional education unit by the national council for accreditation of teacher education (NCATE) at the basic and advanced levels, as appropriate; or

(B) approval of the professional education unit by the state program approval process as follows:

- (i) the standards for unit approval must be equal to or higher than those applied by NCATE; and
- (ii) the state review team must include out-of-state evaluators.

(3) approval of all IHE specialty area programs by the state program approval process in accordance with established SBE rules at the undergraduate and graduate levels, as appropriate;

(4) evidence that the IHE requires a 2.50 grade point average on a 4.00 scale for formal admission into teacher education;

(5) evidence that during the two preceding consecutive years, 70 percent of the graduates of the IHE have passed the NTE on professional knowledge and on appropriate specialty area tests as established by Rule .0310 of this Subchapter;

(6) evidence that during the two preceding

- consecutive years, 95 percent of the graduates of the IHE employed by public schools in the State have earned a continuing certificate as provided by Rule .0304 of this Subchapter; and
- (7) evidence that faculty members assigned by the IHE to teach undergraduate or graduate methods courses or to supervise field experiences for prospective teachers hold valid North Carolina teachers' certificates in the area(s) of their assigned responsibilities.

Authority G.S. 115C-12(9)a; 115C-296(b); N.C. Constitution, Article IX, Sec. 5.

SECTION .0300 - CERTIFICATION

.0310 STANDARD EXAMINATIONS

- (a) The NTE are the standard examinations required for initial certification.
- (1) For formal admission into an approved teacher education program, a person must score at least ~~643~~ 646 on the Communication Skills Test and ~~641~~ 645 on the General Knowledge Test. These requirements apply to person who have not passed these tests by January 1, 1990. ~~The score on the Communication Skills Test shall be 646 and the score on the General Knowledge Test shall be 645 as of July 1, 1992.~~ These requirements do not apply to persons whose specialty area is school social work, school counseling or school psychology.
- (2) All applicants for initial certification must score at least ~~646~~ 649 on the Professional Knowledge Test.
- (3) In addition to the Professional Knowledge Test, each applicant for initial certification must meet minimum teaching area scores as follows:

Specialty Area		eff. 7-1-93	eff. 7-1-94
(A) Agriculture			
(B) Art Education	<u>500</u>	<u>530</u>	
(C) Audiology	<u>570</u>	<u>590</u>	
(D) Biology	<u>510</u>	<u>540</u>	
(E) Biology and General Science	<u>550</u>	<u>570</u>	
(F) Business Education	<u>530</u>	<u>560</u>	
(G) Chemistry	<u>460</u>	<u>490</u>	
(H) Chemistry, Physics and General Science	<u>510</u>	<u>530</u>	<u>550</u>
(I) Early Childhood Education	<u>500</u>	<u>530</u>	
(J) Earth/Space Science	<u>470</u>	<u>500</u>	
(K) Earth/Space Science (Middle Grades Science)	<u>470</u>	<u>500</u>	
(L) Education in the Elementary School	<u>520</u>	<u>540</u>	
(M) Education of the Mentally Retarded	<u>510</u>	<u>540</u>	
(N) Educational Leadership: Administration and Supervision	<u>520</u>	<u>590</u>	
(O) English Language and Literature	<u>490</u>	<u>520</u>	
(P) English Language and Literature (Middle Grades Language Arts)	<u>400</u>	<u>460</u>	
(Q) French	<u>500</u>	<u>540</u>	
(R) German	<u>470</u>	<u>500</u>	
(S) Health Education	<u>550</u>	<u>580</u>	
(T) Home Economics Education	<u>510</u>	<u>540</u>	
(U) Industrial Arts <u>Technology</u> Education	<u>530</u>	<u>570</u>	

(V)	Introduction to the Teaching of Reading	470	540	
(W)	Library Media Specialist	550	590	
(X)	Marketing Education	620	660	
(Y)	Mathematics	540	520	540
(Z)	Mathematics (Middle Grades Mathematics)	490	510	
(AA)	Music Education	500	550	
(BB)	Physical Education	550	570	
(CC)	Physics	470	510	
(DD)	Reading Specialist	540	570	
(EE)	School Guidance and Counseling	500	570	
(FF)	School Psychologist	590	620	
(GG)	Social Studies	540	540	
(HH)	Social Studies (Middle Grades Social Studies)	480	500	
(II)	Spanish	500	520	
(JJ)	Special Education (Cross Categorical)	440	510	
(KK)	Speech Communication	540	530	
(LL)	Speech-Language Pathology	550	550	
(MM)	Teaching Emotionally Disturbed Students	590	620	
(NN)	Teaching English as a Second Language	520	520	
(OO)	Teaching Hearing Impaired Students	590	620	
(PP)	Teaching Learning Disabled Students	500	540	
(QQ)	Teaching Visually Handicapped Students	550	550	

(4) If no teaching area score is possible under Paragraph (a)(3) of this Rule, the Professional Knowledge score satisfies the NTE requirement.

(5) Based on the special nature of the preparation for certification. School Social Workers are excluded from NTE regulations and School Psychologists are required to take only the Area examination for School Psychologists.

(b) Instead of the NTE scores an applicant, except a North Carolina approved program graduate at the Class A level, may be certified on the basis of the Graduate Record Examinations with minimum scores of 380 on the Verbal Ability, 410 on the Quantitative Ability, and 380 on the Analytical Ability examinations.

Authority G.S. 115C-12(9)a; N.C. Constitution, Article IX, Sec. 5.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Landscape Architects intends to amend rules cited as 21 NCAC 26 .0203, .0301; or repeal rules cited as 21 NCAC 26 .0204; and adopt rules cited as 21 NCAC 26 .0205 - .0211.

The proposed effective date of this action is June 1, 1993.

The public hearing will be conducted at 10:00 a.m. on March 30, 1993 at the North Raleigh Hilton, 3415 Wake Forest Rd., Raleigh, NC 27609.

Reason for Proposed Action:

21 NCAC 26 .0203 - .0211 - To make clear and strengthen rules governing practice and conduct.

21 NCAC 26 .0301 - To reflect current needs in education and experience.

Comment Procedures: North Carolina Board of Landscape Architects, 3733 Benson Dr., Raleigh, NC 27609.

CHAPTER 26 - LICENSING BOARD OF LANDSCAPE ARCHITECTS

SECTION .0200 - PRACTICE OF REGISTERED LANDSCAPE ARCHITECTS

.0203 GENERAL OBLIGATIONS OF

PRACTICE: MANDATORY STANDARDS

(a) A registered landscape architect should always act and practice in a manner that reflects creditably upon the honor and dignity of the profession of landscape architecture.

(b) Practice of the profession of landscape architecture calls for individuals of high integrity, judgment, business capacity and artistic and technical ability. A landscape architect's honesty of purpose must be above suspicion. A landscape architect acts as professional advisor to the client and as a consultant to other design professionals (e.g. architects and professional engineers) and the advice must be unprejudiced.

(c) A landscape architect shall further the health, safety and welfare of the public and advance the profession by constantly striving to provide a high level of professional services, avoiding even the appearance of improper conduct as defined herein.

(d) A landscape architect shall serve the public, the client and employer with integrity, understanding, knowledge and creative ability, and shall respond morally to social, political, economic and technological influences.

(e) A landscape architect has a social and environmental responsibility to reconcile the public's needs and the natural environment.

(b) The following practices constitute "dishonest practice" within the meaning of G.S. 89A-7:

- (1) ~~for a licensee to fails to place his name and seal on all plans and specifications which he prepares and issues for the use of others;~~
- (2) ~~to use or to permit the name or the professional seal of the landscape architect to be used on plans or specifications or other professional documents not personally prepared, or prepared in the office and under the immediate supervision of such landscape architect;~~
- (3) ~~to make any false or deliberately misleading statements in an application for examination or in any statements or representations to this board, to a client, or to another landscape architect;~~
- (4) ~~to violate the laws of North Carolina or of any other state relating to the practice of landscape architecture, or to violate any rule of this board;~~
- (5) ~~to use or attempt to use the title or seal under a certificate or permit renewed.~~

(e) The following representations or acts constitute "unprofessional conduct" within the meaning of G.S. 89A-7:

- (1) ~~to use any gift or donation as a device for obtaining competitive advantage over another landscape architect;~~
- (2) ~~to do any act that would falsely or maliciously injure the professional reputation, prospects, practice or employment position of another landscape architect;~~
- (3) ~~to allow one's name to be associated with an undertaking in any professional capacity unless he has served specifically in that capacity;~~
- (4) ~~to undertake, in any form, the execution or construction work or planting on any basis which would impair the objectivity of the landscape architect's advice to his client;~~
- (5) ~~to receive compensation in whole or in part from commissions from commercial or speculative profit emanating from materials or services provided to a client by others;~~
- (6) ~~to accept payment from nurserymen, gardeners, superintendents, contractors, material men, etc. for obtaining employment or sales for them;~~
- (7) ~~to offer payment directly or indirectly to others in order to obtain work;~~
- (8) ~~to engage in any false, deceptive, fraudulent or misleading advertising.~~

(d) The following acts or omissions are deemed to be "incompetence" within the meaning of G.S. 89A-7:

- (1) ~~to fail to use diligence in planning, supervising or inspecting landscape work directly resulting in improper and unprofessional practices and results;~~
- (2) ~~to plan, perform, or supervise work for clients in such manner and with such results as to be below the level of professional competency exercised by and expected of other landscape architects in the area;~~
- (3) ~~to be guilty of such acts or omissions as to demonstrate to the satisfaction of the Board that the holder of the certificate is mentally incompetent or habitually addicted to alcohol or drugs as to render the licensee unfit to continue professional practice.~~

Statutory Authority G.S. 89A-3(c); 89A-7.

.0204 CORPORATE PRACTICE

(a) ~~An application for certificate shall be made~~

upon forms provided by the Board, accompanied by the required corporate application fee.

(b) ~~Corporate certificates of registration shall remain effective from date of issue until June 30 following date of such registration. The renewal of annual corporate certificates will be made upon written application of the holder accompanied by renewal fee of fifty dollars (\$50.00).~~

(c) ~~Failure to apply for renewal of corporate certificate requires automatic revocation of the certificate. Such revoked certificate may be reinstated within 12 months from date of revocation upon payment of the required renewal fee plus the required late payment penalties if the Board finds such corporation is then otherwise qualified and entitled to renewal of certificate or registration.~~

(d) ~~All rules of the Board applicable to individual landscape architects shall apply equally to corporate practice and to the practice of licensees as officers or employees of such corporation. All corporations, whether organized under the Business Corporation Act, Chapter 55, or the Professional Corporation Act, Chapter 55B, shall be required to obtain a certificate for corporate practice prior to using the designation "Landscape Architect", "Landscape Architecture" or "Landscape Architectural".~~

(e) ~~A foreign landscape architectural corporation may qualify and receive a corporate certificate for corporate practice in North Carolina upon a showing satisfactory to the Board that it conforms with the General Statutes of North Carolina and the rules of this board. The same application and certificate fee and renewal fees shall be applicable to firms incorporated in other states as is required for North Carolina corporations.~~

(f) ~~All landscape architectural firms incorporated after April 15, 1971 must be incorporated under the Professional Corporation Act, G.S. 55B. Firms incorporated for landscape architectural practice before April 15, 1971, may apply for certificate under the Business Corporation Act, G.S. 55.~~

Statutory Authority G.S. 89A-3(c); 55B-15.

.0205 FORMS OF PRACTICE

(a) General. The practice of landscape architecture may be carried on by sole practitioners, partnerships, or within professional corporations registered with the Board to perform landscape architectural services, provided all those who practice are duly licensed, and the firm is properly described and defined by its name and title.

(b) Partnership Practice. Whenever the practice of landscape architecture is carried on by partnership, at least one partner shall be a landscape architect.

(c) An application for corporate practice shall be made upon forms provided by the Board accompanied by the required corporate application fee.

(d) Corporate certificates of registration shall remain effective from date of issue until June 30 following date of such registration. The renewal of annual corporate certificates will be made upon written application of the holder accompanied by the required renewal fee.

(e) Failure to apply for renewal of corporate certificate requires automatic revocation of the certificate. Such revoked certificate may be reinstated within 12 months from the date of revocation upon payment of the required renewal fee plus the required late payment penalties if the Board finds such corporation is then otherwise qualified and entitled to renewal of certificate of registration.

(f) All rules of the Board applicable to individual landscape architects shall apply equally to corporate practice and to the practice of licensees as officers or employees of such corporation. All corporations, whether organized under the Business Corporation Act, Chapter 55, or the Professional Corporation Act, Chapter 55B, shall be required to obtain a certificate for corporate practice prior to using the designation "Landscape Architect", "Landscape Architecture" or "Landscape Architectural".

(g) A foreign landscape architectural corporation may qualify and receive a corporate certificate for corporate practice in North Carolina upon a showing satisfactory to the Board that it conforms with the General Statutes of North Carolina and the rules of this Board. The same application and certificate fee and renewal fees shall be applicable to firms incorporated in other states as are required for North Carolina corporations.

(h) All landscape architectural firms incorporated after April 15, 1971 must be incorporated under the Professional Corporation Act, G.S. 55B. Firms incorporated for landscape architectural practice before April 15, 1971 may apply for certificate under the Business Corporation Act, G.S. 55, accompanied by the required corporate application fee.

(i) An application for corporate practice shall be made upon forms provided by the Board, accompanied by the required corporate application fee.

(j) Public Agency Practice. A landscape architect employed by a public agency, including

educational institutions, shall be considered to be an individual practitioner with the public as the client.

(k) Combined Design and Construction (Design-Build) Practice. When a landscape architect operating under the same sole proprietorship or partnership (a professional corporation typically cannot offer non-professional services such as contracting, G.S. 55B) also serves a client as a contractor (e.g. landscape contractor or general contractor) or as an employee thereof, it is not possible for the landscape architect to furnish full-scope landscape architectural services (i.e. schematic design, design development, construction documents, bid/negotiation period and construction review) without a conflict of interest. This is because the Landscape Architect's role following the completion of construction documents is to assist the client with reaching an agreement with a contractor and serving as the owner's representative during the construction period to impartially interpret the construction documents and review construction progress. Because of this inherent conflict of interest with construction services, the landscape architect who also provides contracting services shall do the following:

- (1) Use the term "limited landscape architectural services" in all representations to the public and the client.
- (2) Affix a notation on each construction drawing and the cover professional seal, stating "These construction drawings and technical specifications represent the full extent of the limited landscape architectural services provided for this project".

(l) Supervision of Practice. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have a registered landscape architect present and regularly employed in that office who shall have direct knowledge and supervisory control of such work, except field offices maintained only for the purpose of project construction administration shall have at least one qualified employee present with the supervising landscape architect maintaining control and making periodic visits.

Statutory Authority G.S. 89A-3(c).

.0206 NAME OF FIRM

(a) Exclusion of Non-Licensed Individuals. The name of a landscape architectural firm shall not include the proper name of any officer or employee who is not a licensed landscape architect,

geologist, land surveyor or professional engineer.

(b) Associate. The word "associate" may be used only with reference to a licensee who is a principal or regular employee of the firm. The plural form may be used only when justified by the number of licensees in addition to those licensees whose proper names are included in the firm name.

- (1) Example: Proper Name and (&) Associates shall refer to a principal landscape architect and at least two licensed landscape architectural employees.
- (2) Example: Proper Name Associates shall refer to at least one principal landscape architect and at least one licensed landscape architectural employee.
- (3) Example: Assumed Name Associates shall refer to at least one principal landscape architect and at least one licensed landscape architectural employee, or two or more principal landscape architects.

(c) Names Previously in Effect. This Rule shall not be construed to require any firm to seek approval of, or to change, any name duly adopted in conformity with board rules in effect at the date of such adoption.

Statutory Authority G.S. 89A-3(c).

.0207 APPLICATION OF PROFESSIONAL SEAL

(a) Use of Seal. The seal(s) the landscape architect(s) responsible for the work and the landscape architectural corporation seal, if appropriate, shall be applied to the following documents:

- (1) Drawings and specifications prepared for public agency approval.
- (2) Drawings and specifications issued for the purpose of bidding, negotiation or construction.
- (3) Reports of technical nature.
- (4) Letters and certificates of professional opinion.
- (5) Standard Design Documents. Drawings and specifications which utilize in whole or part "standard design documents" prepared by a public agency or another landscape architect registered in this state or another state or country may be sealed by the succeeding landscape architect registered in North Carolina provided:

- (A) the origin of the "standard design

documents" appears on each drawing or sheet of the documents prepared by the public agency or the original landscape architect;

(B) the succeeding North Carolina landscape architect clearly identifies all modifications of the standard design documents;

(C) the seal of the succeeding North Carolina landscape architect shall be placed on each sheet containing "standard design documents" is prima facie evidence that the landscape architect whose seal is affixed assumes responsibility for the adequacy of the standard design for its specific application in North Carolina, including conformance with applicable codes and ordinances.

(b) The seal(s) shall be applied only to documents prepared personally or under the immediate supervision of the landscape architect whose seal is affixed.

(c) Signature and Date. The individual's seal or facsimile thereof shall have the landscape architect's original signature across its face and the effective date shall be indicated below or elsewhere on the document.

(d) Co-authorship. When a document requiring a seal has been co-authored and by the landscape architect and another licensed design professional of another discipline, the landscape architect shall indicate by notation each portion for which he or she is responsible.

Statutory Authority G.S. 89A-3(c).

.0208 IMPROPER CONDUCT

(a) The following will constitute improper conduct: violation of board rules, dishonest practice, unprofessional conduct, incompetence, conviction of a felony, or addiction habits of such character as to render the landscape architect unfit to continue professional practice.

(b) Definition. "The appearance of improper conduct" is defined as "a circumstance which calls into question a landscape architect's professional conduct, motives or work performance."

(c) Duty of the Board. When the Board is notified in writing of a "an appearance of improper conduct" it shall send a "letter of inquiry" to the landscape architect allegedly involved. After receiving and considering the response from the landscape architect it may send additional "letters of inquiry" to the landscape architect and all other

persons allegedly involved.

(d) Findings of the Board. Upon consideration of responses to the inquiries the Board shall determine what action shall be taken:

- (1) If board determines that no disciplinary action is necessary, all parties previously contacted shall be informed by letter.
- (2) If the Board determines that there is "an appearance of improper conduct" but no formal hearing is warranted, the landscape architect shall be sent a "letter of warning" stipulating the Board's cause for concern and recommending corrective action by the landscape architect. Other persons previously contacted shall be informed that the Board has acted upon the matter. The "letter of warning" and related documents shall remain in the landscape architect's permanent file.
- (3) If the Board determines that a formal hearing should be held, the landscape architect and others allegedly involved shall be notified according to the statute on hearings.
- (4) If the Board determines that another person allegedly involved is an architect, geologist, land surveyor or professional engineer, relevant information shall be sent by letter to that person's professional board.

Statutory Authority G.S. 89A-3(c).

.0209 UNPROFESSIONAL CONDUCT

(a) The following representations or acts, among others, constitute "unprofessional conduct" within the meaning of G.S. 89A-7:

- (1) to violate a prescribed form of landscape architectural practice;
- (2) to misuse a prescribed form of firm name;
- (3) to misuse a professional seal, except as listed under dishonest practice;
- (4) to allow one's name to be associated with an undertaking in any professional capacity unless he has served specifically in that capacity;
- (5) to receive compensation in whole or in part from commissions from commercial or speculative profit emanating from materials or services provided to a client by others;
- (6) to accept payment from others such i.e.; contractors, material men, suppli-

ers for obtaining employment or sales for them;

- (7) to make exaggerated or misleading statements or claims to any personal qualifications, experience or performance;
- (8) to fail to disclose to a client or employer the existence of any financial interest which bears upon the services or project;
- (9) to fail to use a professional seal.

(b) Consequences. A determination of unprofessional conduct may result in revocation or suspension of certificate as provided in G.S. 89A-7. A determination of unprofessional conduct, after all appeals have been resolved, shall become public knowledge.

Statutory Authority G.S. 89A-3(c).

.0210 DISHONEST PRACTICE

(a) The following practices, among others, constitute "dishonest practice" within the meaning of G.S. 89A-7:

- (1) to use or permit the name or the professional seal of the landscape architect to be used on plans or specifications or other professional documents not personally prepared, or prepared under the immediate supervision of such landscape architect.
- (2) to directly or indirectly give, lend or promise anything of value to any person in order to obtain competitive advantage over another landscape architect or other design professional.
- (3) to knowingly make false statements about other's professional work or to maliciously injure or attempt to injure the prospects, practice or employment position of those so engaged.
- (4) to knowingly make any deceptive or false statements in an application for examination or in any statements or representations to this Board, to any public agency, to a prospective or actual client, or to another landscape architect.
- (5) to personally violate of the laws of North Carolina or of any other state or nation relating to the practice of landscape architecture, or to violate the laws of this Board or any other professional board.
- (6) to use or attempt to use the title or seal

under a certificate or permit which has been revoked or suspended.

(b) Consequences. Violation may result in revocation or suspension of certificate as provided in G.S. 89A-7.

(c) A determination of unprofessional conduct, after all appeals have been resolved, shall become public knowledge.

Statutory Authority G.S. 89A-3(c).

.0211 INCOMPETENCE

(a) The following acts or omissions, among others, are deemed to be "incompetence" within the meaning of G.S. 89A-7:

- (1) to attempt to perform professional services which are beyond the qualifications which the landscape architect and those who are engaged as consultants are qualified by education, training and experience in the specific technical areas involved;
- (2) to fail to use diligence in planning, designing, supervising, managing or inspecting landscape architectural projects directly resulting in improper and unprofessional practices and results;
- (3) to plan, perform, or supervise work for clients in such a manner and with such results as to be below the level of professional competency exercised and expected of other landscape architects of good standing who are practicing in the area;
- (4) to be guilty of such acts or omissions as to demonstrate to the satisfaction of the Board that the holder of the certificate is physically or mentally incompetent or habitually addicted to habits of such character as to render the licensee unfit to continue practice.

(b) Consequences. A determination of incompetence may result in revocation or suspension of certificate as provided in G.S. 89A-7.

(c) A determination of unprofessional conduct, after all appeals have been resolved, shall become public knowledge.

Statutory Authority G.S. 89A-3(c).

SECTION .0300 - EXAMINATION AND LICENSING PROCEDURES

.0301 EXAMINATION

(a) Notice. The Board shall hold at least one

examination during each year and may hold such additional examinations as may appear necessary. The secretary shall give public notice of the time and place for each examination at least 60 days in advance of the date set for the examination.

(b) Examination. The ~~Uniform National Examination for Landscape Architects~~ Landscape Architect Registration Examination published by the Council of Landscape Architectural Registration Boards shall be the examination given by the Board, so long as the Board shall remain a member of the Council of Landscape Architectural Registration Boards. The Board in its discretion may administer a state supplement to the Uniform National Examination as allowed by the Council.

(c) Qualified applicants who are admitted to the ~~Uniform National Examination~~ Landscape Architect Registration Examination who do not successfully complete all parts of the examination shall be admitted to as many subsequent Uniform National Examinations as necessary until the examination is successfully completed. Such applicants shall be required to pay the prescribed fees for the examination.

(d) Educational Equivalents. In allowing credit for education and experience in fulfilling the minimum qualification requirements established by statute, the Board will allow credit for educational experience as follows:

- (1) Degree in Landscape Architecture from accredited curriculum approved by the Board: Maximum Credit - 100 percent;
- (2) Degree in Landscape Architecture from non-accredited curriculum approved by the Board:
 - (A) first two years - 100 percent;
 - (B) succeeding years - 100 percent;
 - (C) maximum credit - 4 years.
- (3) Credits in landscape architecture from an accredited curriculum approved by the Board:
 - (A) each year - 100 percent;
 - (B) maximum credit - 4 $\frac{3}{4}$ years.
- (4) Credits in landscape architecture from a non-accredited curriculum approved by the Board:
 - (A) first two years - 100 percent;
 - (B) succeeding years - 67 percent;
 - (C) maximum credit - 4 $\frac{3}{4}$ years.
- (5) Degree (or credits toward a degree) in architecture, civil engineering, and ornamental horticulture, ~~planning, environmental design and similar or related curricula approved by the Board:~~

- (A) first two years - 100 percent;
 - (B) succeeding years - 50 percent;
 - (C) maximum credit - 3 years.
- (6) BS or AB Degree (or credits toward a degree) in curricula not covered in Rule .0301 (e)(5) as approved by the Board:

- (A) first two years - 75 percent;
 - (B) succeeding years - 25 percent;
 - (C) maximum credit - 2 years.
- (7) ~~Educational equivalency shall be based on full-time enrollment as prescribed by the institution of higher education attended.~~ Work at a community college shall be creditable only to the extent that a degree granting institution would accept the work toward the requirements of any degree described in Paragraph (d) of this Rule.

- (8) Education Equivalency shall be based on full-time enrollment as prescribed by the institution of higher education attended or based on the percentage of credits required for the degree being sought; assuming that one should earn 25% of the required credits each academic year.

- (9) Maximum cumulative educational credit shall be 4 years.

(e) Experience Equivalents. In allowing credit for education and experience in fulfilling the minimum qualification requirements established by statute, the Board will allow credit for professional experience as follows:

- (1) ~~Experience in a position of responsible charge in the offices of a landscape architect.~~ Practical training and experience in the office of a Landscape Architect in a position of responsible charge after receiving a degree in landscape architecture or related field.
 - (A) allowable credit - 100 percent;
 - (B) maximum credit - no limit.
- (2) ~~Practical training prior to acquisition of landscape architecture degree in continuous employment periods of 12 months or more.~~ Practical training and experience in the office of a Landscape Architect in periods of 12 months or more and after completing 75% of the requirements for a degree in landscape architecture or related field.
 - (A) allowable credit - ~~100~~ 75 percent;
 - (B) maximum credit - no limit.
- (3) ~~Practical training prior to acquisition of landscape architectural degree in contin-~~

~~uous employment periods of 12 months duration after completion of three years of college: Practical training and experience in the office of a Landscape Architect in periods of three months or more prior to completing 75% of the requirements for a degree in landscape architecture or related field.~~

(A) allowable credit - ~~75~~ 50 percent;

(B) maximum credit - no limit.

- (4) ~~Practical training prior to acquisition of landscape architecture degree in continuous employment periods of three to 12 months duration prior to completion of three years of college: Full-time research or teaching in a landscape architectural curriculum as approved by the Board.~~

(A) allowable credit - 50 percent;

(B) maximum credit - ~~no limit~~ 2 years.

- (5) ~~Full-time teaching or research in a collegiate curriculum approved by the Board: Employment by governmental agencies when diversified and comparable to employment in the office of a Landscape Architect, provided that the work is directly related to landscape architecture, and:~~

~~(A) allowable credit - 50 percent;~~

~~(B) maximum credit - 2 years.~~

~~(A) The supervisor is a licensed Landscape Architect.~~

~~(i) allowable credit - 100 percent;~~

~~(ii) maximum credit - no limit.~~

~~(B) The supervisor is not a Landscape Architect.~~

~~(i) allowable credit - 75 percent;~~

~~(ii) maximum credit - no limit.~~

- (6) ~~Employment by government agencies when diversified and comparable to employment in the office of a landscape architect provided that such work shall be directly related to landscape architectural work: Employment doing landscape architectural type work by an organization having employees perform such work in connection with projects owned or managed by the organization, and:~~

~~(A) The supervisor is a licensed Landscape Architect.~~

~~(i) (A) allowable credit - 100 percent;~~

~~(ii) (B) maximum credit - no limit.~~

~~(B) The supervisor is not a Landscape~~

Architect.

(i) allowable credit - 100 Percent;

(ii) maximum credit - no limit.

- (7) ~~Employment by an organization that has employees performing landscape architectural services in connection with projects used or owned by that organization when such employment is directly related to landscape architectural work: Employment or self-employment as an architect, or professional engineer (civil).~~

(A) allowable credit - ~~100~~ 75 percent;

(B) maximum credit - no limit.

- (8) ~~Employment or self-employment as an architect, engineer, designer or in fields directly related to landscape architecture as approved by the Board: Employment or self-employment as a professional engineer (other than civil engineer) nurseryman, horticulturist, land surveyor, landscape contractor, or in similar related activities approved by the Board.~~

(A) allowable credit - ~~100~~ 50 percent;

(B) maximum credit - ~~5 years~~ no limit.

- ~~(9) Employment or self-employment as a nurseryman, horticulturist, landscape contractor or in similar fields directly related to landscape architecture approved by the Board:~~

~~(A) allowable credit - 50 percent;~~

~~(B) maximum credit - 5 years.~~

- ~~(10) All experience and training equivalency shall be based on a full time work week of 40 hours and a work year of 2,000 hours. Part-time work shall be given proportional credit.~~

~~(f) Any applicant being considered without an accredited degree shall have at least two years of experience equivalency.~~

~~(g) Only one equivalency credit will be allowed when both educational equivalency and experience equivalency appear to be generated from an overlapping or identical activity or time.~~

- (9) ~~Experience credits shall be based on a full-time work week of 40 hours and a work year of at least 2,000 hours. Part-time work must be fully described and can be given proportional credit.~~

(10) ~~No credit will be given for experience of less than three months duration.~~

(11) ~~One cannot receive both educational credit and experience credit for the same period of time.~~

Statutory Authority G.S. 89A-3(c),(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Medical Examiners of the State of North Carolina intends to adopt rule cited as 21 NCAC 32B .0215 and amend rule(s) cited as 21 NCAC 32A .0001; 32B .0101, .0209-.0214, .0305, .0309, .0314, .0315; 32C .0002, .0003, .0006.

The proposed effective date of this action is June 1, 1993.

The public hearing will be conducted at 11:30 a.m. on March 30, 1993 at the NC Board of Medical Examiners Office, 1203 Front Street, Raleigh, NC 27609.

Reason for Proposed Action:

21 NCAC 32B .0215 - Rule is needed because a new national exam, USMLE, has been added to the exams available to applicants for licensure in NC.

21 NCAC 32A .0001 - Amended to give new address, phone number and PO mailing address.

21 NCAC 32B .0101 - Amended to include a new national exam, USMLE, as a basis for licensure in N.C., in the list that defines terms used throughout Subchapter 32B.

21 NCAC 32B .0209 - Amended to reflect fees to be charged for the new national licensing exam, USMLE.

21 NCAC 32B .0210 - Deadline is amended to give additional time for the Board's staff to process applications for the examination.

21 NCAC 32B .0211 - Amended to include the passing score requirement for the new national exam, USMLE.

21 NCAC 32B .0212 - Rule is amended to specify that exams given in June and December are licensing exams not Special Purpose Exams (SPEX) that are given 4 times a year.

21 NCAC 32B .0213 - Rule amended to ensure that physicians who have passed the exam meet the standards of the Board for graduate medical education and training and that additional background checks are made before license is issued

21 NCAC .32B .0214 - Rule is amended to allow the Assistant Executive Secretary to conduct licensure interviews.

21 NCAC 32B .0305 - Rule that lists exams accepted as basis for licensure is amended to include new national exam, USMLE.

21 NCAC 32B .0309 - Amended to allow the Assistance Executive Secretary to conduct interviews for licensure applicants.

21 NCAC 32B .0314 - Rule giving passing scores is amended to include passing scores required on new licensing exam, USMLE.

21 NCAC 32B .0315 - Rule amended to include the new national exam, USMLE, and combinations of exams given in 21 NCAC 32B .0215. It spells out the discretionary authority of the Board in granting licenses in accordance with guidelines listed.

21 NCAC 32C .0002 - Rule is amended to delete descriptive words in the name of a professional corporation to practice medicine.

21 NCAC 32C .0003 - Rule is amended to allow the Assistant Executive Secretary to sign certifying documents filed with the Secretary of State.

21 NCAC 32C .0006 - Rule is amended to allow the Assistant Executive Secretary to sign stock transfer documents to be kept on file in the corporations principal office.

Comment Procedures: Persons interested may present written or oral statements relevant to the actions proposed at a hearing to be held as indicated above. Written statements not presented at the hearing should be directed before April 15, 1993 to the following address: Administrative Procedures, NCBME, P.O. Box 26808, Raleigh, NC 27611-6808.

CHAPTER 32 - BOARD OF MEDICAL EXAMINERS

SUBCHAPTER 32A - ORGANIZATION

.0001 LOCATION

The location of the office of the Board of Medical Examiners is 4313 Navaho Drive, 1203 Front Street, Raleigh, North Carolina 27609. The phone number is (919) 876-3885 (919) 828-1212. The mailing address is Post Office Box 26808, Raleigh, North Carolina 27611-6808.

Statutory Authority G.S. 90-2.

SUBCHAPTER 32B - LICENSE TO PRACTICE MEDICINE

SECTION .0100 - GENERAL

.0101 DEFINITIONS

The following definitions apply to Rules within this Subchapter:

- (1) ACGME - Accreditation Council for Graduate Medical Education.
- (2) AOA - American Osteopathic Association.
- (3) Board - Board of Medical Examiners of the State of North Carolina.
- (4) ECFMG - Educational Commission for Foreign Medical Graduates.
- (5) Fifth Pathway - an avenue for licensure as defined in the Directory of Accredited Residencies 1977-1978, American Medical Association, pp. 30-32.
- (6) FLEX - Federation Licensing Examination (not administered after December 1993).
- (7) LCME - Liaison Commission on Medical Education.
- (8) SPEX - Special Purpose Examination.
- (9) AMA Physician's Recognition Award - American Medical Association recognition of achievement by physicians who have voluntarily completed programs of continuing medical education.
- (10) American Specialty Boards - specialty boards approved by the American Board of Medical Specialties.
- (11) USMLE - United States Medical Licensing Examination.

Statutory Authority G.S. 90-6.

SECTION .0200 - LICENSE BY WRITTEN EXAMINATION

.0209 FEE

(a) FLEX fee:

- (1) The fee for both components of the FLEX written examination taken together is two hundred and fifty dollars (\$250.00), plus the cost of test materials, due at the time of application.
- (2) ~~(b)~~ If the two FLEX components are taken separately, the fee for each component is due at the time of application for that component as follows:
 - (A) ~~(1)~~ for the first component, two hundred and fifty dollars (\$250.00) plus the cost of test materials;
 - (B) ~~(2)~~ for the second component, one hundred and fifty dollars (\$150.00) plus the cost of test materials.
- (b) USMLE fee - The fee for USMLE is two

hundred and fifty dollars (\$250.00), plus the cost of test materials, due at the time of the application.

(c) Fees are non-refundable.

~~(e) In the event the applicant fails to make a passing score on both components taken together or either component taken separately, the fee will not be refunded.~~

~~(d) In the event the applicant does not appear for the regularly scheduled examination or the application is withdrawn, no portion of the fee will be refunded.~~

Statutory Authority G.S. 90-15.

.0210 DEADLINE

All application materials must be in the Board's office at least 75 90 days prior to the written examination. The 75 90 day deadline may be waived on the certification of graduation requirement, Rule .0203 of this Section, if the applicant is either in attendance at a medical school approved by LCME or AOA located in North Carolina or is a citizen of the State of North Carolina. However, before the examination, the applicant must satisfy the certificate of graduation requirement as follows:

- (1) Not less than 75 90 days before the date of the examination, the Board must receive a letter from the dean of the applicant's medical school stating that the applicant is expected to complete all requirements for graduation prior to the date of the examination.
- (2) Prior to the date of the examination, the Board must receive a letter from the dean of the medical school stating that the applicant has completed all requirements for, and will receive, the M.D. degree from the medical school.
- (3) After the applicant's graduation, the Board must receive a letter from the applicant's medical school certifying the date on which the applicant received the M.D. degree. This certification must bear the signature of the dean or other official and the seal of the medical school.

Statutory Authority G.S. 90-9.

.0211 PASSING SCORE

To pass the FLEX written examination, the applicant is required to attain a score of at least 75 on FLEX Component I and a score of at least 75 on FLEX Component II. Components may be

taken in tandem. Any component that is failed may be retaken; however, Component II may not be taken alone unless the applicant has passed Component I within the last seven years. Both components must be passed within seven years of the date of taking the initial examination.

To pass Step 3 of the USMLE written examination, the applicant is required to attain a score of at least 75.

Statutory Authority G.S. 90-9; 90-12; 90-15.

.0212 TIME AND LOCATION

The Board holds two licensing examinations each year, one in June and one in December, in Raleigh, North Carolina.

Statutory Authority G.S. 90-5.

.0213 GRADUATE MEDICAL EDUCATION

AND TRAINING FOR LICENSURE

Before licensure, physicians who pass the written examination must furnish the following:

- (1) Board application questionnaire;
- (2) proof of graduate medical education and training taken after graduation from medical school as follows:
 - (a) (+)Graduates of medical schools approved by LCME or AOA must have satisfactorily completed one year of graduate medical education and training approved by ACGME or AOA.
 - (b) (2)Graduates of medical schools other than those approved by LCME or AOA must have satisfactorily completed three years of graduate medical education and training approved by ACGME or AOA;
- (3) letters from all training program directors since passing the written examination;
- (4) reports from all states in which the applicant has ever been licensed to practice medicine indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probationary terms (mailed directly from other state boards to the Board)
- (5) AMA Physician Profile (requested of AMA by the Board); and
- (6) Federation inquiry (requested of the Federation of State Medical Boards by the Board).

Statutory Authority G.S. 90-9.

.0214 PERSONAL INTERVIEW

To be eligible for the written examination, applicants who are graduates of medical schools not approved by the LCME or AOA must appear before the Executive Secretary or the Assistant Executive Secretary for a personal interview upon completion of all credentials. This interview must be conducted at least 75 days prior to the date of the examination.

Statutory Authority G.S. 90-6.

.0215 EXAMINATION COMBINATIONS

(a) To be eligible to take Part 3 of USMLE, an applicant must supply certification of a passing score on one of the examination combinations listed in Paragraph (c) of this Rule.

(b) The routine examination sequences are as follows:

- (1) National Board Part I
National Board Part II
National Board Part III
- (2) FLEX Component 1
FLEX Component 2
- (3) USMLE Step 1
USMLE Step 2
USMLE Step 3

(c) The following combinations are acceptable for licensure if completed prior to the year 2000:

- (1) National Board Part I or USMLE Step 1 plus
National Board Part II or USMLE Step 2 plus
National Board Part III or USMLE Step 3
- (2) FLEX Component 1 plus USMLE Step 3
- (3) National Board Part I or USMLE Step 1 plus
National Board Part II or USMLE Step 2 plus
FLEX Component 2

Statutory Authority G.S. 90-6; 90-9; 90-11.

SECTION .0300 - LICENSE BY ENDORSEMENT

.0305 EXAMINATION BASIS FOR ENDORSEMENT

(a) To be eligible for license by endorsement of credentials, graduates of medical schools approved by the LCME or AOA must supply certification of

passing scores on one of the following written examinations:

- (1) National Board of Medical Examiners;
- (2) FLEX - under Rule .0314 of this Section;
- (3) Written examination other than FLEX from the state board which issued the original license by written examination; ~~or~~
- (4) National Board of Osteopathic Examiners, all parts taken after January 1, 1990; or
- (5) USMLE - Step 1, Step 2, Step 3 of USMLE or a combination of examinations as set out in Rule .0215 of this Subchapter.

(b) Graduates of medical schools not approved by LCME or AOA must supply certification of passing scores on one of the following written examinations:

- (1) FLEX - under Rule .0314 of this Section; ~~or~~
- (2) Written examination other than FLEX from the state board which issued the applicant's original license by written examination together with American Specialty Board certification; or
- (3) USMLE - Step 1, Step 2, Step 3 of USMLE or a combination of examinations as set out in Rule .0215 of this Subchapter.

(c) A physician who has a valid and unrestricted license to practice medicine in another state, based on a written examination testing general medical knowledge, and who within the past five years has become, and is at the time of application, certified or recertified by an American Specialty Board, is eligible for license by endorsement.

(d) Applicants for license by endorsement of credentials with FLEX scores that do not meet the requirements of Rule .0314 of this Section must meet the requirements of Paragraph (c) in this Rule.

Statutory Authority G.S. 90-10; 90-13.

.0309 PERSONAL INTERVIEW

To be eligible for license by endorsement of credentials, applicants must appear before the Executive Secretary, Assistant Executive Secretary, a Board member, an agent of the Board, or the full Board for a personal interview upon completion of all credentials.

Statutory Authority G.S. 90-13.

.0314 PASSING EXAM SCORE

(a) FLEX - Physicians who have taken the FLEX examination may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:

- (1) FLEX taken before January 1, 1983 - A FLEX weighted average of 75 or more on a single three day examination is required.
- (2) FLEX taken after January 1, 1983 - A FLEX weighted average of 75 or more on a single three day examination, with a score not less than 70 on Day I, a score not less than 75 on Day II, and a score not less than 75 on Day III, is required.
- (3) FLEX taken after January 1, 1985:
 - (A) ~~(a)~~ A score of at least 75 on FLEX Component I and a score of at least 75 on FLEX Component II is required.
 - (B) ~~(b)~~ Components may be taken in tandem. Any component that is failed may be retaken; however, Component II may not be taken alone unless the applicant has passed Component I within the last seven years.
 - (C) ~~(c)~~ Both components must be passed within seven years of the date of taking the initial examination.

(b) USMLE - Physicians who have taken the USMLE may be eligible to apply for a license by endorsement of credentials if they meet the following score requirements:

- (1) A score of at least 75 is required on Step 3.
- (2) The USMLE Step 3 must be passed within seven years of the date of taking Step 1.

(c) Examination Combinations - Physicians who have taken combinations of examinations as set out in Rule .0215 of this Subchapter may be eligible to apply for a license by endorsement of credentials if they meet the score requirements of this Rule.

Statutory Authority G.S. 90-6; 90-10; 90-13.

.0315 TEN YEAR QUALIFICATION

~~(a) To be eligible for license by endorsement of credentials, Pursuant to the discretion granted in G.S. 90-13, the Board may issue a license to any applicant without examination using the following guidelines.~~

- (1) In addition to all other requirements for licensure, an applicant who has not met

one of the following qualifications within the past ten years of the date of the application to the Board, must take the SPEX, or other examination as determined by the Board, and attain a score of at least 75:

- (a) ~~(1)~~ National Board of Medical Examiners certification;
- (b) ~~(2)~~ ~~FLEX~~ Exam scores as required under Rule .0314 of this Section;
- (c) ~~(3)~~ SPEX score of at least 75;
- (d) ~~(4)~~ certification or re-certification from a specialty board recognized by the American Board of Medical Specialties; ~~or~~
- (e) ~~(5)~~ completion of formal postgraduate medical education as required under Rule .0313 of this Section; or
- (f) examination combinations as set out in Rule .0215 of this Subchapter.

- (2) ~~(b)~~ The SPEX requirement may be waived by the Board upon receipt of a current AMA Physician's Recognition Award.

~~(e) This requirement is in addition to all other requirements for licensure and may be applied as the Board deems appropriate.~~

Statutory Authority G.S. 90-11; 90-13.

SUBCHAPTER 32C - PROFESSIONAL CORPORATIONS

.0002 NAME OF PROFESSIONAL CORPORATION

The following requirements must be met regarding the name of a professional corporation to practice medicine:

- (1) The name shall not include any adjectives or other words not in accordance with ethical customs of the medical profession. ~~or any words descriptive of medical or surgical specialties unless the specialty designation is preceded by another modifying word or words, such as a geographical area or a proper name.~~
- (2) The professional corporation may not use any name other than its corporate name.
- (3) A shareholder may authorize the retention of his surname in the corporate name after his retirement or inactivity because of age

or disability, even though he may have disposed of his stock. The estate of a deceased shareholder may authorize the retention of the deceased shareholder's surname in the corporate name after the shareholder's death.

- (4) If a living shareholder in a professional corporation whose surname appears in the corporate name becomes a "disqualified person" as defined in the Professional Corporation Act, the name of the professional corporation shall be promptly changed to eliminate the name of the shareholder, and the shareholder shall promptly dispose of his stock in the corporation.

Statutory Authority G.S. 55B-5; 55B-7; 55B-12.

.0003 PREREQUISITES FOR INCORPORATION

(a) Before filing the articles of incorporation for a professional corporation with the Secretary of State, the incorporators shall file with the Executive Secretary of the Board:

- (1) the original articles of incorporation;
- (2) an additional executed copy of the articles of incorporation;
- (3) a copy of the articles of incorporation;
- (4) a registration fee of fifty dollars (\$50.00) set by Rule .0008 of this Section;
- (5) a certificate (P.C. Form 1) certified by all incorporators, setting forth the names and addresses of each person who will be employed by the corporation to practice medicine for the corporation, and stating that all such persons are duly licensed to practice medicine in North Carolina, and representing that the corporation will be conducted in compliance with the Professional Corporation Act and these Rules;
- (6) a certificate (P.C. Form 2) for the Executive Secretary or the Assistant Executive Secretary of the Board to sign certifying that at least one of the incorporators and each of the persons named as original shareholders is licensed to practice medicine in North Carolina.

- (b) The Executive Secretary or Assistant Execu-

tive Secretary shall review the articles of incorporation for compliance with the laws relating to professional corporations and with these Rules. If they comply, the Executive Secretary or Assistant Executive Secretary shall sign P.C. Form 2 and return the original articles of incorporation and the copy to the incorporators for filing with the Secretary of State. The executed copy of the articles of incorporation shall be retained in the office of the Board. If the articles of incorporation are subsequently changed before they are filed with the Secretary of State, they shall be re-submitted to the Board and shall not be filed with the Secretary of State until approved by the Board.

Statutory Authority G.S. 55B-4; 55B-10; 55B-12.

.0006 CHARTER AMENDMENTS AND STOCK TRANSFERS

The following general provisions shall apply to all professional corporations to practice medicine:

- (1) All changes to the articles of incorporation of the corporation shall be filed with the Board for approval before being filed with the Secretary of State. A copy of the changes filed with the Secretary of State shall be sent to the Board within ten days after filing with the Secretary of State.
- (2) The Executive Secretary or Assistant Executive Secretary shall issue the certificate (P.C. Form 5) required by G.S. 55B-6 when stock is transferred in the corporation. P.C. Form 5 shall be permanently retained by the corporation. The stock books of the corporation shall be kept at the principal office of the corporation and shall be subject to inspection by the Executive Secretary or his designee during business hours.

Statutory Authority G.S. 55B-6; 55B-12.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

COMMERCE

Banking Commission

4 NCAC 3F .0402 - Required and Permissible Investments RRC Objection 01/21/93

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0308 - Specific Use Standards for Ocean Hazard Areas RRC Objection 11/19/92
 Rule Returned to Agency 12/17/92
RRC Objection 01/21/93

Environmental Management

15A NCAC 2H .1103 - Definitions RRC Objection 02/18/93
 15A NCAC 2H .1110 - Implementation RRC Objection 02/18/93

Wildlife Resources and Water Safety

15A NCAC 10I .0001 - Definitions RRC Objection 10/15/92
 Agency Responded No Action 11/19/92
 Agency Responded No Action 12/17/92

HUMAN RESOURCES

Medical Assistance

10 NCAC 26D .0012 - Time Limitation RRC Objection 12/17/92
 Agency Withdrew Rule 12/17/92
 10 NCAC 26N .0201 - Offer to Counsel RRC Objection 12/17/92
 Agency Withdrew Rule 12/17/92

INDEPENDENT AGENCIES

N.C. Housing Finance Agency

24 NCAC 1M .0202 - Eligibility RRC Objection 10/15/92
 No Response from Agency No Action 11/19/92
 No Response from Agency No Action 12/17/92
 24 NCAC 1M .0204 - Selection Procedures RRC Objection 10/15/92
 No Response from Agency No Action 11/19/92
 No Response from Agency No Action 12/17/92
 24 NCAC 1M .0205 - Administration RRC Objection 10/15/92
 No Response from Agency No Action 11/19/92
 No Response from Agency No Action 12/17/92

24 NCAC 1M .0206 - Program Fees	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0301 - Goal and Objectives	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0302 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0303 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0306 - Funding Commitment	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0401 - Goals and Objectives	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0402 - Eligibility Requirements	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0403 - Threshold Review Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0404 - Ranking Criteria	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92
24 NCAC 1M .0405 - Agency Board Approval	RRC Objection	10/15/92
No Response from Agency	No Action	11/19/92
No Response from Agency	No Action	12/17/92

INSURANCE

Departmental Rules

11 NCAC 1 .0432 - Manufactured Housing Board Hearings	RRC Objection	12/17/92
Agency Withdrew Rule		12/17/92

Financial Evaluation Division

11 NCAC 11A .0602 - Licensure	RRC Objection	11/19/92
Agency Revised Rule	RRC Objection	11/19/92
Rule Returned to Agency		12/17/92

Multiple Employer Welfare Arrangements

11 NCAC 18 .0019 - Description of Forms	RRC Objection	06/18/92
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Seniors' Health Insurance Information Program

11 NCAC 17 .0005 - SHIP Inquiries to Insurers and Agents	RRC Objection	06/18/92
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JUSTICE**Private Protective Services***12 NCAC 7D .0205 - Corporate Business License**RRC Objection 02/18/93***LICENSING BOARDS AND COMMISSIONS****General Contractors***21 NCAC 12 .0910 - Limitations; Pro Rata Distribution**RRC Objection 12/17/92***REVENUE****Individual Income, Inheritance and Gift Tax Division***17 NCAC 3B .0401 - Penalties**RRC Objection 08/20/92**17 NCAC 3B .0402 - Interest**RRC Objection 08/20/92***Individual Income Tax Division***17 NCAC 6B .0107 - Extensions**RRC Objection 08/20/92**17 NCAC 6B .0115 - Additions to Federal Taxable Income**RRC Objection 08/20/92**17 NCAC 6B .0116 - Deductions from Federal Taxable Income**RRC Objection 08/20/92**17 NCAC 6B .0117 - Transitional Adjustments**RRC Objection 08/20/92**17 NCAC 6B .3406 - Refunds**RRC Objection 08/20/92*

This Section of the Register lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

1 NCAC 5A .0010 - ADMINISTRATIVE PROCEDURES

Thomas R. West, Administrative Law Judge with the Office of Administrative Hearings, declared two portions of Rule 1 NCAC 5A .0010 void as applied in *Stauffer Information Systems, Petitioner v. The North Carolina Department of Community Colleges and The North Carolina Department of Administration, Respondent and The University of Southern California, Intervenor-Respondent* (92 DOA 0666).

15A NCAC 30 .0201(a)(1)(A) - STDS FOR SHELLFISH BOTTOM & WATER COLUMN LEASES

Julian Mann III, Chief Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 30 .0201(a)(1)(A) void as applied in *William R. Willis, Petitioner v. North Carolina Division of Marine Fisheries, Respondent* (92 EHR 0820).

15A NCAC 19A .0202(d)(10) - CONTROL MEASURES - HIV

Brenda B. Becton, Administrative Law Judge with the Office of Administrative Hearings, declared Rule 15A NCAC 19A .0202(d)(10) void as applied in *ACT-UP TRIANGLE (AIDS Coalition to Unleash Power Triangle), Steven Harris, and John Doe, Petitioners v. Commission for Health Services of the State of North Carolina, Ron Levine, as Assistant Secretary of Health and State Health Director for the Department of Environment, Health, and Natural Resources of the State of North Carolina, William Cobey, as Secretary of the Department of Environment, Health, and Natural Resources of the State of North Carolina, Dr. Rebecca Meriwether, as Chief, Communicable Disease Control Section of the North Carolina Department of Environment, Health, and Natural Resources, Wayne Bobbitt Jr., as Chief of the HIV/STD Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, Respondents* (91 EHR 0818).

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	DST	Department of State Treasurer
BDA	Board of Dental Examiners	EDC	Department of Public Instruction
BME	Board of Medical Examiners	EHR	Department of Environment, Health, and Natural Resources
BMS	Board of Mortuary Science	ESC	Employment Security Commission
BOG	Board of Geologists	HAF	Hearing Aid Dealers and Fitters Board
BON	Board of Nursing	HRC	Human Relations Committee
BOO	Board of Opticians	IND	Independent Agencies
CFA	Commission for Auctioneers	INS	Department of Insurance
COM	Department of Economic and Community Development	LBC	Licensing Board for Contractors
CPS	Department of Crime Control and Public Safety	MLK	Milk Commission
CSE	Child Support Enforcement	NHA	Board of Nursing Home Administrators
DAG	Department of Agriculture	OAH	Office of Administrative Hearings
DCC	Department of Community Colleges	OSP	Office of State Personnel
DCR	Department of Cultural Resources	PHC	Board of Plumbing and Heating Contractors
DCS	Distribution Child Support	POD	Board of Podiatry Examiners
DHR	Department of Human Resources	SOS	Department of Secretary of State
DOA	Department of Administration	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOJ	Department of Justice	WRC	Wildlife Resources Commission
DOL	Department of Labor		
DSA	Department of State Auditor		

CASE NAME	CASE NUMBER	ALJ	FILED DATE
James E. Dunn v. DHR, Division of Medical Assistance	91 OSP 0517	Nesnow	02/17/93
Monty & Vanessa Johnson, individually & on behalf of Wesley Johnson v. Orange County School System	92 EDC 0074	Reilly	02/15/93
Wayne C. Mixon v. Department of Correction	92 OSP 0834	Becton	03/01/93
E. Ray Etheridge v. Department of Environment, Health, & Natural Resources	92 EHR 0926	Reilly	02/19/93

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alcoholic Beverage Control Commission v. Thelma Elizabeth Edgeston T/A Disco Casino, Route 1, Box 455, Dover, NC 28526	92 ABC 1004	Chess	02/26/93
Michael Phillips, by his General Guardian, Foy Lee Phillips v. DHR, Division of Medical Assistance	92 DHR 1214	Gray	02/15/93
Thomas J. Berry Jr. v. DHR, Division of Social Services, CSE	92 CSE 1239	Reilly	02/25/93
Jonathan C. Brown v. DHR, Division of Social Services, CSE	92 CSE 1248	Nesnow	02/15/93
Ronald E. Sanders v. DHR, Division of Social Services, CSE	92 CSE 1255	Gray	02/25/93
James Willie Boulware v. DHR, Division of Social Services, CSE	92 CSE 1261	Gray	02/25/93
Albert Alexander Walker D/B/A Studio 421 v. Alcoholic Beverage Control Commission	92 ABC 1276	Becton	02/15/93
Michael Duval Clark v. DHR, Division of Social Services, CSE	92 CSE 1312	Reilly	02/25/93
Don A. Broughton v. DHR, Division of Social Services, CSE	92 CSE 1314	Mann	02/25/93
Jesse C. Ivey v. DHR, Division of Social Services, CSE	92 CSE 1335	Mann	02/25/93
Arthur C. Kearney v. DHR, Division of Social Services, CSE	92 CSE 1336	Mann	02/25/93
Claude R. Anderson v. DHR, Division of Social Services, CSE	92 CSE 1348	Becton	02/26/93
Marshall Scott Smith v. DHR, Division of Social Services, CSE	92 CSE 1357	Nesnow	02/25/93

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Derrick D. Johnson v. DHR, Division of Social Services, CSE	92 CSE 1359	Nesnow	02/25/93
Dayton Williams v. DHR, Division of Social Services, CSE	92 CSE 1368	Nesnow	02/25/93
Edward J. Wilson v. Victims Compensation Commission	92 CPS 1470	Chess	02/24/93
Mr. & Mrs. Thomas Hunter v. Department of Human Resources	92 DHR 1744	Chess	02/26/93

It is determined that Petitioner's application of 1990 constituted an "initial selection" and it is Ordered that Respondent's Motion for Summary Judgment is **DENIED**.

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. 126-80 et seq.

N.C. Admin. Code, tit. 25, r. 1H .0610 - .0615

N.C. Admin. Code, tit. 25, r. 1H .0606

N.C. Admin. Code, tit. 25, r. 1B .0428

N.C. Admin. Code, tit. 25, r. 1D .0201

N.C. Office of State Personnel - Personnel Manual

EXHIBITS

Exhibits listing has been omitted from this publication. It can be obtained by contacting this office.

STIPULATIONS

1. CAP-DA is the abbreviation for the Community Alternatives Program for Disabled Adults.
2. CAP-MR is the abbreviation for the Community Alternatives Program for the Mentally Retarded.
3. CAP-C is the abbreviation for the Community Alternatives Program for Children.

JUDICIAL NOTICE

The Secretary of Defense, as noted in E.O. 10448, April 22, 1953, E.O. 11265, January 11, 1966, and E.O. 12776, has reinstated the National Defense Service Medal, dated February 20, 1991, for Desert Shield, Desert Storm, and Support personnel covering those operations.

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

Background

1. Petitioner was employed by Respondent (DMA) and its predecessor agency from October 1, 1977 to January 3, 1986. From 1977 to 1978, Petitioner was classified as a Health Standards Officer II. From 1978 to 1986, Petitioner was classified as a Health Standards Officer III.
2. Petitioner held the position of Manager of the Community Alternatives Program (CAP) from the time the Program began in 1982, until January 3, 1986, during which time Petitioner performed all of the duties of the CAP Manager as outlined in the position description.
3. Petitioner voluntarily resigned on January 3, 1986, to work privately in the area of real estate

for purposes of economic advancement.

4. Bruce Steel succeeded Petitioner as CAP Manager in January, 1986, and held that position until March, 1990, when he was promoted to Chief of the Community Care Section, a position which supervises the CAP Manager position.

5. The CAP Manager position was posted for applications in March of 1990. A candidate was selected but a hiring freeze was imposed and the offer was not made until the Fall of 1990. The successful candidate turned it down because that candidate had accepted another position in the interim period.

6. On September 28, 1990, the position was reposted. Petitioner, having learned of the opening, applied on October 11, 1990.

7. Nancy O'Dowd applied on November 9, 1990, and, at Mr. Steel's direction, the position posting was closed on November 16, 1990.

8. Based upon Petitioner's application, Respondent deemed Petitioner to have met the minimum qualifications for the position. The applicants who were deemed to have met the minimum qualifications for the position were reviewed by Mr. Steel.

9. Mr. Steel made the determination as to which of the applicants he would interview.

10. Mr. Steel chose not to interview the Petitioner.

11. On November 21, 1990, Mr. Steel selected Nancy O'Dowd for the CAP Manager position.

12. Petitioner, by an oversight, was not notified that he had not been selected until May of 1991.

Qualification Considerations

13. The CAP Manager position required, at a minimum:

- (a) a four-year degree;
- (b) three years of administrative experience in a health or medical related field of which one year must have been in a supervisory capacity; or,
- (c) an equivalent combination of education and experience.

14. Further, the job classification of Health Standards Officer III sets forth additional recruitment standards, such as:

- (a) knowledge of the Federal Social Security Act as it relates to Medicaid;
- (b) ability to effectively communicate both orally and in writing with personnel in various health care settings; and,
- (c) the ability to plan, assign, and coordinate the work of subordinate employees.

15. The specific duties of the CAP Manager are to develop and administer Medicaid Home and Community-Based Services Waivers, in accordance with federal and state statutes, and to approve plans of care for waiver participants in three separate waiver programs: CAP-DA, CAP-M, and CAP-C.

16. Each state has its own Medicaid Program which must be developed under the guidelines of the federal program.

17. Federal waivers are applied for by each state when that state seeks a waiver from compliance with particular federal guidelines. Waivers are often sought for purposes of economy or to develop alternative methods of serving the states' Medicaid recipients.

18. One of Petitioner's main duties when he was hired by DMA in 1977, was to develop parts of the State's Medicaid Program and to keep the Program in compliance with the federal guidelines.

19. The job description for CAP Manager lists 50% of the duties performed as "Implementation and Administration of Approved Waivers."

20. When Petitioner was first employed with DMA, he wrote the Medicaid waivers for the State CAP Programs as well as the CAP Manual.

21. Ms. O'Dowd testified that waivers were not widely used during her work in Indiana and that she had not personally implemented any waiver programs.

22. Nancy O'Dowd's education and experience as of November 1990, covering information which is applicable to the job qualifications of the job at issue are as follows:

Education: B.A. degree - Sociology, 1970 - University of Nebraska;
Experience: 12/75-2/76 - Client representative, Wishard Memorial Hospital.
 Duties included attempting to increase revenues through patient responsibility and third party payors.
 2/76-6/76 - Quality Control Reviewer - Indiana Department of Welfare.
 7/77-8/83 - Supervisor of operations covering consultant services to county offices for public assistance and food stamps.
 8/83-1/84 - Supervisor of operations covering consultant services to county offices for public assistance and food stamps - Indiana.
 1/84-6/84 - Director of Public Assistance - Indiana
 6/84-4/86 - Assistant Director - Medicaid Division - Indiana.
Total Health Related Experience: 9 years, 3 months
Total Medicaid Experience: 7 years, 11 months
Total Waiver Experience: None
Military: None
Supervision: Total time of supervision - 8 years, 9 months

23. Sometime after 1986, Ms. O'Dowd moved to North Carolina and from June of 1990 to November 1990, she was the Assistant Executive Director/Curator of Executive Mansion Fund. Her duties included decorating and refurbishing the Governor's Mansion.

24. Petitioner's education and experience as of October 1990, covering information which is applicable to the job qualifications of the job at issue are as follows:

Education: B.S. degree - Business, 1972 - Sacramento State College;
Experience: 5/72-8/77 - Department of Health, State of California - Associate Project Director - developed fiscal proposal for prepaid health research project.
 10/77-2/86 - Department of Human Resources, State of N.C. - Developed Medicaid Alternatives Program and EPSDT Program.
Total Health Related Experience: 14 years, 7 months

Total Medicaid Experience: 8 years, 4 months

Total Waiver Experience: 8 years, 4 months

Military: U.S. Air Force Reserves; rank - Major

(Vietnam War, Desert Storm - organized and implemented the deployment of troops) Total military - 31 years

Supervision: Total time of supervision in related field - 14 years, 7 months

25. Comparing Petitioner to Ms. O'Dowd, the two applicants' summaries of qualifications are as follows:

	<u>Petitioner</u>	<u>Ms. O'Dowd</u>
<u>Education</u>	B.S. - Business	B.A. - Sociology
<u>Health Services Experience</u>	14 years, 7 months	9 years, 3 months
<u>Waiver Experience</u>	8 years, 4 months	0
<u>Supervisory</u>	14 years, 7 months	8 years, 9 months

26. Mr. Steel determined that Ms. O'Dowd had 10 years and 2 months Medicaid experience with the Indiana Department of Public Welfare, in which she had received regular promotions up to the level of Assistant Director of the Medicaid Division, and had Supervised staffs of 9 to 20 persons during 9 of those 10 years.

27. As part of her duties, Ms. O'Dowd had some familiarity with the Medicaid Waiver Program, although at the time of her resignation in 1986, Indiana had not completed its waiver plan.

28. Mr. Steel determined that Petitioner had 8 years and 3 months Medicaid experience with the N.C. Division of Medical Assistance, during which time he had supervised a staff of 2. Petitioner had 5 years and 3 months experience with the California Department of Health, during which he supervised a staff of as many as 8.

29. Petitioner testified that his employment in California was Medicaid related. However, Mr. Steel testified that he relied on the information provided in Petitioner's application in determining Petitioner's experience. Neither Petitioner's application nor his resume reflect that his experience in California was Medicaid related.

Veteran's Preference

30. N.C. Gen. Stat. 126-80 provides that:

It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment for positions subject to the provisions of this Chapter with every State department, agency and institution.

31. N.C. Admin. Code, tit. 25, r. 1H .0605(b) provides that preference must be given to veterans and that "persons entitled to such preference must so indicate on any application filed."

32. Petitioner's application included his active naval service and a "yes" entry at the section denoted "military reserve."

33. 25 NCAC 1H .0612 provides, in pertinent part, that "Appointing authorities are responsible for reviewing the Military Service portion of the PD 107 and verifying eligibility."

34. N.C. Admin. Code, tit. 25, r. 1H .0611 defines "periods of war" at subsection (4) as including the hostilities in Vietnam between 1/31/55 and 5/7/75, and at subsection (5) "any other campaign, expedition or engagement for which a campaign badge or medal is authorized by the United States Department of Defense." (DOD)

35. Petitioner was on active duty during Vietnam and the Desert Shield/Desert Storm operations.

36. N.C. Gen. Stat. 126-82(b) outlines provisions for applying the Veteran's Preference:

(b) The State Personnel Commission shall provide that if an eligible veteran has met the minimum requirements for the position, ...he shall receive experience credit as determined by the Commission for additional related and unrelated military service. (Emphasis added)

37. 26 NCAC 1H .0614 provides that Veteran's Preference applies to initial selections and reductions in force.

38. 25 NCAC 1D .0201 defines "Initial Appointment," in pertinent part, as a new appointment or the re-employment of individuals who are not eligible for reinstatement.

39. 25 NCAC 1B .0428 defines "Reinstatement," in pertinent part, as the return to employment of a dismissed employee.

40. 25 NCAC 1H .0614(d) provides that, a veteran who has met the minimum qualifications, and who has no "related" military experience shall receive additional experience credit not to exceed the four year maximum credit.

41. 25 NCAC 1H .0614(e) provides:

After applying the preference, the qualified veteran shall be hired when his/her overall qualifications are substantially equal to one or more non-veterans in the applicant pool. (emphasis added)

42. Mr. Steel testified that his understanding of the Veteran's Preference was that if a relatively substantially equal veteran applied, the veteran would have preference.

43. Mr. Steel testified that he was the person who determined which applicants were substantially equal.

44. Mr. Steel determined that Ms. O'Dowd and Petitioner were not substantially equal.

Substantially Equal Qualifications

45. At the time Petitioner was employed as CAP Manager, CAP was a \$1 million annual program. At the time of the 1990 recruitment for this position, CAP was a \$50 million annual program.

46. Mr. Steel testified that he did not know how large the budget was for the program in Indiana in which Ms. O'Dowd was involved.

47. At the time Petitioner was employed as CAP Manager, Petitioner had Supervisory responsibility for two individuals, while at the time of the 1990 recruitment, the CAP Manager Supervised a staff of five.

48. Mr. Steel testified that when he decided not to interview Petitioner, he only worked from Petitioner's application and did not look at his personnel file.

49. Mr. Steel further testified that he was looking for strong management skills, that writing waivers was not significant because they were already done, and that Petitioner was good at starting programs but later let details slip.

50. Mr. Steel testified that he preferred someone who is computer literate.

51. Petitioner's application indicates under the education category that he had been studying computer science at Wake Tech (dBase, IV, DOS, Lotus) since February of 1989.

52. Mr. Steel testified that based upon his own experience in succeeding Petitioner as CAP Manager, Petitioner had shown a lack of attention to detail in his management of the CAP Program.

53. Mr. Steel testified that he did not want to hire Petitioner because he did not want mistakes made again, such as producing a manual with mistakes, not having the age limit in the manual, telling people false or incorrect information, claims paid to children not approved for waiver services for which a federal payback was required, and incorrect lead agencies.

54. When Mr. Steel took over as CAP Manager, he found hospitals designated as lead agencies. When he looked at the waiver which the Petitioner had written, it listed "County Departments of Social Services, County Health Departments, County Departments on Aging, and County Human Resources Boards," as possible lead agencies.

55. Mr. Steel testified that no one knew what a community human services board was, although hospitals are, in fact, run by boards.

56. Mr. Steel testified that the waiver had to be amended to avoid possible federal sanctions.

57. Petitioner testified that hospitals were always allowed to be lead agencies under the waiver which he had written and that no amendment was necessary to avoid federal sanctions.

58. In another instance, Mr. Steel testified that a waiver listed 18 as the minimum age, but that he found a DMA letter stating that the age limit was 19 years. Further, he testified that the CAP Manual made no mention of an age limit.

59. A letter was sent to all County Boards of Commissioners from DMA on December 7, 1984 (DMA Adm. letter no. 15-84 or 25) summarizing the CAP Programs and listing the age limitation as 18 years.

60. Alene Matthews is the Assistant Director for Recipient and Provider Services at DMA and was Petitioner's supervisor during part of the time he was CAP Manager. Ms. Matthews testified that Petitioner did a good job and worked independently.

61. A question had come to Ms. Matthews concerning a County which rejected a client based on age eligibility. She reviewed it and wrote back saying that it was her opinion that the County had been properly trained but had made an error.

62. No testimony was offered which was conclusive as to whether or not the CAP Manual mentions age.

63. Daphne Lyons was Petitioner's supervisor for part of the time he was employed at Respondent Agency. Ms. Lyons testified, and it is found as fact, that Petitioner was very proficient, was an asset to the Program, that she knew of no complaints about his work, and that the comments she heard, particularly from the Federal Government, were favorable.

64. Ms. Lyons testified, and it is found as fact, that Petitioner's strength was working with others and that he had above average skills at communication.

65. Ms. Lyons selected and hired Mr. Steel as Petitioner's replacement.

66. Ms. Lyons testified, and it is found as fact, that when Mr. Steel took over the Program, he wanted to do things differently.

67. Mr. Steel testified that he did not believe that he and Petitioner had different interpretations of federal regulations but that there is a right way and a wrong way.

68. Petitioner testified that he had approved the CAP-C services in question to the child under the "Katie Beckett" Waiver.

69. On April 24, 1986, Ms. Lyons wrote a memo indicating that after consulting with the caseworker, she had determined that the services were allowed in error because they were not part of the Medicaid provisions and were not included in the "Katie Beckett" Waiver.

70. Mr. Steel also found that Petitioner had written a section of the CAP-DA handbook in which Petitioner instructed that, in situations in which a recipient of services was not Medicaid eligible on the date that screening services were provided, the date of such services was to be changed on the Medicaid reimbursement forms to the date on which the recipient became eligible for Medicaid.

71. Mr. Steel testified that Petitioner had told people that services which had been provided prior to their Medicaid eligibility could be adjusted to show the date of eligibility instead of the date of the service.

72. Mr. Steel testified that there were no exceptions to the date of service rule and the date of service must always be used exactly as it occurred.

73. Peter Goolsby, who worked under Petitioner's supervision when Petitioner was CAP Manager, testified that there is an exception to the date of service rule for optometry services delivered during eligibility but with the glasses delivered after eligibility had expired. There were also exceptions for undelivered dentures, and for the date of screening examinations for eligibility.

74. Don Taylor was the Deputy Director of DMA and was responsible for the overall Supervision of the CAP Programs during Petitioner's tenure. Mr. Taylor testified, and it is found as fact, that Petitioner did an outstanding job, had a professional demeanor and had good leadership skills. Mr. Taylor never heard that anyone was dissatisfied with Petitioner's performance and heard no complaints about his work.

75. Barbara Matula, the Director of DMA since 1979, testified that she is generally familiar with

the CAP Program and Petitioner's work.

76. Ms. Matula testified, and it is found as fact, that the CAP waivers are incredibly complex and it was a brand new program when Petitioner started. To her knowledge, Petitioner's work was exemplary.

77. Mr. Steel testified that he could explain waivers in 5 minutes to someone who understood Medicaid.

78. Anne Williams was an area supervisor in Professional Standards Review Organization. Petitioner conducted in-service education for Ms. Williams' group in New Bern covering Medicaid changes. Ms. Williams testified and it is found as fact that Petitioner was very professional and very helpful, had a good ability to work with others and never gave her any false or misleading information.

79. Bill Lamb was with the Division of Social Services Long Term Care Screening and was the Family Support Services Supervisor at the Department of Social Services from 1982 through 1986 and knew Petitioner through the CAP-DA Program. Mr. Lamb testified that Petitioner's ability to work with others was excellent, that he had had only positive feedback, and that there was never anything incomplete, false or misleading in the Manual.

80. Mr. Lamb further testified that he knew that Petitioner and Mr. Steel had different interpretations of the Federal and CAP Program regulations.

81. Mannon Eldreth is the Executive Director of the Ashe County Council on Aging and worked with Petitioner on the CAP Program. Eldreth testified that Petitioner's abilities were excellent, that there were never any complaints about the Manual, and that no negative comments had been made concerning Petitioner.

82. Sandra Shay was employed with the Mental Health, Mental Retardation and Substance Abuse Services in the Mental Retardation Center/Area Health Education Center (AHEC) and was in charge of CAP-MR for her community when she met and worked with Petitioner. Dr. Shay testified that Petitioner was very professional and helpful, that she had not heard of any false or misleading information, and that she had not heard any negative comments.

83. Dr. Shay testified that the Manual was considered to be excellent and that the Federal Government commended Petitioner on the Manual.

84. Peter Goolsby worked under Petitioner's supervision during Petitioner's tenure at the Respondent agency, and testified that Petitioner was a modern supervisor who gave his employees resources and latitude to do their jobs.

85. Mr. Goolsby testified, and it is found as fact, that he never heard any negative comments and was not aware of any problems in the CAP Program.

86. The Health Care Financing Administration (HCFA) of the U.S. Department of Health and Human Resources, did a Target Area Review of the N.C. Community Based Services Waivers in 1984. That Review included a selection entitled, "Exemplary Practices" which included the following comments:

North Carolina has developed and implemented excellent procedures to effectively control the Community Alternatives Program (CAP) and to assure the objectives are met.

North Carolina has developed and distributed an excellent CAP provider manual, copies of which may be obtained from the HCFA Regional Office in Atlanta or the Division

of Medical Assistance, 410 North Boylan Avenue, Raleigh, North Carolina 27603.

87. Members of the N.C. Program, Petitioner in particular, were invited as keynote speakers at the New Mexico Annual Convention on Medicaid Waivers.

88. Petitioner was also invited to speak at a workshop conducted in Cherry Hill, New Jersey.

89. During Petitioner's tenure at the Respondent agency, no one ever told him that he provided false or misleading information to the counties.

90. Mr. Steel determined that although Petitioner was qualified for the job and had previously performed the duties of CAP Manager, Ms. O'Dowd was the best qualified applicant, based upon her history of rapid promotions within the Indiana Department of Welfare, her high level of responsibility within that system, her familiarity with Medicaid waivers and Medicaid programs generally, and her supervisory experience.

91. Dennis Williams has been an Assistant Director of DMA since July of 1984, and supervises Mr. Steel. Mr. Williams testified that Mr. Steel discussed Ms. O'Dowd's application with him and that they were both enthusiastic about Ms. O'Dowd's application.

92. Mr. Williams and Mr. Steel both agreed that Ms. O'Dowd was more qualified for the new expanded CAP Programs.

93. Respondent determined, on the basis of the applications and after interviewing Ms. O'Dowd, and together with Mr. Steel's knowledge of Petitioner's experience as CAP Manager, that Ms. O'Dowd was better qualified for the position of CAP Manager than Petitioner.

94. Mr. Steel recommended Ms. O'Dowd for the position on or about November 21, 1990, whereupon his recommendation was approved by the Division EEO Officer, the Division Personnel Office, and the Department Personnel Office. Respondent subsequently selected Ms. O'Dowd to fill the position.

95. The Office of State Personnel Manual, at Section 2, p. 4, provides:

The selection of applicants for vacant positions will be based upon a relative consideration of their qualifications for the position to be filled. Advantage will be given to applicants determined to be most qualified and hiring authorities must reasonably document hiring decisions to verify this advantage was granted and explain their basis for selection. (emphasis added)

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

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter of this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes, and all parties are properly before this Office.

2. Petitioner's application was an "initial selection" for purposes of 25 NCAC 1H .0614.

3. Petitioner is an eligible veteran as that term is defined in G.S. 126-81.

4. Petitioner is entitled to the Veteran's Preference as set forth in 25 NCAC 1H .0614.

5. Petitioner had 31 years military service through two periods of war. Therefore, pursuant to 25 NCAC 1H .0614(d), Petitioner was entitled to four years experience credit for his military service. Petitioner would then have 18 years, 7 months experience compared to Ms. O'Dowd's 9 years, 3 months.

6. Pursuant to 25 NCAC 1H .0614(e) Petitioner was entitled to the Veteran's Preference credit before a determination was made on whether or not the applicants were substantially equal.

7. The Respondent did not specifically articulate when, if ever, the Veteran's Preference credit was given to the Petitioner. However, the Respondent through Mr. Steel determined that Petitioner's and Ms. O'Dowd's qualifications were not substantially equal and that Ms. O'Dowd was better qualified.

The regulation at 25 NCAC 1H .0614(e) provides that "after applying the Veteran's Preference, the qualified veteran shall be hired when his/her overall qualifications are substantially equal."

The Office of State Personnel Manual, at Section 2, p. 4, provides that the most qualified applicant shall be chosen and that hiring authorities must reasonably document their decision to explain the basis for their selection. To that end, Respondent presented the following evidence:

Mr. Steel asserted that the CAP Program had gone from \$1 million a year to \$50 million a year, but did not know how large any of the programs were in which Ms. O'Dowd had worked.

Mr. Steel asserted that writing waivers was not important because they had already been written and that he could explain waivers in five minutes to someone with a Medicaid background. Ms. Matula, the Director of DMA, testified that CAP waivers are incredibly complex. Further, the CAP Manager's job description includes a 50% time allotment for "implementation and administration of approved waivers."

Mr. Steel asserted that there was a problem with an age limit being in mistakenly listed as 19, but a DMA memo indicates that it was listed at 18 and Ms. Matthews determined it had been an error on the part of one of the counties.

The evidence presented concerning hospitals operating as lead agencies was inconclusive. It appears from the evidence that Petitioner interpreted the waiver which he himself had written to include hospitals, and Mr. Steel subsequently interpreted the waiver language differently.

A CAP-C payment for a child under the "Katie Beckett" Program appears to have been made in error and a refund was made to HCFA. This appears to have been the only error which was made and for which no extenuating explanation appears in the evidence.

According to the provisions on Veteran's Preference, if both applicants' qualifications were substantially equal after the 4 year Veteran's Preference credit, then Petitioner should have been hired.

Putting aside, for the purpose of analysis, Mr. Steel's subjective judgment, it is the opinion of the undersigned that Petitioner and Ms. O'Dowd were not substantially equally qualified before the Veteran's Preference credit, but, rather, Petitioner was more qualified even at that point.

8. It is concluded that after the application of the Veteran's Preference, Petitioner was notably better qualified than Ms. O'Dowd.

9. Acknowledging Mr. Steel's first hand information concerning Petitioner and giving deference

to his managerial business judgment, it is nevertheless incumbent on Respondent to show upon review that they have made a reasonable decision. While it is clear that Mr. Steel did not want to hire Petitioner, it is not clear that his reasons were based on sound, unbiased business judgment.

It is concluded that Respondent violated the Veteran's Preference regulations because they did not correctly apply the Veteran's Preference credit, if it was applied at all.

10. It is concluded that the Respondent has failed to meet the burden of showing that the decision that the candidates were not substantially equal was based on sound business and managerial judgment.

11. It is concluded that Respondent did not choose the best qualified candidate for the position of Health Standards Officer III.

Based upon the foregoing Stipulations, Findings of Fact and Conclusions of Law, the undersigned makes the following:

RECOMMENDATION

It is recommended that Petitioner be given the position of Health Standards Officer III, CAP Manager, that attorney's fees not be awarded as there is no applicable provision under 25 NCAC 1B .0414, and that partial back pay be awarded to the Petitioner from November 21, 1990, to November 15, 1992, with that amount reduced in accordance with the provisions of 25 NCAC 1B .0421.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

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

The agency that will make the final decision in this contested case is the North Carolina State Personnel Commission.

This the 17th day of February, 1993.

Dolores O. Nesnow
Administrative Law Judge

4. The building was built and owned by the Texas Company.

FINDINGS OF FACT

1. This contested case involves the demolition of a dilapidated Texaco gas station on property owned by the petitioner and his brother in rural Currituck County. The petitioner paid Mr. Clyde Ferebee to demolish the commercial building. The petitioner's grandfather had renewed a lease with The Texas Company (Texaco) in 1945 for a small portion of the farm. Thereafter, The Texas Company constructed the gas station on the site. The Texas Company paid taxes on the building until the lease expired and the building was abandoned in 1963.
2. On January 9, 1991, the Currituck County Department of Inspection wrote the petitioner concerning the condemnation of the "dwelling", i.e. the gas station. The petitioner was afforded the opportunity for a hearing. Instead, the petitioner demolished the building as requested. The petitioner did not wait for an Order to be issued by the Department of Inspection. No Order was ever issued. However, after the petitioner complied with the request, the Department notified the respondent on July 10, 1991, that the petitioner failed to give written notice of intention to demolish the facility as required by 40 CFR 61.145(b)(1). However, the Department never notified the petitioner of this requirement.
3. On July 11, 1991, employees of the respondent visited the demolition site. There was a large pile of demolition debris and a cement slab still in place. Crumbled and scattered floor tiles and broken pieces of transite siding were observed. The size of the building indicated that the transite siding had exceeded 160 square feet. Samples were collected and photographs were made.
4. On July 12, 1991, an employee of respondent telephoned the petitioner and informed him of the applicable regulations of which he was unaware. The petitioner stated that he would await receipt of the laboratory analysis of the samples. The employee telephoned the petitioner again on September 3, 1991, and informed him that the transite siding had asbestos-containing material. The tests had revealed that the transite siding was 20% chrysotile asbestos. The petitioner denied responsibility for the building. Information and a copy of the regulations were sent to the petitioner. However, the petitioner did not undertake to clean up the site and properly dispose of the ACM.
5. The respondent assessed three \$1,000.00 civil penalties and \$940.99 in costs on the petitioner in the July 10, 1992, Assessment. The Assessment contained the proper CFR references as contained in the Federal Register, Tuesday, November 20, 1990.

CONCLUSIONS OF LAW

1. The dilapidated Texaco gas station was a "facility" as defined in 40 CFR 61.141 and was subject to the Standards for Demolition and Renovation contained in 40 CFR 61.145.
2. The petitioner was the owner or operator of a demolition activity as defined in 40 CFR 61.141 because he was the person who controlled the facility.
3. The partial exemption contained in 40 CFR 61.145(a)(3) is inapplicable to the petitioner because the facility was not demolished "under an order of a State or local government agency."
4. The petitioner did not give written notice of intention to demolish the facility as required by 40 CFR 61.145(b)(1). However, the failure was not willful or intentional.
5. The petitioner did not adequately wet the asbestos-containing material at all times after demolition as required by 40 CFR 61.150(a)(3). The petitioner willfully and intentionally failed to adequately wet

the ACM after September 3, 1991, when he was advised of the asbestos contents of the material. He had been advised of the applicable regulations on July 12, 1991.

6. The petitioner willfully and intentionally failed to deposit the ACM as soon as was practical at an approved waste disposal site as required by 40 CFR 61.150(b)(1) after being advised of the asbestos content of the material on September 3, 1991.
7. The respondent properly assessed two civil penalties of \$1,000.00 with \$940.99 in investigation costs against the petitioner in accordance with GS 143-215.3(a)(9), GS 143-215.114A and GS 143B-282.1(b). It did not properly assess the other \$1,000 civil penalty because it failed to consider the petitioner's lack of knowledge of the applicable rules at the time of the demolition. The petitioner acted pursuant to a request of a local agency which, although it was familiar with the rules, failed to advise the petitioner of the regulations but then advised the respondent of the petitioner's violation.

RECOMMENDED DECISION

It is recommended that the civil penalty of \$1,000.00 for failure to notify the respondent be dismissed but that the remaining two \$1,000.00 civil penalties and the investigation costs of \$940.99 be affirmed.

ORDER

It is hereby ORDERED that the agency serve a copy of the Final Decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statutes 150B-36(b).

NOTICE

The final decision in this contested case shall be made by the Environmental Management Commission. Each party has the right to file exceptions to the recommended decision and to present written arguments on the decision to this agency.

The agency is required by GS 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 19th day of February, 1993.

Robert Roosevelt Reilly, Jr.
Administrative Law Judge

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

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