

# NORTH CAROLINA REGISTER

VOLUME 25 • ISSUE 15 • Pages 1642 - 1872

February 1, 2011

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## **Contact List for Rulemaking Questions or Concerns**

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

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

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### **Fiscal Notes & Economic Analysis**

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### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee  
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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2011 – December 2011

| FILING DEADLINES      |            |                     | NOTICE OF TEXT                   |                                | PERMANENT RULE                                       |                                      |   | TEMPORARY RULES  |
|-----------------------|------------|---------------------|----------------------------------|--------------------------------|--|--------------------------------------|---|--|
| Volume & issue number | Issue date | Last day for filing | Earliest date for public hearing | End of required comment period | Deadline to submit to RRC for review at next meeting | Earliest Eff. Date of Permanent Rule | Delayed Eff. Date of Permanent Rule<br>31st legislative day of the session beginning: | 270 <sup>th</sup> day from publication in the Register |
| 25:13                 | 01/03/11   | 12/08/10            | 01/18/11                         | 03/04/11                       | 03/21/11   | 05/01/11                             | 05/2012   | 09/30/11   |
| 25:14                 | 01/18/11   | 12/22/10            | 02/02/11                         | 03/21/11                       | 03/21/11   | 05/01/11                             | 05/2012   | 10/15/11   |
| 25:15                 | 02/01/11   | 01/10/11            | 02/16/11                         | 04/04/11                       | 04/20/11   | 06/01/11                             | 05/2012   | 10/29/11   |
| 25:16                 | 02/15/11   | 01/25/11            | 03/02/11                         | 04/18/11                       | 04/20/11   | 06/01/11                             | 05/2012   | 11/12/11   |
| 25:17                 | 03/01/11   | 02/08/11            | 03/16/11                         | 05/02/11                       | 05/20/11   | 07/01/11                             | 05/2012   | 11/26/11   |
| 25:18                 | 03/15/11   | 02/22/11            | 03/30/11                         | 05/16/11                       | 05/20/11   | 07/01/11                             | 05/2012   | 12/10/11   |
| 25:19                 | 04/01/11   | 03/11/11            | 04/16/11                         | 05/31/11                       | 06/20/11   | 08/01/11                             | 05/2012   | 12/27/11   |
| 25:20                 | 04/15/11   | 03/25/11            | 04/30/11                         | 06/14/11                       | 06/20/11   | 08/01/11                             | 05/2012   | 01/10/12   |
| 25:21                 | 05/02/11   | 04/08/11            | 05/17/11                         | 07/01/11                       | 07/20/11   | 09/01/11                             | 05/2012   | 01/27/12   |
| 25:22                 | 05/16/11   | 04/25/11            | 05/31/11                         | 07/15/11                       | 07/20/11   | 09/01/11                             | 05/2012   | 02/10/12   |
| 25:23                 | 06/01/11   | 05/10/11            | 06/16/11                         | 08/01/11                       | 08/22/11   | 10/01/11                             | 05/2012   | 02/26/12   |
| 25:24                 | 06/15/11   | 05/24/11            | 06/30/11                         | 08/15/11                       | 08/22/11   | 10/01/11                             | 05/2012   | 03/11/12   |
| 26:01                 | 07/01/11   | 06/10/11            | 07/16/11                         | 08/30/11                       | 09/20/11   | 11/01/11                             | 05/2012   | 03/27/12   |
| 26:02                 | 07/15/11   | 06/23/11            | 07/30/11                         | 09/13/11                       | 09/20/11   | 11/01/11                             | 05/2012   | 04/10/12   |
| 26:03                 | 08/01/11   | 07/11/11            | 08/16/11                         | 09/30/11                       | 10/20/11   | 12/01/11                             | 05/2012   | 04/27/12   |
| 26:04                 | 08/15/11   | 07/25/11            | 08/30/11                         | 10/14/11                       | 10/20/11   | 12/01/11                             | 05/2012   | 05/11/12   |
| 26:05                 | 09/01/11   | 08/11/11            | 09/16/11                         | 10/31/11                       | 11/21/11   | 01/01/12                             | 05/2012   | 05/28/12   |
| 26:06                 | 09/15/11   | 08/24/11            | 09/30/11                         | 11/14/11                       | 11/21/11   | 01/01/12                             | 05/2012   | 06/11/12   |
| 26:07                 | 10/03/11   | 09/12/11            | 10/18/11                         | 12/02/11                       | 12/20/11   | 02/01/12                             | 05/2012   | 06/29/12   |
| 26:08                 | 10/17/11   | 09/26/11            | 11/01/11                         | 12/16/11                       | 12/20/11   | 02/01/12                             | 05/2012   | 07/13/12   |
| 26:09                 | 11/01/11   | 10/11/11            | 11/16/11                         | 01/03/12                       | 01/20/12   | 03/01/12                             | 05/2012   | 07/28/12   |
| 26:10                 | 11/15/11   | 10/24/11            | 11/30/11                         | 01/17/12                       | 01/20/12   | 03/01/12                             | 05/2012   | 08/11/12   |
| 26:11                 | 12/01/11   | 11/07/11            | 12/16/11                         | 01/30/12                       | 02/20/12   | 04/01/12                             | 05/2012   | 08/27/12   |
| 26:12                 | 12/15/11   | 11/22/11            | 12/30/11                         | 02/13/12                       | 02/20/12   | 04/01/12                             | 05/2012   | 09/10/12   |

## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.





BEVERLY EAVES PERDUE  
GOVERNOR

**EXECUTIVE ORDER NO. 78**

**PROCLAMATION OF A STATE OF EMERGENCY  
BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA**

Pursuant to the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina:

**Section 1.**

I declare that a state of emergency exists in the State due to the expected impact of an approaching winter storm.

**Section 2.**

I order all state and local government entities and agencies to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

**Section 3.**

I delegate to Reuben F. Young, Secretary of Crime Control and Public Safety, or his designee, all power and authority granted to me and required of me by Article 1 of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in North Carolina.

**Section 4.**

Further, Secretary Young, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in G. S. § 143B-476.

**Section 5.**

I further direct Secretary Young to seek assistance from any and all agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State in responding to this emergency.

**Section 6.**

I hereby order this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of emergency prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

**Section 7.**


This order is adopted pursuant to my powers under Article 1 of Chapter 166A of the General Statutes and not under my authority under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

**Section 8.**

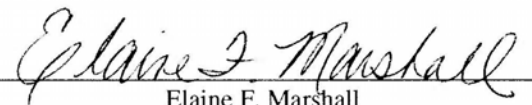
This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

**IN WITNESS WHEREOF**, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this tenth day of January in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.



  
Beverly E. Perdue  
Governor

**ATTEST:**

  
Elaine F. Marshall  
Secretary of State



**EXECUTIVE ORDER NO. 79**

**TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS  
TO ENSURE RESTORATION OF UTILITY SERVICES AND TRANSPORTING  
ESSENTIALS THROUGHOUT THE STATE**

**WHEREAS**, I have determined that a State of Emergency exists due to an approaching winter storm and its likely-effects in North Carolina, thereby justifying an exemption from 49 CFR Part 395 (Federal Motor Carrier Safety Regulations); and

**WHEREAS**, the uninterrupted supply of electricity, fuel oil, diesel oil, gasoline, kerosene, propane, liquid petroleum gas, food, water, and medical supplies to residential and commercial establishments is essential during the storm and after the storm and any interruption in the delivery of those commodities threatens the public welfare; and

**WHEREAS**, the prompt restoration of utility services to citizens is essential to their safety and well being; and

**WHEREAS**, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Part 395 for up to 30 days if the Governor determines that an emergency condition exists; and

**WHEREAS**, under N.C.G.S. §§ 166A-4 and 166A-6.03(b), the Governor may declare that the health, safety, or economic well-being of persons or property in this State require that the maximum hours of service for drivers prescribed by N.C.G.S. § 20-381 should be waived for persons transporting essential fuels, food, water, medical supplies, debris removal and restoration of utility services; and

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

**Section 1.**

The Department of Crime Control and Public Safety in conjunction with the North Carolina Department of Transportation shall waive the maximum hours of service for drivers prescribed by the Department of Crime Control and Public Safety pursuant to N.C.G.S. § 20-381.

**Section 2.**

The waiver of regulations under 49 CFR Part 395 (Federal Motor Carrier Safety Regulations) does not apply to the commercial drivers' licenses and insurance requirements.

**Section 3.**

The Department of Crime Control & Public Safety in conjunction with the North Carolina Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116 and 20-118, and certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, 105-449.49 for the vehicles transporting equipment and supplies for the restoration of utility services along North Carolina roadways to our impacted counties.

**Section 4.**

Notwithstanding the waivers set forth above, size and weight restrictions and penalties have not been waived under the following conditions:

- a. When the vehicle weight exceeds the maximum gross weight criteria established by the manufacturer (GVWR) or 90,000 pounds gross weight, whichever is less.
- b. When the tandem axle weight exceeds 42,000 pounds and the single axle weight exceeds 22,000 pounds.
- c. When a vehicle/vehicle combination exceeds 12 feet in width and a total overall vehicle combination length 75 feet from bumper to bumper.
- d. Vehicles and vehicles combinations subject to exemptions or permits by authority of this executive order shall not be exempt from the requirement of a yellow banner on the front and rear measuring a total length of 7 feet by 18 inches bearing the legend oversized load in 10 inch black letters 1.5 inches wide and red flags measuring 18 inches square to be displayed on all sides at the widest point of the load. In addition, when operating between sunset and sunrise a certified escort shall be required for load exceeding 8 feet 6 inches in width.

**Section 5.**

Vehicles referenced under Sections 1 and 3 shall be exempt from the following registration requirements:

- a. The \$50.00 fee listed in N.C.G.S. § 105-449.49 for a temporary trip permit is waived for the vehicles described above. No quarterly fuel tax is required because the exception in N.C.G.S. § 105-449.45(a)(1) applies.
- b. The registration requirements under N.C.G.S. § 20-382.1 concerning intrastate and interstate for-hire authority is waived; however, vehicles shall maintain the required limits of insurance as required.
- c. Non-participants in North Carolina's International Registration Plan will be permitted into North Carolina in accordance with the exemptions identified by this Executive Order.

**Section 6.**

The size and weight exemption for vehicles will be allowed on all routes designated by the North Carolina Department of Transportation, except those routes designated as light traffic roads under N.C.G.S. § 20-118. This order shall not be in effect on bridges posted pursuant to N.C.G.S. § 136-72.

**Section 7.**

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1-6 of this Executive Order in a manner which will implement this rule without endangering motorists in North Carolina.

**Section 8.**

Upon request by law enforcement officers, exempted vehicles must produce documentation sufficient to establish their loads are being used for relief efforts associated with the winter storm and its after-effects in North Carolina.

**Section 9.**

This order is adopted pursuant to my powers under Article 1 of Chapter 166A of the General Statutes and not under my authority under Article 36A of Chapter 14 of the General Statutes. It does not trigger the limitations on weapons in G.S. § 14-288.7 or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages.

**Section 10.**


This Executive Order is effective immediately and shall remain in effect for thirty (30) days or the duration of the emergency, whichever is less.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 10th day of January in the year of our Lord two thousand and eleven, and of the Independence of the United States of America the two hundred and thirty-fifth.



  
Beverly E. Perdue  
Governor

ATTEST:

  
Elaine F. Marshall  
Secretary of State



## STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

GARY O. BARTLETT  
Executive Director

MAILING ADDRESS:

P.O. BOX 27255

RALEIGH, NC 27611-7255

RECEIVED

December 10, 2010

N.C. BOARD OF ELECTIONS

John R. Wallace, Esq.  
Wallace & Nordan, L.L.P.  
3737 Glenwood Avenue, Suite 27609  
Raleigh, North Carolina 27612

Re: *Advisory Request of the North Carolina Democratic Party;*  
*N.C. Gen. Stat. § 163-278.23*

Dear Mr. Wallace:

On October 25, 2010 you requested an advisory opinion pursuant to N.C. Gen. Stat. § 163-278.23 on whether the provisions of Article 22M of Chapter 163 are applicable to political parties. You correctly note that on April 3, 2005 I wrote the President Pro Tempore of the North Carolina Senate and the Speaker of the North Carolina House of Representatives to inform them that the issue of treatment of legal defense funds was not adequately addressed in North Carolina statutes. My letter highlighted the issues that arose with respect to candidates and political committees, and explained that, since before my tenure, it had been the "longstanding practice of the State Board of Elections, through the Executive Director, not to regulate monies raised and spent for expenses arising from contested elections or lawsuits filed against candidates and other political committees as long as that money was not deposited in a political committee account." A political party or executive committee of a political party is one form of a political committee under N.C. Gen. Stat. § 163-278.6(14).

The General Assembly adopted Article 22M in Session Law 2007-349, effective January 1, 2008. Some of the statutes in the Article were amended by Session Law 2009-534, effective December 1, 2009. As you note, the Article addresses legal expense funds for "elected officers," defined to include individuals "serving in or seeking a public office." N.C. Gen. Stat. § 163-278.300(3). A legal expense fund may be created by an individual other than the elected officer or by a group of individuals. "Legal expense fund" is defined as "[a]ny collection of money for the purpose of funding a legal action, or a potential legal action, taken by or against an elected officer in that elected officer's official capacity." N.C. Gen. Stat. § 163-278.300(6). Thus, Article 22M addresses legal expense funds created to support elected officers and those seeking elective office.

Article 22M does not address legal funds set up to defend non-candidate political committees or legal funds of political parties set up to pay for the expenses incurred by the political party to prosecute or

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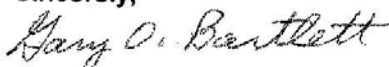
defend a legal action. If such funds are set up as part of the party's political committee structure, then monies into and out of the funds would need to comply with source and reporting requirements for political committees. If the legal fund is set up separately from the party's political committee structure, however, it is not covered by Article 22M of Chapter 163.

The purpose of my letter of April 3, 2005, was to alert the General Assembly to the fact that "North Carolina's campaign finance statutes [did] not clearly address fund raising by candidates or political committees for legal expenses." The General Assembly responded by adopting legislation that clearly addresses fund raising by or on behalf of candidates for legal expenses. The General Assembly did not address fund raising by or on behalf of political parties for the parties' legal expenses. Consistent with the longstanding approach of the State Board of Elections, it will not seek to regulate an area that the General Assembly has chosen not to give the State Board authority to regulate.

The leadership of the General Assembly and the chairs of all three recognized political parties will be provided with copies of your opinion request, this response, and my letter of April 3, 2005, so they will be aware of this issue should the leadership choose to address it in the upcoming session.

This opinion is based upon the information provided in your letter of October 25, 2010. If the information should change, you should evaluate whether this opinion is still applicable and binding. Finally, this opinion will be filed with the Codifier of Rules to be published unedited in the North Carolina Register and the North Carolina Administrative Code.

Sincerely,



Gary O. Bartlett  
Executive Director

cc: The Honorable Marc Basnight, President Pro Tempore of the Senate  
The Honorable Phil Berger, President-Elect Pro Tempore of the Senate  
The Honorable Joe Hackney, Speaker of the House of Representatives  
The Honorable Thom Tillis, Speaker-Elect of the House of Representatives  
✓ The Honorable Julian Mann, III, Codifier of Rules  
David Young, Chair of the Democratic Party  
Barbara Howe, Chair of the Libertarian Party  
Tom Fetzer, Chair of the Republican Party

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JOHN R. WALLACE  
RICHARD P. NORDAN  
JOSEPH A. NEWSOME

October 25, 2010

The Honorable Gary O. Bartlett, Executive Director  
North Carolina State Board of Elections  
506 North Harrington Street  
Raleigh, North Carolina 27603

**VIA HAND DELIVERY**

**Re: Advisory Request of the North Carolina Democratic Party, pursuant to  
N.C.G.S. § 163-278.23**

Dear Mr. Bartlett:

In the past, you have noted that the State Board has "never required legal funds to be bound by contribution limits and reporting requirements set out for regular campaign accounts." See News & Observer article, "Schools hopeful seeks donors," dated December 29, 2004. On April 13, 2005, you formally expressed this position by letter addressed to the leadership of both our North Carolina Senate and House, noting in particular:

North Carolina's campaign finance statutes do not clearly address fundraising by candidates or political committees for legal expenses. It has been the long standing practice of the State Board of Elections, through the Executive Director, not to regulate monies raised and spent for expenses arising from contested elections or lawsuits filed against candidates and political committees as long as that money was not deposited into a political committee account. This practice was in place prior to my tenure and has not been changed. The rationale for this policy is that (1) monies raised in these situations are for legal fees, and not for an election, and (2) frivolous or questionable lawsuits should not be allowed to cripple a candidate committee during an election or prevent a candidate from challenging or defending the results of an election.

Letter of Gary Bartlett, dated April 13, 2005.

Following your letter of April 13, 2005, the North Carolina General Assembly, aware that candidates and party committees had been utilizing legal funds in connection with litigation matters and post election contests, enacted the provisions of N.C.G.S. § 163-278.300, et seq. Article 22M, which provides for the regulation and reporting of legal expense funds created by "elected officers" as defined therein.

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G. Bartlett  
October 25, 2010  
Page 2

In N.C.G.S. § 163-278.301, entitled "Creation of legal expense funds," the General Assembly provided:

(a) An elected officer, or another individual or group of individuals on the elected officer's behalf, shall create a legal expense fund if given a legal expense donation, other than from that elected officer's self, spouse, parents, brother, or sister, for any of the following purposes:

(1) To fund an existing legal action taken by or against the elected officer in that elected officer's official capacity.

As I am sure that you are aware, the definition of "elected officer" in N.C.G.S. § 163-278.300(3) includes individuals both "serving in or seeking a public office."

Thus, in spite of your letter of April 13, 2005, the General Assembly chose not to require political parties utilizing legal funds to create legal expense funds subject to the provisions of Article 22M. Specifically, although Article 22M adds the requirement that elected officers receiving "legal expense donation[s]" create "legal defense funds[s]," it imposes no such obligation on political parties. The General Assembly made this determination, aware that both the Republican and Democratic parties in this State had utilized legal funds to fund litigation and post-election contests.

The North Carolina Democratic Party has a renewed need to fund legal expenses and is desirous of forming a legal expense fund in its own behalf. The Party has recently been named in two actions filed in the Superior Courts of this State, alleging, we believe without merit, that certain campaign communications by the Party are defamatory. Each of these actions seeks recovery of money damages, and the Party must mount defenses. The defense of these actions will occur, in large measure, subsequent to the November 2010 General Election. Therefore, the expenses of the defense of these actions will not have a bearing on the outcome of the impending General Election.

Your confirmation of the foregoing understanding will be appreciated.

With best regards, I remain

Sincerely,

WALLACE & NORDAN, LLP

John R. Wallace



## STATE BOARD OF ELECTIONS

6400 Mail Service Center • Raleigh, North Carolina 27699-6400

**GARY O. BARTLETT**  
Executive Director

**MAILING ADDRESS:**  
P.O. BOX 27255  
RALEIGH, NC 27611-7255

April 3, 2005

The Honorable Marc Basnight  
President Pro Tempore of the Senate  
North Carolina General Assembly  
2007 Legislative Building  
Raleigh, NC 27601-2808

The Honorable Jim Black  
Speaker of the House of Representatives  
North Carolina General Assembly  
2304 Legislative Building  
Raleigh, NC 27601-1096

Re: Disclosure of Attorneys Fees Arising From Contested Elections or  
Lawsuits filed against Candidates/Political Committees

Dear Mr. President Pro Tempore and Mr. Speaker:

A campaign finance issue has arisen with increasing frequency in recent years and is not clearly addressed in our statutes. This letter is intended to provide you background information about this issue, and to request guidance on whether legislative action with respect to it is appropriate for consideration.

In the past three years, the State Board of Elections has received inquiries about whether current campaign finance statutes are applicable to fund raising to pay for legal expenses arising from election contests or from post-election lawsuits against a candidate or political committee over campaign activity. For example, the 2002 race for sheriff of Caldwell County resulted in a lengthy election protest hearing at the county level and subsequent administrative and judicial appeals. The candidates conducted post-election fund raising in order to pay their legal expenses. This year the candidates for Commissioner of Agriculture and Superintendent of Public Instruction also asked for guidance about fund raising to pay for legal expenses associated with their contested elections. In addition, the State Board currently has pending a complaint alleging violations of campaign finance statutes by Attorney General Roy

LOCATION: 506 NORTH HARRINGTON STREET • RALEIGH, NORTH CAROLINA 27603 • (919) 733-7173

President Pro Tempore Basnight  
Speaker Black  
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Cooper and his political committee arising from his defense of a lawsuit filed by Dan Boyce about campaign activities in the 2000 General Election.

North Carolina's campaign finance statutes do not clearly address fund raising by candidates or political committees for legal expenses. It has been the longstanding practice of the State Board of Elections, through the Executive Director, not to regulate monies raised and spent for expenses arising from contested elections or lawsuits filed against candidates and political committees as long as that money was not deposited into a political committee account. This practice was in place prior to my tenure and has not been changed. The rationale for this policy is that (1) monies raised in these situations are for legal fees and not for an election, and (2) frivolous or questionable lawsuits should not be allowed to cripple a candidate committee during an election or prevent a candidate from challenging or defending the results of an election. This policy is similar to the approach of the Federal Election Commission with respect to federal candidates raising funds to cover legal expenses.

Given that increasingly large sums are being raised and spent for legal expenses in this State, it appears that it would be in the public interest for the statutes clearly to require disclosure of such fund raising. Candidates and political committees should be allowed to raise funds for such legal expenses and to deposit them into an account separate from a campaign account. Donations to a legal expenses account would not be considered "contributions" subject to contribution limits. Any funds raised could not be used to fund any other efforts by a candidate or a political committee in pursuit of election or reelection. All monies raised and costs incurred for such legal expenses would be disclosed in periodic reports, and these reports would be available for public review.

Current law does not require disclosure of funds raised unless they are deemed "contributions." Although the current statutory definition of "contribution" includes "anything of value [given] to a candidate to support or oppose the nomination or election of one or more clearly identified candidates, to a political committee, to a political party, or to a referendum committee, whether or not made in an election year," it has not been construed to extend to post-election donations to candidates to off-set legal expenses. See G.S. 163-278.6(6). Any legislation adopted to require disclosure of funds raised for legal expenses would need to define the donations that are required to be disclosed. It would need to address the frequency with which reporting is required. Finally, it would need to address whether volunteer services of an attorney should ever be considered either contributions to a political committee or donations to a separate fund for legal expenses. Currently, the definition of "contribution" includes language allowing individuals to "volunteer" a portion or all of their time on behalf of a candidate. See G.S. 163-278.6(6). The

President Pro Tempore Basnight  
Speaker Black  
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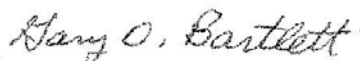
question has arisen whether there is a point at which services provided by attorneys cross the line from "volunteer services" to contributions.

At my request, C. Colon Willoughby, District Attorney, 10<sup>th</sup> District, reviewed this letter and offered additional comments that should be considered. Colon is district attorney of the prosecutorial district where most campaign reporting violations are filed. His thoughts follow:

"I agree that there should be disclosure of contributions and volunteer "services" of professionals for work/expenses done other than to assist the campaign in filing its required reporting. Lawyers, CPA's and other professionals should be allowed to donate their time so long as there is disclosure. I also agree that any contribution for legal expenses should be separated from ordinary contributions. However, the General Assembly may wish to consider some regulation of this flow of funds. I would suggest that the funds/services only be allowed to be used to "defend" the candidate, treasurer, or committee, and that the funds not be used to prosecute lawsuits against others, including the Board, etc. This would discourage disgruntled losing candidates from attempting to overturn results that the Board certifies or attempts to certify. It seems prudent to also impose some limits on these funds--such as the amount an individual may contribute and whether or not corporations would be allowed to contribute. Without some type of regulation I believe we will be vulnerable to system attacks by wealthy and out of state persons or entities."

As always, I appreciate your wisdom and guidance on administering the law as it has been passed and whether additional legislative action is required. If you should have any questions, please feel free to contact me at 919-715-1827.

Most sincerely,



Gary O. Bartlett  
Executive Director

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

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

## **TITLE 14A – DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Crime Control and Public Safety, State Highway Patrol intends to amend the rule cited as 14A NCAC 09J .0101.*

**Proposed Effective Date:** June 1, 2011

### **Public Hearing:**

**Date:** February 16, 2011

**Time:** 9:30 a.m.

**Location:** State Highway Patrol (SHP), Archdale Building, 3<sup>rd</sup> Floor Conference Room, 512 North Salisbury Street, Raleigh, NC 27604

**Reason for Proposed Action:** According to CFR Part 350, States receiving Federal Motor Carrier Safety Assistance Program (MCSAP) funding to conduct an annual review of its laws and regulations for compatibility. The review revealed laws and regulations needed revision. This law change will bring the State law as it applies to gross vehicle weight rating (GVWR), gross combination weight rating (GCWR), gross vehicle weight (GVW), gross combination weight (GCW) of commercial motor vehicles and the farm vehicle exemption of the periodic annual inspection in compliance with 49 CFR Part 350 as it pertains to a Commercial Motor Vehicle having a GVWR or a GCWR or GVW or GCW of 26,001 or more operated in intrastate Commerce.

**Procedure by which a person can object to the agency on a proposed rule:** The Secretary will accept written objections to the proposed rule amendment until the expiration of the comment period on April 4, 2011.

**Comments may be submitted to:** Captain William T. Belch, 4702 Mail Service Center, Raleigh, NC 27699-4702; phone (919) 715-8683; fax (919) 715-8196; email wtbelch@ncshp.org

**Comment period ends:** April 4, 2011

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in

G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

### **Fiscal Impact:**

- ☐ State  
☐ Local  
☐ Substantial Economic Impact (≥\$3,000,000)  
☒ None

## **CHAPTER 09 - STATE HIGHWAY PATROL**

### **SUBCHAPTER 09J - MOTOR CARRIER SAFETY REGULATIONS**

#### **SECTION .0100 - SAFETY RULES AND REGULATIONS**

#### **14A NCAC 09J .0101 SAFETY OF OPERATION AND EQUIPMENT**

(a) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carriers and all for-hire motor carrier vehicles, and all private motor carriers and all private motor carrier vehicles engaged in interstate commerce over the highways of the State of North Carolina if such vehicles are commercial motor vehicle(s) as defined in 49 CFR Part 390.5.

(b) The rules and regulations adopted by the U.S. Department of Transportation relating to safety of operation and equipment (49 CFR Parts 390-397 and amendments thereto) shall apply to all for-hire motor carriers and all for-hire motor carrier vehicles, and all private motor carriers and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicle(s) is

- (1) a vehicle having a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR) or gross vehicle weight (GVW) or gross combination weight (GCW) of 26,001 pounds or more, whichever is greater, or
- (2) designed or used to transport 16 or more passengers, including the driver, or
- (3) used in transporting a hazardous material in a quantity requiring placarding pursuant to 49 C.F.R. Parts 170 through 185."

~~have a GVWR of greater than 26,000 pounds; or are designed to transport 16 or more passengers, including the driver; or~~

~~transport hazardous materials required to be placarded pursuant to 49 CFR 170.185.~~

(c) In addition, Provided, the following exceptions shall also apply to all intrastate motor carriers:

- (1) An intrastate motor carrier driver shall not drive more than 12 hours following eight consecutive hours off duty; or for any period after having been on duty 16 hours following eight consecutive hours off duty; or after having been on duty 70 hours in seven consecutive days; or more than 80 hours in eight consecutive days. An intrastate driver shall be determined by his previous seven days of operation.
- (2) Persons who otherwise qualify medically to operate a commercial motor vehicle within the State of North Carolina shall be exempt from the provisions of Part 391.11(b)(1) and may be exempt from provisions of Part 391.41(b)(1) through (11) where applicable and therefore shall be authorized for intrastate operation if approved by an Exemption Review Officer appointed by the Commissioner of Motor Vehicles. These drivers shall continue to be exempt upon completion of a medical examination indicating the condition has not worsened or no new disqualifying conditions have been diagnosed and upon continued approval of an Exemption Review Officer. After a medical review by the Exemption Review Officer, a driver may be granted a waiver not to exceed a period of two years based on the type and severity of the condition. The Exemption Review Officer shall follow the guidelines established for variances from the Federal Motor Carrier Safety Regulations for intrastate commerce found in 49 CFR, Part 350.341.

~~(d)(e)~~ The rules and regulations adopted by the U. S. Department of Transportation relating to inspection, repair and maintenance of motor vehicles (49 CFR Part 396.17 through 396.23 and including Appendix G, and amendments thereto) shall apply to all for-hire motor carrier vehicles, and all private motor carrier vehicles engaged in intrastate commerce over the highways of the State of North Carolina if such vehicles have a GVWR of greater than 10,000 pounds. Provided, any farm vehicle shall be exempt from the requirements of this Paragraph if:

- ~~(1) It is being operated by a farmer (or a person under the direct control of the farmer) as a private motor carrier of property;~~
- ~~(2) It is being used to transport either:~~
  - ~~(A) agricultural products, or~~
  - ~~(B) farm machinery, farm supplies, or both, to and from a farm;~~
- ~~(3) It is being operated solely within this State and within 150 air miles of the farmer's farm;~~
- ~~(4) It is not being used in the operation of a for hire motor carrier; and~~

~~(5) It is not carrying hazardous materials of a type or quantity that requires the vehicle to be placarded in accordance with 49 CFR 177.823.~~

~~(e)(d)~~ Every motor vehicle registered or required to be registered in North Carolina and subject to the inspection requirements of the Federal Motor Carrier Safety Regulations (49 CFR Part 396), ~~which does not display a current approved State inspection certificate as provided in N.C. Gen. Stat. 20-183.2~~ must display a current approved federal inspection certificate when operated on the streets and highways of this State. On self-propelled vehicles the federal inspection certificate shall be displayed on the outside of the vehicle in a readily visible location on, or in the immediate vicinity of, the driver's door exclusive of the window or rear view mirror. On trailers and semitrailers, the federal inspection certificate shall be located on the left side as near as possible to the outside lower front of the vehicle. The inspection certificate shall contain at least the following legible information:

- (1) The date of inspection;
- (2) Name and address of the motor carrier or other entity where the inspection report required by 49CFR 396.21(a) is maintained;
- (3) Information uniquely identifying the vehicle-inspected; and
- (4) A certification that the vehicle has passed an inspection in accordance with 49 CFR 396.17.

~~(f)(e)~~ The Secretary shall ~~Commissioner may~~ fine violators for out-of-service criteria as allowed by G.S. 20-17.7. The ~~commercial motor vehicle~~ Commercial Vehicle Safety Alliance (CVSA) out-of-service maximum civil fine schedule shall be maintained in the Office of the ~~Secretary Commissioner~~ Secretary of Crime Control and Public Safety, the Division of Motor Vehicles, be available for public inspection, and be updated annually by the ~~Secretary Commissioner~~ on the first day of April. The out-of-service maximum civil fine schedule shall not apply to educational contacts or North American Standard Level-V inspections approved by the ~~Secretary of Crime Control and Public Safety, Commissioner of Motor Vehicles~~. An educational contact for the purpose of this code shall mean a pre-planned, public safety inspection activity, focusing on commercial motor vehicle safety awareness and compliance.

~~(g)(4)~~ Any fines assessed for a violation listed in ~~of an~~ the North American Standard out-of-service criteria shall be assessed against the motor carrier of the commercial motor vehicle.

~~(h)(g)~~ Whenever a motor carrier of a ~~commercial motor~~ vehicle shall have a defense to the enforcement of ~~the collection of a fine~~ or fines for violation(s) of ~~the~~ out-of-service criteria, by the Department of Crime Control and Public Safety, must pay the penalty within 30 calendar days after the date the penalty was assessed or make a written request within this time limit to the Department for a Departmental review of the penalty. A person who does not submit a request for review within the required time waives the right to a review and hearing on the penalty. such motor carrier shall pay such fine to the proper officer, and notify such officer in writing that he pays the same under protest. Such payment shall be without prejudice to any defense or rights he may have, and he may, at any time within 30 days after such payment, demand in writing the return of the fine from the Commissioner of Motor Vehicles.



(i)(4) All Code of Federal Regulations (CFR) Parts cited in this Section, are incorporated herein by reference including any subsequent amendments. A copy of the CFR is available from the Office of Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, at a cost set by that office.

*Authority G.S. 20-17.7; 20-21; 20-37.22; 20-96; 20-183.2(a); 20-381.*

## TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to adopt the rule cited as 21 NCAC 18B .0308, amend the rules cited as 21 NCAC 18B .0102-.0103, .0204, .0209-.0211, .0402, .0803, .1102-.1103, and repeal the rules cited as 21 NCAC 18B .0106, .0205-.0208, and .0601-.0602.*

**Proposed Effective Date:** June 1, 2011

**Public Hearing:**

**Date:** February 24, 2011

**Time:** 9:30 a.m.

**Location:** Brunswick Community College at 50 College Road, Bolivia, NC 28422

**Reason for Proposed Action:** *In response to the Governor's Executive Order No. 70, the Board has conducted a review of its Rules and proposes to repeal certain rules, consolidate other rules and rename some rules. At the same time, the Board proposes to adopt a rule required by amendment to G.S. 93B-2 and proposes to codify a requirement that permits be required in a new rule. It is the view of the Board that no material impact on licensees, the public or local government will result from this process.*

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

**Comments may be submitted to:** Robert L. Brooks, Jr., 3101 Industrial Drive, Suite 206, Raleigh, NC 27619; phone (919) 733-9042

**Comment period ends:** April 4, 2011

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed

objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal Impact:**

☐

State

☐

Local

☐

Substantial Economic Impact (≥\$3,000,000)

☒

None

### SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT

#### SECTION .0100 - GENERAL PROVISIONS

#### 21 NCAC 18B .0102 REFERENCE TO STATE BUILDING AND ELEVATOR CODES

(a) Pursuant to G.S. ~~150B-14(e)~~, 150B-21.6, the North Carolina State Building Code, Volume IV Electrical, and the National Electrical Code, NFPA 70, are adopted by reference. Whenever a reference is made to this Subchapter to one of these codes, it shall mean the current edition any amendments thereto. The term "National Electrical Code" when used in these rules includes both codes adopted under this Subsection.

(b) Pursuant to G.S. ~~150B-14(e)~~, 150B-21.6, the North Carolina codes and standards for elevators, dumbwaiters, escalators, moving walks and personnel hoists, administered by the North Carolina Department of Labor and codified as 13 NCAC 15 .0200, are adopted by reference. Whenever a reference is made in this Subchapter to these codes and standards, it shall mean the current edition and amendments thereto.

*Authority G.S. 87-39; 87-42; 95-11(e); 143-138.*

#### 21 NCAC 18B .0103 ORGANIZATION

(a) Executive Director. The Board shall employ a full-time executive director whose duties shall be to manage and supervise the office and staff in carrying out the policies and directives of the Board. The executive director shall handle all administrative duties of the Board and such other duties as the Board may from time to time assign. The executive director is designated the legal process agent for the Board upon whom all legal process may be served. The compensation of the executive director shall be fixed by the Board.

(b) Committees. The chairman of the Board may appoint regular, special, and special advisory committees. Regular committees facilitate prescribed phases of the Board's duties and operations. Special committees undertake specific assignments of the Board. Special advisory committees assist the Board's regular or special committees with specific board assignments.



(c) Meetings. The regular quarterly meetings of the Board shall begin at 8:30 a.m., unless some other place or time is set by the Board. Special meetings may be held at places and times deemed by the chairman to be suitable to accomplish the necessary purposes for which the meetings are held.

(d) Annual Reports. The Board will make timely filing of all reports required by G. S. 93B-2. In case of unforeseen circumstances causing the untimely filing of a report, then pursuant to G.S. 93B-2(d), the Board will hold in escrow any fees tendered between the filing deadline and the filing date. Issuance of licenses, renewals and application processing will continue during any interval created by the untimely filing of a report required by G.S. 93B-2.

*Authority G.S. 87-39; 87-40; 87-42.*

## **21 NCAC 18B .0106 JOINT RESOLUTION AND AGREEMENTS**

~~(a) When deemed necessary for the effective implementation of Article 4, Chapter 87, of the North Carolina General Statutes, the Board may enter into joint resolutions or agreements with other North Carolina licensing boards or agencies.~~

~~(b) Exact copies of all joint resolutions or agreements entered into by the Board shall be filed with the North Carolina Secretary of State and the North Carolina Attorney General.~~

*Authority G.S. 87-39; 87-42.*

## **SECTION .0200 - EXAMINATIONS**

### **21 NCAC 18B .0204 EXAMINATIONS**

(a) The Executive Director is authorized to arrange for examinations to be administered by the Board or the Board's authorized computer testing service.

~~(a)(b)~~ All qualifying examinations administered by the Board for each license classification shall be written or computer-based examinations and must be taken personally by the approved applicant.

~~(b)(c)~~ Approved applicants shall be provided a notice of examination eligibility that shall be valid for a period of three months and for a single administration of the qualifying examination. Upon receipt of a notice of examination eligibility from the Board, the applicant shall schedule the examination by contacting the Board or the authorized testing service. The applicant will be scheduled for the examination and will be notified of the date, time and place.

(d) A minimum grade of 75 out of a possible score of 100 is required in order to pass any qualifying examination administered by the Board.

*Authority GS 87-42; 87-43.3; 87-43.4.*

### **21 NCAC 18B .0205 MINIMUM PASSING GRADE**

A minimum grade of 75 is required for passing any qualifying examination administered by the Board for any class of electrical contracting license.

*Authority G.S. 87-42; 87-43.3; 87-43.4.*

### **21 NCAC 18B .0206 REGULAR EXAMINATIONS**

~~The executive director is authorized to arrange for regular examinations to be administered by the Board or the Board's authorized computer testing service.~~

*Authority GS 87-42; 87-43.3; 87-43.4.*

### **21 NCAC 18B .0207 APPLICATION FOR REGULAR EXAMINATIONS**

~~(a) To be eligible for consideration, applications for regular examinations must be filed with the Board on a form furnished by the Board.~~

~~(b) The Board's staff shall determine whether applications are filed in accordance with Rule .0210 of this Section, process all applications, and return all applications not duly filed.~~

*Authority G.S. 87-42; 87-43.3; 87-43.4.*

### **21 NCAC 18B .0208 SPECIALLY ARRANGED EXAMINATIONS**

~~(a) Specially arranged examinations are examinations given in the Board's office or elsewhere at a time other than during a regular examination period.~~

~~(b) Provided the conditions of this Rule are met, the Board's staff may accept applications for specially arranged examinations, to expedite verification of references and qualifications of applicants, and to arrange for such applicants to take a specially arranged examination if the staff finds that a specially arranged examination is justified. The Board shall consider and act on applications at the request of the application review committee or on written appeal of an applicant.~~

~~(c) An out of state electrical contractor shall mean a person, partnership, firm or corporation currently operating an electrical contracting business in accordance with the laws of his or its home state, outside the State of North Carolina. The Board shall give specially arranged examinations on a reciprocal basis for out of state electrical contractors whose circumstances require that they be licensed prior to the time when a regular examination is scheduled and when such contractors are not eligible for a license pursuant to G.S. 87-50 because no reciprocal licensing agreement exists. An out of state electrical contractor's need to bid or otherwise offer to engage in a specific North Carolina project, the time table for which will not permit waiting until the next examination period, may constitute circumstances reasonably justifying the scheduling of a specially arranged examination for the individual representing such out of state electrical contractor.~~

~~(1) To be eligible to take a specially arranged examination, the individual applying to become qualified must file with the Board an application, together with the following:~~

~~(A) Information satisfactorily verifying that the out of state electrical contractor which the individual represents is engaged in a lawful electrical contracting business in its home state. If the out of state electrical contractor is required to be, and is, licensed in its home state as an~~

electrical contractor, this information must include written verification that the licensing agency of such state will grant the same specially arranged privilege to North Carolina electrical contractors.

(B) Information satisfactorily verifying the need for a North Carolina license prior to the next examination period.

(C) The specially arranged application-examination fee as prescribed in Rule .0209 of this Section.

(D) Information satisfactorily verifying that the applicant for the examination has met all the minimum requirements applicable to the classification involved as prescribed in Rules .0201, .0202 and .0210 of this Section.

(2) The Board's staff shall approve the application if the out-of-state electrical contractor is required to be, and is, licensed in its home state as an electrical contractor and if the licensing agency in that state has committed itself in writing to grant to electrical contractors licensed by North Carolina the same privilege which the applicant is requesting from the Board.

(3) The applicant shall take the examination for the classification of license involved, and at such special time and place as mutually agreed upon by the Board's staff and the applicant.

(4) Specially arranged examinations shall be graded promptly, and immediately thereafter the applicant shall be notified of the results. If the applicant passes, the out-of-state electrical contractor which he represents will be eligible to apply for a license based upon his qualifications and, upon meeting all of the other license requirements applicable to the license classification involved, as prescribed in Section .0400 of this Subchapter, a license shall be issued to the out-of-state electrical contractor with him indicated thereon as the qualified individual. If the applicant fails the examination, he will be required to wait the normally required six-month waiting period between examinations before being eligible to take another specially arranged examination. However, if he meets all of the other requirements and wishes to apply to take another specially arranged examination in a classification lower than the classification of his failed examination, or to apply to take a regular examination during the next examination period, the normally required six-month waiting period shall not apply.

(d) A North Carolina electrical contractor shall mean a person, partnership, firm or corporation licensed by the Board to engage

or offer to engage in the business of electrical contracting within the state of North Carolina. The Board shall give a specially arranged examination for a North Carolina electrical contractor whose circumstances require that it be licensed in a classification higher than its current license prior to the time when a regular examination is scheduled. A North Carolina electrical contractor's need to bid or otherwise offer to engage in a specific electrical contracting project having a value exceeding the limitations of such contractor's current license, the time table for which will not permit waiting until the next regular examination period, may constitute circumstances reasonably justifying the scheduling of a specially arranged examination for the individual representing such North Carolina electrical contractor.

(1) To be eligible to take a specially arranged examination, the individual applying to become qualified must file with the Board an application, together with the following:

(A) Information satisfactorily verifying the need to have the license upgraded prior to the next regular examination period.

(B) The specially arranged application-examination fee as prescribed in Rule .0209 of this Section.

(C) Information satisfactorily verifying that the applicant for the examination has met all the minimum requirements applicable to the classification involved as prescribed in Rules .0201, .0202 and .0210 of this Section.

(2) When an application for a specially arranged examination is received, the Board's staff shall determine if the applicant is the duly authorized representative of an electrical contractor licensed by the Board and, if so, shall approve the application.

(3) The applicant shall take the examination for the classification of license involved, at such time and place as mutually agreed upon by the Board's staff and the applicant.

(4) Specially arranged examinations shall be graded promptly, and immediately thereafter the applicant shall be notified of the results. If the applicant passes, the electrical contractor which he represents will be eligible to apply to have its license upgraded based upon the passing applicant's qualification and, upon meeting all of the other license requirements applicable to the license classification involved, as prescribed in Section .0400 of this Subchapter, a new license shall be issued to the electrical contractor with him indicated thereon as the qualified individual. If the applicant fails the examination, he will be required to wait the normally required six-month waiting period between examinations before being eligible to take another specially arranged examination. However, if he meets

~~all of the other requirements and wishes to apply to take another specially arranged examination in a classification lower than the classification of his failed examination, or to apply to take a regular examination during the next examination period, the normally required six month waiting period shall not apply.~~

~~(e) For the purposes of this Subsection, the loss of a listed qualified individual shall mean a currently licensed electrical contractor being left without a listed qualified individual regularly on active duty in its electrical contracting principal or separate place of business. The Board shall give a specially arranged examination for an electrical contractor which has lost its listed qualified individual to have another representative take a specially arranged examination for the purposes of maintaining continuity of such electrical contractor's business. To be eligible to take a specially arranged examination, the individual applying to become qualified must file with the Board an application, together with the following:~~

- ~~(1) Information satisfactorily verifying the electrical contractor's need for a representative to take a specially arranged examination before the next regular examination period.~~
- ~~(2) The specially arranged application examination fee as prescribed in Rule .0209 of this Section.~~
- ~~(3) Information satisfactorily verifying that the applicant for the examination has met all the minimum requirements applicable to the classification involved as prescribed in Rules .0201, .0202 and .0210 of this Section.~~

*Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.*

#### **21 NCAC 18B .0209 FEES**

(a) The examination fee for ~~regular~~ qualifying examinations is ninety dollars (\$90.00) for all classifications.

~~(b) The examination fee for a specially arranged qualifying examination is two hundred dollars (\$200.00) for all classifications.~~

~~(c)~~(b) The fee for review of a failed examination is twenty-five dollars (\$ 25.00). All reviews are supervised by the Board or staff.

~~(d)~~(c) The examination fees for ~~regular or specially arranged~~ examinations in all classifications and the fees for examination reviews may be in the form of cash, check, money order, Visa or Mastercard made payable to the Board and must accompany the respective applications when filed with the Board.

~~(e)~~(d) Examination fees received with applications filed for qualifying examinations shall be retained by the Board unless:

- (1) an application is not filed as prescribed in Rule .0210 of this Section, in which case the examination fee and application shall be returned; or
- (2) the applicant does not take the examination during the period for which application was made, files a written request for a refund,

setting out extenuating circumstance, and the Board finds extenuating circumstances.

~~(f)~~(e) Examination review fees are non-refundable unless the applicant does not take the review, files a written request for a refund, setting out extenuating circumstance, and the Board finds extenuating circumstances.

~~(g)~~(f) Any fee retained by the Board shall not be creditable toward any future examination fee or examination review.

~~(h)~~(g) Extenuating circumstances for the purposes of Paragraphs ~~(e)~~(2) ~~(d)~~(2) and ~~(f)~~(e) of this Rule shall be the applicant's illness, bodily injury or death, or death of the applicant's spouse, child, parent or sibling, or a breakdown of the applicant's transportation to the designated site of the examination or examination review.

*Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.*

#### **21 NCAC 18B .0210 APPLICATIONS DULY FILED**

Examinations applications shall be considered as duly filed when the applicant has filed an application with the Board, on a form provided by the Board, together with the examination fee as prescribed in Rule .0209 of this Section and information sufficient to ~~establish~~ meet the minimum examination requirements applicable to the classification involved. By filing ~~his an~~ application with the ~~Board~~ Board, an applicant authorizes the Board or the Board's staff to verify, in any manner the Board or staff deems necessary and appropriate, the information submitted on or in support of ~~his the~~ application. The Board or staff shall determine whether applications are duly filed, process all applications, and return all applications not duly filed.

*Authority G.S. 87-42; 87-43.3; 87-43.4; 87-44.*

#### **21 NCAC 18B .0211 WAITING PERIOD BETWEEN EXAMINATIONS**

(a) A person who fails a ~~regular~~ qualifying examination must wait before being eligible to take another regular examination in the same classification. The waiting period depends on the score on the failed examination, as follows:

| Failed Examination Grade | Waiting Period |
|--------------------------|----------------|
| 74-65                    | 3 months       |
| 64 and below             | 6 months       |

(b) A person who fails an examination in the same license classification three times must satisfactorily complete a minimum of 16 hours classroom education on the electrical code provided by a board-approved continuing education sponsor before retaking the examination.

(c) A person shall be considered a new applicant each time he applies to take an examination and must file an application on the standard application form and pay the required examination fee.

*Authority G.S. 87-42; 87-43.3; 87-43.4.*

#### **SECTION .0300 - DEFINITIONS AND EXPLANATIONS OF TERMS APPLICABLE TO LICENSING**

**21 NCAC 18B .0308 PERMITS AND INSPECTIONS**

(a) A licensed contractor shall ensure that a permit is obtained from the local Code Enforcement official before commencing any work, for which a license is required by the Board except as set out in Paragraph (c) of this Rule. The licensee shall also ensure that a request for final inspection is made by him, the general contractor or the owner within 10 days of substantial completion of the work for which a license is required, absent agreement with both the owner and the local Code Enforcement official. Absent agreement with the local Code Enforcement official the licensee is not relieved by the Board of responsibility to arrange inspection until a certificate of compliance or the equivalent is obtained from the local Code Enforcement official or the licensee has clear and convincing evidence of his effort to obtain same.

(b) A licensed contractor shall not allow a permit to be obtained or his license number to appear upon a permit except for work which he or his employees perform, over which he will provide general supervision until the completion of the work, for which he holds an executed contract with the licensed general contractor or property owner and for which he receives all contractual payments.

(c) An electrical permit is not required for repair or replacement of electrical lighting fixtures or devices, such as receptacles and lighting switches, or for the connection of an existing branch circuit to an electric water heater that is being replaced, provided that all of the following requirements are met:

- (1) with respect to electric water heaters, the replacement water heater is placed in the same location and is of the same or less capacity and electrical rating as the original;
- (2) with respect to electrical lighting fixtures and devices, the replacement is with a fixture or device having the same voltage and the same or lower amperage;
- (3) the repair or replacement installation meets the current edition of the State Building Code, including the State Electrical Code.

Authority G.S. 87-42; 87-43; 87-46; 153A-357; 160A-417.

**SECTION .0400 - LICENSING REQUIREMENTS**

**21 NCAC 18B .0402 LICENSE NAME REQUIREMENTS**

(a) Issuance of License. The name in which a license is issued must be distinguishable upon the records of the Board from the name in which a license has already been issued. If the name requested, after deleting all spaces, punctuation marks, articles, prepositions, conjunctions and, whether abbreviated or not, "corporation," "incorporated," "company," or "limited," is not identical to the name in which a license has already been issued, it shall be distinguishable. The substitution of a numeral for a word that represents the same numeral shall not make the name distinguishable.

(b) Name In Which Business Must Be Conducted. All electrical contracting business, including all business advertising and the submission of all documents and papers, conducted in the state of North Carolina by a licensee of the Board shall be conducted

in the exact name in which the electrical contracting license is issued.

(c) Notification of ~~Address~~ Address, and ~~Telephone Change~~ Change and email address. All licensees shall notify the Board in writing within 30 days of any change in ~~location~~ location, or mailing ~~address~~ address, and telephone ~~number~~ number or email address.

Authority G.S. 87-42.

**SECTION .0600 - RECLASSIFICATION OF FORMER CLASS I AND CLASS II LICENSES AND QUALIFIED INDIVIDUALS**

**21 NCAC 18B .0601 LICENSES EXPIRING AND INDIVIDUALS QUALIFIED/JULY 1, 1970**

~~(a) Inactive Class I Licensee or Individual. Subject to Section .0400 of this Subchapter, any licensee whose last active license was a Class I license that expired on or before June 30, 1970, or any listed qualified individual who was last indicated as such on a Class I license that expired on or before June 30, 1970, and currently has Class I license qualifications is entitled to receive, without written examination, a license in either the limited, intermediate or unlimited classification upon:~~

- ~~(1) filing an application with the Board designation the class license desired; and~~
- ~~(2) paying the annual license fee for the license classification desired.~~

~~(b) Initial Choice of License Classification. The inactive Class I licensee or Class I qualified individual may initially choose either the limited, intermediate or unlimited license. Thereafter the same requirements which apply to new applicants must be met to obtain a license in a classification higher than the license initially chosen.~~

~~(c) Inactive Class II Licensee or Individual. Subject to Section .0400 of this Subchapter, any licensee whose last active license was a Class II license that expired on or before June 30, 1970, or any listed qualified individual who was last indicated as such on a Class II license that expired on or before June 30, 1970, and currently has Class II license qualifications may obtain a license in either the limited, intermediate or unlimited license classification without written examination upon meeting the requirements for the particular license classification as follows:~~

- ~~(1) To obtain a limited license, the applicant must:~~
  - ~~(A) file an application with the Board requesting a limited license; and~~
  - ~~(B) pay the annual fee for the limited license.~~
- ~~(2) To obtain an intermediate license, the applicant must:~~
  - ~~(A) file an application with the Board requesting an intermediate license;~~
  - ~~(B) pay the annual fee for the intermediate license; and~~
  - ~~(C) furnish to the Board, on a form provided by the Board, a statement from a bonding company licensed to do business in North Carolina certifying the applicant's ability to~~

- ~~furnish a performance bond for electrical contracting projects in excess of twenty-five thousand dollars (\$25,000) or submit other information regarding the applicant's financial and business qualifications for evaluation by the Board.~~
- (3) ~~To obtain an unlimited license, the applicant must:~~
- ~~(A) file an application with the Board requesting an unlimited license;~~
  - ~~(B) pay the annual fee for the unlimited license; and~~
  - ~~(C) furnish to the Board, on a form provided by the Board, a statement from a bonding company licensed to do business in North Carolina certifying the applicant's ability to furnish a performance bond for electrical contracting purposes in excess of seventy-five thousand dollars (\$75,000) or submit other information regarding the applicant's financial and business qualifications for evaluation by the Board.~~

Authority G.S. 87-42; 87-49.

## 21 NCAC 18B .0602 QUALIFIED INDIVIDUALS LISTED PRIOR TO JULY 1, 1970

For the purpose of reclassification only, any qualified individual whose name was listed on a license which expired on or before June 30, 1970, shall be deemed a holder of the class license on which his name was listed.

Authority G.S. 87-42; 87-49.

## SECTION .0800 - SPECIAL RESTRICTED LICENSES

### 21 NCAC 18B .0803 SCOPE OF SP-SFD LICENSE

- (a) Definitions. The following definitions apply in this Rule:
- (1) An "ancillary" "Ancillary" to with reference to the scope of a single family residential dwelling license, is an appurtenance or ~~an~~ out-building or similar structure associated with the single family dwelling such as a detached residential garage or carport, a farm or household equipment storage shed, a barn, a pump house, an electric fence, or yard lighting.
  - (2) "Habitation" means the occupancy of dwelling primarily or exclusively for residential purposes and includes the incidental use of the dwelling or its ancillaries for a business, commercial, or professional activity, such as providing hair dressing, medical, legal, consulting, or tax services, if:
    - (A) the activity is clearly incidental to the primary use of the dwelling as a residence;

- (B) no stock-in-trade is either displayed or sold on the premises;
  - (C) the full-time or part-time services of no more than one person who does not live at the dwelling are used in the activity.
- (3) A "single family residential dwelling" is a building or a manufactured home that is designed and used only for habitation by one family and is not physically attached to any other building or structure. Cabanas, porches, room additions, and ~~similar~~ ancillary structures are considered part of a single family dwelling if they are designed for and used only for residential purposes by the occupants of the dwelling.
- (b) A special restricted single family residential dwelling electrical contracting license (SP-SFD) authorizes the licensee to install, maintain, or repair only electrical wiring and devices that are in or on a single family residential dwelling or ~~an~~ are ancillary to a single family residential dwelling. Electrical work ~~that is covered by~~ within the scope of another special restricted license can be performed by a SP-SFD licensee without obtaining the other special restricted license as long as it is in or on a single family residential dwelling or ~~an~~ is ancillary to a single family residential dwelling.

Authority G.S. 87-42; 87-43.4.

## SECTION .1100 - CONTINUING EDUCATION

### 21 NCAC 18B .1102 MINIMUM REQUIREMENTS FOR COURSE SPONSOR APPROVAL

- (a) Each course sponsor shall submit an application for continuing education course sponsor approval to the Board on a form provided by the Board by March 1 prior to the fiscal year (July 1 - June 30) in which the course will be offered. For good cause, the Board may approve course sponsors at any quarterly Board meeting. The application shall include:
- (1) the name of the sponsor;
  - (2) sponsor contact person, ~~address and address,~~ telephone ~~number;~~ number and email address;
  - (3) course title and outline;
  - (4) course contact hours;
  - (5) schedule of courses, if established, including dates, time and locations;
  - (6) course fee; and
  - (7) names and credentials of each instructor.
- (b) To qualify as an approved continuing education course sponsor:
- (1) all courses offered by the sponsor shall last no fewer than two contact hours required for the license classification pursuant to Rule .1101(b) of this Section; and
  - (2) all courses offered by the sponsor shall cover articles of the current National Electrical Code; NFPA 72 and reference materials for Fire Alarm Systems; G.S. 87, Article 4; 21 NCAC 18B; or other subject matter satisfying

the requirements in G.S. 87-44.1 as approved by the Board.

- (c) The course sponsor or instructor shall provide the Board with a certified class roster of all attending qualified individuals within ~~30~~ 10 days after the completion of each course.
- (d) The course sponsor or instructor shall provide each attending qualified individual with a certificate of completion within ~~30~~ 10 days after completion of each course.
- (e) The Board shall approve or deny applications at its ~~April meeting~~, regularly scheduled meetings.
- (f) Upon approval of the application, each approved sponsor shall agree to conduct courses in accordance with this Section and the application and shall indicate its agreement by signing a continuing education sponsor agreement form provided by the Board.

*Authority G.S. 87-42; 87-44.1.*

**21 NCAC 18B .1103 MINIMUM REQUIREMENTS FOR COURSE INSTRUCTOR APPROVAL**

- (a) Each course instructor shall submit an application for continuing education course instructor approval to the Board on a form provided by the Board by March 1 prior to the fiscal year (July 1 – June 30) in which the course will be offered. For good cause, the Board may approve course instructors at any quarterly Board meeting. The application shall include:

- (1) The name of the instructor;
- (2) Instructor's ~~address and address~~, telephone ~~number; number and email address;~~
- (3) The name of the course sponsor;
- (4) Course title;
- (5) Course contact hours; and
- (6) Qualifications of instructor.

- (b) ~~Beginning March 1, 1994, no~~ No applicant shall be considered for approval as a continuing education course instructor unless the applicant satisfies at least one of the following:

- (1) ~~Be~~ Is a "qualified individual" as defined in G.S. 87-41.1(1) and certified as such by the Board pursuant to G.S. 87-42. This applicant will be considered for approval as a continuing education instructor to teach courses in the same or lower license classification in which the applicant is certified as a "qualified individual" as follows:  
 Unlimited - Any License Classification  
 Intermediate - Intermediate, Limited, SP-SFD and any SP-Restricted Classification  
 Limited - Limited, SP-SFD and any SP-Restricted Classification

SP-Restricted - Only in same SP-Restricted Classification

- (2) Have passed the Continuing Education Instructor Examination prescribed and conducted by the Board. This applicant will be considered for approval as a continuing education instructor to teach courses in any license classification.
- (3) Be a "qualified code-enforcement official" as defined in G.S. 143-151.8(a)(5) and certified as such by the North Carolina Code Officials Qualification Board as holding qualifications for an electrical inspector in Standard Level III, Standard Level II or Standard Level I categories. This applicant will be considered for approval as a continuing education instructor to teach courses in license classifications as follows:  
 Standard Level III - Any License Classification  
 Standard Level II - Intermediate, Limited, SP-SFD and any SP-Restricted Classification  
 Standard Level I - Limited, SP-SFD and any SP-Restricted Classification.
- (4) Be found by the Board to have professional or trade experience or other special qualifications qualifying him to teach courses in the license classification or classifications determined by the Board.

- (c) The Board may deny an application if it finds that the applicant has failed to comply with the terms of any agreement as provided in Paragraph ~~(e)~~ (f) of this Rule or the rules of the Board.

- (d) The course instructor application shall be submitted together with the application for continuing education course sponsor approval as prescribed in Rule .1102 of this Section.

- (e) The Board shall approve or deny applications at ~~a its April meeting~~, regular meeting.

- ~~(f) Appeals from denials shall be heard by the Board at a scheduled meeting in May.~~

- ~~(g)~~ (f) Upon approval of the application, each approved instructor shall agree to conduct courses in accordance with this Section and shall indicate his agreement by signing a continuing education instructor agreement form provided by the Board.

*Authority G.S. 87-42; 87-44.1.*

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**APPROVED RULES**

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

*Rules approved by the Rules Review Commission at its meeting on December 16, 2010.*

**REGISTER CITATION TO THE  
NOTICE OF TEXT****AGRICULTURE, BOARD OF**

|                               |    |      |     |        |           |
|-------------------------------|----|------|-----|--------|-----------|
| <u>Adoptions by Reference</u> | 02 | NCAC | 09B | .0116* | 24:19 NCR |
|-------------------------------|----|------|-----|--------|-----------|

**AGRICULTURE, BOARD OF**

|  |    |      |     |       |           |
|--|----|------|-----|-------|-----------|
| <u>Definitions</u>                                       | 02 | NCAC | 48A | .0201 | 25:05 NCR |
| <u>Protection From and Abatement of Bee Diseases</u>     | 02 | NCAC | 48A | .0202 | 25:05 NCR |
| <u>Inspections</u>                                       | 02 | NCAC | 48A | .0203 | 25:05 NCR |
| <u>The Inspection Process</u>                            | 02 | NCAC | 48A | .0204 | 25:05 NCR |
| <u>Interstate Shipment</u>                               | 02 | NCAC | 48A | .0205 | 25:05 NCR |
| <u>The Transportation of Bees</u>                        | 02 | NCAC | 48A | .0206 | 25:05 NCR |
| <u>Requirements for Issuance of Permit</u>               | 02 | NCAC | 48A | .0207 | 25:05 NCR |
| <u>Location of Bees</u>                                  | 02 | NCAC | 48A | .0208 | 25:05 NCR |
| <u>Inspection of Nuclei and Queen Breeding Apiaries</u>  | 02 | NCAC | 48A | .0209 | 25:05 NCR |
| <u>Health Certificates</u>                               | 02 | NCAC | 48A | .0210 | 25:05 NCR |
| <u>Compliance Agreement</u>                              | 02 | NCAC | 48A | .0211 | 25:05 NCR |
| <u>Exposure of Diseased Materials</u>                    | 02 | NCAC | 48A | .0213 | 25:05 NCR |
| <u>Infested Apiary Material Liable to Destruction</u>    | 02 | NCAC | 48A | .0214 | 25:05 NCR |
| <u>Destruction of Bees; Apiary Products or Equipment</u> | 02 | NCAC | 48A | .0215 | 25:05 NCR |
| <u>Fumigation or Sterilization of Apiary Equipment</u>   | 02 | NCAC | 48A | .0216 | 25:05 NCR |
| <u>Fumigation by Private Practitioner</u>                | 02 | NCAC | 48A | .0217 | 25:05 NCR |
| <u>Clean Up Areas</u>                                    | 02 | NCAC | 48A | .0218 | 25:05 NCR |
| <u>Diseased Apiaries Quarantined</u>                     | 02 | NCAC | 48A | .0219 | 25:05 NCR |
| <u>Out of State Areas May be Quarantined</u>             | 02 | NCAC | 48A | .0220 | 25:05 NCR |
| <u>Diseases and Disorders of Special Concern</u>         | 02 | NCAC | 48A | .0221 | 25:05 NCR |
| <u>Certification of Pollination Conditions</u>           | 02 | NCAC | 48A | .0222 | 25:05 NCR |
| <u>Abandoned Bees or Bee Equipment</u>                   | 02 | NCAC | 48A | .0223 | 25:05 NCR |
| <u>Registration of Honeybee Colonies</u>                 | 02 | NCAC | 48A | .0225 | 25:05 NCR |
| <u>Forms</u>   | 02 | NCAC | 48A | .0226 | 25:05 NCR |
| <u>Form BS-1</u>   | 02 | NCAC | 48A | .0227 | 25:05 NCR |
| <u>Location of Forms</u>                                 | 02 | NCAC | 48A | .0228 | 25:05 NCR |
| <u>Form BS-2</u>   | 02 | NCAC | 48A | .0229 | 25:05 NCR |
| <u>Form BS-3</u>   | 02 | NCAC | 48A | .0230 | 25:05 NCR |
| <u>Form BS-4</u>   | 02 | NCAC | 48A | .0231 | 25:05 NCR |
| <u>Form BS-5</u>   | 02 | NCAC | 48A | .0232 | 25:05 NCR |
| <u>Form BS-6</u>   | 02 | NCAC | 48A | .0233 | 25:05 NCR |
| <u>Form BS-7</u>   | 02 | NCAC | 48A | .0234 | 25:05 NCR |
| <u>Form BS-8</u>   | 02 | NCAC | 48A | .0235 | 25:05 NCR |
| <u>Form BS-9</u>   | 02 | NCAC | 48A | .0236 | 25:05 NCR |

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**APPROVED RULES**

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|  |    |      |     |        |           |
|--|----|------|-----|--------|-----------|
| <u>Form BS-10</u>  | 02 | NCAC | 48A | .0237  | 25:05 NCR |
| <u>Africanized Bee/Varroa Mite Clean Up Area</u>         | 02 | NCAC | 48A | .0238  | 25:05 NCR |
| <u>Permit to Sell Bees</u>                               | 02 | NCAC | 48A | .0239  | 25:05 NCR |
| <u>Form BS-11</u>  | 02 | NCAC | 48A | .0240  | 25:05 NCR |
| <u>Form BS-12</u>  | 02 | NCAC | 48A | .0241  | 25:05 NCR |
| <u>Definitions</u>                                       | 02 | NCAC | 48A | .0242* | 25:05 NCR |
| <u>Inspections</u>                                       | 02 | NCAC | 48A | .0243* | 25:05 NCR |
| <u>Inspection Process</u>                                | 02 | NCAC | 48A | .0244* | 25:05 NCR |
| <u>Interstate Shipment</u>                               | 02 | NCAC | 48A | .0245* | 25:05 NCR |
| <u>Requirements for Issuance of Permit</u>               | 02 | NCAC | 48A | .0247* | 25:05 NCR |
| <u>Location of Bees</u>                                  | 02 | NCAC | 48A | .0248  | 25:05 NCR |
| <u>Inspection of Nuclei and Queen Breeding Apiaries</u>  | 02 | NCAC | 48A | .0249* | 25:05 NCR |
| <u>Health Certificates</u>                               | 02 | NCAC | 48A | .0250* | 25:05 NCR |
| <u>Compliance Agreement</u>                              | 02 | NCAC | 48A | .0251* | 25:05 NCR |
| <u>Exposure of Diseased Materials</u>                    | 02 | NCAC | 48A | .0252  | 25:05 NCR |
| <u>Infested Apiary Material Liable to Destruction</u>    | 02 | NCAC | 48A | .0253* | 25:05 NCR |
| <u>Destruction of Bees: Apiary Products or Equipment</u> | 02 | NCAC | 48A | .0254* | 25:05 NCR |
| <u>Fumigation or Sterilization of Apiary Equipment</u>   | 02 | NCAC | 48A | .0255  | 25:05 NCR |

**AGRICULTURE, COMMISSIONER OF**

|                       |    |      |     |        |           |
|-----------------------|----|------|-----|--------|-----------|
| <u>Clean-Up Areas</u> | 02 | NCAC | 48A | .0256* | 25:05 NCR |
|-----------------------|----|------|-----|--------|-----------|

**AGRICULTURE, BOARD OF**

|                                      |    |      |     |        |           |
|--------------------------------------|----|------|-----|--------|-----------|
| <u>Diseased Apiaries Quarantined</u> | 02 | NCAC | 48A | .0257* | 25:05 NCR |
|--------------------------------------|----|------|-----|--------|-----------|

**AGRICULTURE, COMMISSIONER OF**

|  |    |      |     |        |           |
|--|----|------|-----|--------|-----------|
| <u>Exterior Quarantine</u>                       | 02 | NCAC | 48A | .0258* | 25:05 NCR |
| <u>Diseases and Disorders of Special Concern</u> | 02 | NCAC | 48A | .0259* | 25:05 NCR |
| <u>Certification of Pollination Conditions</u>   | 02 | NCAC | 48A | .0260  | 25:05 NCR |

**AGRICULTURE, BOARD OF**

|  |    |      |     |        |           |
|--|----|------|-----|--------|-----------|
| <u>Abandoned Bees or Bee Equipment</u>   | 02 | NCAC | 48A | .0261* | 25:05 NCR |
| <u>Registration of Honeybee Colonies</u> | 02 | NCAC | 48A | .0262* | 25:05 NCR |

**AGRICULTURE, COMMISSIONER OF**

|                            |    |      |     |        |           |
|----------------------------|----|------|-----|--------|-----------|
| <u>Permit to Sell Bees</u> | 02 | NCAC | 48A | .0263* | 25:05 NCR |
|----------------------------|----|------|-----|--------|-----------|

**AGRICULTURE, BOARD OF**

|              |    |      |     |        |           |
|--------------|----|------|-----|--------|-----------|
| <u>Forms</u> | 02 | NCAC | 48A | .0264* | 25:05 NCR |
|--------------|----|------|-----|--------|-----------|

**AGRICULTURE, COMMISSIONER OF**

|  |    |      |     |       |           |
|--|----|------|-----|-------|-----------|
| <u>Africanized Bee/Varroa Mite Clean Up Area</u> | 02 | NCAC | 48A | .0265 | 25:05 NCR |
|--|----|------|-----|-------|-----------|

**ALCOHOLIC BEVERAGE CONTROL COMMISSION**

|                             |    |      |     |        |                          |
|-----------------------------|----|------|-----|--------|--------------------------|
| <u>Location and Address</u> | 04 | NCAC | 02R | .0102* | n/a G.S. 150B-21.5(a)(4) |
|-----------------------------|----|------|-----|--------|--------------------------|



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**APPROVED RULES**

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|   |    |      |     |        |           |
|---|----|------|-----|--------|-----------|
| <u>Storage: Deliveries: Security</u>                                | 04 | NCAC | 02R | .1302* | 25:06 NCR |
| <u>Direct Shipments</u>   | 04 | NCAC | 02R | .1305  | 25:06 NCR |
| <u>Mixed Beverages Tax Stamp</u>                                    | 04 | NCAC | 02R | .1901  | 25:06 NCR |
| <u>Definitions</u>  | 04 | NCAC | 02S | .0101* | 25:06 NCR |
| <u>Applications for Permits: General Provisions</u>                 | 04 | NCAC | 02S | .0102* | 25:06 NCR |
| <u>Special Requirements for Restaurants</u>                         | 04 | NCAC | 02S | .0105  | 25:06 NCR |
| <u>Special Requirements for Hotels</u>                              | 04 | NCAC | 02S | .0106  | 25:06 NCR |
| <u>Special Requirements for Private Clubs</u>                       | 04 | NCAC | 02S | .0107  | 25:06 NCR |
| <u>Use of Profanity Prohibited</u>                                  | 04 | NCAC | 02S | .0209  | 25:06 NCR |
| <u>Consumption: Intoxication by Permittee Prohibited</u>            | 04 | NCAC | 02S | .0212* | 25:06 NCR |
| <u>Entertainers and Conduct</u>                                     | 04 | NCAC | 02S | .0216  | 25:06 NCR |
| <u>Visual Displays</u>  | 04 | NCAC | 02S | .0217  | 25:06 NCR |
| <u>Happy Hours Regulated</u>  | 04 | NCAC | 02S | .0232  | 25:06 NCR |
| <u>Private Clubs: General Prohibitions; Guests</u>                  | 04 | NCAC | 02S | .0234  | 25:06 NCR |
| <u>Private Clubs: Reciprocal Memberships</u>                        | 04 | NCAC | 02S | .0235  | 25:06 NCR |
| <u>Restaurants: Hotels: Display: Control of Beverages</u>           | 04 | NCAC | 02S | .0404  | 25:06 NCR |
| <u>Tastings Held by Retailers for Consumers</u>                     | 04 | NCAC | 02S | .0901* | 25:06 NCR |
| <u>Tastings Held by Industry Members for Consumers</u>              | 04 | NCAC | 02S | .0902  | 25:06 NCR |
| <u>Tastings Held by Industry Members for Retail</u>                 | 04 | NCAC | 02S | .0903  | 25:06 NCR |
| <u>Permittees: ...</u>  |    |      |     |        |           |
| <u>General Prohibitions</u>   | 04 | NCAC | 02S | .1006* | 25:06 NCR |
| <u>Advertising of Malt Beverages, Wine and Mixed Beverages b...</u> | 04 | NCAC | 02S | .1008* | 25:06 NCR |
| <u>Advertising of Spirituous Liquors</u>                            | 04 | NCAC | 02S | .1011* | 25:06 NCR |

**MEDICAL CARE COMMISSION**

|   |     |      |     |        |           |
|---|-----|------|-----|--------|-----------|
| <u>Minimum Provisions of Patient's Bill of Rights</u> | 10A | NCAC | 13B | .3302* | 25:04 NCR |
|---|-----|------|-----|--------|-----------|

**HOME INSPECTOR LICENSURE BOARD**

|   |    |      |    |        |           |
|---|----|------|----|--------|-----------|
| <u>Inactive License</u>                               | 11 | NCAC | 08 | .1303* | 25:05 NCR |
| <u>Elective Course Instructional Delivery Methods</u> | 11 | NCAC | 08 | .1326* | 25:05 NCR |

**INSURANCE, DEPARTMENT OF**

|  |    |      |     |       |           |
|--|----|------|-----|-------|-----------|
| <u>Purpose and Scope</u>                           | 11 | NCAC | 11A | .0501 | 24:09 NCR |
| <u>Definitions</u>                                 | 11 | NCAC | 11A | .0502 | 24:09 NCR |
| <u>Filing and Extensions for Filing Reports</u>    | 11 | NCAC | 11A | .0503 | 24:09 NCR |
| <u>Contents of Annual Audited Financial Report</u> | 11 | NCAC | 11A | .0504 | 24:09 NCR |
| <u>Designation of CPA</u>                          | 11 | NCAC | 11A | .0505 | 24:09 NCR |
| <u>Qualifications of Independent CPA</u>           | 11 | NCAC | 11A | .0506 | 24:09 NCR |
| <u>Approval of CPA</u>                             | 11 | NCAC | 11A | .0507 | 24:09 NCR |
| <u>Scope of Examination and Report of CPA</u>      | 11 | NCAC | 11A | .0508 | 24:09 NCR |
| <u>Notification of Adverse Financial Condition</u> | 11 | NCAC | 11A | .0509 | 24:09 NCR |
| <u>Internal Control Structure Related Matters</u>  | 11 | NCAC | 11A | .0510 | 24:09 NCR |
| <u>CPA Workpapers</u>                              | 11 | NCAC | 11A | .0511 | 24:09 NCR |
| <u>Exemptions and Effective Dates</u>              | 11 | NCAC | 11A | .0512 | 24:09 NCR |
| <u>Examinations</u>                                | 11 | NCAC | 11A | .0513 | 24:09 NCR |

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**APPROVED RULES**

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|                                      |    |      |     |       |           |
|--------------------------------------|----|------|-----|-------|-----------|
| <u>Seasoning Requirements</u>        | 11 | NCAC | 11A | .0514 | 24:09 NCR |
| <u>Notes to Financial Statements</u> | 11 | NCAC | 11A | .0515 | 24:09 NCR |

**SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION**

|   |    |      |     |        |           |
|---|----|------|-----|--------|-----------|
| <u>Instructors</u>  | 12 | NCAC | 10B | .2004* | 25:03 NCR |
| <u>Minimum Training Requirements</u>                      | 12 | NCAC | 10B | .2005  | 25:03 NCR |
| <u>Sheriff/Agency Head Responsibilities</u>               | 12 | NCAC | 10B | .2007  | 25:03 NCR |
| <u>In-Service Firearms Requalification Specifications</u> | 12 | NCAC | 10B | .2104  | 25:03 NCR |

**ENVIRONMENTAL MANAGEMENT COMMISSION**

|   |     |      |     |        |           |
|---|-----|------|-----|--------|-----------|
| <u>Neuse River Basin-Nutrient Sensitive Waters Man...</u>     | 15A | NCAC | 02B | .0235  | 24:24 NCR |
| <u>Falls Water Supply Nutrient Strategy: Purpose and...</u>   | 15A | NCAC | 02B | .0275* | 24:24 NCR |
| <u>Falls Water Supply Nutrient Strategy: Definitions</u>      | 15A | NCAC | 02B | .0276* | 24:24 NCR |
| <u>Falls Reservoir Water Supply Nutrient Strategy: ...</u>    | 15A | NCAC | 02B | .0277* | 24:24 NCR |
| <u>Falls Water Supply Nutrient Strategy: Stormwater...</u>    | 15A | NCAC | 02B | .0278* | 24:24 NCR |
| <u>Falls Water Supply Nutrient Strategy: Wastewater...</u>    | 15A | NCAC | 02B | .0279* | 24:24 NCR |
| <u>Falls Water Supply Nutrient Strategy: Agriculture</u>      | 15A | NCAC | 02B | .0280* | 24:24 NCR |
| <u>Falls Water Supply Nutrient Strategy: Stormwater...</u>    | 15A | NCAC | 02B | .0281* | 24:24 NCR |
| <u>Falls Water Supply Nutrient Strategy: Options for...</u>   | 15A | NCAC | 02B | .0282* | 24:24 NCR |
| <u>Neuse River Basin</u>                                      | 15A | NCAC | 02B | .0315  | 24:24 NCR |
| <u>Prevention of Significant Deterioration</u>                | 15A | NCAC | 02D | .0530* | 25:04 NCR |
| <u>Sources In Nonattainment Areas</u>                         | 15A | NCAC | 02D | .0531* | 25:04 NCR |
| <u>Hospital, Medical, and Infectious Waste Incinerators</u>   | 15A | NCAC | 02D | .1206* | 25:04 NCR |
| <u>Permitting by Regulation</u>                               | 15A | NCAC | 02T | .0113* | 24:16 NCR |
| <u>Setbacks</u>   | 15A | NCAC | 02T | .0506* | 24:16 NCR |
| <u>Scope</u>  | 15A | NCAC | 02T | .0901  | 24:16 NCR |
| <u>Definitions</u>  | 15A | NCAC | 02T | .0902  | 24:16 NCR |
| <u>Permitting By Regulation</u>                               | 15A | NCAC | 02T | .0903  | 24:16 NCR |
| <u>Application Submittal - Conjunctive Systems</u>            | 15A | NCAC | 02T | .0904  | 24:16 NCR |
| <u>Application Submittal - Non-Conjunctive Systems</u>        | 15A | NCAC | 02T | .0905  | 24:16 NCR |
| <u>Reclaimed Water Effluent Standards</u>                     | 15A | NCAC | 02T | .0906  | 24:16 NCR |
| <u>Design Criteria for Wastewater Treatment Facilities...</u> | 15A | NCAC | 02T | .0907  | 24:16 NCR |
| <u>Design Criteria for Wastewater Treatment Facilities...</u> | 15A | NCAC | 02T | .0908  | 24:16 NCR |
| <u>Design Criteria for Distribution Lines</u>                 | 15A | NCAC | 02T | .0909  | 24:16 NCR |
| <u>Reclaimed Water Utilization</u>                            | 15A | NCAC | 02T | .0910  | 24:16 NCR |
| <u>Bulk Distribution of Reclaimed Water</u>                   | 15A | NCAC | 02T | .0911  | 24:16 NCR |
| <u>Setbacks</u>   | 15A | NCAC | 02T | .0912  | 24:16 NCR |
| <u>Operation and Maintenance Plan</u>                         | 15A | NCAC | 02T | .0913  | 24:16 NCR |
| <u>Residuals Management Plan</u>                              | 15A | NCAC | 02T | .0914  | 24:16 NCR |
| <u>Local Program Approval</u>                                 | 15A | NCAC | 02T | .0915  | 24:16 NCR |
| <u>Purpose</u>  | 15A | NCAC | 02U | .0101* | 24:16 NCR |
| <u>Scope</u>  | 15A | NCAC | 02U | .0102* | 24:16 NCR |
| <u>Definitions</u>  | 15A | NCAC | 02U | .0103* | 24:16 NCR |
| <u>Activities Which Require a Permit</u>                      | 15A | NCAC | 02U | .0104* | 24:16 NCR |
| <u>General Requirements</u>                                   | 15A | NCAC | 02U | .0105* | 24:16 NCR |
| <u>Submission of Permit Applications</u>                      | 15A | NCAC | 02U | .0106  | 24:16 NCR |

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**APPROVED RULES**

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|   |                     |           |
|---|---------------------|-----------|
| <u>Staff Review and Permit Preparation</u>                    | 15A NCAC 02U .0107  | 24:16 NCR |
| <u>Final Action on Permit Applications to the Division</u>    | 15A NCAC 02U .0108  | 24:16 NCR |
| <u>Permit Renewals</u>  | 15A NCAC 02U .0109  | 24:16 NCR |
| <u>Modification and Revocation of Permits</u>                 | 15A NCAC 02U .0110  | 24:16 NCR |
| <u>Conditions for Issuing General Permits</u>                 | 15A NCAC 02U .0111  | 24:16 NCR |
| <u>Delegation of Authority</u>                                | 15A NCAC 02U .0112  | 24:16 NCR |
| <u>Wastewater Design Flow Rates</u>                           | 15A NCAC 02U .0114  | 24:16 NCR |
| <u>Operational Agreements</u>                                 | 15A NCAC 02U .0115  | 24:16 NCR |
| <u>Certification of Completion</u>                            | 15A NCAC 02U .0116  | 24:16 NCR |
| <u>Treatment Facility Operation and Maintenance</u>           | 15A NCAC 02U .0117  | 24:16 NCR |
| <u>Historical Consideration in Permit Approval</u>            | 15A NCAC 02U .0120* | 24:16 NCR |
| <u>Application Submittal - Conjunctive Systems</u>            | 15A NCAC 02U .0201* | 24:16 NCR |
| <u>Application Submittal - Non Conjunctive Systems</u>        | 15A NCAC 02U .0202* | 24:16 NCR |
| <u>Reclaimed Water Effluent Standards</u>                     | 15A NCAC 02U .0301* | 24:16 NCR |
| <u>Design Criteria for Wastewater Treatment Facilities...</u> | 15A NCAC 02U .0401* | 24:16 NCR |
| <u>Design Criteria for Wastewater Treatment Facilities...</u> | 15A NCAC 02U .0402* | 24:16 NCR |
| <u>Design Criteria for Distribution Lines</u>                 | 15A NCAC 02U .0403* | 24:16 NCR |
| <u>Bulk Distribution of Reclaimed Water</u>                   | 15A NCAC 02U .0601* | 24:16 NCR |
| <u>Setbacks</u>   | 15A NCAC 02U .0701* | 24:16 NCR |
| <u>Operation and Maintenance Plan</u>                         | 15A NCAC 02U .0801* | 24:16 NCR |
| <u>Residuals Management Plan</u>                              | 15A NCAC 02U .0802* | 24:16 NCR |
| <u>Local Program Approval</u>                                 | 15A NCAC 02U .0901* | 24:16 NCR |
| <u>Wetlands Augmentation</u>                                  | 15A NCAC 02U .1101* | 24:16 NCR |
| <u>Irrigation to Food Chain Crops</u>                         | 15A NCAC 02U .1401* | 24:16 NCR |

**WILDLIFE RESOURCES COMMISSION**

|  |                     |           |
|--|---------------------|-----------|
| <u>Deer (White Tailed)</u>                                 | 15A NCAC 10B .0203  | 25:03 NCR |
| <u>Definitions</u>   | 15A NCAC 10B .0301* | 25:03 NCR |
| <u>Traps</u>   | 15A NCAC 10B .0305* | 25:03 NCR |
| <u>Public Mountain Trout Waters</u>                        | 15A NCAC 10C .0205* | 25:03 NCR |
| <u>Possession of Certain Fishes</u>                        | 15A NCAC 10C .0211  | 25:03 NCR |
| <u>Open Seasons: Creel and Size Limits</u>                 | 15A NCAC 10C .0305  | 25:03 NCR |
| <u>Manner of Taking Non-game Fishes: Purchase and Sale</u> | 15A NCAC 10C .0401  | 25:03 NCR |
| <u>General Regulations Regarding Use</u>                   | 15A NCAC 10D .0102* | 25:03 NCR |
| <u>Hunting On Game Lands</u>                               | 15A NCAC 10D .0103* | 25:03 NCR |

**PUBLIC HEALTH, COMMISSION FOR**

|  |                     |           |
|--|---------------------|-----------|
| <u>Special Purpose Commercial Hazardous Waste Facility</u> | 15A NCAC 13A .0116* | 25:03 NCR |
|--|---------------------|-----------|

**ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF**

|                      |                     |           |
|----------------------|---------------------|-----------|
| <u>Fee Schedules</u> | 15A NCAC 13A .0117* | 25:03 NCR |
|----------------------|---------------------|-----------|

**STATE TREASURER, DEPARTMENT OF**

|                          |                   |           |
|--------------------------|-------------------|-----------|
| <u>Fees</u>              | 20 NCAC 03 .0112* | 25:16 NCR |
| <u>Fees and Expenses</u> | 20 NCAC 09 .0602* | 25:16 NCR |

**CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF**

|   |    |      |     |        |           |
|---|----|------|-----|--------|-----------|
| <u>Definitions</u>  | 21 | NCAC | 08A | .0301* | 25:04 NCR |
| <u>Concentration in Accounting</u>                            | 21 | NCAC | 08A | .0309* | 25:04 NCR |
| <u>Hearing Exhibits</u>                                       | 21 | NCAC | 08C | .0126* | 25:04 NCR |
| <u>Education and Work Experience Required Prior to...</u>     | 21 | NCAC | 08F | .0302* | 25:04 NCR |
| <u>Waiver of Education Required Prior to Examination</u>      | 21 | NCAC | 08F | .0304  | 25:04 NCR |
| <u>Work Experience Required of Candidates for CPA...</u>      | 21 | NCAC | 08F | .0401* | 25:04 NCR |
| <u>Education Required of Candidates for CPA Certification</u> | 21 | NCAC | 08F | .0410* | 25:04 NCR |
| <u>Reciprocal Certificates</u>                                | 21 | NCAC | 08H | .0101  | 25:04 NCR |
| <u>Annual Renewal of Certificate, Forfeiture, and...</u>      | 21 | NCAC | 08J | .0101* | 25:04 NCR |
| <u>Retired and Inactive Status: Change of Status</u>          | 21 | NCAC | 08J | .0105  | 25:04 NCR |
| <u>CPA Firm Registration</u>                                  | 21 | NCAC | 08J | .0108* | 25:04 NCR |
| <u>CPA Firm Practice Privilege Notification</u>               | 21 | NCAC | 08J | .0109* | 25:04 NCR |
| <u>Peer Review Requirements</u>                               | 21 | NCAC | 08M | .0105* | 25:04 NCR |
| <u>Violation of Tax Law</u>                                   | 21 | NCAC | 08N | .0207  | 25:04 NCR |
| <u>International Financial Accounting Standards</u>           | 21 | NCAC | 08N | .0215* | 25:04 NCR |
| <u>Forms of Practice</u>                                      | 21 | NCAC | 08N | .0302* | 25:04 NCR |
| <u>Advertising or Other Forms of Solicitation</u>             | 21 | NCAC | 08N | .0306  | 25:04 NCR |
| <u>CPA Firm Names</u>   | 21 | NCAC | 08N | .0307* | 25:04 NCR |
| <u>Independence</u>   | 21 | NCAC | 08N | .0402* | 25:04 NCR |
| <u>Government Auditing Standards</u>                          | 21 | NCAC | 08N | .0409* | 25:04 NCR |

**COSMETIC ART EXAMINERS, BOARD OF**

|   |    |      |     |        |           |
|---|----|------|-----|--------|-----------|
| <u>Sanitary Ratings and Posting of Ratings</u>          | 21 | NCAC | 14H | .0105* | 25:05 NCR |
| <u>Water Supply</u>                                     | 21 | NCAC | 14H | .0107* | 25:05 NCR |
| <u>Cleanliness of Clinic Area</u>                       | 21 | NCAC | 14H | .0112* | 25:05 NCR |
| <u>Whirlpool, Footspa and Facial Steamer Sanitation</u> | 21 | NCAC | 14H | .0120* | 25:05 NCR |
| <u>Prohibited Practices</u>                             | 21 | NCAC | 14H | .0121* | 25:05 NCR |
| <u>General Examination Instructions</u>                 | 21 | NCAC | 14N | .0103* | 25:05 NCR |
| <u>Continuing Education Requirements</u>                | 21 | NCAC | 14R | .0101* | 25:05 NCR |

**NURSING BOARD**

|                        |    |      |    |        |           |
|------------------------|----|------|----|--------|-----------|
| <u>Regular Renewal</u> | 21 | NCAC | 36 | .0201* | 25:02 NCR |
|------------------------|----|------|----|--------|-----------|

**APPRAISAL BOARD**

|   |    |      |     |        |            |
|---|----|------|-----|--------|------------|
| <u>Continuing Education</u>                         | 21 | NCAC | 57A | .0204* | 25:06 NCR  |
| <u>Expired Registration, License or Certificate</u> | 21 | NCAC | 57A | .0206* | 25:06 NCR  |
| <u>Appraisal Reports</u>                            | 21 | NCAC | 57A | .0405* | 25:06 NCR  |
| <u>Appraisal Management Companies</u>               | 21 | NCAC | 57A | .0410* | 25:06 NCR* |
| <u>Form of Complaints and Pleadings</u>             | 21 | NCAC | 57C | .0101* | 25:06 NCR  |
| <u>Form</u>   | 21 | NCAC | 57D | .0101* | 25:06 NCR  |
| <u>Filing and Fees</u>                              | 21 | NCAC | 57D | .0102* | 25:06 NCR  |
| <u>Registration Renewal</u>                         | 21 | NCAC | 57D | .0202* | 25:06 NCR  |
| <u>Expired Registration</u>                         | 21 | NCAC | 57D | .0203  | 25:06 NCR  |
| <u>Payment of Fees to the Board</u>                 | 21 | NCAC | 57D | .0204* | 25:06 NCR  |

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**APPROVED RULES**

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|  |    |      |     |        |           |
|--|----|------|-----|--------|-----------|
| <u>Use of Registration Number</u>                          | 21 | NCAC | 57D | .0301* | 25:06 NCR |
| <u>Change of Name or Contact Information</u>               | 21 | NCAC | 57D | .0302  | 25:06 NCR |
| <u>Appraiser Qualifications</u>                            | 21 | NCAC | 57D | .0304  | 25:06 NCR |
| <u>Appraiser Competency</u>                                | 21 | NCAC | 57D | .0305  | 25:06 NCR |
| <u>Appraisal Review</u>                                    | 21 | NCAC | 57D | .0306* | 25:06 NCR |
| <u>Records</u>   | 21 | NCAC | 57D | .0307  | 25:06 NCR |
| <u>Production of Records</u>                               | 21 | NCAC | 57D | .0308* | 25:06 NCR |
| <u>Complaints Against Appraisers</u>                       | 21 | NCAC | 57D | .0309  | 25:06 NCR |
| <u>Payment of Fees to Appraisers</u>                       | 21 | NCAC | 57D | .0310  | 25:06 NCR |
| <u>Removal of an Appraiser from an Appraiser Panel</u>     | 21 | NCAC | 57D | .0311  | 25:06 NCR |
| <u>Requesting Additional Information from an Appraiser</u> | 21 | NCAC | 57D | .0312* | 25:06 NCR |
| <u>Business Practices</u>                                  | 21 | NCAC | 57D | .0401  | 25:06 NCR |

**STATE PERSONNEL COMMISSION**

|   |    |      |     |        |           |
|---|----|------|-----|--------|-----------|
| <u>Leave Offsetting</u>                 | 25 | NCAC | 01E | .0103* | 25:02 NCR |
| <u>Vacation Leave Credits</u>           | 25 | NCAC | 01E | .0203* | 25:02 NCR |
| <u>Policy</u>                           | 25 | NCAC | 01E | .1801* | 25:02 NCR |
| <u>Definitions</u>                      | 25 | NCAC | 01E | .1802* | 25:02 NCR |
| <u>Recruitment Documentation</u>        | 25 | NCAC | 01E | .1803* | 25:02 NCR |
| <u>Eligibility Requirements</u>         | 25 | NCAC | 01E | .1804  | 25:02 NCR |
| <u>Amount of Leave</u>                  | 25 | NCAC | 01E | .1805  | 25:02 NCR |
| <u>Relationship to Other Leave</u>      | 25 | NCAC | 01E | .1806* | 25:02 NCR |
| <u>Carry-over and Payment of Leave</u>  | 25 | NCAC | 01E | .1807* | 25:02 NCR |
| <u>Definitions</u>                      | 25 | NCAC | 01J | .0614* | 25:02 NCR |
| <u>Special Provisions</u>               | 25 | NCAC | 01J | .0615* | 25:02 NCR |
| <u>Purpose</u>                          | 25 | NCAC | 01N | .0601* | 25:04 NCR |
| <u>Policy</u>                           | 25 | NCAC | 01N | .0602* | 25:04 NCR |
| <u>Office of State Personnel Policy</u> | 25 | NCAC | 01N | .0603  | 25:04 NCR |
| <u>Agencies Responsibilities</u>        | 25 | NCAC | 01N | .0604* | 25:04 NCR |
| <u>Employee Responsibility</u>          | 25 | NCAC | 01N | .0605* | 25:04 NCR |

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

**ENVIRONMENTAL MANAGEMENT COMMISSION**

|  |     |      |     |        |           |
|--|-----|------|-----|--------|-----------|
| <u>Prevention of Significant Deterioration Requirements...</u> | 15A | NCAC | 02D | .0544* | 25:04 NCR |
| <u>Permitting by Regulation</u>                                | 15A | NCAC | 02U | .0113* | 24:16 NCR |
| <u>Reclaimed Water Utilization</u>                             | 15A | NCAC | 02U | .0501* | 24:16 NCR |

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**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES****02 NCAC 09B .0116 ADOPTIONS BY REFERENCE**

(a) The Board incorporates by reference, including subsequent amendments and editions, "Official Methods of Analysis of AOAC," published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International,

Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of six hundred thirty dollars (\$630.00).

(b) The Board incorporates by reference, including subsequent amendments and editions, "U.S. Pharmacopeia National Formulary USP XXXIII-NFXXVIII" and supplements, published by the U.S. Pharmacopeial Convention, Inc. Copies of this document may be obtained from The United States Pharmacopeial Convention, Inc., Attention: Customer Service, 12601 Twinbrook Parkway, Rockville, MD 20852, at a cost of eight hundred dollars (\$800).

(c) The Board incorporates by reference, including subsequent amendments and editions, "ASTM Standards on Engine Coolants," published by the American Society for Testing Materials. Copies of this document may be obtained from the American Society for Testing Materials, 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959, at a cost of one hundred eighty-six dollars (\$186.00).

(d) The Board incorporates by reference, including subsequent amendments and editions, "EPA Manual of Chemical Methods for Pesticides and Devices" and supplements, published by AOAC. Copies of this document may be obtained online from the Environmental Protection Agency National Service Center for Environmental Publications at <http://nepis.epa.gov/EXE/ZyPURL.cgi?Dockey=2000YS3Y.txt>.

(e) The Board incorporates by reference, including subsequent amendments and editions, "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/PesticideAnalysisManualPAM/default.htm>.

(f) The Board incorporates by reference, including subsequent amendments and editions, "FDA Compliance Policy Guides," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManuals/default.htm> or from the State Information Branch (HFC-151), Division of Federal-State Relations, US Food and Drug Administration, 5600 Fishers Lane, Room 12-07, Rockville, MD 20857.

(g) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Determinative Bacteriology," Lippincott, Williams & Wilkins Company, Baltimore. Copies of this document may be obtained from the Lippincott, Williams & Wilkins Company, P.O. Box 1620, Hagerstown, MD 21741 at a cost of one hundred ten dollars (\$110.00).

(h) The Board incorporates by reference, including subsequent amendments and editions, "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Food Safety and Inspection Service, Washington, DC. Copies of this document may be obtained online from [http://www.fsis.usda.gov/science/microbiological\\_Lab\\_Guidebook/](http://www.fsis.usda.gov/science/microbiological_Lab_Guidebook/) at no charge.

(i) The Board incorporates by reference, including subsequent amendments and editions, "FDA Bacteriological Analytical Manual," published by the United States Department of Health and Human Services, Food and Drug Administration. Copies of this document may be obtained online at <http://www.fda.gov/Food/ScienceResearch/LaboratoryMethods/BacteriologicalAnalyticalManualBAM/default.htm>.

(j) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Dairy Products," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of eighty-five dollars (\$85.00).

(k) The Board incorporates by reference, including subsequent amendments and editions, "Compendium of Methods for the Microbiological Examination of Foods," published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of one hundred fifty dollars (\$150.00).

(l) The Board incorporates by reference, including subsequent amendments and editions, "Bergey's Manual of Systematic Bacteriology," Springer Publishing, New York, NY. Copies of this document may be obtained from Springer Publishing, 233 Spring Street, New York, NY, 10013 at a cost of one hundred thirty-nine dollars (\$139.00).

(m) The Board incorporates by reference, including subsequent amendments and editions, "Manual of Clinical Microbiology," published by the American Society for Microbiology. Copies of this document may be obtained from the American Society for Microbiology Press, PO Box 605, Herndon, VA 22070, at a cost of two-hundred nine dollars and ninety-five cents (\$209.95).

(n) The Board incorporates by reference, including subsequent amendments and editions, "Standard Methods for the Examination of Water and Waste Water," published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies of this document may be obtained from the American Public Health Association Publication Sales, P.O. Box 933019, Atlanta, GA at a cost of two hundred fifty dollars (\$250.00).

(o) The Board incorporates by reference, including subsequent amendments and editions, the following parts or sections of the Code of Federal Regulations, Title 21, Chapter I, as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

|      | Part or<br>Section | Subject of Part or Section  |
|------|--------------------|---|
| (1)  | 1.1                | General   |
| (2)  | 1.3                | Labeling - Definitions  |
| (3)  | 1.20               | Presence of Mandatory Label Information   |
| (4)  | 1.21               | Failure to Reveal Material Facts  |
| (5)  | 1.24               | Exemptions from Required Label Statements   |
| (6)  | 2.25               | Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food |
| (7)  | 2.35               | Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed                                    |
| (8)  | 7.12               | Guaranty  |
| (9)  | 7.13               | Suggested Forms of Guaranty   |
| (10) | 70                 | Color Additives   |
| (11) | 73                 | Listing of Color Additives Exempt from Certification  |
| (12) | 74                 | Listing of Color Additives Subject to Certification   |
| (13) | 81                 | General Specifications and General Restrictions for Provisioned Color   |

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**APPROVED RULES**

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|------|-----|--|------|-----|--|
|      |     | Additives for Use in Foods, Drugs and Cosmetics  | (53) | 172 | Food Additives Permitted for Direct Addition to Food for Human Consumption                                 |
| (14) | 82  | Listing of Certified Provisionally Listed Colors and Specifications  | (54) | 173 | Secondary Direct Food Additives Permitted in Food for Human Consumption                                    |
| (15) | 100 | General  |      |     |  |
| (16) | 101 | Food Labeling  | (55) | 174 | Indirect Food Additives: General   |
| (17) | 102 | Common or Usual Name for Nonstandardized Foods   | (56) | 175 | Indirect Food Additives: Adhesive Coatings and Components  |
| (18) | 104 | Nutritional Quality Guidelines for Foods   | (57) | 176 | Indirect Food Additives: Paper and Paperboard Components   |
| (19) | 105 | Foods for Special Dietary Use  | (58) | 177 | Indirect Food Additives: Polymers  |
| (20) | 106 | Infant Formula Quality Control Procedures  | (59) | 178 | Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers  |
| (21) | 107 | Infant Formula   | (60) | 179 | Irradiation in the Production, Processing and Handling of Food   |
| (22) | 108 | Emergency Permit Control   | (61) | 180 | Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study      |
| (23) | 109 | Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material                         | (62) | 181 | Prior-Sanctioned Food Ingredients  |
| (24) | 110 | Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food           | (63) | 182 | Substances Generally Recognized as Safe  |
| (25) | 113 | Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers                              | (64) | 184 | Direct Food Substances Affirmed as Generally Recognized as Safe  |
| (26) | 114 | Acidified Foods  | (65) | 186 | Indirect Food Substances Affirmed as Generally Recognized as Safe  |
| (27) | 120 | Hazard Analysis and Critical Control Point (HACCP) Systems   | (66) | 189 | Substances Prohibited from Use in Human Food   |
| (28) | 123 | Frozen Raw Breaded Shrimp  | (67) | 200 | General  |
| (29) | 129 | Processing and Bottling of Bottled Drinking Water (Except as amended by 02 NCAC 09C .0700 - Bottled Water) | (68) | 201 | Labeling   |
|      |     |  | (69) | 202 | Prescription Drug Advertising  |
| (30) | 130 | Food Standards: General  | (70) | 210 | Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding of Drugs; General    |
| (31) | 131 | Milk and Cream   |      |     |  |
| (32) | 133 | Cheeses and Related Cheese Products  | (71) | 211 | Current Good Manufacturing Practice for Finished Pharmaceuticals   |
| (33) | 135 | Frozen Desserts  | (72) | 225 | Current Good Manufacturing Practice for Medicated Feeds  |
| (34) | 136 | Bakery Products  | (73) | 226 | Current Good Manufacturing Practice for Medicated Premixes   |
| (35) | 137 | Cereal Flours and Related Products   | (74) | 250 | Special Requirements for Specific Human Drugs  |
| (36) | 139 | Macaroni and Noodle Products   | (75) | 290 | Controlled Drugs   |
| (37) | 145 | Canned Fruits  | (76) | 299 | Drugs; Official Names and Established Names  |
| (38) | 146 | Canned Fruit Juices  | (77) | 300 | General  |
| (39) | 150 | Fruit Butters, Jellies, Preserves, and Related Products  | (78) | 310 | New Drugs  |
| (40) | 152 | Fruit Pies   | (79) | 312 | New Drugs for Investigational Use  |
| (41) | 155 | Canned Vegetables  | (80) | 314 | New Drug Applications  |
| (42) | 156 | Vegetable Juices   | (81) | 320 | Bioavailability and Bioequivalence Requirements  |
| (43) | 158 | Frozen Vegetables  | (82) | 330 | Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded |
| (44) | 160 | Eggs and Egg Products  |      |     |  |
| (45) | 161 | Fish and Shellfish (Except Section 161.30 and 161.130 through 161.145)                                     | (83) | 331 | Antacid Products for Over-the-Counter (OTC) Human Use  |
| (46) | 163 | Cacao Products   |      |     |  |
| (47) | 164 | Tree Nut and Peanut Products   |      |     |  |
| (48) | 165 | Beverages  |      |     |  |
| (49) | 166 | Margarine  |      |     |  |
| (50) | 168 | Sweeteners and Table Syrups  |      |     |  |
| (51) | 169 | Food Dressings and Flavorings  |      |     |  |
| (52) | 170 | Food Additives   |      |     |  |

|       |     |  |   |      |  |
|-------|-----|--|---|------|--|
| (84)  | 332 | Antiflatulent Products for Over-the-Counter Human Use  | (114)   | 589  | Substances Prohibited from Use in Animal Food or Feed  |
| (85)  | 361 | Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research | (115)   | 700  | General  |
| (86)  | 369 | Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale                                    | (116)   | 701  | Cosmetic Labeling  |
| (87)  | 809 | In Vitro Diagnostic Products for Human Use   | (117)   | 720  | Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements                         |
| (88)  | 812 | Investigational Device Exemptions  | (118)   | 740  | Cosmetic Product Warning Statements  |
| (89)  | 820 | Good Manufacturing Practices for Medical Devices: General  | (119)   | 111  | Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements |
| (90)  | 860 | Medical Device Classification Procedures   | (120)   | 190  | Dietary Supplements  |
| (91)  | 861 | Procedures for Performance Standards Development   | (121)   | 7.1  | Scope  |
| (92)  | 870 | Cardiovascular Devices   | (122)   | 7.3  | Definition   |
| (93)  | 882 | Neurological Devices   | (123)   | 7.40 | Recall Policy  |
| (94)  | 884 | Obstetrical and Gynecological Devices  | (124)   | 7.41 | Health Hazard Evaluation and Classification  |
| (95)  | 895 | Banned Devices   | (125)   | 7.42 | Recall Strategy  |
| (96)  | 500 | General  | (126)   | 7.45 | Food and Drug Administration- Requested Recall   |
| (97)  | 501 | Animal Food Labeling   | (127)   | 7.46 | Firm-initiated Recall  |
| (98)  | 502 | Common or Usual Names for Nonstandardized Animal Foods   | (128)   | 7.49 | Recall Communications  |
| (99)  | 509 | Unavoidable Contaminants in Animal Food and Food-Packaging Material  | (129)   | 7.50 | Public Notification of Recall  |
| (100) | 510 | New Animal Drugs   | (130)   | 7.53 | Recall Status Reports  |
| (101) | 511 | New Animal Drugs for Investigational Use   | (131)   | 7.55 | Termination of Recall  |
| (102) | 514 | New Animal Drug Applications   | (132)   | 7.59 | General Industry Guidance  |
| (103) | 520 | Oral Dosage Form New Animal Drugs Not Subject to Certification   | Copies of the Code of Federal Regulations may be obtained at no cost by accessing the website of the U.S. Government Printing Office at <a href="http://www.gpoaccess.gov/cfr/index.html">http://www.gpoaccess.gov/cfr/index.html</a> .   |      |  |
| (104) | 522 | Implantation of Injectable Dosage Form New Animal Drugs Not Subject to Certification                                   |   |      |  |
| (105) | 524 | Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification                                       | (p) The Board incorporates by reference, including subsequent amendments and editions, "Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities," 40 C.F.R. Part 180. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of fifty-six dollars (\$56.00).       |      |  |
| (106) | 526 | Intramammary Dosage Forms Not Subject to Certification   | (q) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition for Meats, Meat By-products, and Meat Food Products," 9 C.F.R. Part 319. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00).      |      |  |
| (107) | 529 | Certain Other Dosage Form New Animal Drugs Not Subject to Certification  | (r) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition for Poultry and Poultry Products," 9 C.F.R. Sections 381.155 through 381.170. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00). |      |  |
| (108) | 556 | Tolerances for Residues of New Animal Drugs in Food  | (s) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 317.2(1) of the Code of Federal Regulations. Copies of Title 9 of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00).   |      |  |
| (109) | 558 | New Animal Drugs for Use in Animal Feeds   |   |      |  |
| (110) | 570 | Food Additives   |   |      |  |
| (111) | 573 | Food Additives Permitted in Feed and Drinking Water of Animals   |   |      |  |
| (112) | 582 | Substances Generally Recognized as Safe  |   |      |  |
| (113) | 584 | Food Substances Affirmed as Generally Recognized as Safe in Feed and Drinking Water of Animals                         |   |      |  |



(t) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 381.125(b) of the Code of Federal Regulations. Copies of Title 9 of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixty-four dollars (\$64.00).

(u) The Board incorporates by reference, including subsequent amendments and editions, a document entitled, "Fresh Air '2000' - A Look At FDA's Medical Gas Requirements," published by the United States Department of Health and Human Services, Food and Drug Administration.. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the North Carolina Department of Agriculture and Consumer Services.

(v) The Board incorporates by reference the definition of "dietary supplement" found at 21 USC 321 (ff).

*History Note: Authority G.S. 106-139; 106-267; 106-267.2; Eff. December 14, 1981;  
Amended Eff. January 1, 2011; June 1, 2004; April 1, 2003;  
June 1, 1995; April 1, 1992; June 1, 1988; October 1, 1987.*

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**02 NCAC 48A .0201      DEFINITIONS**  
**02 NCAC 48A .0202      PROTECTION FROM AND**  
**ABATEMENT OF BEE DISEASES**  
**02 NCAC 48A .0203      INSPECTIONS**  
**02 NCAC 48A .0204      THE INSPECTION PROCESS**  
**02 NCAC 48A .0205      INTERSTATE SHIPMENT**  
**02 NCAC 48A .0206      THE TRANSPORTATION OF**  
**BEES**  
**02 NCAC 48A .0207      REQUIREMENTS FOR**  
**ISSUANCE OF PERMIT**  
**02 NCAC 48A .0208      LOCATION OF BEES**  
**02 NCAC 48A .0209      INSPECTION OF NUCLEI AND**  
**QUEEN BREEDING APIARIES**  
**02 NCAC 48A .0210      HEALTH CERTIFICATES**  
**02 NCAC 48A .0211      COMPLIANCE AGREEMENT**

*History Note: Authority G.S. 106-634 through 106-644;  
Eff. January 1, 1985;  
Amended Eff. July 1, 1998; June 1, 1993; December 1, 1988;  
October 1, 1987; April 1, 1985;  
Repealed Eff. January 1, 2011.*

**02 NCAC 48A .0213      EXPOSURE OF DISEASED**  
**MATERIALS**  
**02 NCAC 48A .0214      INFESTED APIARY MATERIAL**  
**LIABLE TO DESTRUCTION**  
**02 NCAC 48A .0215      DESTRUCTION OF BEES;**  
**APIARY PRODUCTS OR EQUIPMENT**  
**02 NCAC 48A .0216      FUMIGATION OR**  
**STERILIZATION OF APIARY EQUIPMENT**  
**02 NCAC 48A .0217      FUMIGATION BY PRIVATE**  
**PRACTITIONER**  
**02 NCAC 48A .0218      CLEAN UP AREAS**  
**02 NCAC 48A .0219      DISEASED APIARIES**  
**QUARANTINED**

**02 NCAC 48A .0220      OUT OF STATE AREAS MAY BE**  
**QUARANTINED**  
**02 NCAC 48A .0221      DISEASES AND DISORDERS OF**  
**SPECIAL CONCERN**  
**02 NCAC 48A .0222      CERTIFICATION OF**  
**POLLINATION CONDITIONS**  
**02 NCAC 48A .0223      ABANDONED BEES OR BEE**  
**EQUIPMENT**

*History Note: Authority G.S. 106-634 through 106-644;*

**02 NCAC 48A .0225      REGISTRATION OF**  
**HONEYBEE COLONIES**  
**02 NCAC 48A .0226      FORMS**  
**02 NCAC 48A .0227      FORM BS-1**  
**02 NCAC 48A .0228      LOCATION OF FORMS**  
**02 NCAC 48A .0229      FORM BS-2**  
**02 NCAC 48A .0230      FORM BS-3**  
**02 NCAC 48A .0231      FORM BS-4**  
**02 NCAC 48A .0232      FORM BS-5**  
**02 NCAC 48A .0233      FORM BS-6**  
**02 NCAC 48A .0234      FORM BS-7**  
**02 NCAC 48A .0235      FORM BS-8**  
**02 NCAC 48A .0236      FORM BS-9**  
**02 NCAC 48A .0237      FORM BS-10**

*History Note: Authority G.S. 106-634 through 106-644;  
Eff. January 1, 1985;  
Repealed Eff. January 1, 2011.*

**02 NCAC 48A .0238      AFRICANIZED BEE/VARROA**  
**MITE CLEAN UP AREA**

*History Note: Authority G.S. 106-634 through 106-644;  
Eff. December 1, 1988;  
Repealed Eff. January 1, 2011.*

**02 NCAC 48A .0239      PERMIT TO SELL BEES**  
**02 NCAC 48A .0240      FORM BS-11**  
**02 NCAC 48A .0241      FORM BS-12**

*History Note: Authority G.S. 106-638;;  
Eff. May 1, 1992;  
Repealed Eff. January 1, 2011.*

**02 NCAC 48A .0242      DEFINITIONS**

For the purpose of this Section:

- (1) Compliance Agreement means an agreement between the State Apiarist and a beekeeper wherein the beekeeper agrees to follow the practices and procedures set forth in 02 NCAC 48A .0248 and 02 NCAC 48A .0252 as a prerequisite for authorization to ship bees or apiary equipment into or within North Carolina.
- (2) Inspector means a person designated by the Commissioner to be responsible for performing inspections, services and enforcing

- the bee and honey statutes and rules of North Carolina.
- (3) Nuclei means colonies of honeybees on one to four brood combs, usually with queen, eggs and developing bees, in a hive or box suitable for shipping or mailing.
  - (4) Package Bee Producer means a beekeeper who is in the business of producing worker bees for sale and shipment without comb or honey in screened cages or packages suitable for shipping or mailing.
  - (5) Queen Breeder means a beekeeper who is in the business of producing queen bees for sale and shipment without comb or honey in cages suitable for shipping or mailing.
  - (6) State Apiarist means the person designated by the Commissioner to be responsible for administering and enforcing the North Carolina bee and honey statutes and rules.
  - (7) Uniform Health Certificate means a Uniform Health Certificate agreed on by several states.

*History Note: Authority G.S. 106-638;  
Eff. January 1, 2011.*

**02 NCAC 48A .0243 INSPECTIONS**

- (a) Apiary inspectors shall inspect bees at the request of a beekeeper on a first-come, first-serve basis compatible with the weather and the schedule of the inspector.
- (b) Apiary inspectors shall conduct random survey inspections to evaluate bee disease conditions in North Carolina and other inspections as called for in the rules in this Section.
- (c) Apiary inspectors shall inspect for diseases by sampling and submission of the sample for laboratory diagnosis.
- (d) To the extent of available resources, laboratory diagnosis of bee diseases shall be made on samples sent in to the State Apiarist by beekeepers.

*History Note: Authority G.S. 106-638;  
Eff. January 1, 2011.*

**02 NCAC 48A .0244 THE INSPECTION PROCESS**

- (a) Apiary inspectors shall inspect colonies of bees by opening the hive and observing the brood (eggs, larvae and developing bees) and adult bees. Diagnosis of the common bee diseases shall be made based on characters listed in Table 1, "Agricultural Extension Beekeeping Note No. 2.01," January 2007, published by North Carolina State University's Cooperative Extension Service, including subsequent amendments and editions. A copy of this document is available for inspection at the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division office located at 216 West Jones Street, Raleigh, NC 27603. It may also be obtained online at <http://www.cals.ncsu.edu/entomology/apiculture/PDF%20files/2.01.pdf>.
- (b) If the beekeeper desires a confirmation of a diagnosis given by an inspector, the apiary inspector shall send a sample of the disease to the Apicultural Laboratory, N.C. State University or

- the United States Department of Agriculture Bioenvironmental Laboratory, Beltsville, Maryland, for a laboratory diagnosis.
- (c) Destruction of a beehive shall be performed in accordance with Rule .0254.

*History Note: Authority G.S. 106-638;  
Eff. January 1, 2011.*

**02 NCAC 48A .0245 INTERSTATE SHIPMENT**

- (a) Apiary inspectors shall inspect North Carolina bees within 14 calendar days of a beekeeper's requesting such an inspection at a time of year when there is brood rearing activity in a majority of the colonies as a prerequisite for interstate shipment of bees.
- (b) Apiary inspectors shall issue health certificates in accordance with the provisions of the rules in this Section.
- (c) The State Apiarist shall charge the additional costs of making inspections when the beekeeper requests inspection within a specified time of less than 14 calendar days for his own convenience and there is not adequate time for normal routine scheduling of the inspection, pursuant to Paragraph (a) of this Rule.

*History Note: Authority G.S. 106-638;  
Eff. January 1, 2011.*

**02 NCAC 48A .0247 REQUIREMENTS FOR ISSUANCE OF PERMIT**

- (a) No permits for entry into North Carolina shall be issued until the following information has been filed with the State Apiarist:
  - (1) A valid certificate of apiary inspection from an official of the state of origin, who is authorized by the state of origin, to conduct apiary inspections and equipment to the effect that said bees and equipment have been inspected within sixty days of the proposed date of entry into North Carolina and found apparently free from contagious and infectious diseases, and giving the number of colonies inspected, date of inspection, whether all of the bees owned by the owner of said bees were inspected and included in the certificate. Certificates not meeting the requirements of this Section regarding specific diseases inspected for and thoroughness of inspection may be rejected;
  - (2) A statement from the owner of the bees and equipment giving the number of colonies of bees and amount of equipment to be brought into North Carolina, the proposed date of entry into the state, and where the bees and equipment will be located in the state; and
  - (3) Permission from the owner of said bees for North Carolina inspectors to inspect at any time the bees and equipment while in North Carolina.
- (b) A permit shall be granted for used beekeeping equipment without bees if:
  - (1) The State Apiarist has received a statement from an official of the state of origin, who is

authorized by the state of origin, to conduct apiary inspections that the bees on which the equipment was last used have been inspected and found free of American foulbrood or other dangerous diseases;

- (2) The equipment has been fumigated or otherwise sterilized in such a manner that in the opinion of the State Apiarist the equipment is free of infectious American foulbrood or other dangerous disease.

(c) The State Apiarist may require specified marking or other identification of used beekeeping equipment to avoid that equipment being comingled with new equipment as a prerequisite for granting a permit.

(d) The State Apiarist may require treatments or fumigations for diseases and disorders of special concern as identified in this section as a prerequisite for granting a permit from areas under quarantine.

(e) The proposed location of imported bees and bee equipment in North Carolina shall be approved by the State Apiarist in advance of issuance of a permit. In determining whether a proposed location will be approved, the State Apiarist shall consider the following criteria in determining whether the requested movement of bees or equipment could create or lead to overcrowding of bees or other detrimental conditions at the proposed site:

- (1) The bee population or density in the proposed entry area and proximity to other bees with respect to creation of conditions favoring honeybee stress diseases or increased disease or pest spread hazard;
- (2) The number of colonies for which the entry permit is requested;
- (3) The adequacy of the honey pasture in the proposed entry area;
- (4) The effect on incorporated cities in North Carolina or any local bee ordinance;
- (5) The effect on honeybee research being conducted in North Carolina;
- (6) The effect on honeybee disease quarantine or clean-up areas in North Carolina;
- (7) Any previous locations or enforcement histories in North Carolina;
- (8) Any unusual or mitigating circumstances; and
- (9) The timing of the request.

*History Note: Authority G.S. 106-638; Eff. January 1, 2011.*

#### **02 NCAC 48A .0248 LOCATION OF BEES**

(a) The statement as specified in 02 NCAC 48A .0247(e) regarding where bees are to be located in North Carolina must be in sufficient detail to enable location of the bees.

(b) Honeybees requiring an entry permit which are moved into North Carolina from other states or countries shall be placed under postentry quarantine for a period of one year after entry. These bees shall not be moved from the initial location to other locations in North Carolina while under quarantine.

*History Note: Authority G.S. 106-638; Eff. January 1, 2011.*

#### **02 NCAC 48A .0249 INSPECTION OF NUCLEI AND QUEEN BREEDING APIARIES**

(a) No one shall sell queen bees, package bees or nuclei in North Carolina without having the bees from which the above are produced, inspected and found apparently disease free by the State Apiarist.

(b) All nuclei, package bees and queen bees produced in North Carolina must have a North Carolina health certificate attached to each shipment from the producer's apiary. The health certificate shall be issued in accordance with the rules in this Section.

(c) Beekeepers shall not sell nuclei, package bees or queens produced in other states from North Carolina locations without having a North Carolina health certificate on all the bees they own in North Carolina issued in accordance with the rules in this Section.

(d) If the inspector has reason to believe that bees or equipment offered for sale are symptomless carriers of any disease or disorder listed in the rules in this Section he shall forbid movement or sale of the bees and equipment.

(e) A protective quarantine area of a two-mile radius shall exist around the production apiaries of nuclei, queen bee or package bee producers in North Carolina who are in compliance with this Section. No one shall move bees into the quarantined area without a health certificate issued by the State Apiarist based on an inspection within 30 days prior to movement.

(f) All persons who sell, ship, or deliver queen bees, package bees or nuclei in North Carolina must keep records of their acquisitions, sales, shipments or deliveries. These records must show contents of shipments; where sold, shipped, or delivered; to whom sold, shipped or delivered; and the date sold, shipped or delivered. These records must be kept for three years after the transaction and must be made available to any North Carolina Department of Agriculture apiary inspector on request. All persons who sell, ship, or deliver either queen bees, package bees, or nuclei in North Carolina must obtain a permit from the Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services.

*History Note: Authority G.S. 106-638; 106-639; Eff. January 1, 2011.*

#### **02 NCAC 48A .0250 HEALTH CERTIFICATES**

The State Apiarist shall grant health certificates as follows:

- (1) For queen breeders, package bee shippers, and nuclei producers in North Carolina:
  - (a) The beekeeper shall have an inspector inspect all of the bees owned or operated by the beekeeper at least one time a year at a time the bees are actively rearing brood;
  - (b) All frames of brood shall be inspected in each hive;
  - (c) If no disease is found, the State Apiarist shall issue a North Carolina

- health certificate dated to expire 12 months after issuance;
- (d) If disease is found the disease shall be suppressed by destruction of hives or eradicated by fumigation;
- (e) The inspector must wait 30 days after the disease has been eradicated or suppressed before performing a re-inspection of remaining hives for health certification purposes; and
- (2) For certification of bees to be moved from North Carolina:
  - (a) The inspector shall inspect the bees according to the entry requirements of the destination state or country;
  - (b) A uniform health certificate shall be issued if the disease freedom requirements of the destination state are met;
  - (c) The State Apiarist may make any additional declarations for which he has supporting data when such declarations are required by the destination state; and
  - (d) The inspector may mark or stamp hives that are disease-free if such is required by the destination state.

*History Note: Authority G.S. 106-638; 106-639; Eff. January 1, 2011.*

**02 NCAC 48A .0251 COMPLIANCE AGREEMENT**

(a) A compliance agreement may be made between the State Apiarist and those rearing bees for sale provided the shipper agrees to:

- (1) Notify the State Apiarist of bees shipped into or within North Carolina, the date shipped, and the destination;
- (2) Not use chemotherapy to mask the presence of disease;
- (3) Not exchange used frames in the operation;
- (4) Have all of his bees inspected twice a year when brood is present, and at intervals no less than 90 days, and send the State Apiarist copies of health certification issued; and
- (5) Meet all other conditions provided for by the rules in this Section.

(b) If conditions within the state of origin warrant or violations of the compliance agreement or other health standards occur, the State Apiarist shall discontinue the issuance of compliance agreements and revoke any outstanding agreements.

(c) The compliance agreement expires December 31 of each year unless revoked by the State Apiarist prior to that date.

*History Note: Authority G.S. 106-638; Eff. January 1, 2011.*

**02 NCAC 48A .0252 EXPOSURE OF DISEASED MATERIALS**

- (a) No one shall knowingly expose bees, bee products, or equipment which is known to be infested with a contagious and infectious bee disease in such a manner as to be accessible to robber bees.
- (b) When a colony of bees dies as a result of disease, the beekeeper shall seal or close the colony to prevent robber bees from carrying disease to healthy colonies.
- (c) If apiary products or equipment that are infested with infectious disease are mixed with uninfected products or equipment, the entire lot is considered infested.

*History Note: Authority G.S. 106-638; Eff. January 1, 2011.*

**02 NCAC 48A .0253 INFESTED APIARY MATERIAL LIABLE TO DESTRUCTION**

- (a) Anyone possessing bees, apiary products, or equipment that is infested or infected with infectious and contagious bee disease or disorders must disinfect or sterilize such bees, apiary products, or equipment in such a manner as to prevent propagation or spread hazard of the disease.
- (b) If bees, equipment, or apiary products that are infested or infected with infectious and contagious bee diseases or disorders are not disinfected or sterilized the inspector shall take measures to eradicate such bee diseases or disorders at the expense of the beekeeper.
- (c) If sterilization treatments or fumigations are not available or acceptable to the beekeeper, bees, apiary products, or equipment that are infested with contagious and infectious bee diseases or disorders shall be destroyed by the State Apiarist or inspector.

*History Note: Authority G.S. 106-639; Eff. January 1, 2011.*

**02 NCAC 48A .0254 DESTRUCTION OF BEES: APIARY PRODUCTS OR EQUIPMENT**

- (a) The inspector shall consider all factors and make the determination as to whether the bees, apiary products, or equipment can be safely sterilized or disinfected.
- (b) This Rule shall be enforced for diseases as listed in this Section.
- (c) The inspector shall consider all treatments approved by the United States Environmental Protection Agency, including drug therapy and fumigation, in making the safe sterilization determination.
- (d) The destruction or disposition of bees and equipment shall be conducted under the supervision of the inspector.
- (e) The destruction of a beehive shall be performed as is described in "Agricultural Extension Beekeeping Note No. 2.01," January 2007, published by North Carolina State University's Cooperative Extension Service, including subsequent amendments and editions, or in "Beekeeping Basics," Mid-Atlantic Apiculture Research and Extension Consortium, 2004, including subsequent amendments and editions. Copies of these documents are available for inspection at the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division office located at 216 West

Jones Street, Raleigh, NC 27603. They may also be obtained online at  
<http://www.cals.ncsu.edu/entomology/apiculture/PDF%20files/201.pdf> and  
<http://pubs.cas.psu.edu/FreePubs/pdfs/agrs93.pdf>.

*History Note:* Authority G.S. 106-639;  
 Eff. January 1, 2011.

#### **02 NCAC 48A .0255 FUMIGATION OR STERILIZATION OF APIARY EQUIPMENT**

- (a) The State Apiarist shall allow fumigation or sterilization of diseased bee equipment in lieu of destruction when fumigation or sterilization is sufficient to eliminate the disease or disorder.
- (b) The State Apiarist shall, at the request of the beekeeper, provide and operate the chamber for fumigation of diseased bee equipment in lieu of destruction, when fumigation or sterilization is sufficient to eliminate the disease or disorder. When the beekeeper makes such a request, the beekeeper shall pay for the cost of the fumigant.
- (c) The State Apiarist shall dispose of honey, wax, or bee equipment abandoned in connection with the fumigation program in a manner such that there is no disease spread hazard.

*History Note:* Authority G.S. 106-639;  
 Eff. January 1, 2011.

#### **02 NCAC 48A .0256 CLEAN-UP AREAS**

- (a) When in the opinion of the Commissioner action is necessary to prevent or check the spread of bee diseases or disorders he may designate areas or counties as "clean" or under a "clean-up campaign" for designated diseases or disorders and prohibit the movement of bees and equipment into or from these areas, except when they have been inspected within 60 days of the time they are to be moved, and found apparently free of the designated diseases or disorders, and a certificate of inspection issued.
- (b) The following types of clean-up areas may be designated and the diseases or disorders regulated in the areas:
- (1) areas where bees are moved to or concentrated at certain times of the year such as apple and blueberry pollinating areas;
  - (2) areas with a concentration of bee disease;
  - (3) areas around queen or package bee rearing sites;
  - (4) areas around an infestation of a disease new to the state;
  - (5) any other area where disease clean-up is needed at the time.
- (c) Before designating or removing a clean-up area, a public hearing must be held before the Board of Agriculture.
- (d) The diseases or disorders regulated in the clean-up areas are dependent on the type of clean-up area and must be designated by the Commissioner.
- (e) Any bees or beekeeping equipment moved in violation of this Rule shall be subject to confiscation and destruction.

*History Note:* Authority G.S. 106-389 through 106-640;  
 Eff. January 1, 2011.

#### **02 NCAC 48A .0257 DISEASED APIARIES QUARANTINED**

- (a) Any apiary or colony of bees infected with contagious and infectious diseases, disorders, or conditions prescribed in the rules in this Section shall be placed under quarantine by the State Apiarist or inspector. Such quarantine becomes effective upon a verbal or written notice to the person in charge of the bees from the State Apiarist or inspector and remains in effect until the inspector has determined that the disease is eradicated or under control to his satisfaction.
- (b) The movement or transportation of any and all colonies of bees, apiary equipment, queen bees, nuclei, combs, or other diseased materials from a quarantined apiary or colony is prohibited.
- (c) A quarantine zone shall exist within a radius of two miles around the diseased apiary or colony of bees. No bees may be moved from a quarantine zone until after they have been inspected and found to be apparently free from disease.

*History Note:* Authority G.S. 106-638 through 106-639;  
 Eff. January 1, 2011.

#### **02 NCAC 48A .0258 EXTERIOR QUARANTINE**

The Commissioner shall quarantine areas outside of North Carolina when he has reason to believe that a bee of the genus *Apis* other than *Apis mellifera* or a bee disease or disorder that is not established throughout North Carolina exists in that area and that importation of honeybees or beekeeping equipment present an introduction hazard to North Carolina beekeeping.

*History Note:* Authority G.S. 106-640;  
 Eff. January 1, 2011.

#### **02 NCAC 48A .0259 DISEASES AND DISORDERS OF SPECIAL CONCERN**

The following diseases, disorders, and conditions are of special concern to beekeeping in North Carolina. These are prescribed for special regulatory action as referenced in the rules in this Section:

- (1) American foulbrood disease, *Paenibacillus* larvae;
- (2) Chalkbrood disease, *Ascosphaera apis*;
- (3) Any bee disease or disorder which, in the opinion of and so declared by the Commissioner, constitutes a threat to the bee and honey industry in North Carolina;
- (4) Any bee of the genus *Apis* other than *Apis mellifera*;
- (5) Any bees, beekeeping equipment or products that have been moved or used in violation of North Carolina bee and honey statutes and rules;
- (6) Genetic material of exotic strains of bees;
- (7) Honeybee tracheal mite, *Acarapis woodi*, Rennie;
- (8) Africanized bee – Hybrids of *Apis mellifera* scutellata;
- (9) Varroa mite – *Varroa destructor*; and
- (10) Small Hive Beetle – *Aethina tumida*.

*History Note: Authority G.S. 106-640;  
Eff. January 1, 2011.*

**02 NCAC 48A .0260 CERTIFICATION OF  
POLLINATION CONDITIONS**

At the request of either a beekeeper or a grower renting bees for pollination, and with knowledge of both parties, the State Apiarist shall inspect each colony for colony strength and condition of bees rented or provided for pollination, and shall make a certification of his or her findings available to both parties.

*History Note: Authority G.S. 106-636;  
Eff. January 1, 2011.*

**02 NCAC 48A .0261 ABANDONED BEES OR BEE  
EQUIPMENT**

The State Apiarist, upon permission of the property owner or manager, may take possession and care for an apiary or honeybee colonies left untended on the property of another for a period of 12 months.

*History Note: Authority G.S. 106-639;  
Eff. January 1, 2011.*

**02 NCAC 48A .0262 REGISTRATION OF  
HONEYBEE COLONIES**

(a) Beekeepers requesting notification of an applicator who applies pesticides by using aircraft in compliance with Federal Aviation Administration regulations under Title 14 CFR Part 137 shall register such a request in accordance with the provisions of this subsection.

(b) Registering agency. The Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services shall be responsible for the registration of honeybees and making registration information available to aerial applicators.

(c) Registration procedure:

- (1) Beekeepers desiring advance notification of pesticide application under these procedures shall register their apiaries with the registering agency. The registration period shall be from January 1 to December 31 of each year;
- (2) Beekeepers may register their bees at any time of the year but registration shall not be effective until the registration revisions have been distributed to aerial applicators;
- (3) The registration will expire on December 31 of each year and must be renewed each year;
- (4) The Plant Industry Division will distribute a list of registration revisions by U.S. mail on the first of March, July, and October to all aerial applicators licensed in North Carolina and the revisions will be effective on the fifth day of the month. When deemed necessary by the state apiarist due to pesticide use patterns, a special registration list may be distributed more frequently;

- (5) Registration must be on forms provided by the Plant Industry Division and are available from the North Carolina Department of Agriculture and Consumer Services, Plant Industry Division, 1060 Mail Service Center, Raleigh, NC 27699-1060; Apiculturist, Entomology Department, NC State University, Campus Box 7613, Raleigh, NC 27696 and all agricultural extension offices. The names, addresses, and phone numbers of persons authorized to receive notification must be of people within North Carolina and of such nature that the aerial applicator or his representative can easily give notification of planned application of pesticide; an alternative notification procedure must be provided by beekeepers who are away from primary notification address for periods in excess of 24 hours. Beekeepers who cannot be contacted or notified of intent to spray for periods of time in excess of 24 hours are hereby declared not properly registered; and

- (6) A registration fee of ten dollars (\$10.00) must be paid for each registration.

*History Note: Authority G.S. 106-638;  
Eff. January 1, 2011.*

**02 NCAC 48A .0263 PERMIT TO SELL BEES**

(a) The Plant Industry Division of the North Carolina Department of Agriculture and Consumer Services shall issue permits to individuals, corporations, or firms intending to sell honeybees in North Carolina.

(b) Permitting procedure:

- (1) Individuals, corporations, or firms desiring to sell bees in North Carolina shall apply annually for a permit. The permitting period is from January 1 to December 31 of each year. Permit applications must be on a form provided by the Plant Industry Division. Permit application forms are available from the following:
  - (A) North Carolina Department of Agriculture and Consumer Services, Plant Industry Division, 1060 Mail Service Center, Raleigh, NC 27699-1060; and
  - (B) available on-line at NCDA&CS, Plant Industry Division, Plant Protection website;
- (2) A permitting fee must be paid on an annual basis in accordance with the provisions of G.S. 106-639.1 and subsequent amendments;
- (3) Individuals, corporations, or firms may obtain a permit to sell bees at any time of year;
- (4) The permit shall expire on December 31 of each year and must be renewed each year;
- (5) All provisions of the N.C. Bee and Honey Act and the rules adopted thereunder must be met

as a prerequisite to obtaining a permit to sell bees, including compliance with existing quarantines;

- (6) A permit to sell bees in North Carolina shall be denied or revoked if necessary to prevent the introduction or spread of bees or colonies with contagious or infectious diseases, disorders, or conditions deemed harmful to the North Carolina beekeeping industry;
- (7) A permit is non-transferable; and
- (8) A permit holder shall not sell bees owned by another person.

*History Note:* Authority G.S. 106-639.1;  
Eff. January 1, 2011.

**02 NCAC 48A .0264 FORMS**

Forms needed to implement the provisions of the rules in this Section shall be provided by the North Carolina Department of Agriculture and Consumer Services, Plant Protection Section as needed.

*History Note:* Authority G.S. 106-641;  
Eff. January 1, 2011.

**02 NCAC 48A .0265 AFRICANIZED BEE/VARROA MITE CLEAN UP AREA**

(a) To prevent introduction of the Africanized bee (hybrids of *Apis mellifera scutellata*) and the Varroa mite (*Varroa destructor*) into North Carolina through the ports at Morehead City and Wilmington, Africanized bee/Varroa mite clean up areas are hereby established at these ports.

(b) The clean up areas are the areas encompassed within a two mile radius with center at the western terminus of Morehead City-Beaufort Bridge on U.S. 70 in Morehead City, North Carolina and within a two mile radius with center at the western terminus of Shipyard Boulevard in Wilmington, North Carolina.

(c) These areas are hereby declared bee-free areas. No bees shall be kept or husbanded in these areas without permission of the State Apiarist. Apiary inspectors are authorized to take and destroy any bees found in these areas including bees on ships or in cargo. No one shall transport or ship bees into or from these areas unless they are part of a bee shipment through the ports. Any cargo containing bees shall not be removed from the area until declared bee-free by an Apiary Inspector. No one shall capture or take a swarm of bees from the area. Bees and their progeny taken from the area are subject to destruction without regard to whether they are Africanized or not.

*History Note:* Authority G.S. 106-639; 106-640;  
Eff. January 1, 2011.

**TITLE 04 – DEPARTMENT OF COMMERCE**

**04 NCAC 02R .0102 LOCATION AND ADDRESS**

The principal office of the North Carolina Alcoholic Beverage Control Commission is located at 400 East Tryon Road, Raleigh, North Carolina 27610. The mailing address is 4307 Mail

Service Center, Raleigh, North Carolina 27699-4307. The telephone number is (919) 779-0700. The Commission's email address is [contactus@abc.nc.gov](mailto:contactus@abc.nc.gov). The Commission's web site address is [www.ncabc.com](http://www.ncabc.com). This office is open to the public during regular business hours, from 8:00 a.m. to 5:00 p.m., Monday through Friday.

*History Note:* Authority G.S. 18B-207;  
Eff. January 1, 1982;  
Amended Eff. January 1, 2011; August 1, 2010; May 1, 1984.

**04 NCAC 02R .1302 STORAGE: DELIVERIES: SECURITY**

(a) Storage. Private warehouse contractors performing the receipt, storage and distribution functions shall:

- (1) Allocate space in the Commission's warehouse for each item listed on the price list adopted by the Commission. Space allocated shall be based on sales volume;
- (2) Develop and publish a delivery schedule of spirituous liquors to all local boards, which are subject to approval of the Commission which are based on sales volume. Orders and shipments over the quantity on the approved schedule may be made as agreed between the local boards and the contractor. All orders over the quantity on the schedule shall be accepted when deemed economically feasible by the contractor.
- (3) Develop and publish standard operating procedures not covered by these Rules for use by the contractor and local boards. All procedures published shall be submitted to the Commission.

(b) Deliveries and Shipments. The processing of shipments upon receipt by the local boards shall be as follows:

- (1) The driver shall provide the local board representative an Off-Loading Check Sheet, an Invoice Bill(s) of Lading and a Transmittal Sheet with the shipment. The Off-Loading Check Sheet shall reflect the items and quantities being delivered in numerical order, and the quantities shall agree with those on the Invoice Bill(s) of Lading and the Transmittal Sheet;
- (2) The system used for off-loading shall be such that an accurate count of the merchandise is made and all overages or shortages can be verified by the driver before any exceptions entries are made on the Transmittal Sheet;
- (3) If there are no overages, shortages or breakage, remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
- (4) If there is an overage which is accepted by the local board representative, the local board representative shall line through the number of cases invoiced and shall write the correct number of cases on the Transmittal Sheet. The

- local board representative shall enter the quantity over, the stock code number and an explanation in the "comments" block on the Transmittal Sheet. Upon return of the Transmittal Sheet to the Commission's warehouse, the contractor shall issue a debit adjustment. The debit adjustment shall have the original invoice number in the purchase order reference box as a cross reference. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
- (5) If there is an overage that is not accepted by a local board representative, the local board representative shall enter the quantity, the stock code number and an explanation in the "comments" box on the Transmittal Sheet. The driver shall return the merchandise to the Commission's warehouse;
- (6) If there is a shortage, the local board representative shall line through the number of cases invoiced and shall write the correct number of cases on the Transmittal Sheet. The local board representative shall enter the quantity under, the stock code number and an explanation in the "comments" box on the Transmittal Sheet. Upon return of the Transmittal Sheet to the Commission's warehouse, the contractor shall issue a credit adjustment. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
- (7) The local board representative shall handle breakage discovered during the unloading process as a shortage in shipment [see Subparagraph (6) of this Paragraph] with the note in the "comments" block of the Transmittal Sheet indicating that the case was returned due to breakage. If the breakage involves a case that is an overage not accepted by the local board representative, the procedures in Subparagraph (5) of this Paragraph shall be followed. Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
- (8) If a local board's shipment includes a shrink-wrapped pallet(s), the local board shall break down the pallet(s) and any overage, shortage, or breakage shall be reported to the warehouse as follows:
- (A) The procedures for marking the Transmittal Sheet in Subparagraphs (4), (5), (6) and (7) of this Paragraph shall be followed; and
- (B) The updated Transmittal Sheet shall be emailed, faxed or postmarked to the Commission's warehouse within three days of delivery of the pallet(s); Remittance shall be made as referenced in Subparagraph (10) of this Paragraph;
- (9) The local board representative and the driver shall sign the Transmittal Sheet(s) and the driver shall return the Transmittal Sheet(s) to the Commission's warehouse. The local board representative shall receipt date stamp or sign the distiller's Invoice Bills of Lading copies and the driver shall return them to the Commission's warehouse; and
- (10) The local board shall remit payment to the party listed in the "Remit to" information listed on the Invoice Bill(s) of Lading which includes any Bailment Invoices or Surcharge Invoices. The local board shall enter the Invoice Bill of Lading number on each check or each check stub.
- (c) Security Measures. Security of the merchandise during the delivery process shall be as follows:
- (1) The conveyances (trucks and trailers) shall be secured with a lock and serially numbered metal or plastic seal by the contractor. Each local board shall be issued a key that will unlock all the locks used by the contractor;
- (2) The seal numbers will be entered on the "Seal Nos." line of the invoice transmittal sheet. Extra seals shall be included in sealed envelopes for resealing the unit when shipments are destined for more than one local board and for the return trip after final delivery;
- (3) The local board general manager or his designated representative shall check the seal number on the unit with the number on the invoice transmittal sheet upon arrival of a shipment. If the numbers correspond the unit shall be unlocked by the local board's representative. If the numbers do not correspond the contractor shall be contacted for further instructions; and
- (4) The local boards' general manager shall limit the accessibility of the key to three personnel and shall not allow the contractor's driver or his assistant to remove the seal or have the key in his possession at any time.
- (d) Local boards shall not pick up merchandise from the Commission's warehouse without prior approval from the Commission's Administrator or his designee.
- (e) Local boards may purchase, exchange, or otherwise obtain spirituous liquor from another local board and transport such beverages as necessary for the operation of its ABC stores. Payment for such transactions shall be satisfied as provided by 04 NCAC 02R .1407.

*History Note: Authority G.S. 18B-100; 18B-203; 18B-207; 18B-701(1);  
Eff. January 1, 1982;  
Amended Eff. January 1, 2011; May 1, 1984.*



**04 NCAC 02R .1305 DIRECT SHIPMENTS**

(a) A direct shipment is a shipment of a distiller's spirituous liquors from the distiller or a warehouse directly to a local board without passing through the Commission's warehouse.

(b) Direct shipments are allowed by the Commission in emergency situations or in a situation that is mutually advantageous to local boards, the Commission and the operator of the Commission's warehouse (for example, commemorative bottles).

(c) Direct shipment shall have written approval from the Commission. Merchandise authorized to be shipped direct shall be consigned by the Commission's warehouse to the distiller's account in care of the local board. The local board shall acknowledge receipt of the merchandise on the shipping documents and forward them to the contractor for processing through the accounting system as though the merchandise were shipped from the Commission's warehouse.

*History Note: Authority G.S. 18B-100; 18B-109(a); 18B-207; 18B-701(1);*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; May 1, 1984.*

**04 NCAC 02R .1901 MIXED BEVERAGES TAX STAMP**

(a) Prior to the sale of any container of spirituous liquor to a permittee, the local board shall affix to the container a mixed beverages tax stamp that indicates the following:

- (1) local board system of sale,
- (2) permittee's transaction number,
- (3) permittee's Mixed Beverage Permit number.

(b) The mixed beverages tax stamp shall be affixed to the original paper labeling of each container, except that in the case of a container bearing no original label the stamp shall be affixed to any conspicuous portion of the container. In no event may the stamp be affixed to the cap or closure of a container. Where a case of one brand has been purchased, the mixed beverages tax stamp shall be affixed to each container in the case and it shall not be sufficient to stamp the exterior of the case.

(c) For sales of liquor to a guest room cabinet permittee, a local board may affix the mixed beverages tax stamp to any portion of the container other than the cap or closure. In lieu of affixing the stamp to each container purchased by a guest room cabinet permittee, a local board may choose to give to the guest room cabinet permittee one tax stamp for each container of liquor purchased for resale from a guest room cabinet, as authorized by Rule .1804 of this Subchapter.

(d) Mixed beverage permittees may transport no more than eight liters of opened containers of spirituous liquor without a purchase-transportation permit to and from an ABC Board in the non-passenger area of a motor vehicle for the purpose of replacing mixed beverage tax stamps that are defaced or that have worn out numbers.

*History Note: Authority G.S. 18B-100; 18B-203(a)(1); 18B-207; 18B-804(b)(8); 18B-807;*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

**04 NCAC 02S .0101 DEFINITIONS**

In addition to the definitions found in Sections 18B-101 and 18B-1000 of the North Carolina General Statutes, the following definitions apply to this Subchapter:

- (1) "Employee" means any person who performs a service for any person holding an ABC permit, regardless of whether that person is compensated for the performance of those services.
- (2) "Intoxicated" means the condition of a person whose mental or physical functioning appears to be presently substantially impaired as a result of the use of alcohol or other substance, such as when the person appears to a reasonable observer to be so far under such influence that:
  - (A) the person's emotions are conspicuously uncontrolled; or
  - (B) the person's intelligence, sense-perceptions, judgment, continuity of thought or of ideas, speech and coordination of volition with muscular action, or some of these faculties or processes are materially impaired.
- (3) "Modified Plan Permits," as used in 04 NCAC 02S .0105 and 04 NCAC 02S .0106, mean on-premise malt beverage permits authorized by elections held pursuant to G.S. 18B-602(a)(4).
- (4) "Original container" means a bottle, can or other alcoholic beverage product container filled by a manufacturer or bottler that has been approved for sale within this State.
- (5) "Premises" means the same as defined in G.S. 18B-101(12a). A diagram attached to the investigative report and kept in the permittee's file is prima facie evidence of the premises covered by that permit and for which the permittee and his employees are responsible. Permits shall authorize the sale and possession or consumption of alcoholic beverages only on the premises described in the investigative report and diagram furnished by the investigating agent.
- (6) "Private dining area" means any area of a restaurant or hotel that is or can be substantially closed off from public view.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-305; 18B-602(a)(4); 18B-1008; 122C-3(18);*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

**04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS**

(a) Forms. Application forms for all ABC permits may be obtained from the North Carolina Alcoholic Beverage Control Commission.

(b) **Statutory Requirements.** Before the issuance of any ABC permit, an applicant shall comply with the statutory requirements of Articles 9 and 10 of Chapter 18B of the General Statutes and with the rules of the Commission.

(c) **Separate Permits Required.** An applicant operating separate buildings or structures not connected directly with each other or businesses with separate trade names shall obtain and hold separate permits for each building or business for which he wants permits, and he shall pay the appropriate application fees as provided in G.S. 18B-902(d). Where there are multiple buildings, and the Commission determines that the business is operated as one entity, the Commission may, in its discretion, issue one permit.

(d) **Information Required on Application.** An applicant for an ABC permit shall file a written application with the Commission and in the application shall state, under oath, the following information:

- (1) name and address of applicant;
- (2) corporate, limited liability company or partnership name;
- (3) mailing address and location address of business for which permit is desired, and county in which business is located;
- (4) trade name of business;
- (5) name and address of owner of premises;
- (6) applicant's date and place of birth;
- (7) if a corporation or limited liability company, the name and address of agent or employee authorized to serve as process agent (person upon whom legal service of Commission notices or orders can be made);
- (8) if a non-resident, name and address of person appointed as attorney-in-fact by a power of attorney;
- (9) a diagram of the premises showing:
  - (A) entrances and exits;
  - (B) storage area for alcoholic beverages; and
  - (C) locations where alcoholic beverages will be served or consumed;
- (10) that the applicant is the actual and bona fide owner or lessee of the premises for which a permit is sought and shall submit a copy or memorandum of the lease showing the applicant as tenant, or a copy of the deed showing the applicant as the grantee or owner;
- (11) that the applicant intends to carry on the business authorized by the permit himself or under his immediate supervision and direction; and
- (12) that the applicant is an actual and bona fide resident of the State of North Carolina or, as a non-resident, has appointed, by a power of attorney, a resident manager to serve as attorney-in-fact who will manage the business and accept service of process and official Commission notices or orders.

(e) **General Restriction; Living Quarters.** No permit for the possession, sale or consumption of alcoholic beverages shall be

issued to any establishment when there are living quarters connected directly thereto, and no permittee shall establish or maintain living quarters in or connected to his licensed premises.

(f) **General Restriction; Restrooms.** No permit for the on-premises possession, sale, or consumption of alcoholic beverages shall be issued to any establishment unless there are two restrooms in working order on the premises. This requirement shall be waived upon a showing that the permittee will suffer financial hardship or the safety of the employees will be jeopardized.

(g) **Areas for Sales and Consumption.** In determining the areas in which alcoholic beverages will be sold and consumed, the Commission shall consider the convenience of the permittee and his patrons, allowing the fullest use of the premises consistent with the control of the sale and consumption of alcoholic beverages, but will attempt to avoid consumption in areas open to the general public other than patrons.

(h) **Temporary Permits for Continuation of Business.** The Commission may issue temporary permits to an applicant for the continuation of a business operation that holds current ABC permits when a change in ownership or location of a business has occurred. To obtain a temporary permit an applicant shall submit the appropriate ABC permit application form, all required fees, a lease or other proof of legal ownership or possession of the property on which the business is to be operated, and a written statement from the ALE agent in that area stating that there are no pending ABC violations against the business. An applicant for a temporary permit shall also submit the permits of the prior permittee for cancellation prior to the issuance of any temporary permit. No temporary permit shall be issued to any applicant unless all prior ABC permits issued for the premises have been cancelled by the Commission.

(i) **Retail Sales at Public Places Restricted.** The sale and delivery of alcoholic beverages by permitted retail outlets located on fair grounds, golf courses, ball parks, race tracks, and other similar public places are restricted to an enclosed establishment in a designated place. No alcoholic beverages, shall be sold, served, or delivered by these outlets outside the enclosed establishment, nor in grandstands, stadiums or bleachers at public gatherings.

As used in this Rule, the term "enclosed establishment" includes a temporary structure or structures constructed and used for the purpose of dispensing food and beverages at events to be held on fairgrounds, golf courses, ball parks, race tracks, and other similar places.

Sales of alcoholic beverages may be made in box seats only under the following conditions:

- (1) table service of food and non-alcoholic beverages are available to patrons in box seats;
- (2) no alcoholic beverages are delivered to the box seats area until after orders have been taken; and
- (3) box seat areas have been designated as part of the permittee's premises on a diagram submitted by the permittee, and the Commission has granted written approval of alcoholic beverage sales in these seating areas.

(j) **Separate Locations at Airport.** If one permittee has more than one location within a single terminal of an airport boarding

at least 150,000 passengers annually and that permittee leases space from the airport authority, the permittee in such a situation may:

- (1) obtain a single permit for all its locations in the terminal;
- (2) use one central facility for storing the alcoholic beverages it sells at its locations; and
- (3) pool the gross receipts from all its locations for determining whether it meets the requirements of G.S. 18B-1000(6) and 04 NCAC 02S .0519.

(k) Food Businesses. Unless the business otherwise qualifies as a wine shop primarily engaged in selling wines for off-premise consumption, a food business qualifies for an off-premise fortified wine permit only if it has and maintains an inventory of staple foods worth at least one thousand five hundred dollars (\$1,500) at retail value. Staple foods include meat, poultry, fish, bread, cereals, vegetables, fruits, vegetable and fruit juices and dairy products. Staple foods do not include coffee, tea, cocoa, soft drinks, candy, condiments and spices.

*History Note: Authority 18B-100; 18B-207; 18B-900; 18B-901(d); 18B-902; 18B-903; 18B-905; 18B-1000(3); 18B-1008; Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

#### **04 NCAC 02S .0105 SPECIAL REQUIREMENTS FOR RESTAURANTS**

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a restaurant for a Brownbagging, on-premise Fortified Wine or Mixed Beverages Permit, or a Malt Beverages Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), a business shall have an inside dining area set aside for the service of meals that contains seating for at least 36 persons. Food shall be available at all times that alcoholic beverages are being served. After 10:00 P.M., restaurants may offer a partial food menu or prepackaged food in individual servings.

(b) Typical Characteristics. Although a facility need not possess all of the following characteristics to qualify as a restaurant, each is typical of a bona fide restaurant and the Commission shall consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke the permits listed in Paragraph (a):

- (1) The facility has a printed menu listing full meals with substantial entrees;
- (2) The facility has complete cooking and refrigeration equipment;
- (3) The greatest portion of the food sold is prepared in the facility's own kitchen and prepackaged food is only an incidental part of the sales;
- (4) The greatest portion of the food sold is consumed on the premises;
- (5) There are separate kitchen and service staffs;
- (6) Seating for dining customers is primarily at tables;

(7) Only a small portion of the premises is devoted to activities unrelated to the service and consumption of food; and

(8) Sales of food are significantly greater than sales of nonalcoholic beverages, especially nonalcoholic beverages sold as "set-ups."

(c) Requirements for Application. For a restaurant to obtain a permit listed in Paragraph (a), the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which includes the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock, interest holders holding 25 percent or more of the interest, and the manager; if, however, a corporation holds any other ABC permit, application by the manager is sufficient;
- (2) a copy of the restaurant's menu or list of food served;
- (3) photographs of sufficient detail to show the following:
  - (A) entire kitchen, including all equipment;
  - (B) all dining areas, showing seating arrangements, including patios or outdoor areas where alcoholic beverages will be sold or consumed;
  - (C) bars, counters, mixing stations;
  - (D) locked storage area or areas for storage of alcoholic beverages; and
  - (E) front exterior of premises or if establishment is located in an office building, mall or other larger structure, the main entrance.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(6); 18B-1008; Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

#### **04 NCAC 02S .0106 SPECIAL REQUIREMENTS FOR HOTELS**

(a) Requirements to Qualify for Brownbagging, On-premise Fortified Wine, Mixed Beverages, or Modified Plan Permits. To qualify as a hotel for a Brownbagging or a Mixed Beverages Permit, or a Malt Beverage Permit in areas approving on-premise malt beverages under G.S. 18B-602(a)(4), an establishment shall have on or closely associated with its premises a restaurant providing at least 36 seats. The restaurant may or may not be owned by the same person who owns the hotel. (If the restaurant is owned by a person different from the owner of the hotel, permits shall not be issued to the restaurant unless it qualifies under Rule .0105 of this Section).

(b) For a hotel to obtain one of the permits listed in Paragraph (a), the applicant shall submit to the Commission, the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which includes the full names and addresses of all owners, officers, directors, shareholders owning 25 percent or more of the stock, interest holders holding 25 percent of the interest, and the manager; if, however, a corporation holds any other ABC permit, application by the manager is sufficient;
  - (2) a copy of the restaurant's menu or a list of food served; and
  - (3) photographs of sufficient detail to show the following:
    - (A) entire kitchen including all equipment;
    - (B) all permanent dining areas, showing seating arrangements, including patio or outdoor areas where alcoholic beverages might be served or consumed;
    - (C) bars, counters and mixing stations;
    - (D) locked storage area or areas; and
    - (E) front exterior of hotel and restaurant.
- (c) **Locations Where Sales Permitted.** Brownbagging by patrons, consumption of alcoholic beverages and sales of mixed beverages are allowed at any time during lawful hours in the restaurant and in any lounge or other place that is customarily open to the general public and that is associated with the restaurant. These lounges and other places need not be directly connected to the restaurant as long as the services of the restaurant are available to the lounge at all times that alcoholic beverages are being served. Sales and consumption of mixed beverages are allowed in banquet rooms, convention rooms, suites and similar places not usually open to the general public only during scheduled events and only to persons attending those events. Portable bars may be used for the sale or mixing of mixed beverages in those rooms.
- (d) **Diagram of Premises.** The diagram of the premises submitted with the application for a permit under this Rule and the diagram submitted to the Commission when the permit is issued shall be marked to indicate which spaces are considered part of the restaurant and lounge or other places associated with the restaurant and customarily open to the general public, and which spaces are considered banquet rooms, convention rooms, meeting rooms, suites, and similar places where mixed beverages are to be sold only during scheduled events.
- (e) **Managers' Receptions.** Hotels operating lodging, restaurant and lounge facilities under one set of ABC permits may offer lodging guests up to two alcoholic beverages per guest per day in the price of the room package under the following conditions:
- (1) The reception or social hour is held on the licensed premises of the hotel;
  - (2) The hotel issues a voucher or other proof of guest registration for the beverages that can be used by the guest to obtain the beverage of his choice;
  - (3) Nonalcoholic beverages are also offered to lodging guests during the function; and

- (4) The hotel accounts for the beverages by an internal accounting procedure that insures that the price of each beverage included in the room rate package is the same price as is being charged other patrons in the lounge or restaurant for the same beverage.
- (f) **Guest Room Cabinet Permits; Application Requirements.** Applications for a Guest Room Cabinet permit shall be accepted only from hotels with Mixed Beverages permits, or from hotels simultaneously applying for Mixed Beverages permits. In addition to the general requirements for permit applications in this Rule and in Rule .0102 of this Section, a hotel applying for a Guest Room Cabinet permit shall submit the following items along with the completed application form and appropriate fee:
- (1) List of lodging rooms by room number in which cabinets will be placed;
  - (2) Total number of lodging rooms and total number of rooms set aside that will not have a cabinet;
  - (3) Description of cabinets to be installed by the hotel. A manufacturer's brochure describing the cabinet is sufficient, or the permittee may submit photographs and a written description of the lock used on the cabinet; and
  - (4) Written policies developed by the permittee regarding the procedures that will be implemented by the hotel to:
    - (A) insure no one under 21 is able to obtain a key to the cabinet;
    - (B) control inventory;
    - (C) insure price lists for items sold from cabinets are easily readable;
    - (D) dispose of all opened alcoholic beverage containers sold from cabinets after guest has checked out; and
    - (E) maintain adequate numbers of ice and soft drink vending machines elsewhere on the premises.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(4); 18B-1001(13); 18B-1008; S.L. 1991, c. 565, s. 7;*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

#### **04 NCAC 02S .0107 SPECIAL REQUIREMENTS FOR PRIVATE CLUBS**

- (a) Use of the private club's facility shall not be open to the general public but shall be limited to members of the private club and their guests.
- (b) **Typical Characteristics.** Although a private facility need not possess all of the following characteristics to qualify as a private club, each is typical of a club and the Commission shall consider the extent to which a facility possesses these characteristics in deciding whether to issue, suspend, or revoke a Brownbagging, Fortified Wine or Mixed Beverages Permit:

- (1) Membership is subject to stated requirements that tend to show a common bond among members;
- (2) Some limit related to the size of the facility is placed on total membership;
- (3) All members are allowed to participate in its organizational affairs, including the selection of officers or directors at reasonably frequent intervals;
- (4) The club operates pursuant to a charter, articles of association, constitution, or similar basic document and has adopted by-laws, copies of which are provided to each member;
- (5) The club has stated objectives of a social, recreational, patriotic or fraternal nature and its activities advance those objectives;
- (6) Membership entitles a person to multiple privileges other than the consumption of alcoholic beverages;
- (7) Most members hold full rather than limited memberships;
- (8) Facilities and activities other than those customarily related to the consumption of alcoholic beverages are available to members;
- (9) Some limits are placed on the number of times a guest may use the facility; and
- (10) Guests constitute a relatively small portion of the users of the facility.

(c) **Mandatory Requirements.** To qualify as a private club, a facility shall meet the following requirements concerning membership:

- (1) collect an annual membership fee separate from any admission or cover charge, no dues from which shall be more than 30 days past due;
- (2) maintain a written policy on the granting of full and limited memberships;
- (3) require each prospective member to complete a written application that contains questions directly related to the applicant's interest in the social, patriotic, fraternal or recreational purpose of the club, the applicant's qualifications for membership, and the applicant's background;
- (4) retain each completed application, if approved, in the organization's permanent records as long as the individual's membership continues;
- (5) issue written or printed evidence of membership to each member, which evidence of membership or other reasonably reliable document of identification shall be in the possession of each member present on the licensed premises;
- (6) maintain on the premises a current alphabetical roster of all members and their complete addresses; and
- (7) maintain and provide to each member a written policy concerning the use of facilities by guests.

(d) **Permit Application Procedures.** For a private club to obtain a Brownbagging, or Fortified Wine or Mixed Beverages Permit, the applicant shall submit to the Commission the appropriate application fee and the following documents:

- (1) a completed application on a form provided by the Commission, which includes the full names and addresses of all officers and directors (including those chosen by the membership), and the manager;
- (2) the written policy on granting of full and limited memberships;
- (3) a copy of the membership application form;
- (4) a copy of the membership card or certificate to be issued to members;
- (5) the written policy on use of facilities by guests; and
- (6) the charter, articles of incorporation, constitution, or other basic documents, and the by-laws, if any.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-900; 18B-901; 18B-902; 18B-1000(5); 18B-1008; Eff. January 1, 1982; Amended Eff. January 1, 2011; July 1, 1992; February 1, 1986; May 1, 1984.*

#### **04 NCAC 02S .0209 USE OF PROFANITY PROHIBITED**

*History Note: Authority G.S. 18B-207; 18B-1005(a)(6); Eff. January 1, 1982; Repealed Eff. January 1, 2011.*

#### **04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED**

(a) No permittee or his employees shall be on the licensed premises after consuming alcoholic beverages except under the following conditions:

- (1) The permittee or employee is off duty for the remainder of that day or night during which he consumes any alcoholic beverage;
- (2) The permittee or employee is out of uniform when uniforms are required to be worn while performing any on duty services; and
- (3) The permittee or employee shall not perform any on duty services of any nature while or after consuming alcoholic beverages.

(b) Notwithstanding Paragraph (a) of this Rule, a malt beverage or wine permittee or its employee who is of legal age and who is responsible for ordering or serving beverage alcohol may sample new malt beverage or wine products as provided by 04 NCAC 02T .0713(b) on the premises. Samples shall not exceed two ounce servings of individual products and the total of the samples shall not exceed eight ounces in one calendar day.

(c) No permittee or his agents or employees shall be or become intoxicated on the licensed premises.

*History Note: Authority 18B-100; 18B-203(b); 18B-207; 18B-1005(b); 18B-1006(d);*

*Eff. January 1, 1982;*  
*Amended Eff. May 1, 1984;*  
*Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared Rule 04 NCAC 02S .0212(b) void as applied in North Carolina Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732);*  
*Amended Eff. January 1, 2011.*

**04 NCAC 02S .0216 ENTERTAINERS AND CONDUCT**

**04 NCAC 02S .0217 VISUAL DISPLAYS**

*History Note: Authority G.S. 18B-207; 18B-1005(a)(4),(5),(6);*  
*Eff. January 1, 1982;*  
*Amended Eff. May 1, 1984;*  
*Repealed Eff. January 1, 2011.*

**04 NCAC 02S .0232 HAPPY HOURS REGULATED**

- (a) An on-premise permittee or his agent shall not:
- (1) sell more than one drink to a patron for a single price;
  - (2) establish a single price based upon the required purchase of more than one drink; or
  - (3) deliver more than one drink at one time
  - (d) An on-premise permittee may include alcoholic beverages in a package offering that includes a meal or entertainment to a patron for his consumption.

This Rule does not prohibit the sale of pitchers of alcoholic beverages to two or more patrons. This Rule also does not prohibit serving a single carafe or bottle of wine to a single patron.

(b) An on-premise permittee or his agent shall not give away a drink or sell one at a price that is different from the usual or established price charged for the drink for any period of time less than one full business day. Free or reduced drinks under this provision shall be offered to all customers, not just a segment of the population.

(c) For purposes of this Rule, a "drink" contains the amount of alcoholic beverages usually and customarily served to a single patron as a single serving by the permittee. A "drink" may also include two different alcoholic beverages served separately at the same time to a single patron if such "drink" is a customary combination, such as a shot of spirituous liquor with a malt beverage.

(d) An on-premise permittee may include alcoholic beverages in a package offering that includes a meal or entertainment.

(e) The offer of a meal and alcoholic beverage at a single total price is not a violation of this Rule so long as the total price reflects the actual price of the alcoholic beverages and not a reduced price.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1008;*  
*Eff. August 1, 1985;*  
*Amended Eff. January 1, 2011; July 1, 1992.*

**04 NCAC 02S .0234 PRIVATE CLUBS: GENERAL PROHIBITIONS; GUESTS**

(a) Private club permittees or their employees shall not allow any person who is not a member or a guest of a member to purchase or possess alcoholic beverages on the premises.

(b) "House" Guests. No private club permittee or his employee shall admit patrons as "house" guests.

(c) Employee Member. An employee who is also a member of the private club shall not admit a patron as his guest while that employee is on duty.

(d) A member shall designate his own guest. If a member accepts a patron as his guest at the behest of the private club mixed beverages permittee or employee, then the Commission shall consider that member to be acting as the permittee's agent.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1008;*  
*Eff. July 1, 1992;*  
*Amended Eff. January 1, 2011.*

**04 NCAC 02S .0235 PRIVATE CLUBS; RECIPROCAL MEMBERSHIPS**

A private club permittee may offer reciprocal memberships to members of other private clubs under the following conditions:

- (1) Reciprocity shall extend only to members of private clubs holding Mixed Beverages or Brownbagging permits issued by the Commission.
- (2) All clubs participating in reciprocal membership arrangements shall enter into a written agreement setting forth the terms of their arrangement, and each club shall adopt rules governing the use of their facilities by reciprocal members. The agreement and rules shall be filed with the Commission and made a part of the permittees' files.
- (3) A member of another club who is granted a reciprocal membership shall be required to show a valid membership card indicating he is a member of the reciprocal club each time he enters the facility.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1008;*  
*Eff. July 1, 1992;*  
*Amended Eff. January 1, 2011.*

**04 NCAC 02S .0404 RESTAURANTS: HOTELS: DISPLAY: CONTROL OF BEVERAGES**

(a) A restaurant or hotel holding a Brownbagging Permit shall ensure that all fortified wine and liquor is possessed inconspicuously by patrons when they are not in a private dining area.

(b) Every person possessing fortified wine or spirituous liquor in restaurants and hotels with Brownbagging Permits shall at all times retain control of his alcoholic beverages.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1001(7);*  
*Eff. January 1, 1982;*  
*Amended Eff. January 1, 2011; May 1, 1984.*

**04 NCAC 02S .0901 TASTINGS HELD BY RETAILERS FOR CONSUMERS**

(a) General. A retail wine or malt beverage permittee may conduct tastings of wine or malt beverages for consumers. A tasting held on the retailer's premises requires a tasting permit. Any retailer conducting a wine or malt beverage tasting shall:

- (1) Provide training to its employees conducting and supervising any tasting, including:
  - (A) identification of potential underage customers;
  - (B) recognition of fictitious identification;
  - (C) identification of potentially intoxicated customers; and
  - (D) service of correct sample sizes; and
- (2) Prominently display in the area where the tasting is being conducted a sign informing customers that they must be 21 years of age to participate in the tasting.

(b) Tastings Assisted by Industry Member. For the purposes of this Rule, "industry member" means any manufacturer, bottler, importer, vendor, representative or wholesaler of alcoholic beverages. An industry member may assist with wine or malt beverage tastings for consumers in conjunction with, or on the licensed premises of, a retailer provided that:

- (1) The wine or malt beverage is taken directly from the retailer's existing inventory;
- (2) The industry member makes no payment to or on behalf of the retailer for promoting or advertising the tasting;
- (3) The retailer provides instruction to any participating industry member outlining how the tasting will be conducted prior to the tasting;
- (4) The retailer designates one of its employees to supervise the tasting. The retail supervisor shall:
  - (A) be physically present, actively supervise and be readily available to any participating industry member at all times during the tasting;
  - (B) wear visible identification;
  - (C) physically check-in with any participating industry member at each tasting station at least once per hour;
  - (D) make a final determination on the eligibility of a consumer to participate in a tasting in the event such a question arises;
  - (E) maintain an accurate accounting of all wine or malt beverages purchased for and consumed at the tasting; and
  - (F) dispose of any opened wine or malt beverage containers remaining after the tasting, unless the remaining wine is retained by a wine shop permittee.

(c) Unlawful Inducements Prohibited. No industry member shall require a retailer, and no retailer shall require an industry member, to conduct a wine or malt beverage tasting.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1001(15); 18B-1001(18);*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; May 1, 1984.*

**04 NCAC 02S .0902 TASTINGS HELD BY INDUSTRY MEMBERS FOR CONSUMERS**

Where the legal sale of those beverages is permitted, an industry member may furnish wine or malt beverages for tastings for consumers provided that:

- (1) The tasting is conducted for promotional purposes; and
- (2) No alcoholic beverages are sold, no sales or orders are solicited, and no order blanks are placed in or about the premises.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b);*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

**04 NCAC 02S .0903 TASTINGS HELD BY INDUSTRY MEMBERS FOR RETAIL PERMITTEES: SAMPLES**

(a) Samples. An industry member may give samples of wine, malt beverages or spirituous liquor to a retail permittee authorized to sell that beverage under the following circumstances:

- (1) The industry member may give the retailer up to three gallons per brand of malt beverages, up to three liters per brand of wine and up to 50 milliliters per brand of spirituous liquor; and
- (2) The retailer has not previously purchased those brands from the industry member within the previous calendar year.

(b) Tastings. At educational seminars, an industry member may give a retail permittee samples by the glass of any products he offers for sale. A tasting may be conducted on the industry member's premises or at any other location. A tasting under this Paragraph shall not be conducted in conjunction with a meal, a party, or any other social event but shall be for business purposes only.

*History Note: Authority G.S. 18B-100; 18B-207; 18B-1107(a)(4); 18B-1109(a)(4); 18B-1116(b);*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

**04 NCAC 02S .1006 GENERAL PROHIBITIONS**

(a) For the purposes of this Rule, the following definitions shall apply:

- (1) "Coupon" means a part of a retail permittee's advertisement that is redeemed by a purchaser to the retail permittee to obtain a discount at the time of sale;
- (2) "Loyalty card, discount card, or membership card" means a card that is issued by a retail permittee to customers that, upon presentation to the retail permittee, provides for the

purchaser to receive a loyalty card, discount card, membership card, or coupon discount on a portion of the amount paid by the purchaser for off-premises beer or wine consumption sales at the time of sale; and

- (3) "Rebate" for a retail permittee, means a promise by the retail permittee to return a portion of the amount paid by the purchaser upon the condition the purchaser completes a rebate form and the purchaser meets the terms and conditions of the rebate form's requirements.

(b) Advertising for an alcoholic beverage shall not include a coupon or an offer for a free alcoholic beverage. No person shall advertise by means of a coupon, a rebate or a permittee's loyalty card, discount card or membership card offering a discount off the purchase of a malt beverage or wine, except as provided in this section. A combination of the use of a coupon, a rebate or a permittee's loyalty card, discount card or membership card shall not exceed a total of 25 percent of the advertised retail price of the item. Permittees may advertise by means of a coupon, a rebate or a permittee's loyalty card, discount card or membership card under the following conditions:

- (1) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise by means of a coupon or a rebate in the following circumstances:
  - (A) The permittee may provide a coupon or a rebate for use by a customer when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
  - (B) The permittee may require a customer to use the permittee's loyalty card, discount card or membership card with the use of a coupon or rebate when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
  - (C) No coupons or rebates shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;
  - (D) A coupon or rebate shall not provide a discount exceeding 25 percent of the advertised retail price of the item;
  - (E) A permittee shall not advertise or distribute coupons or rebates in a publication produced for or by a higher education institution; and
  - (F) In any advertisement displaying a discount coupon or rebate, the permittee shall include the following statement on or about the discount coupon or rebate in a similar font to

the discount coupon or rebate, "Drink Responsibly – Be 21;" and

- (2) A permittee who holds an on-premises or off-premises malt beverage or wine permit under G.S. 18B-1001(1) through (6) or a wine shop permit under G.S. 18B-1001(16) may advertise discounts, coupons and rebates with the requirement of the use of the permittee's loyalty card, discount card or membership card in the following circumstances;

- (A) The permittee shall require customers to present a loyalty card, discount card or membership card to receive the advertised loyalty card, discount card or membership card discount when purchasing a malt beverage or wine sold at the permittee's retail location for off-premises consumption;
- (B) No loyalty card, discount card or membership card shall be honored for the purchase of alcohol for any individual below the legal age for purchase of alcohol;
- (C) A loyalty card, discount card or membership card shall not provide a discount exceeding 25 percent of the advertised retail price of the item;
- (D) A permittee shall not advertise permittee loyalty card, discount card or membership card discounts in a publication produced for or by a higher education institution; and
- (E) In any advertisement displaying a permittee loyalty card, discount card or membership card discount, the permittee shall include the following statement on or about the discount coupon or rebate in a similar font to the discount, "Drink Responsibly – Be 21."

Direct or indirect cooperation shall not occur between a retailer and an industry member in either marketing, redemption or funding of coupons, rebates or loyalty card, discount card or membership card discounts under this Rule. Participation of an industry member in the use of coupons, rebates or loyalty card, discount card or membership card discounts is a violation of G.S. 18B-1116(a)(3).

(c) No industry member or retailer shall advertise alcoholic beverages in any programs for events or activities in connection with any elementary or secondary schools; nor shall any alcoholic beverages advertising be connected with these events when broadcast over radio or television.

(d) No industry member or retailer is permitted to advertise alcoholic beverages by use of sound trucks.

(e) No industry member or retailer shall advertise spirituous liquor upon the picture screen of any theater.

(f) Except as otherwise provided in these Rules, no industry member or retailer shall promote an alcoholic beverage product



by giving prizes, premiums or merchandise to individuals for which any purchase of alcoholic beverages is required or based on the return of empty containers unless all containers of like products are accepted and considered on an equal basis with the product sold by the promoter.

(g) No on-premise permittee or his agent shall advertise any drink promotion prohibited by 04 NCAC 02S .0232. This Paragraph includes a ban on all advertisements of "2 for 1," "buy 1 get 1 free," "buy 1 get another for a \_\_\_\_\_ (nickle, penny, etc.)," and any other similar statement indicating that a patron must buy more than one drink.

*History Note: Authority G.S. 18B-100; 18B-105(b); 18B-1116(a)(3); Eff. January 1, 1982; Amended Eff. January 1, 2011; July 1, 1992; August 1, 1985; May 1, 1984.*

**04 NCAC 02S .1008 ADVERTISING OF MALT BEVERAGES, WINE AND MIXED BEVERAGES BY RETAILERS**

**(a) Interior Advertising.**

- (1) Point-of-Sale. Retail malt beverage, wine and mixed beverage permittees may utilize any amount of point-of-sale advertising for malt beverage, wine and mixed beverage products offered for sale in the establishment. This advertising may be supplied by the industry member unless it constitutes a fixture or has value other than as advertising material; except that an industry member may give a retailer brand-identified items listed in 04 NCAC 02T .0713(c) for use as point-of-sale advertising;
- (2) Price Boards. Retail malt beverage, wine and mixed beverage permittees may display inside price boards showing the brand names and prices of malt beverage, wine and mixed beverage products offered for sale in the establishment;
- (3) Menus and Beverage Lists. Retail on-premise malt beverage, wine and mixed beverage permittees may place on the menu and beverage lists the brand names and prices of malt beverage, wine and mixed beverage products offered for sale in the establishment. Beverage lists may be supplied by an industry member and may include up to six items from the retailer's food menu but shall not include the name, logo or other identifier of the retail permittee on the advertisement. A table tent shall be considered a beverage list for purposes of this Rule;
- (4) Retailer Advertising Specialty Items. Retailer advertising specialty items are items such as trays, coasters, mats, meal checks, paper napkins, glassware, cups, foam scrapers, back bar mats, thermometers and other similar items that bear advertising matter. Advertising specialty items may be provided to a retailer

by an industry member as provided in 04 NCAC 02T .0713(b)(8);

- (5) Window Displays. Retail malt beverage, wine and mixed beverage permittees may arrange unopened malt beverage, wine or spirituous liquor products in a window display;
- (6) Location. No point-of-sale advertising, advertising specialty item or price board shall be displayed in a manner designed or intended to advertise malt beverages, wine or mixed beverages on the outside of the establishment;
- (7) T-shirts. A retailer's employees shall not wear alcoholic beverage brand identified t-shirts while working on the retailer's licensed premises; and
- (8) Removal of Signs. A permittee shall remove any sign, display or advertisement in or about his licensed premises if the Commission finds it is contrary to public interest and orders its removal.

**(b) Exterior Advertising.**

**(1) Outside signs on the premises.**

- (A) Malt Beverages. Retail malt beverage permittees may display the term "beer" or "cold beer" or "draught beer" on a single, non-mechanical outside sign. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises;
- (B) Wine. Retail wine permittees may display the term "wine permit-off premise" or "wine permit-on premise" or a substantially equivalent term on a single non-mechanical outside sign. The letters and figures on the sign shall not be more than 5 inches in height and 2 inches apart and the sign shall be attached to the building on the licensed premises. Instead of the sign described in this Paragraph, retail wine permittees substantially engaged in off-premise sales of wine may display the term "Wine Shop" or "Wine and Cheese" or a substantially equivalent term on a single non-mechanical sign. The letters and figures on the sign shall not be more than 18 inches in height and the sign shall be attached to the building on the licensed premises;
- (C) Restriction. Retail malt beverage, wine and mixed beverage permittees shall not allow price advertising or additional signs advertising malt beverages, wine and mixed beverages on the outside of their premises. Outside signs alluding to malt

beverages, wine or mixed beverages by slang descriptions such as "brew," "suds," "six-pack," "vino" or "booze" are prohibited;

(D) Exceptions; Menus; Trade Names. The placement in a window or on the exterior of the retailer's building of a food menu that also contains a list of alcoholic beverages by brand and price is not a violation of this Rule. Additional exceptions shall be granted by the Commission in the case of corporate names or franchise trade names;

(E) Mixed Beverages. Retail mixed beverage permittees may display the term "mixed beverages," "all ABC permits," "mixed drinks," "cocktails," or "spirits," on a single non-mechanical, non-neon, or otherwise self-illuminated outside sign. The letters and figures on the sign shall not be more than five inches in height and two inches apart and the sign shall be attached to the building on the licensed premises; and

(F) Private Club. A private club shall not display any exterior sign advertising the availability of malt beverages, wine or mixed beverages;

(2) Billboards. Retail permittees shall not advertise malt beverage, wine or mixed beverage products or the availability of alcoholic beverages by means of a billboard or outdoor sign except as provided in this Section. Industry members with retail permits may advertise tastings; and

(3) Aerial Displays. Retail permittees shall not advertise malt beverage, wine or mixed beverage products or the availability of alcoholic beverages by means of an aerial display or an inflatable item that is tethered.

(c) Removal of Signs. A permittee shall remove any sign, display, or advertisement in or about his licensed premises if the Commission finds it is contrary to public interest and orders its removal.

(d) Media Advertising. A retail malt beverage, wine or mixed beverage permittee may advertise price and brand of malt beverage, wine and mixed beverage products offered for sale by means of circular, newspaper, magazine, radio, television and internet.

*History Note: Authority G.S. 18B-100; 18B-105; 18B-1116(b);*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

#### **04 NCAC 02S .1011 ADVERTISING OF SPIRITUOUS LIQUORS**

(a) ABC Stores. An ABC store may have one or more outside signs located on the premises for the purpose of identifying the outlet if the sign is not prohibited by local ordinance and it has been approved by the Commission. During the approval process the Commission shall consider the following factors:

- (1) the proximity of the ABC store to schools and churches;
- (2) the number and size of the signs requested;
- (3) the text and graphics on the sign;
- (4) the materials that make up the sign; and
- (5) the public concern in matters of the public's welfare.

(b) Aerial Displays. No distiller, importer, or rectifier of spirituous liquor, or representative thereof, nor any retail permittee, shall advertise by means of an aerial display or inflatable the brand name or availability of spirituous liquor.

(c) Point-of-Sale. Point-of-sale and advertising specialties for spirituous liquor may be used in ABC stores but not in retail establishments holding permits issued by the Commission. Advertising used in ABC stores shall conform to the provisions of Rule .1005 of this Section, and in addition shall not:

- (1) incorporate the use of any present or former athlete or athletic team; or
- (2) refer to the availability of or offer any alcoholic beverages by mail.

All point-of-sale advertising material, advertising specialties, and recipes, booklets or brochures intended for use and display in ABC stores shall first be submitted to the Commission prior to their display in an ABC store.

*History Note: Authority G.S. 18B-100; 18B-105; 18B-207; 18B-801*

*Eff. January 1, 1982;*

*Amended Eff. January 1, 2011; July 1, 1992; May 1, 1984.*

#### **TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

##### **10A NCAC 13B .3302 MINIMUM PROVISIONS OF PATIENT'S BILL OF RIGHTS**

This Rule does not apply to patients in licensed nursing facility beds since these individuals are granted rights pursuant to G.S. 131E-117. A patient in a facility subject to this Rule has the following rights:

- (1) A patient has the right to respectful care given by competent personnel.
- (2) A patient has the right, upon request, to be given the name of his attending physician, the names of all other physicians directly participating in his care, and the names and functions of other health care persons having direct contact with the patient.
- (3) A patient has the right to privacy concerning his own medical care program. Case discussion, consultation, examination, and

- treatment are considered confidential and shall be conducted discreetly.
- (4) A patient has the right to have all records pertaining to his medical care treated as confidential except as otherwise provided by law or third party contractual arrangements.
  - (5) A patient has the right to know what facility rules and regulations apply to his conduct as a patient.
  - (6) A patient has the right to expect emergency procedures to be implemented without unnecessary delay.
  - (7) A patient has the right to good quality care and high professional standards that are continually maintained and reviewed.
  - (8) A patient has the right to full information in laymen's terms, concerning his diagnosis, treatment and prognosis, including information about alternative treatments and possible complications. When it is not possible or medically advisable to give such information to the patient, the information shall be given on his behalf to the patient's designee.
  - (9) Except for emergencies, a physician must obtain necessary informed consent prior to the start of any procedure or treatment, or both.
  - (10) A patient has the right to be advised when a physician is considering the patient as a part of a medical care research program or donor program. Informed consent must be obtained prior to actual participation in such a program and the patient or legally responsible party, may, at any time, refuse to continue in any such program to which he has previously given informed consent. An Institutional Review Board (IRB) may waive or alter the informed consent requirement if it reviews and approves a research study in accord with federal regulations for the protection of human research subjects including U.S. Department of Health and Human Services (HHS) regulations under 45 CFR Part 46 and U.S. Food and Drug Administration (FDA) regulations under 21 CFR Parts 50 and 56. For any research study proposed for conduct under an FDA "Exception from Informed Consent Requirements for Emergency Research" or an HHS "Emergency Research Consent Waiver" in which informed consent is waived but community consultation and public disclosure about the research are required, any facility proposing to be engaged in the research study also must verify that the proposed research study has been registered with the North Carolina Medical Care Commission. When the IRB reviewing the research study has authorized the start of the community consultation process required by the federal regulations for emergency research, but before the beginning of that process, notice of the proposed research study by the facility shall be provided to the North Carolina Medical Care Commission. The notice shall include:
    - (a) the title of the research study;
    - (b) a description of the research study, including a description of the population to be enrolled;
    - (c) a description of the planned community consultation process, including currently proposed meeting dates and times;
    - (d) an explanation of the way that people choosing not to participate in the research study may opt out; and
    - (e) contact information including mailing address and phone number for the IRB and the principal investigator.
- The Medical Care Commission may publish all or part of the above information in the North Carolina Register, and may require the institution proposing to conduct the research study to attend a public meeting convened by a Medical Care Commission member in the community where the proposed research study is to take place to present and discuss the study or the community consultation process proposed.
- (11) A patient has the right to refuse any drugs, treatment or procedure offered by the facility, to the extent permitted by law, and a physician shall inform the patient of his right to refuse any drugs, treatment or procedures and of the medical consequences of the patient's refusal of any drugs, treatment or procedure.
  - (12) A patient has the right to assistance in obtaining consultation with another physician at the patient's request and expense.
  - (13) A patient has the right to medical and nursing services without discrimination based upon race, color, religion, sex, sexual orientation, gender identity, national origin or source of payment.
  - (14) A patient who does not speak English shall have access, when possible, to an interpreter.
  - (15) A facility shall provide a patient, or patient designee, upon request, access to all information contained in the patient's medical records. A patient's access to medical records may be restricted by the patient's attending physician. If the physician restricts the patient's access to information in the patient's medical record, the physician shall record the reasons on the patient's medical record. Access shall be restricted only for sound medical reason. A patient's designee may have access to the information in the patient's

medical records even if the attending physician restricts the patient's access to those records.

- (16) A patient has the right not to be awakened by hospital staff unless it is medically necessary.
- (17) The patient has the right to be free from duplication of medical and nursing procedures as determined by the attending physician.
- (18) The patient has the right to medical and nursing treatment that avoids unnecessary physical and mental discomfort.
- (19) When medically permissible, a patient may be transferred to another facility only after he or his next of kin or other legally responsible representative has received complete information and an explanation concerning the needs for and alternatives to such a transfer. The facility to which the patient is to be transferred must first have accepted the patient for transfer.
- (20) The patient has the right to examine and receive a detailed explanation of his bill.
- (21) The patient has a right to full information and counseling on the availability of known financial resources for his health care.
- (22) A patient has the right to be informed upon discharge of his continuing health care requirements following discharge and the means for meeting them.
- (23) A patient shall not be denied the right of access to an individual or agency who is authorized to act on his behalf to assert or protect the rights set out in this Section.
- (24) A patient has the right to be informed of his rights at the earliest possible time in the course of his hospitalization.
- (25) A patient has the right to designate visitors who shall receive the same visitation privileges as the patient's immediate family members, regardless of whether the visitors are legally related to the patient.

*History Note:* Authority G.S. 131E-75; 131E-79; 143B-165;  
RRC Objection due to ambiguity Eff. July 13, 1995;  
Eff. January 1, 1996;  
Temporary Amendment Eff. April 1, 2005;  
Amended Eff. January 1, 2011; May 1, 2008; November 1, 2005.

## TITLE 11 – DEPARTMENT OF INSURANCE

### 11 NCAC 08 .1303 INACTIVE LICENSE

A person holding an inactive license is not subject to this Section. In order to change a license from inactive status to active status, the licensee must complete the same number of continuing education credit hours that would have been required for an active license during the period of inactive status but not more than the hours required in G.S. 143-151.55.

*History Note:* Authority G.S. 143-151.49; 143-151.55;

Eff. August 1, 1998;

Amended Eff. January 1, 2011.

### 11 NCAC 08 .1326 ELECTIVE COURSE INSTRUCTIONAL DELIVERY METHODS

(a) The principal instructional delivery method utilized in elective courses shall be one or more of the following:

- (1) Personal teaching by an instructor in a traditional classroom setting;
- (2) Instruction through an interactive audio and video system that requires continuous audio communication between the instructor and all students and that provides for monitoring and technical support at each site where the instructor or students are located;
- (3) Instruction through an interactive computer-based instructional program, which program provides for control of student progress through the educational materials by testing to assure student mastery of the subject matter at the end of each lesson, monitoring of time devoted to each lesson by the computer with automatic program shutdown after a period of non-activity by the student, which period shall be determined by the sponsor, and a monitoring system that assures that the student receiving continuing education credit for completing the program actually performed all the work required to complete the program; and
- (4) Personal teaching by an instructor in a field setting, such as a house or other structure, a new home construction site, a home renovation site, or other locations outside of a classroom that are appropriate for the subject matter of the course.

(b) The use of passive or non-interactive instructional delivery systems such as video, remote non-interactive television, or similar systems may be employed only in a limited manner to enhance or supplement one of the acceptable instructional delivery methods previously described in this Rule. No portion of a course may consist of correspondence instruction.

(c) A field setting shall have technical support at each site where the instructor and students are located, and have safeguards in place to prevent injury to the students, such as hardhats. A field setting shall not be at the residence of the instructor, course sponsor, or any other person affiliated with the course.

*History Note:* Authority G.S. 143-151.49(13); 143-151.64;  
Eff. July 18, 2002;  
Amended Eff. January 1, 2011.

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11 NCAC 11A .0501  
11 NCAC 11A .0502  
11 NCAC 11A .0503  
FILING REPORTS

PURPOSE AND SCOPE  
DEFINITIONS  
FILING AND EXTENSIONS FOR

**11 NCAC 11A .0504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT**  
**11 NCAC 11A .0505 DESIGNATION OF CPA**  
**11 NCAC 11A .0506 QUALIFICATIONS OF INDEPENDENT CPA**  
**11 NCAC 11A .0507 APPROVAL OF CPA**  
**11 NCAC 11A .0508 SCOPE OF EXAMINATION AND REPORT OF CPA**  
**11 NCAC 11A .0509 NOTIFICATION OF ADVERSE FINANCIAL CONDITION**  
**11 NCAC 11A .0510 INTERNAL CONTROL STRUCTURE RELATED MATTERS**  
**11 NCAC 11A .0511 CPA WORKPAPERS**  
**11 NCAC 11A .0512 EXEMPTIONS AND EFFECTIVE DATES**  
**11 NCAC 11A .0513 EXAMINATIONS**

*History Note: Authority G.S. 58-2-40; 58-2-131; 58-2-131; 58-2-133; 58-2-205; 150B-21.1(a3); Eff. December 1, 1990; Amended Eff. June 1, 2007; July 1, 2004; August 1, 2004; April 1, 1993; Temporary Amendment Eff. February 15, 2003; Repealed Eff. January 1, 2011.*

**11 NCAC 11A .0514 SEASONING REQUIREMENTS**  
**11 NCAC 11A .0515 NOTES TO FINANCIAL STATEMENTS**

*History Note: Authority G.S. 58-2-40; 58-2-205; Temporary Adoption Eff. October 1, 2000; Eff. July 18, 2002; Repealed Eff. January 1, 2011.*

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**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 10B .2004 INSTRUCTORS**

The following requirements and responsibilities are hereby established for instructors who conduct a Commission-mandated In-Service Training Program:

- (1) The instructors shall:
  - (a) hold General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0302, .0304, and .0306;
  - (b) hold Professional Lecturer Instructor certification issued by either the Commission as set out in either 12 NCAC 10B .0906 or .0916, or the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, or General Instructor Certification as issued by the North Carolina Criminal Justice Education and Training Standards Commission as

- set out in 12 NCAC 09B .0302, .0304, and .0306, when teaching a legal block of instruction;
- (c) hold Professional Lecturer Instructor certification issued by the Criminal Justice Education and Training Standards Commission as set out in 12 NCAC 09B .0306, when teaching a medical or psychological block of instruction; or
- (d) hold Specific Instructor Certification issued by the Criminal Justice Education and Training Standards Commission when teaching the lesson plans published by the NC Justice Academy as follows:
  - (i) Firearms must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e);
  - (ii) Weapons Retention and Disarming Techniques must be taught by Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
  - (iii) Spontaneous Attack Defense and Subject Control/Arrest Techniques must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(b);
  - (iv) Handcuffing and Impact Weapons Refresher must be taught by a Subject Control Arrest Techniques Instructor certified in accordance with 12 NCAC 09B .0304(e);
  - (v) Wellness and Stress Awareness and Health and Fitness for Detention Officers must be taught by a Physical Fitness Instructor certified in accordance with 12 NCAC 09B .0304(g); and
  - (vi) Law Enforcement Driver Training (classroom and practical) must be taught by a Specialized Law Enforcement Driver Training Instructor certified in accordance with 12 NCAC 09B .0304(f).
  - (vii) Active Shooter: Practical Refresher must be taught by a Firearms Instructor certified in accordance with 12 NCAC 09B .0304(e).

In addition, each instructor certified by the Criminal Justice Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.

- (2) The use of guest participants is permitted provided they are subject to the direct on-site supervision of a commission-certified instructor.
- (3) The instructor shall deliver the training consistent with the specifications as established in the rules in this Section.
- (4) The instructor shall document the successful or unsuccessful completion of training for each person attending a training program and forward a record of their completion to each person's Sheriff or Department Head.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007;  
Amended Eff. January 1, 2011; March 1, 2010; January 1, 2009.*

## **12 NCAC 10B .2005 MINIMUM TRAINING REQUIREMENTS**

(a) A Sheriff or Department Head may use a lesson plan developed by the North Carolina Justice Academy, or may use a lesson plan for any of the topical areas developed by another entity. The Sheriff or Department Head may also use a lesson plan developed by a certified instructor, provided that the instructor develops the lesson plan in accordance with the Instructional Systems Development model as taught in Criminal Justice Instructor Training in 12 NCAC 09B .0209.

(b) The 2010 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Race Matters;
- (3) Career Survival: Positive Ways to be Successful;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter; and
- (5) Any topic areas of the Sheriff's choosing.

(c) The 2010 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Cryptology and Contraband via Mail;
- (2) Legal Update for Detention Officers;
- (3) Career Survival for Detention Officers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(d) The 2010 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Amber and Silver Alerts;
- (2) Call Taking Procedures in Emergency Services;

- (3) Critical Incident Stress Management; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(e) The 2011 Law Enforcement In-Service Training Program requires 24 hours of training in the following topical areas:

- (1) Legal Update;
- (2) Juvenile Minority Sensitivity Training: Interactions, Communications, and Understanding;
- (3) Career Survival: Leadership and Mentoring;
- (4) Firearms Training and Requalification for deputy sheriffs as set out in Section .2100 of this Subchapter;
- (5) Domestic Violence: Lesbian, Gay, Bi-Sexual and Transgender (LGBT) Relationships; and
- (6) Any topic areas of the Sheriff's choosing.

(f) The 2011 Detention Officer In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Legal Update for Detention Officers;
- (2) Career Survival for Detention Officers; Interpersonal Communications;
- (3) Communicable Diseases and Pandemics; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

(g) The 2011 Telecommunicator In-Service Training Program requires 16 hours of training in the following topical areas:

- (1) Elder Abuse Awareness and the Telecommunicator;
- (2) Tactical Dispatch;
- (3) Handling Difficult Callers; and
- (4) Any topic areas of the Sheriff's or Department Head's choosing.

*History Note: Authority G.S. 17E-4; 17E-7;  
Eff. January 1, 2007;  
Amended Eff. January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.*

## **12 NCAC 10B .2007 SHERIFF/AGENCY HEAD RESPONSIBILITIES**

Each Sheriff or Department Head shall ensure that the respectively required In-Service Training Program established by this Section is conducted. In addition, the Sheriff or Department Head shall:

- (1) report to the Division those deputy sheriffs, detention officers and telecommunicators who are inactive;
- (2) maintain a roster of each deputy sheriff, detention officer and telecommunicator who successfully completes the respectively required In-Service Training Program;
- (3) report to the Division by January 15<sup>th</sup>, 2010:
  - (a) those active telecommunicators who fail to complete the 2009 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (b) those active detention officers who fail to complete the 2009 Detention

- Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and
- (c) those active deputy sheriffs who fail to complete the 2009 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form;
- (4) report to the Division by January 15<sup>th</sup>, 2011:
- (a) those active telecommunicators who fail to complete the 2010 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (b) those active detention officers who fail to complete the 2010 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and
  - (c) those active deputy sheriffs who fail to complete the 2010 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.
- (5) report to the Division by January 15<sup>th</sup>, 2012:
- (a) those active telecommunicators who fail to complete the 2011 Telecommunicator Officer In-Service Training Program in accordance with 12 NCAC 10B .2005;
  - (b) those active detention officers who fail to complete the 2011 Detention Officer In-Service Training Program in accordance with 12 NCAC 10B .2005; and
  - (c) those active deputy sheriffs who fail to complete the 2011 Law Enforcement In-Service Training Program in accordance with 12 NCAC 10B .2005. The reporting shall be on a Commission form.

*History Note:* Authority G.S. 17E-4; 17E-7;  
 Eff. January 1, 2007;  
 Amended Eff. January 1, 2011; January 1, 2010; January 1, 2009; January 1, 2008.

**12 NCAC 10B .2104 IN-SERVICE FIREARMS  
 REQUALIFICATION SPECIFICATIONS**

- (a) All deputy sheriffs and detention officers who are authorized by the sheriff to carry a handgun shall qualify a minimum of once each year with their individual and department-approved service handgun. The course of fire shall not be less stringent than the "Basic Law Enforcement Training Course" requirements for firearms qualification.
- (b) All deputy sheriffs and detention officers who are issued, or otherwise authorized by the sheriff to carry a shotgun, rifle, or

automatic weapon shall qualify with each weapon respectively a minimum of once each year. The course of fire shall not be less stringent than those set out in the "In Service Firearms Qualification Manual" as published by the North Carolina Justice Academy.

- (c) Qualifications conducted pursuant to Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or ballistic equivalent ammunition to include lead free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.
- (d) All deputy sheriffs and detention officers who are authorized by the sheriff to carry off duty handguns shall qualify with their off duty handgun a minimum of once each year pursuant to 12 NCAC 10B .2103 and .2104(a) and (b) with each handgun the officer carries off duty using ammunition approved by the sheriff.
- (e) All deputy sheriffs and detention officers who are issued or have access to any weapons not stated in this Rule must qualify with these weapons once each year using ammunition approved by the sheriff.
- (f) In cases where reduced-sized targets are used to simulate actual distances, a modified course of fire may be used.
- (g) To satisfy the training requirements for all in-service firearms requalifications, a deputy sheriff or detention officer shall attain a minimum qualification score of 70 percent accuracy with each weapon once in three attempts with no more than three attempts on each course of fire per day.
- (h) The "In-Service Firearms Qualification Manual" as published by the North Carolina Justice Academy is hereby incorporated by reference, and shall automatically include any later amendments or editions of the referenced materials to apply as a minimum guide for conducting the annual in-service firearms qualification. Copies of the publication may be obtained from the North Carolina Justice Academy, Post Office Drawer 99, Salemburg, North Carolina 28385. There is no cost per manual at the time of adoption of this Rule.

*History Note:* Authority G.S. 17E-4; 17E-7;  
 Eff. January 1, 1989;  
 Amended Eff. January 1, 1994; January 1, 1993; January 1, 1992; January 1, 1991;  
 Temporary Amendment Eff. March 1, 1998;  
 Amended Eff. January 1, 2011; January 1, 2006; August 1, 2002; August 1, 1998.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND  
 NATURAL RESOURCES**

**15A NCAC 02B .0235 NEUSE RIVER BASIN-  
 NUTRIENT SENSITIVE WATERS MANAGEMENT  
 STRATEGY: BASINWIDE STORMWATER  
 REQUIREMENTS**

The following is the urban stormwater management strategy for the Neuse River Basin:

- (1) The following local governments are designated, based on population and other factors, as parties responsible for implementing stormwater management

requirements as part of the Neuse River Nutrient Sensitive Waters stormwater management strategy:

- (a) Cary,
  - (b) Durham,
  - (c) Garner,
  - (d) Goldsboro,
  - (e) Havelock,
  - (f) Kinston,
  - (g) New Bern,
  - (h) Raleigh,
  - (i) Smithfield,
  - (j) Wilson,
  - (k) Durham County,
  - (l) Johnston County,
  - (m) Orange County,
  - (n) Wake County, and
  - (o) Wayne County.
- (2) Other incorporated areas and other counties, not listed under Item (1) of this Rule, may seek to implement their own local stormwater management plan by complying with the requirements specified in Items (5) and (6) of this Rule.
- (3) The Environmental Management Commission may designate additional local governments by amending this Rule based on their potential to contribute significant nutrient loads to the Neuse River. At a minimum, the Commission shall review the need for additional designations to the stormwater management program as part of the basinwide planning process for the Neuse River Basin. Any local governments that are designated at a later date under the Neuse Nutrient Sensitive Waters Stormwater Program shall meet the requirements under Items (5) and (6) of this Rule.
- (4) Local stormwater programs shall address nitrogen reductions for both existing and new development and include the following elements:
- (a) Review and approval of stormwater management plans for new developments to ensure that:
    - (i) the nitrogen load contributed by new development activities is held at 70 percent of the average nitrogen load contributed by the 1995 land uses of the non-urban areas of the Neuse River Basin. The local governments shall use a nitrogen export standard of 3.6 pounds/acre/year, determined by the Environmental Management Commission as 70 percent of

the average collective nitrogen load for the 1995 non-urban land uses in the basin above New Bern. The EMC may periodically update the design standard based on the availability of new scientific information. Developers shall have the option of offsetting part of their nitrogen load by funding offsite management measures by making payment to the NC Ecosystem Enhancement Program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division. Offset payments shall meet the requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments. However, before using offset payments, the development must attain, at a minimum, a nitrogen export that does not exceed 6 pounds/acre/year for residential development and 10 pounds/acre/year for commercial or industrial development;

- (ii) For the following local governments and any additional local governments identified in rule by the Commission, the post-construction requirements of 15 NCAC 02B .0277 shall supersede the requirements in this Sub-item for areas within their jurisdiction within the watershed of the Falls of the Neuse Reservoir: Durham, Raleigh, Durham County, Orange County, and Wake County; and
  - (iii) there is no net increase in peak flow leaving the site from the predevelopment conditions for the 1-year, 24-hour storm.
- (b) Review of new development plans for compliance with requirements for protecting and maintaining existing



- riparian areas as specified in 15A NCAC 02B .0233;
- (c) Implementation of public education programs;
  - (d) Identification and removal of illegal discharges;
  - (e) Identification of suitable locations for potential stormwater retrofits (such as riparian areas) that could be funded by various sources; and
  - (f) Submittal of an annual report on October 30 to the Division documenting progress on and net changes to nitrogen load from the local government's planning jurisdiction.
- (5) Local governments shall implement stormwater management programs according to their plans approved by the Commission as of March 2001. Local governments administering a stormwater management program shall submit annual reports to the Division documenting their progress and net changes to nitrogen load by October 30 of each year.
- (6) If a local government fails to properly implement an approved plan, then stormwater management requirements for existing and new urban areas within its jurisdiction shall be administered through the NPDES municipal stormwater permitting program per 15A NCAC 02H .0126:
- (a) Subject local governments shall develop and implement comprehensive stormwater management programs, tailored toward nitrogen reduction, for both existing and new development.
  - (b) These stormwater management programs shall provide all components that are required of local government stormwater programs in Sub-items (4)(a) through (f) of this Rule.
  - (c) Local governments that are subject to an NPDES permit shall be covered by the permit for at least one permitting cycle (five years) before they are eligible to submit a local stormwater management program for consideration and approval by the EMC.

#### **15A NCAC 02B .0275 FALLS WATER SUPPLY NUTRIENT STRATEGY: PURPOSE AND SCOPE**

**PURPOSE.** The purpose of this Rule and Rules 15A NCAC 02B .0276 through .0282 and .0315(q) shall be to attain the classified uses of Falls of the Neuse Reservoir set out in 15A NCAC 02B .0211 from current impaired conditions related to excess nutrient inputs; protect its classified uses as set out in 15A NCAC 02B .0216, including use as a source of water supply for drinking water; and maintain and enhance protections currently implemented by local governments in existing water supply watersheds encompassed by the watershed of Falls of the Neuse Reservoir. The reservoir, and all waters draining to it, have been supplementally classified as Nutrient Sensitive waters (NSW) pursuant to 15A NCAC 02B .0101(e)(3) and 15A NCAC 02B .0223. These Rules, as enumerated in Item (6) of this Rule, together shall constitute the Falls water supply nutrient strategy, or Falls nutrient strategy, and shall be implemented in accordance with 15A NCAC 02B .0223. The following items establish the framework of the Falls nutrient strategy:

- (1) **SCOPE AND LIMITATION.** Falls of the Neuse Reservoir is hereafter referred to as Falls Reservoir. All lands and waters draining to Falls Reservoir are hereafter referred to as the Falls watershed. The Falls nutrient strategy rules require controls that reduce nitrogen and phosphorus loads from significant sources of these nutrients throughout the Falls watershed. These Rules do not address atmospheric emission sources of nitrogen that is deposited into the watershed but do include provisions to account for reductions in such deposition as the water quality benefits of air quality regulations are quantified. Neither do these Rules address sources on which there is insufficient scientific knowledge to base regulation, other sources deemed adequately addressed by existing regulations, sources currently considered minor, or nutrient contributions from lake sediments, which are considered outside the scope of these Rules. The Commission may undertake additional rulemaking in the future or make recommendations to other rulemaking bodies as deemed appropriate to more fully address nutrient sources to Falls Reservoir. While the scope of these Rules is limited to the reduction of nutrient loads to surface waters, practitioners are encouraged to maximize opportunities for concurrently benefiting other ecosystem services where feasible in the course of achieving the nutrient objectives.
- (2) **CRITICAL WATER SUPPLY WATERSHED DESIGNATION.** Water supply waters designated WS-II, WS-III, and WS-IV within the Falls watershed shall retain their classifications. The remaining waters in the Falls watershed shall be classified WS-V. The requirements of all of these water supply classifications shall be retained and applied

*History Note: Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 1995, c. 572;*

*Eff. August 1, 1998;*

*Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

except as specifically noted elsewhere within the Falls nutrient strategy. In addition, pursuant to G.S. 143-214.5(b), the entire Falls watershed shall be designated a critical water supply watershed and through the Falls nutrient strategy given additional, more stringent requirements than the state minimum water supply watershed management requirements. Water supply requirements of 15A NCAC 02B .0104 apply except to the extent that requirements of the Falls nutrient strategy are more stringent than provisions addressing agriculture, forestry, and existing development. These requirements supplement the water quality standards applicable to Class C waters, as described in Rule .0211 of this Section, which apply throughout the Falls watershed. Water supply watershed requirements shall be as follows:

- (a) For WS-II, WS-III, and WS-IV waters, the retained requirements of Rules 15A NCAC 02B .0214 through .0216 are characterized as follows:
  - (i) Item (1) addressing best usages;
  - (ii) Item (2) addressing predominant watershed development conditions, discharges expressly allowed watershed-wide, general prohibitions on and allowances for domestic and industrial discharges, Maximum Contaminant Levels following treatment, and the local option to seek more protective classifications for portions of existing water supply watersheds;
  - (iii) Sub-Item (3)(a) addressing wastewater discharge limitations;
  - (iv) Sub-Item (3)(b) addressing nonpoint source and stormwater controls; and
  - (v) Sub-Items (3)(c) through (3)(h) addressing aesthetic and human health standards.
- (b) For waters classified WS-V, the requirements of water supply Rule 15A NCAC 02B .0218 shall be applied.
- (3) **GOAL AND OBJECTIVES.** To achieve the purpose of the Falls nutrient strategy, the Commission establishes the goal of attaining and maintaining nutrient-related water quality standards identified in 15A NCAC 02B .0211 throughout Falls Reservoir pursuant to G.S.

143-215.8B and 143B-282(c) and (d) of the Clean Water Responsibility Act of 1997. The Commission establishes a staged and adaptive implementation plan, outlined hereafter, to achieve the following objectives. The objective of Stage I is to, at minimum, achieve and maintain nutrient-related water quality standards in the Lower Falls Reservoir as soon as possible but no later than January 15, 2021 and to improve water quality in the Upper Falls Reservoir.

The objective of Stage II is to achieve and maintain nutrient-related water quality standards throughout Falls Reservoir. This is estimated to require a reduction of 40 and 77 percent in average annual mass loads of nitrogen and phosphorus respectively, delivered from the sources named in Item (6) in the Upper Falls Watershed from a baseline of 2006. The resulting Stage II allowable loads to Falls Reservoir from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek shall be 658,000 pounds of nitrogen per year and 35,000 pounds of phosphorus per year.

- (4) **STAGED IMPLEMENTATION.** The Commission shall employ the staged implementation plan set forth below to achieve the goal of the Falls nutrient strategy:

- (a) **STAGE I.** Stage I requires intermediate or currently achievable controls throughout the Falls watershed with the objective of reducing nitrogen and phosphorus loading, and attaining nutrient-related water quality standards in the Lower Falls Reservoir as soon as possible but no later than January 15, 2021, while also improving water quality in the Upper Falls Reservoir as described in this Item. Implementation timeframes are described in individual rules, with full implementation occurring no later than January 15, 2021;
- (b) **STAGE II.** Stage II requires implementation of additional controls in the Upper Falls Watershed beginning no later than January 15, 2021 to achieve nutrient-related water quality standards throughout Falls Reservoir by 2041 to the maximum extent technically and economically feasible, with progress toward this overall objective as described in Sub-Item (5)(a); and
- (c) **MAINTENANCE OF ALLOCATIONS.** Sources shall maintain the load reductions required

- under these Rules beyond the implementation stages.
- (5) ADAPTIVE IMPLEMENTATION. The Commission shall employ the following adaptive implementation plan in concert with the staged implementation approach described in this Rule:
- (a) The Division shall perform water quality monitoring throughout Falls Reservoir and shall accept reservoir water quality monitoring data provided by other parties that meet Division standards and quality assurance protocols. The Division shall utilize this data to estimate load reduction achieved and to perform periodic use support assessments pursuant to 40 CFR 130.7(b). It shall evaluate use support determinations to judge progress on and compliance with the goal of the Falls nutrient strategy, including the following assessments:
    - (i) Attainment of nutrient-related water quality standards downstream of Highway NC-98 crossing of Falls Reservoir no later than January 15, 2016;
    - (ii) Attainment of nutrient-related water quality standards in the Lower Falls Reservoir no later than January 15, 2021;
    - (iii) Attainment of nutrient-related water quality standards in the Lick Creek arm of Falls Reservoir and points downstream no later than January 15, 2026;
    - (iv) Attainment of nutrient-related water quality standards in the Ledge and Little Lick Creek arms of Falls Reservoir and points downstream no later than January 15, 2031;
    - (v) Attainment of nutrient-related water quality standards at points downstream of the Interstate 85 crossing of Falls Reservoir no later than January 15, 2036;
    - (vi) Attainment of nutrient-related water quality standards throughout Falls Reservoir no later than 2041;
  - (vii) Where the Division finds that acceptable progress has not been made towards achieving nutrient-related water quality standards throughout Falls Reservoir defined in Sub-Items (i) through (vi) of this Item or that conditions have deteriorated in a segment of Falls Reservoir as described in this Item, at any time, it shall evaluate compliance with the Falls nutrient strategy rules, and may request Commission approval to initiate additional rulemaking;
  - (viii) Where the Division finds, based on reservoir monitoring, that nutrient-related water quality standards are attained in a previously impaired segment of Falls Reservoir, as described in this Item, and are met for sufficient time to demonstrate sustained maintenance of standards, as specified in individual rules of this strategy, it shall notify affected parties in that segment's watershed that further load reductions are not required and of requirements for maintenance of measures to prevent loading increases. Sufficient time is defined as at least two consecutive use support assessments demonstrating compliance with nutrient-related water quality standards in a given segment of Falls Reservoir.
- (b) The Division, to address resulting uncertainties including those related to technological advancement, scientific understanding, actions chosen by affected parties, loading effects, and loading effects of other regulations, shall report to the Commission and provide information to the public in January 2016 and every five years thereafter as necessary. The reports shall address all of the following subjects:
- (i) Changes in nutrient loading to Falls Reservoir and

- progress in attaining nutrient-related water quality standards as described in Sub-Items (5)(a)(i) through (vi) of this Rule;
  - (ii) The state of wastewater and stormwater nitrogen and phosphorus control technology, including technological and economic feasibility;
  - (iii) Use and projected use of wastewater reuse and land application opportunities;
  - (iv) The utilization and nature of nutrient offsets and projected changes. This shall include an assessment of any load reduction value derived from preservation of existing forested land cover;
  - (v) Results of any studies evaluating instream loading changes resulting from implementation of rules;
  - (vi) Results of any studies evaluating nutrient loading from conventional septic systems and discharging sand filter systems;
  - (vii) Assessment of the instream benefits of local programmatic management measures such as fertilizer or pet waste ordinances, improved street sweeping and the extent to which local governments have implemented these controls;
  - (viii) Results of applicable studies, monitoring, and modeling from which a baseline will be established to address changes in atmospheric deposition of nitrogen;
  - (ix) Recent or anticipated changes in regulations affecting atmospheric nitrogen emissions and their projected effect on nitrogen deposition;
  - (x) Results of any studies evaluating nutrient loading from groundwater;
  - (xi) Updates to nutrient loading accounting tools; and
- (c) The Division shall submit a report to the Commission in July 2025 that shall address the following subjects in addition to the content required elsewhere under this Item:
  - (i) The physical, chemical, and biological conditions of the Upper Falls Reservoir including nutrient loading impacts;
  - (ii) Whether alternative regulatory action pursuant to Sub-Item (5)(g) would be sufficient to protect existing uses as required under the Clean Water Act;
  - (iii) The impact of management of the Falls Reservoir on water quality in the Upper Falls Reservoir;
  - (iv) The methodology used to establish compliance with nutrient-related water quality standards in Falls Reservoir and the potential for using alternative methods;
  - (v) The feasibility of achieving the Stage II objective; and
  - (vi) The estimated costs and benefits of achieving the Stage II objective;
- (d) The Division shall make recommendations, if any, on rule revisions based on the information reported pursuant to Sub-Items (b) and (c) of this Rule;
- (e) In developing the reports required under Sub-Items (b) and (c) of this Rule, the Division shall consult with and consider information submitted by local governments and other persons with an interest in Falls Reservoir. Following receipt of a report, the Commission shall consider whether revisions to the requirements of Stage II are needed and may initiate rulemaking or any other action allowed by law;
- (f) Recognizing the uncertainty associated with model-based load reduction targets, to ensure that allowable loads to Falls Reservoir remain appropriate as implementation proceeds, a person may at any time during implementation of the Falls nutrient strategy develop and submit for Commission approval supplemental nutrient response modeling of Falls Reservoir based on additional data collected after a period of implementation. The Commission may consider revisions

to the requirements of Stage II based on the results of such modeling as follows:

- (i) A person shall obtain Division review and approval of any monitoring study plan and description of the modeling framework to be used prior to commencement of such a study. The study plan and modeling framework shall meet any Division requirements for data quality and model support or design in place at that time. Within 180 days of receipt, the division shall either approve the plan and modeling framework or notify the person seeking to perform the supplemental modeling of changes to the plan and modeling framework required by the Division;
- (ii) Supplemental modeling shall include a minimum of three years of lake water quality data unless the person performing the modeling can provide information to the Division demonstrating that a shorter time span is sufficient;
- (iii) The Commission may accept modeling products and results that estimate a range of combinations of nitrogen and phosphorus percentage load reductions needed to meet the goal of the Falls nutrient strategy, along with associated allowable loads to Falls Reservoir, from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek and that otherwise comply with the requirements of this Item. Such modeling may incorporate the results of studies that provide new data on various nutrient sources such as atmospheric deposition, internal loading, and loading from tributaries other than those identified in this Sub-item. The Division

shall assure that the supplemental modeling is conducted in accordance with the quality assurance requirements of the Division;

- (iv) The Commission shall review Stage II requirements if a party submits supplemental modeling data, products and results acceptable to the Commission for this purpose. Where supplemental modeling is accepted by the Commission, and results indicate allowable loads of nitrogen and phosphorus to Falls Reservoir from the watersheds of Ellerbe Creek, Eno River, Little River, Flat River, and Knap of Reeds Creek that are substantially different than those identified in Item (3), then the Commission may initiate rulemaking to establish those allowable loads as the revised objective of Stage II relative to their associated baseline values;

- (g) Nothing in this strategy shall be construed to limit, expand, or modify the authority of the Commission to undertake alternative regulatory actions otherwise authorized by state or federal law, including the reclassification of waters of the State pursuant to G.S. 143-214.1, the revision of water quality standards pursuant to G.S. 143-214.3, and the granting of variances pursuant to G.S. 143-215.3.

- (6) RULES ENUMERATED. The Falls nutrient strategy rules consists of the following rules titled as follows:

- (a) Rule .0275 Purpose and Scope;
- (b) Rule .0276 Definitions. An individual rule may contain additional definitions for terms that are used in that rule only;
- (c) Rule .0277 Stormwater Management for New Development;
- (d) Rule .0278 Stormwater Management for Existing Development;
- (e) Rule .0279 Wastewater Discharge Requirements;
- (f) Rule .0280 Agriculture;

- (g) Rule .0281 Stormwater Requirements for State and Federal Entities;
  - (h) Rule .0282 Options for Offsetting Nutrient Loads; and
  - (i) Rule .0315 Neuse River Basin.
- (7) **APPLICABILITY.** Categories of parties required to implement the Falls nutrient strategy rules and, as applicable, their geographic scope of responsibility, are identified in each rule. The specific local governments responsible for implementing Rules .0277, .0278, and .0282 shall be as follows:
- (a) All incorporated municipalities, as identified by the Office of the Secretary of State, with planning jurisdiction within or partially within the Falls watershed. Those municipalities are currently:
    - (i) Butner;
    - (ii) Creedmoor;
    - (iii) Durham;
    - (iv) Hillsborough;
    - (v) Raleigh;
    - (vi) Roxboro;
    - (vii) Stem; and
    - (viii) Wake Forest;
  - (b) All counties with jurisdiction in Falls watershed and for land where municipalities listed in Sub-Item (7)(a) do not have an implementation requirement:
    - (i) Durham;
    - (ii) Franklin;
    - (iii) Granville;
    - (iv) Orange;
    - (v) Person; and
    - (vi) Wake;
  - (c) A unit of government may arrange through interlocal agreement or other instrument of mutual agreement for another unit of government to implement portions or the entirety of a program required or allowed under any rule of this strategy to the extent that such an arrangement is otherwise allowed by statute. The governments involved shall submit documentation of any such agreement to the Division. No such agreement shall relieve a unit of government from its responsibilities under these Rules.
- (8) **ENFORCEMENT.** Failure to meet requirements of Rules .0275, .0277, .0278, .0279, .0280, .0281, or .0282 of this Section may result in imposition of enforcement measures as authorized by G.S. 143-215.6A (civil penalties), G.S. 143-215.6B (criminal

penalties), and G.S. 143-215.6C (injunctive relief).

*History Note:* Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;

*Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

#### **15A NCAC 02B .0276 FALLS WATER SUPPLY NUTRIENT STRATEGY: DEFINITIONS**

(a) Unless the context indicates otherwise, the following words and phrases, which are not defined in G.S. 143, Article 21, shall be interpreted as follows for the purposes of the Falls nutrient strategy:

- (1) "Allocation" means the mass quantity of nitrogen or phosphorus that a discharger, group of dischargers, nonpoint source, or collection of nonpoint sources is assigned. For point sources, possession of allocation does not authorize the discharge of nutrients but is prerequisite to such authorization through a NPDES permit, and allocation may be further distinguished as follows:
  - (A) "Active" allocation means that portion of an allocation that has been applied toward and is expressed as a nutrient limit in an individual NPDES permit;
  - (B) "Reserve" allocation means allocation that is held by a permittee or other person but which has not been applied toward and is not expressed as a nutrient limit in an individual NPDES permit;
- (2) "Applicator" means the same as defined in 15A NCAC 02B .0202(4);
- (3) "Atmospheric nitrogen" means total oxidized nitrogen (NO<sub>x</sub>) which includes all nitrogen oxides (including NO<sub>2</sub>, NO, N<sub>2</sub>, nitrogen trioxide [N<sub>2</sub>O<sub>3</sub>], nitrogen tetroxide [N<sub>2</sub>O<sub>4</sub>], dinitrogen pentoxide [N<sub>2</sub>O<sub>5</sub>], nitric acid (HNO<sub>3</sub>) peroxyacid nitrates (PAN)), the sum of which is referred to as reduced nitrogen (NH<sub>x</sub>);
- (4) "Delivered," as in delivered allocation, load, or limit, means the allocation, load, or limit that is measured or predicted at Falls Reservoir;
- (5) "Development" means the same as defined in 15A NCAC 02B .0202(23);
- (6) "Discharge," as in discharge allocation, load, or limit means the allocation, load, or limit that is measured at the point of discharge into surface waters in the Falls watershed;
- (7) "Existing development" means development, other than that associated with agricultural or

forest management activities that meets one of the following criteria:

- (A) It either is built or has established a vested right based on statutory or common law as interpreted by the courts, as of the effective date of either local new development stormwater programs implemented under 15A NCAC 02B .0277 for projects that do not require a state permit or, as of the applicable compliance date established in 15A NCAC 02B .0281(5) and (6); or
  - (B) It occurs after the compliance date set out in Sub-Item (5)(d) of Rule .0277 but does not result in a net increase in built-upon area;
- (8) "Falls nutrient strategy," or "Falls water supply nutrient strategy" means the set of 15A NCAC 02B .0275 through .0282 and .0315(p);
  - (9) "Falls Reservoir" means the surface water impoundment operated by the US Army Corps of Engineers and named Falls of Neuse Reservoir;
  - (10) "Upper Falls Reservoir" means that portion of the reservoir upstream of State Route 50;
  - (11) "Upper Falls Watershed" means that area of Falls watershed draining to Upper Falls Reservoir;
  - (12) "Lower Falls Reservoir" means that portion of the reservoir downstream of State Route 50;
  - (13) "Lower Falls Watershed" means that are of Falls watershed draining to lower falls Reservoir without first passing through Upper Falls Reservoir;
  - (14) "Load" means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent "discharge load;"
  - (15) "Load allocation" means the same as set forth in federal regulations 40 CFR 130.2(g), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401;
  - (16) "New development" means any development project that does not meet the definition of existing development set out in this Rule;
  - (17) "Nitrogen" means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in a water or wastewater;
  - (18) "NPDES" means National Pollutant Discharge Elimination System, and connotes the permitting process required for the operation

of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq;

- (19) "Nutrients" means total nitrogen and total phosphorus;
- (20) "Phosphorus" or "total phosphorus" means the sum of the orthophosphate, polyphosphate, and organic forms of phosphorus in a water or wastewater;
- (21) "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface;
- (22) "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters;
- (23) "Technical specialist" means the same as defined in 15A NCAC 06H .0102(9);
- (24) "Total nitrogen" means the same as 'nitrogen' defined in Item (17);
- (25) "Total phosphorus" means the same as 'phosphorus' defined in Item (20);
- (26) "Wasteload" means the mass quantity of a nutrient or pollutant released into surface waters by a wastewater discharge over a given time period. Wasteloads may be expressed in terms of pounds per year and may be expressed as "delivered wasteload" or an equivalent "discharge wasteload;" and
- (27) "Wasteload allocation" means the same as set forth in federal regulations 40 CFR 130.2(h), which is incorporated herein by reference, including subsequent amendments and editions. These regulations may be obtained at no cost from <http://www.epa.gov/lawsregs/search/40cfr.html> or from the U.S. Government Printing Office, 732 North Capitol St. NW, Washington D.C., 20401.

(b) The definitions in Rule .0279 shall also apply throughout these Falls Water Supply Nutrient Strategy rules.

*History Note: Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;*

*Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

**15A NCAC 02B .0277 FALLS RESERVOIR WATER SUPPLY NUTRIENT STRATEGY: STORMWATER MANAGEMENT FOR NEW DEVELOPMENT**

The following is the stormwater strategy, as prefaced in 15A NCAC 02B .0275, for new development activities within the Falls watershed:

- (1) PURPOSE. The purposes of this Rule are as follows:

- (a) To achieve and maintain the nitrogen and phosphorus loading objectives established for Falls Reservoir in 15A NCAC 02B .0275 from lands in the Falls watershed on which new development occurs;
  - (b) To provide control for stormwater runoff from new development in Falls watershed to ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows; and
  - (c) To protect the water supply, aquatic life and recreational uses of Falls Reservoir from the potential impacts of new development.
- (2) **APPLICABILITY.** This Rule shall apply to those areas of new development that lie within the Falls watershed and the planning jurisdiction of a municipality or county that is identified in 15A NCAC 02B .0275. This Rule shall not apply to development activities on state and federal lands that are set out in Rule .0281 of this Section.
- (3) **REQUIREMENTS.** All local governments subject to this Rule shall develop stormwater management programs for submission to and approval by the Commission, to be implemented in areas described in Item (2) of this Rule. Nothing in this Rule preempts local governments from establishing requirements that are more restrictive than those set forth in this Rule. Local government stormwater management programs shall include the following elements and the standards contained in Item (4):
- (a) The requirement that a stormwater management plan shall be submitted for local government approval based on the standards in Item (4) for all proposed new development disturbing one-half acre or more for single family and duplex residential property and recreational facilities, and 12,000 square feet or more for commercial, industrial, institutional, multifamily residential, or local government property;
  - (b) A plan to ensure maintenance of best management practices (BMPs) implemented to comply with this rule for the life of the development; and
  - (c) A plan to ensure enforcement and compliance with the provisions in Item (4) of this Rule for the life of the new development.
- (4) **PLAN APPROVAL REQUIREMENTS.** A developer's stormwater plan shall not be

- approved by a subject local government unless the following criteria are met:
- (a) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the following unit-area mass loading rates for nitrogen and phosphorus, respectively, expressed in units of pounds/acre/year: 2.2 and 0.33. Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that the developer shall provide stormwater control at least equal to the previous development. Proposed development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in this Item. These requirements shall supersede those identified in 15A NCAC 02B .0104(q). The developer shall determine the load reductions needed to meet these loading rate targets by using the loading calculation method called for in Sub-Item (5)(a) or other equivalent method acceptable to the Division;
  - (b) The developer shall have the option of offsetting part of the nitrogen and phosphorus load by implementing or funding offsite offset measures. Before using an offsite offset option, a development shall implement onsite structural stormwater controls that achieve one of the following levels of reductions:
    - (i) Proposed new development activity disturbing at least one-half acre but less than one acre of land for single family and duplex residential property and recreational facilities, except as stated in Sub-Item (4)(b)(iv), shall



- achieve 30 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item (4)(e) of this Rule;
- (ii) Proposed new development activity disturbing at least 12,000 but less than one acre of land for commercial, industrial, institutional, multifamily residential, or local government property, except as stated in Sub-Item (4)(b)(iv), shall achieve 30 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item (4)(e) of this Rule;
- (iii) Except as stated in Sub-Item (4)(b)(iv), proposed new development activity that disturbs one acre of land or more shall achieve 50 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in Sub-Item (4)(e) of this Rule; or
- (iv) Proposed development that would replace or expand structures or improvements that existed as of December 2006 and that increases impervious surface within a local government's designated downtown area, regardless of area disturbed, shall achieve 30 percent of the needed load reduction in both nitrogen and phosphorus onsite, and shall meet any requirements for engineered stormwater controls described in Sub-Item (4)(e) of this Rule;
- (c) Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in Sub-Item (4)(a) of this Item. A developer may use any measure that complies with the requirements of Rules .0240 and .0282. of this Section;
- (d) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations in addition to the other requirements of this Sub-item. Proposed new development in any water supply watershed in the Falls watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions, obligations, and requirements for engineered stormwater controls, clustering options, operation and maintenance responsibilities, vegetated setbacks, land application, and landfill provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable rule among 15A NCAC 02B .0214 through .0216. Provided, the allowance in water supply watershed rules for 10 percent of a jurisdiction to be developed at up to 70 percent built-upon area without stormwater treatment shall not be available in the Falls watershed;
- (e) Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the Division;
- (f) To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, at a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event;

- (g) New development may satisfy the requirements of this Rule by meeting the post-development hydrologic criteria set out in Chapter 2 of the North Carolina Low Impact Development Guidebook dated June 2009, or the hydrologic criteria in the most recent version of that guidebook;
  - (h) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242 or subsequent amendments or replacements to those requirements.
- (5) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
- (a) No later than March 15, 2011, the Division shall submit a model local stormwater program, including a model local ordinance that embodies the criteria described in Items (3) and (4) of this Rule to the Commission for approval. The model program shall include a tool that will allow developers to account for nutrient loading from development lands and loading changes due to BMP implementation to meet the requirements of Items (3) and (4) of this Rule. The accounting tool shall utilize nutrient efficiencies and associated design criteria established for individual BMPs in the July 2007 version of the Stormwater Best Management Practices Manual published by the Division, or other more precise standards acceptable to the Division. At such time as data quantifying nutrient loads from onsite wastewater systems is made available, the new development nutrient export accounting tool shall be revised to require accounting for nutrient loading from onsite wastewater from newly developed lands that use such systems. Should research quantify significant loading from onsite wastewater systems, the Division may also make recommendations to the Commission for Public Health to initiate rulemaking to reduce nutrient loading to surface waters from these systems. The Division shall work in cooperation with subject local governments and other watershed interests in developing this model program;
  - (b) Within five months after the Commission's approval of the model local stormwater program and model ordinance, subject local governments shall submit stormwater management programs, in conjunction with similar requirements in 15A NCAC 02B .0278, to the Division for preliminary approval. These local programs shall meet or exceed the requirements in Items (3) and (4) of this Rule;
  - (c) Within 10 months after the Commission's approval of the model local stormwater program, the Division shall provide recommendations to the Commission on local stormwater programs. The Commission shall either approve the programs or require changes based on the standards set out in Items (3) and (4) of this Rule. Should the Commission require changes, the applicable local government shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
  - (d) Within six months after the Commission's approval of a local program, or upon the Division's first renewal of a local government's NPDES stormwater permit, whichever occurs later, the affected local government shall complete adoption of and implement its local stormwater management program; and
  - (e) Upon implementation, subject local governments shall submit annual reports to the Division summarizing their activities in implementing each of the requirements in Items (3) and (4) of this Rule, including changes to nutrient loading.
- (6) **EQUIVALENT PROGRAM OPTION.** A local government may in its program submittal under Sub-Item (5)(b) of this Rule request that the Division accept the local government's implementation of another stormwater program or programs as satisfying one or more of the requirements set forth in Items (3) and (4) of this Rule. The Division shall provide determination on the acceptability of any such alternative prior to requesting Commission approval of local programs as required in Sub-Item (5)(c) of this Rule. Should a local

government propose alternative requirements to achieve and maintain the rate targets described in Sub-Item (4)(a) of this Rule, it shall include in its program submittal technical information demonstrating the adequacy of those requirements. Should an alternative program propose monitoring of watersheds to compare measured loading to expected loading, it shall at a minimum include the following:

- (a) Engineering calculations that quantify expected loading from new development projects based on stormwater controls currently enforced;
- (b) At least three years of continuous flow and nutrient monitoring data demonstrating that watershed loading rates are at or below rates that would result from meeting the requirements of this Rule and Rule .0278 of this Section based on the land cover composition of the watershed;
- (c) An ongoing water quality monitoring program based on continuous flow and concentration sampling to be performed indefinitely into the future with results reported annually to the Division for review and approval;
- (d) A corrective action plan to be implemented should data collected under the ongoing monitoring program demonstrate watershed loading is within 10 percent of the rate estimated in compliance with this Item; and
- (e) Should a local government submit an alternate program for consideration that includes areas within its jurisdiction outside of the monitored watershed it shall submit technical information demonstrating the areas outside of the monitored watershed can reasonably be expected to load at equal or lesser rates than those estimated in compliance with this Item based on comparative analysis of land uses and other factors affecting nutrient loading.

*History Note:* Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;

*Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

#### **15A NCAC 02B .0278 FALLS WATER SUPPLY NUTRIENT STRATEGY: STORMWATER MANAGEMENT FOR EXISTING DEVELOPMENT**

This Rule establishes a staged, adaptive approach by which municipalities and counties shall contribute to achieving the nonpoint source loading objectives of the Falls Reservoir nutrient strategy by reducing or otherwise offsetting nutrient contributions from existing development. It provides local governments three years to develop programs that propose Stage I load reduction actions to the Division and requires local governments to begin and track measures to reduce nutrient loads from existing developed lands within their jurisdiction by January 15, 2014, as specified in Item (7). Local governments shall submit for approval and implement Stage II load reduction programs by January 15, 2021 and submit revised load reductions programs every five years thereafter. The following is the watershed stormwater strategy, as prefaced in Rule 15A NCAC 02B .0275, for existing development in the Falls watershed:

- (1) **PURPOSE.** The purposes of this Rule are as follows:
  - (a) To achieve and maintain the nonpoint source nitrogen and phosphorus percentage reduction objectives established for Falls Reservoir in Rule 15A NCAC 02B .0275 on nutrient loading from existing development in the Falls watershed relative to the baseline period defined in that rule. Existing development is defined in Rule 15A NCAC 02B .0276; and
  - (b) To protect the water supply, aquatic life, and recreational uses of Falls Reservoir.
- (2) **APPLICABILITY.** This Rule shall apply to municipalities and counties in the Falls watershed as identified in Rule 15A NCAC 02B .0275.
- (3) **STAGED AND ADAPTIVE IMPLEMENTATION REQUIREMENTS.** Local governments shall employ the following staged and adaptive implementation program. All local governments subject to this Rule shall develop load-reducing programs for submission to and approval by the Commission that include the following staged elements and meet the associated minimum standards for each stage of implementation:
  - (a) In Stage I, a local government subject to this Rule shall implement a load reduction program that provides estimates of, and plans for offsetting by calendar year 2020, nutrient loading increases from lands developed subsequent to the baseline period and not subject to the requirements of the local government's Falls Lake new

development stormwater program. For these post-baseline existing developed lands, the current loading rate shall be compared to the loading rate for these lands prior to development for the acres involved, and the difference shall constitute the load reduction need in annual mass load, in pounds per year. Alternatively, a local government may assume uniform pre-development loading rates of 2.89 pounds/acre/year N and 0.63 pounds/acre/year P for these lands. The local government shall achieve this Stage I load reduction by calendar year 2020. This Stage I program shall meet the criteria defined in Item (4) of this Rule;

- (b) By January 15, 2021 and every five years thereafter, a local government located in the Upper Falls Watershed shall submit and begin implementing a Stage II load reduction program that meets the following requirements:

- (i) If a local government achieves the Stage I reduction objectives described in this Item, a local government's initial Stage II load reduction program shall, at the local government's election, either (A) achieve additional annual reductions in nitrogen and phosphorus loads from existing development greater than or equal to the average annual additional reductions achieved in the last seven years of Stage I or (B) provide for an annual expenditure that equals or exceeds the average annual amount the local government has spent to achieve nutrient reductions from existing development during the last seven years of Stage I. A local government's expenditures shall include all local government funds, including any state and federal grant funds used to achieve nutrient reductions from existing developed lands. The cost of achieving reductions from municipal wastewater treatment plants

shall not be included in calculating a local government's expenditures. Notwithstanding this requirement, the EMC may approve an initial Stage II load reduction program based on a lower annual level of reduction or a lower annual level of expenditure if the local government demonstrates that continuing the prior annual level of reduction or annual level of expenditure is not reasonable or cost-effective given the reductions that will be achieved, or the expenditure would cause serious financial hardship to the local government;

- (ii) If Stage I reduction objectives are not achieved, a local government's initial Stage II load reduction program shall, at the local government's election, either (A) achieve additional annual reductions in nitrogen and phosphorus loads from existing development greater than or equal to the average annual additional reductions achieved in the highest three years of implementation of Stage I or (B) provide for an annual expenditure that equals or exceeds the average annual amount the local government has spent to achieve nutrient reductions from existing development during the highest three years of implementation of Stage I. Annual expenditures shall be calculated in accordance with Sub-Item (3)(b)(i) of this Item;
- (iii) Subsequent five year programs shall be designed to achieve the Stage II percent load reduction goals from existing developed lands in a local government's jurisdiction, shall include timeframes for achieving these goals and shall meet

- the requirements of Item (4) of this Rule;
- (4) **ELEMENTS OF LOAD REDUCTION PROGRAMS.** A local government's Stage I and Stage II load reduction program shall address the following elements:
- (a) Jurisdictions in the Eno River and Little River subwatersheds shall, as a part of their Stage I load reduction programs, begin and continuously implement a program to reduce loading from discharging sand filters and malfunctioning septic systems discharging into waters of the State within those jurisdictions and subwatersheds;
  - (b) Jurisdictions within any Falls subwatershed in which chlorophyll a levels have exceeded 40 micrograms/liter in more than seventy-five percent of the monitoring events in any calendar year shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce nutrient loading into the waters of the State within those jurisdictions and that subwatersheds;
  - (c) The total amount of nutrient loading reductions in Stage I is not increased for local jurisdictions by the requirements to add specific program components to address loading from malfunctioning septic systems and discharging sand filters or high nutrient loading levels pursuant to Sub-Items (4)(a) and (b) of this Item;
  - (d) In preparation for implementation of their Stage I and Stage II load reduction programs, local governments shall develop inventories and characterize load reduction potential to the extent that accounting methods allow of the following by January 2013:
    - (i) Wastewater collection systems;
    - (ii) Discharging sand filter systems, including availability of or potential for central sewer connection;
    - (iii) Properly functioning and malfunctioning septic systems;
    - (iv) Restoration opportunities in utility corridors;
    - (v) Fertilizer management plans for local government-owned lands;
  - (vi) Structural stormwater practices, including intended purpose, condition, potential for greater nutrient control; and
  - (vii) Wetlands and riparian buffers including potential for restoration opportunities;
  - (e) A local government's load reduction need shall be based on the developed lands that fall within its general police powers and within the Falls watershed;
  - (f) The load reduction need shall not include lands under state or federal control, and a county shall not include lands within its jurisdictional boundaries that are under municipal police powers;
  - (g) Nitrogen and phosphorus loading from existing development, including loading from onsite wastewater treatment systems to the extent that accounting methods allow, shall be calculated by applying the accounting tool described in Sub-Item (7)(a) and shall quantify baseline loads of nitrogen and phosphorus to surface waters in the local government's jurisdiction as well as loading changes post-baseline. It shall also calculate target nitrogen and phosphorus loads and corresponding load reduction needs;
  - (h) The Commission shall recognize reduction credit for early implementation of policies and practices implemented after January 1, 2007 and before timeframes required by this Rule, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486. The load reduction program shall identify specific load-reducing practices implemented to date subsequent to the baseline period and for which the local government is seeking credit. It shall estimate load reductions for these practices and their anticipated duration using methods provided for in Sub-Item (5)(a);
  - (i) The program shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the local government intends to implement and types of

- existing development affected, a prioritization of practices, magnitude of reductions it expects to achieve from each, and the costs and efficiencies of each activity to the extent information is available. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term reductions;
- (j) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps take or planned to secure such funding;
  - (k) The program shall address the extent of load reduction opportunities intended from the following types of lands:
    - (i) Lands owned or otherwise controlled by the local government;
    - (ii) Each land use type of privately owned existing development including projected redevelopment, on which the local government's load reduction need is based as described in this Item; and
    - (iii) Lands other than those on which the local government's load reduction need is based as described in this Item, including lands both within and outside its jurisdiction and including the use of interlocal agreements and private third party sellers;
  - (l) The program shall address the extent of load reduction proposed from the following stormwater and ecosystem restoration activities:
    - (i) Bioretention;
    - (ii) Constructed wetland;
    - (iii) Sand filter;
    - (iv) Filter strip;
    - (v) Grassed swale;
    - (vi) Infiltration device;
    - (vii) Extended dry detention;
    - (viii) Rainwater harvesting system;
    - (ix) Treatment of redevelopment;
    - (x) Overtreatment of new development;
    - (xi) Removal of impervious surface;
  - (m) The program shall evaluate the load reduction potential from the following wastewater activities:
    - (i) Creation of surplus relative to an allocation established in Rule 15A NCAC 02B .0279;
    - (ii) Expansion of surplus allocation through regionalization;
    - (iii) Connection of discharging sand filters and malfunctioning septic systems to central sewer or replacement with permitted non-discharge alternatives;
    - (iv) Removal of illegal discharges; and
    - (v) Improvement of wastewater collection systems;
  - (n) A local government may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (m), or may propose other measures for which it can provide accounting methods acceptable to the Division:
    - (i) Redirecting runoff away from impervious surfaces;
    - (ii) Soil amendments;
    - (iii) Stream restoration;
    - (iv) Improved street sweeping; and
    - (v) Source control, such as pet waste and fertilizer ordinances;
  - (o) The program shall include evaluation of load reduction potential relative to the following factors:
    - (i) Extent of physical opportunities for installation;
    - (ii) Landowner acceptance;
    - (iii) Incentive and education options for improving landowner acceptance;
    - (iv) Existing and potential funding sources and magnitudes;
  - (xii) Retrofitting treatment into existing stormwater ponds;
  - (xiii) Off-line regional treatment systems;
  - (xiv) Wetland or riparian buffer restoration; and
  - (xv) Reforestation with conservation easement or other protective covenant;

- (v) Practice cost-effectiveness (e.g., cost per pound of nutrient removed);
  - (vi) Increase in per capita cost of a local government's stormwater management program to implement the program;
  - (vii) Implementation rate without the use of eminent domain; and
  - (viii) Need for and projected role of eminent domain;
- (5) The Commission shall approve a Stage I load reduction program if it is consistent with Items (3) and (4) of this Rule. The Commission shall Approve a Stage II load reduction program if it is consistent with Items (3) and (4) of this Rule unless the Commission finds that the local governments can, through the implementation of reasonable and cost-effective measures not included in the proposed program, meet the Stage II nutrient load reductions required by this Rule by a date earlier than that proposed by the local government. If the Commission finds that there are additional or alternative reasonable and cost-effective measures, the Commission may require the local government to modify its proposed program to include such measures to achieve the required reductions by the earlier date. If the Commission requires such modifications, the local government shall submit a modified program within two months. The Division shall recommend that the Commission approve or disapprove the modified program within three months after receiving the modified program. In determining whether additional or alternative load reduction measures are reasonable and cost effective, the Commission shall consider factors identified in Sub-Item (4)(o) of this Rule. The Commission shall not require additional or alternative measures that would require a local government to:
  - (a) Install or require installation of a new stormwater collection system in an area of existing development unless the area is being redeveloped;
  - (b) Acquire developed private property; or
  - (c) Reduce or require the reduction of impervious surfaces within an area of existing development unless the area is being redeveloped.
- (6) A municipality shall have the option of working with the county or counties in which it falls, or with another municipality or municipalities within the same subwatershed, to jointly meet the loading targets from all lands within their combined jurisdictions within a subwatershed. A local government may utilize private or third party sellers. All reductions involving trading with other parties shall meet the requirements of Rule 15A NCAC 02B .0282.
- (7) **RULE IMPLEMENTATION.** This Rule shall be implemented as follows:
  - (a) By July 2013, the Division shall submit a Stage I model local program to the Commission for approval that embodies the criteria described in Items (3)(a) and (4) of this Rule. The Division shall work in cooperation with subject local governments and other watershed interests in developing this model program, which shall include the following:
    - (i) Model local ordinances as applicable;
    - (ii) Methods to quantify load reduction requirements and resulting load reduction assignments for individual local governments;
    - (iii) Methods to account for discharging sand filters, malfunctioning septic systems, and leaking collection systems; and
    - (iv) Methods to account for load reduction credits from various activities;
  - (b) Within six months after the Commission's approval of the Stage I model local program, subject local governments shall submit load reduction programs that meet or exceed the requirements of Items (3) and (4) of this Rule to the Division for review and preliminary approval and shall begin implementation and tracking of measures to reduce nutrient loads from existing developed lands within their jurisdictions;
  - (c) Within 20 months of the Commission's approval of the Stage I model local program, the Division shall provide recommendations to the Commission on existing development load reduction programs. The Commission shall either approve the programs or require changes based on the standards set out in Item (4) of this Rule. Should the Commission require changes, the applicable local government shall have two months to

- submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
- (d) Within three months after the Commission's approval of a Stage I local existing development load reduction program, the local government shall complete adoption of and begin implementation of its existing development Stage I load reduction program;
- (e) Upon implementation of the programs required under Item (4) of this Rule, local governments shall provide annual reports to the Division documenting their progress in implementing those requirements within three months following each anniversary of program implementation date until such time the Commission determines they are no longer needed to ensure maintenance of reductions or that standards are protected. Annual reports shall include accounting of total annual expenditures, including local government funds and any state and federal grants used toward load reductions achieved from existing developed lands. Local governments shall indefinitely maintain and ensure performance of implemented load-reducing measures;
- (f) By January 15, 2021 and every five years thereafter until accounting determines that assigned load reductions have been achieved, standards are met in the lake, or the Commission takes other actions per Rule 15A NCAC 02B .0275, local governments located in the upper Falls watershed as defined in Item (3) of Rule 15A NCAC 02B .0275 shall submit and begin implementation of a Stage II load reduction program or program revision to the Division. Within nine months after submittal, the Division shall make recommendations to the Commission on approval of these programs. The Commission shall either approve the programs or require changes based on the standards set out in this Rule. If the Commission require changes, the applicable local governments shall submit revisions within two months, and the Division shall provide follow-up recommendations to the Commission within three months after receiving revisions. Upon program approval, local governments shall revise implementation as necessary based on the approved program;
- (g) A local government may, at any time after commencing implementation of its load reduction program, submit program revisions to the Division for approval based on identification of more cost-effective strategies or other factors not originally recognized;
- (h) Once either load reductions are achieved per annual reporting or water quality standards are met in the lake per Rule 15A NCAC 02B .0275, local governments shall submit programs to ensure no load increases and shall report annually per Sub-Item (e) on compliance with no increases and take additional actions as necessary;
- (i) At least every five years after the effective date, the Division shall review the accounting methods stipulated under Sub-Item (7)(a) to determine the need for revisions to those methods and to loading reductions assigned using those methods. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as nutrient removal efficiencies.

*History Note: Authority G.S. 143-214.1; 143-214.5; 143-214.7; 143-214.12; 143-214.21; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

**15A NCAC 02B .0279 FALLS WATER SUPPLY  
NUTRIENT STRATEGY: WASTEWATER DISCHARGE  
REQUIREMENTS**

The following is the NPDES wastewater discharge management strategy for the Falls of the Neuse Reservoir watershed (the Falls watershed):

- (1) **PURPOSE.** The purpose of this Rule is to establish minimum nutrient control requirements for point source wastewater discharges in the Falls watershed in order to



- restore and maintain water quality in the reservoir and protect its designated uses.
- (2) **APPLICABILITY.** This Rule applies to all wastewater treatment facilities discharging in the Falls watershed that receive nutrient-bearing wastewater and are subject to requirements for individual NPDES permits.
- (3) **DEFINITIONS.** For the purposes of this Rule, the definitions in 15A NCAC 02B .0276 and the following definitions apply:
- (a) In regard to point source dischargers, treatment facilities, and wastewater flows and discharges,
- (i) "Existing" means that which was subject to an NPDES permit as of December 31, 2006;
- (ii) "Expanding" means that which has increased or will increase beyond its permitted flow as defined in this Rule; and
- (iii) "New" means that which was not subject to an NPDES permit as of December 31, 2006.
- (b) "Limit" or "limitation," except when specified as a concentration limit, means the mass quantity of nitrogen or phosphorus that a discharger or group of dischargers is authorized through an NPDES permit to release into surface waters of the Falls watershed.
- (c) "MGD" means million gallons per day.
- (d) "Permitted flow" means the maximum monthly average flow authorized in a facility's NPDES permit as of December 31, 2006.
- (4) **INITIAL NUTRIENT ALLOCATIONS FOR EXISTING UPPER FALLS DISCHARGERS.** This Item establishes initial Stage I and Stage II nutrient allocations for existing dischargers in the Upper Falls watershed:
- (a) Stage I nitrogen and phosphorus allocations for dischargers with permitted flows of 0.1 MGD or greater are as follows:

| Facility Name | NPDES No. | Mass Allocations (pounds/year) |                  |
|---------------|-----------|--------------------------------|------------------|
|               |           | Total Nitrogen                 | Total Phosphorus |
| North Durham  | NC0023841 | 97,665                         | 10,631           |
| SGWASA        | NC0026824 | 22,420                         | 2,486            |
| Hillsborough  | NC0026433 | 10,422                         | 1,352            |

- (b) Stage I allocations for dischargers with permitted flows less than 0.1 MGD are equal to the Stage II allocations specified in Sub-Items (c) and (d) of this Item.
- (c) Stage II nitrogen and phosphorus allocations are as follows:

| Discharger Subcategories       | Mass Allocations (pounds/year) |                  |
|--------------------------------|--------------------------------|------------------|
|                                | Total Nitrogen                 | Total Phosphorus |
| Permitted flows $\geq$ 0.1 MGD | 97,617                         | 5,438            |
| Permitted flows $<$ 0.1 MGD    | 1,052                          | 175              |

- (d) The Stage II allocations in Sub-Item (c) of this Item shall be divided among the existing dischargers in each subcategory in proportion to the dischargers' permitted flows as defined in this Rule, and the resulting nutrient allocations shall be assigned to each individual discharger.
- (5) **CHANGES IN NUTRIENT ALLOCATIONS.**
- (a) The aggregate and individual nutrient allocations available to point source dischargers in the Falls watershed are subject to change:
- (i) Whenever the Commission, through rulemaking, revises the nutrient reduction targets in or pursuant to 15A NCAC 02B .0275 in order to ensure the protection of water quality in the reservoir and its tributaries or to conform with applicable state or federal requirements;
- (ii) Whenever one or more point source dischargers acquires any portion of the nonpoint load allocations under the provisions in this Rule and 15A NCAC 02B .0282, Options for Offsetting Nutrient Loads; or
- (iii) As the result of allocation transfers conducted between point sources or between point and nonpoint sources and in accordance with this Rule, provided that nutrient

allocation can be transferred and applied only within the portion of the Falls watershed to which it was originally assigned (Upper or Lower).

- (b) In the event that the Commission changes any nutrient reduction target specified in 15A NCAC 02B .0275 or in Item (4) of this Rule, the Commission shall also re-evaluate the apportionment among the dischargers and shall revise the individual allocations as necessary.
- (6) **NUTRIENT DISCHARGE LIMITATIONS FOR EXISTING UPPER FALLS DISCHARGERS.**
  - (a) Beginning with calendar year 2016, any existing discharger with a permitted flow of 0.1 MGD or greater shall limit its total nitrogen and phosphorus discharges to its active, individual Stage I allocations as defined or modified pursuant to this Rule.
  - (b) Beginning with calendar year 2036, except as provided in Sub-item (d) of this Item, each existing discharger with a permitted flow greater than or equal to 0.1 MGD shall limit its total nitrogen and phosphorus discharges to its active, individual Stage II allocations as defined or modified pursuant to this Rule.
  - (c) Not later than March 15, 2011, the Director shall notify existing permittees of the individual Stage I and Stage II nutrient allocations initially assigned to them pursuant to this Rule.
  - (d) Not later than January 15, 2027, each existing discharger with a permitted flow greater than or equal to 0.1 MGD shall submit to the Division a plan for meeting its Stage II mass limitations. The plan shall describe the discharger's strategy for complying with the limitations and shall include a schedule for the design and construction of facility improvements and for the development and implementation of related programs necessary to the strategy. If a discharger determines that it cannot meet its limitations by calendar year 2036, the discharger may include its findings in the plan and request an extension of its

compliance dates for the nitrogen and phosphorus limitations. This alternate plan shall document the compliance strategies considered and the reasons each was judged infeasible; identify the minimum loadings that are technically and economically feasible by 2036; and propose intermediate limits for the period beginning with 2036 and extending until the Stage II limitations can be met. Within 180 days of receipt, the Division shall approve the plan as submitted, which could include intermediate limits, or inform the discharger of any changes or additional information needed for approval. The Division shall incorporate the approved nitrogen and phosphorus mass limitations and compliance dates into the discharger's NPDES permit upon the next renewal or other major permit action following plan approval. If the Division extends the dates by which a discharger must meet Stage II limitations, the discharger shall update and submit its plan for Division approval every five years after the original submittal, and the Division shall take necessary and appropriate action as with the original plan, until the Stage II limitations are satisfied.

- (e) It is the intent of this Item that all dischargers shall make continued progress toward complying with Stage II mass limitations. The Division shall not approve intermediate limitations that exceed either the applicable Stage I limitations or intermediate limitations previously approved pursuant to this Item.
- (7) **NUTRIENT DISCHARGE LIMITATIONS FOR EXISTING LOWER FALLS DISCHARGERS.**
  - (a) Beginning with calendar year 2016, any existing discharger with a permitted flow of 0.1 MGD or greater shall limit its total nitrogen and phosphorus discharges as specified in this Item.
  - (b) **CONCENTRATION LIMITS.** The nitrogen and phosphorus discharge limits for existing dischargers shall be as follows:

| Limit Type      | Discharge Limits (milligrams/liter) |                  |
|-----------------|-------------------------------------|------------------|
|                 | Total Nitrogen                      | Total Phosphorus |
| Monthly Average | 8.0                                 | 1.0              |
| Annual Average  | 5.5                                 | 0.5              |

Existing facilities must meet both monthly average and annual average limits in any given calendar year.

(c) **MASS LIMITS.**

- (i) In addition to the concentration limits specified in this Item, the collective annual mass discharge of total phosphorus shall not exceed 911 pounds in any calendar year.
- (ii) Any discharger may request a mass discharge limit in lieu of the concentration limit for nitrogen or phosphorus or both, in which case the Director shall set a limit equivalent to the annual average concentration limit at the facility's permitted flow. The resulting mass limit shall become effective with the ensuing calendar year or with calendar year 2016, whichever is later.

(8) **NUTRIENT CONTROL REQUIREMENTS FOR NEW DISCHARGERS.**

- (a) Any person proposing a new wastewater discharge in the Upper Falls watershed shall meet the following requirements prior to applying for an NPDES permit:
  - (i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H .0105(c)(2);
  - (ii) If the results of the evaluation support a new discharge, acquire sufficient nitrogen and phosphorus allocations for the discharge. The proponent may obtain allocation for the proposed discharge from existing dischargers pursuant to the applicable requirements of Item (10) of this Rule or obtain allocation from other sources to offset the increased nutrient loads resulting from the proposed discharge. The proponent may fund offset measures by

making payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division, either of which shall meet the requirements of Rule 15A NCAC 02B .0282. The amount of allocation or offsets obtained shall be sufficient for the duration of the discharge or for a period of 30 years, whichever is shorter. Payment for each allocation or offset shall be made prior to the ensuing permit issuance;

- (iii) Determine whether the proposed discharge of nutrients will cause local water quality impacts; and
- (iv) Provide documentation with its NPDES permit application demonstrating that the requirements of Sub-Items (a)(i) through (a)(iii) of this Item have been met.

- (b) The nutrient discharge limits for a new facility in the Upper Falls watershed shall not exceed the mass loads equivalent to a concentration of 3.0 milligrams per liter nitrogen or 0.1 milligrams per liter phosphorus at the permitted flow in the discharger's NPDES permit.
- (c) Upon the effective date of its NPDES permit, a new discharger in the Upper Falls watershed shall be subject to nitrogen and phosphorus limits not to exceed its active individual discharge allocations in any given calendar year.
- (d) The Director shall not issue an NPDES permit for any new wastewater facility that would discharge in the Lower Falls watershed and to which this Rule would apply.

(9) **NUTRIENT CONTROL REQUIREMENTS FOR EXPANDING DISCHARGERS.**

- (a) Any person proposing to expand an existing wastewater discharge in the Upper Falls watershed beyond its permitted flow shall meet the following requirements prior to applying for an NPDES permit:
    - (i) Evaluate all practical alternatives to said discharge, pursuant to 15A NCAC 02H .0105(c)(2);
    - (ii) If the results of the evaluation support an expanded discharge, acquire sufficient nitrogen and phosphorus allocations for the discharge. The proponent may obtain allocation for the proposed discharge from existing dischargers pursuant to the applicable requirements of Item (10) of this Rule or obtain allocation from other sources to offset the increased nutrient loads resulting from the proposed discharge. The proponent may fund offset measures by making payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that program or to another seller of offset credits approved by the Division or may implement other offset measures contingent upon approval by the Division, either of which shall meet the requirements of Rule 15A NCAC 02B .0282. The amount of allocation or offsets obtained shall be sufficient for the duration of the discharge or for a period of 30 years, whichever is shorter. Payment for each allocation or offset shall be made prior to the ensuing permit issuance;
    - (iii) Determine whether the proposed discharge of nutrients will cause local water quality impact; and
    - (iv) Provide documentation with its NPDES permit application demonstrating that the requirements of Sub-Items (a)(i) through (a)(iii) of this Item have been met;
  - (b) The nutrient discharge limits for an expanding facility in the Upper Falls watershed shall not exceed the mass value equivalent to a concentration of 3.0 milligrams per liter nitrogen or 0.1 milligrams per liter phosphorus at the expanded flow limit in the discharger's NPDES permit; except that this provision shall not result in an active allocation or limit that is less than originally assigned to the discharger under this Rule.
  - (c) Upon expansion or upon notification by the Director that it is necessary to protect water quality, any discharger with a permitted flow of less than 0.1 MGD in the Upper Falls watershed, shall become subject to total nitrogen and total phosphorus permit limits not to exceed its active individual discharge allocations.
  - (d) The Director shall not issue an NPDES permit for the expansion of any wastewater discharge in the Lower Falls watershed to which this Rule applies.
- (10) **ADDITIONAL PROVISIONS REGARDING NUTRIENT ALLOCATIONS AND LIMITATIONS.**
- (a) Annual mass nutrient limits shall be established as calendar-year limits.
  - (b) Any discharger holding nutrient allocations pursuant to this Rule may by mutual agreement transfer all or part of its allocations to any new, existing, or expanding dischargers or to other person(s) in the Falls watershed, subject to the provisions of this Rule and the Falls nutrient strategy, except that allocation shall not be transferred between the Upper and Lower Falls watersheds.
  - (c) For NPDES compliance purposes, the enforceable nutrient limits for an individual facility or for a compliance association described in Item (11) of this Rule shall be the effective limits in the governing permit, regardless of the allocation held by the discharger or association.
  - (d) The Director may establish more stringent nitrogen or phosphorus discharge limits for any discharger upon finding that such limits are necessary to prevent the discharge from causing adverse water quality impacts on surface waters tributary to

Falls Reservoir. The Director shall establish such limits through modification of the discharger's NPDES permit in accordance with applicable rules and regulations. When the Director does so, the discharger retains its nutrient allocations, and the non-active portion of the discharger's allocation becomes reserve allocation. The allocation remains in reserve until the Director determines that less stringent limits are allowable or until the allocation is applied to another discharge not subject to such water quality-based limits.

- (e) In order for any transfer of allocation to become effective as a discharge limit in an individual NPDES permit, the discharger must request and obtain modification of the permit. Such request shall:
  - (i) Describe the purpose and nature of the modification;
  - (ii) Describe the nature of the transfer agreement, the amount of allocation transferred, and the dischargers or persons involved;
  - (iii) Provide copies of the transaction agreements with original signatures consistent with NPDES signatory requirements; and
  - (iv) Demonstrate to the Director's satisfaction that the increased nutrient discharge will not violate water quality standards in localized areas.
- (f) Changes in a discharger's nutrient limits shall become effective upon modification of its individual permit but no sooner than January 1 of the year following modification. If the modified permit is issued after January 1, the Director may make the limit effective on that January 1 provided that the discharger made acceptable application in a timely manner.
- (g) REGIONAL FACILITIES. In the event that an existing discharger or group of dischargers accepts wastewater from another NPDES-permitted treatment facility and that acceptance results in the elimination of the discharge from the other

treatment facility, the eliminated facility's nutrient allocations shall be transferred and added to the accepting discharger's allocations, except that allocation shall not be transferred between the Upper and Lower Falls watersheds.

(11) GROUP COMPLIANCE OPTION.

- (a) Any facilities within the Upper or the Lower Falls watersheds may form a group compliance association to meet nutrient limits collectively within their respective portion of the Falls watershed. More than one group compliance association may be established in either portion of the watershed. No facility may be a co-permittee member of more than one association for any given calendar year.
- (b) Any such association must apply for and shall be subject to an NPDES permit that establishes the effective nutrient limits for the association and for its members.
- (c) No later than 180 days prior to the proposed date of a new association's operation or expiration of an existing association's NPDES permit, the association and its members shall submit an application for an NPDES permit for the discharge of nutrients to surface waters of the Falls watershed. The association's NPDES permit shall be issued to the association and its members. It shall specify the nutrient limits for the association and for each of its co-permittee members. Association members shall be deemed in compliance with the permit limits for nitrogen and phosphorus contained in their individually issued NPDES permits so long as they remain members in an association.
- (d) An association's nitrogen and phosphorus limits shall be the sum of its members' individual active allocations for each nutrient plus any other active allocation obtained by the association or its members.
- (e) The individual limits for each member in the association permit shall initially be equivalent to the discharge limits in effect in the member's NPDES permit. Thereafter, changes in individual allocations or limits shall be incorporated into the members' individual permits before

- they are included in the association permit.
- (f) An association and its members may reapportion the individual allocations of its members on an annual basis. Changes in individual allocations or limits must be incorporated into the members' individual permits before they are included in the association permit.
  - (g) Changes in an association's nutrient limits shall become effective no sooner than January 1 of the year following permit modification. If the modified permit is issued after January 1, the Director may make the limit effective on that January 1 provided that the association made acceptable application in a timely manner.
  - (h) Beginning with the first full calendar year that the nitrogen or phosphorus limits are effective, an association that does not meet its permit limit for nitrogen or phosphorus for a calendar year shall, no later than May 1 of the year following the exceedance, make an offset payment to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that program or by implementing other load offsetting measures contingent upon approval by the Division, either of which shall meet the requirements of Rule 15A NCAC 02B .0282.
  - (i) Association members shall be deemed in compliance with their individual limits in the association NPDES permit for any calendar year in which the association is in compliance with its group limit for that nutrient. If the association fails to meet its limit, the association and the members that have failed to meet their individual nutrient limits in the association NPDES permit shall be deemed out of compliance with the association NPDES permit.

**15A NCAC 02B .0280 FALLS RESERVOIR WATER SUPPLY NUTRIENT STRATEGY: AGRICULTURE**

This Rule sets forth a staged process, as prefaced in 15A NCAC 02B .0275, by which agricultural operations in the Falls watershed will collectively limit their nitrogen and phosphorus loading to the Falls Reservoir. This process is as follows:

- (1) **PURPOSE.** The purposes of this Rule are to achieve and maintain the percentage reduction objectives defined in 15A NCAC 02B .0275 for the collective agricultural loading of nitrogen and phosphorus from their respective 2006 baseline levels, to the extent that best available accounting practices will allow, in two stages. Stage I shall be 10 years and Stage II shall be 15 years, as set out in Item (5) of this Rule. Additionally this Rule will protect the water supply uses of the Falls Reservoir.
- (2) **PROCESS.** This Rule requires accounting for agricultural land management practices at the county level in the Falls watershed, and implementation of practices by farmers to collectively achieve the nutrient reduction objectives on a watershed basis. Producers may be eligible to obtain cost share and technical assistance from the NC Agriculture Cost Share Program and similar federal programs to contribute to their counties' nutrient reductions. A Watershed Oversight Committee and Local Advisory Committees will develop strategies, coordinate activities, and account for progress.
- (3) **LIMITATION.** This Rule does not fully address significant agricultural nutrient sources in that it does not directly address atmospheric sources of nitrogen to the Falls watershed from agricultural operations located both within and outside of the Falls watershed. As better information becomes available from ongoing research on atmospheric nitrogen loading to the Falls watershed from these sources, and on measures to control this loading, the Commission may undertake separate rule-making to require such measures it deems necessary from these sources to support the objectives of the Falls Nutrient Strategy.
- (4) **APPLICABILITY.** This Rule shall apply to all persons engaging in agricultural operations in the Falls watershed, including those related to crops, horticulture, livestock, and poultry. This Rule applies to livestock and poultry operations above the size thresholds in this Item in addition to requirements for animal operations set forth in general permits issued pursuant to G.S. 143-215.10C. Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standard by any agricultural operation, including any livestock or poultry

*History Note: Authority G.S. 143-214.1; 143-214.5; 143-215; 143-215.1; 143-215.3(a)(1); 143-215B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

operation below the size thresholds in this Item. This Rule shall not apply to dedicated land application sites permitted under 15A NCAC 02T .1100. This Rule does not require specific actions by any individual person or operation if agriculture in the Falls watershed can collectively achieve its Stage I nutrient reduction objectives, in the manner described in Item (5) of this Rule, by calendar year 2020. If the Stage I nutrient reduction objectives are not met by calendar year 2020, Stage II of implementation shall require specific actions by individuals and operations. For the purposes of this Rule, agricultural operations are activities that relate to any of the following pursuits:

- (a) The commercial production of crops or horticultural products other than trees. As used in this Rule, commercial shall mean activities conducted primarily for financial profit.
- (b) Research activities in support of such commercial production.
- (c) The production or management of any of the following number of livestock or poultry at any time, excluding nursing young:
  - (i) Five or more horses;
  - (ii) 20 or more cattle;
  - (iii) 20 or more swine not kept in a feedlot, or 150 or more swine kept in a feedlot;
  - (iv) 120 or more sheep;
  - (v) 130 or more goats;
  - (vi) 650 or more turkeys;
  - (vii) 3,500 or more chickens; or
  - (viii) Any single species of any other livestock or poultry, or any combination of species of livestock or poultry that exceeds 20,000 pounds of live weight at any time.

(5) **METHOD FOR RULE IMPLEMENTATION.** This Rule shall be implemented in two stages and through a cooperative effort between the Watershed Oversight Committee and Local Advisory Committees in each county. The membership, roles and responsibilities of these committees are set forth in Items (7) and (8) of this Rule. Committee's activities shall be guided by the following:

- (a) In Stage I, agriculture shall achieve a collective 20 percent reduction in nitrogen loading and a 40 percent reduction in phosphorus loading relative to the 2006 baseline by calendar year 2020.

- (b) In Stage II, beginning in calendar year 2021 agriculture shall achieve a collective 40 percent reduction in nitrogen loading and a 77 percent reduction in phosphorus loading relative to the 2006 baseline by calendar year 2035.
- (c) By January 15, 2013, the Watershed Oversight Committee shall provide the Commission with an initial assessment of the extent to which agricultural operations in the Falls watershed have achieved the Stage I nitrogen and phosphorus reduction objectives identified in Item (1) of this rule through activities conducted since the baseline period. The Watershed Oversight Committee shall use the accounting process described in Items (7) and (8) of this rule to make its assessment.
- (d) If annual reporting following the 10th year of implementation indicates that agriculture has not collectively achieved its Stage I nitrogen and phosphorus reduction objectives identified in this Item, Stage II shall include specific implementation requirements for individual operators. Specifically, within five years of the start of Stage II, cropland operators shall establish vegetated riparian buffers adjacent to streams on all cropland where such buffers do not already exist. Additionally, pastured livestock operators shall establish excluded vegetated riparian buffers adjacent to streams where such excluded buffers do not already exist. Streams to which these requirements apply shall be those that meet the classification of intermittent or perennial streams using the September 2010 version of the *Identification Methods for the Origins of Intermittent and Perennial Streams Manual* published by the Division. Existing and newly established riparian buffers shall be a minimum of 20 feet in width with criteria further defined by the Watershed Oversight Committee. The Commission may also consider alternative recommendations from the Watershed Oversight Committee based on the Committee's assessment of the practicability of agricultural operations meeting the Stage I objectives. Should the Commission

accept some alternative form of individual compliance, then it shall also subsequently approve a framework proposed by the Watershed Oversight Committee for allowing producers to obtain credit through offsite measures. Such offsite measures shall meet the requirements of 15A NCAC 02B .0282.

- (e) Should a committee called for under Item (5) of this Rule not form nor follow through on its responsibilities such that a local strategy is not implemented in keeping with Item (8) of this Rule, the Commission shall require all persons subject to this Rule in the affected area to implement BMPs as needed to meet the objectives of this Rule.

(6) **RULE REQUIREMENTS FOR INDIVIDUAL OPERATIONS.** Persons subject to this Rule shall adhere to the following requirements:

- (a) Persons subject to this Rule shall register their operations with their Local Advisory Committee according to the requirements of Item (8) of this Rule;
- (b) Persons are not required to implement any specific BMPs in Stage I, with the exception of Sub-Item (d) of this Item, but may elect to contribute to the collective local nutrient strategy by implementing any BMPs they choose that are recognized by the Watershed Oversight Committee as nitrogen-reducing or phosphorus-reducing BMPs;
- (c) The Division shall require that residuals application, animal waste application, and surface irrigation pursuant to permits issued under 15A NCAC 02T .1100, 15A NCAC 02T .1300, and 15A NCAC 02T .0500 respectively, to lands within the Falls watershed be done in a manner that minimizes the potential for nitrogen and phosphorus loading to surface waters by implementing the following measures:
  - (i) Animal waste application operators subject to the permitting requirements in this Sub-item shall meet Realistic Yield Expectation based nitrogen application rates and shall apply phosphorus in compliance with guidance established in

the most recent version of North Carolina Agricultural Research Service's Technical Bulletin 323, "North Carolina Phosphorus Loss Assessment: I. Model Description and II. Scientific Basis and Supporting Literature" developed by the Department of Soil Science and Biological and Agricultural Engineering at North Carolina State University. The Division shall modify all existing permits for affected lands to include these requirements upon their next renewal after effective date, and shall include these requirements in all new permits issued after effective date. Permittees shall be required to comply with this condition upon permit issuance or renewal as applicable; and

- (ii) Residual application and surface irrigation operators subject to the permitting requirements in this Sub-item shall meet Realistic Yield Expectation based nitrogen application rates and shall conduct and provide to the Division annual assessments of their soil test phosphorus index results and phosphorus loading rates. At such time as data quantifying the fate and transport of chemically bound phosphorus are made available, the Division may make recommendations to the Commission to consider whether revisions to the requirements of this Rule are needed and may initiate rulemaking or any other action allowed by law.

- (d) Should a local strategy not achieve its Stage I objectives by calendar year 2020; operations within that local area shall face specific implementation requirements, as described under Sub-Item (5)(d) of this Rule.



- (7) **WATERSHED OVERSIGHT COMMITTEE.** The Watershed Oversight Committee shall have the following membership, role and responsibilities:

(a) **MEMBERSHIP.** The Director shall be responsible for forming a Watershed Oversight Committee by March 15, 2011. Until such time as the Commission determines that long-term maintenance of the nutrient loads is assured, the Director shall either reappoint members or replace members at least every six years. The Director shall solicit nominations for membership on this Committee to represent each of the following interests, and shall appoint one nominee to represent each interest except where a greater number is noted. The Director of the Division of Water Quality may appoint a replacement at any time for an interest in Sub-Items (7)(a)(vi) through (7)(a)(x) of this Rule upon request of representatives of that interest or by the request of the Commissioner of Agriculture:

- (i) Division of Soil and Water Conservation;
- (ii) United States Department of Agriculture-Natural Resources Conservation Service (shall serve in an "ex-officio" non-voting capacity and shall function as a technical program advisor to the Committee);
- (iii) North Carolina Department of Agriculture and Consumer Services;
- (iv) North Carolina Cooperative Extension Service;
- (v) Division of Water Quality;
- (vi) Three environmental interests, at least two of which are residents of the Falls watershed;
- (vii) General farming interests;
- (viii) Pasture-based livestock interests;
- (ix) Equine livestock interests;
- (x) Cropland farming interests; and
- (xi) The scientific community with experience related to water quality problems in the Falls watershed.

(b) **ROLE.** The Watershed Oversight Committee shall:

- (i) Develop tracking and accounting methods for nitrogen and phosphorus loading and submit methods to the Water Quality Committee of the Commission for approval based on the standards set out in Sub-Item (7)(c) of this Rule by March 15, 2012;
- (ii) Identify and implement future refinements to the accounting methods as needed to reflect advances in scientific understanding, including establishment or refinement of nutrient reduction efficiencies for BMPs;
- (iii) By January 15, 2013, collect data needed to conduct initial nutrient loading accounting for the baseline period and the most current year feasible, perform this accounting, and determine the extent to which agricultural operations have achieved the Stage I nitrogen loading objective and phosphorus loading trend indicators for the watershed and present findings to the Water Quality Committee of the Commission;
- (iv) Review, approve, and summarize local nutrient strategies if required pursuant to Sub-Item (5)(d) of this Rule and according to the timeframe identified in Sub-Item (8)(c)(ii) of this Rule. Provide these strategies to the Division;
- (v) Establish requirements for, review, approve and summarize local nitrogen and phosphorus loading annual reports as described under Sub-Item (8)(e) of this Rule, and present the report to the Division annually, until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of Rule. Present a report in January 2014 to the Commission. Should that

- report find that agriculture in the watershed has not met its collective nitrogen or phosphorus objective, include an assessment in that report of the practicability of producers achieving the Stage I objective by calendar year 2020, and recommendations to the Commission as deemed appropriate;
- (vi) Obtain nutrient reduction efficiencies for BMPs from the scientific community associated with design criteria identified in rules adopted by the Soil and Water Conservation Commission, including 15A NCAC 06E .0104 and 15A NCAC 06F .0104; and
  - (vii) Investigate and, if feasible, develop an accounting method to equate implementation of specific nutrient-reducing practices on cropland or pastureland to reductions in nutrient loading delivered to streams;
  - (viii) Quantify the nitrogen and phosphorus credits generated by such practices for the purpose of selling or buying credits; establish criteria and a process as needed for the exchange of nutrient credits between parties subject to this rule with each other or with parties subject to other nutrient strategy rules in the Falls lake watershed pursuant to the requirements of 15A NCAC 02B .0282; obtain approval from the Division for this trading program pursuant to the requirements of Rule .0282; approve eligible trades; and ensure that such credits traded for purposes of meeting this Rule are accounted for and tracked separately from those contributing to the objectives of other rules of the Falls nutrient strategy.
- (c) ACCOUNTING METHODS.  
Success in meeting this Rule's
- purpose will be gauged by estimating percentage changes in nitrogen loading from agricultural lands in the Falls watershed and by evaluating broader trends in indicators of phosphorus loading from agricultural lands in the Falls watershed. The Watershed Oversight Committee shall develop accounting methods that meet the following requirements:
- (i) The nitrogen method shall estimate baseline and annual total nitrogen loading from agricultural operations in each county and for the entire Falls watershed;
  - (ii) The nitrogen and phosphorus methods shall include a means of tracking implementation of BMPs, including number, type, and area affected;
  - (iii) The nitrogen method shall include a means of estimating incremental nitrogen loading reductions from actual BMP implementation and of evaluating progress toward and maintenance of the nutrient objectives from changes in BMP implementation, fertilization, individual crop acres, and agricultural land use acres;
  - (iv) The nitrogen and phosphorus methods shall be refined as research and technical advances allow;
  - (v) The phosphorus method shall quantify baseline values for and annual changes in factors affecting agricultural phosphorus loading as identified by the phosphorus technical advisory committee established under 15A NCAC 02B .0256(f)(2)(C). The method shall provide for periodic qualitative assessment of likely trends in agricultural phosphorus loading from the Falls watershed relative to baseline conditions;
  - (vi) Phosphorus accounting may also include a scientifically valid, survey-based sampling

- of farms in the Falls watershed for the purpose of conducting field-scale phosphorus loading assessments and extrapolating phosphorus loading for the Falls watershed for the baseline period and at periodic intervals; and

(vii) Aspects of pasture-based livestock operations that potentially affect nutrient loading and are not captured by the accounting methods described above shall be accounted for in annual reporting to the extent that advances in scientific understanding reasonably allow. Such accounting shall, at a minimum, quantify changes in the extent of livestock-related nutrient controlling BMPs. Progress may be judged based on percent change in the extent of implementation relative to percentage objectives identified in Item (5) of this Rule.

(8) **LOCAL ADVISORY COMMITTEES.** Local Advisory Committees shall be formed for each county within the watershed by January 15, 2012, and shall have the following membership, roles, and responsibilities:

(a) **MEMBERSHIP.** A Local Advisory Committee shall be appointed as provided for in this Item. It shall terminate upon a finding by the Commission that it is no longer needed to fulfill the purposes of this Rule. Each Local Advisory Committee shall consist of:

  - (i) One representative of the county Soil and Water Conservation District;
  - (ii) One representative of the county office of the United States Department of Agriculture Natural Resources Conservation Service;
  - (iii) One representative of the North Carolina Department of Agriculture and Consumer Services;
  - (iv) One representative of the county office of the North Carolina Cooperative Extension Service;

(v) One representative of the North Carolina Division of Soil and Water Conservation whose regional assignment includes the county;

(vi) At least two farmers who reside in the county; and

(vii) One representative of equine livestock interests.

(b) **APPOINTMENT OF MEMBERS.** The Director of the Division of Water Quality and the Director of the Division of Soil and Water Conservation of the Department of Environment and Natural Resources shall appoint members described in Sub-Items (8)(a)(i), (8)(a)(ii), (8)(a)(iv), and (8)(a)(v) of this Rule. The Director of the Division of Water Quality, with recommendations from the Director of the Division of Soil and Water Conservation and the Commissioner of Agriculture, shall appoint the members described in Sub-Items (8)(a)(iii) and (8)(a)(vi) of this Rule from persons nominated by nongovernmental organizations whose members produce or manage agricultural commodities in each county. Members of the Local Advisory Committees shall serve at the pleasure of their appointing authorities.

(c) **ROLE.** The Local Advisory Committees shall:

  - (i) Conduct a registration process for persons subject to this Rule. This registration process shall be completed by January 15, 2012. The registration process shall request at a minimum the type and acreage of agricultural operations. It shall provide persons with information on requirements and options under this Rule, and on available technical assistance and cost share options;
  - (ii) Develop local nutrient control strategies for agricultural operations, pursuant to Sub-Item (8)(d) of this Rule, to meet the nitrogen and phosphorus

- objectives of this Rule. Strategies shall be submitted to the Watershed Oversight Committee by July 2012;
- (iii) Ensure that any changes to the design of the local strategy will continue to meet the nutrient objectives of this Rule; and
  - (iv) Submit reports to the Watershed Oversight Committee, pursuant to Sub-Item (8)(e) of this Rule, annually beginning in calendar year 2012 until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of this Rule.
- (d) **LOCAL NUTRIENT CONTROL STRATEGIES.** Local Advisory Committees shall develop nutrient control strategies. If a Local Advisory Committee fails to submit a nutrient control strategy required in Sub-Item (8)(c)(ii) of this Rule, the Commission may develop one based on the accounting methods that it approves pursuant to Sub-Item (7)(b)(i) of this Rule. Local strategies shall meet the following requirements:
- (i) Local nutrient control strategies shall be designed to achieve the required nitrogen loading reduction objectives and qualitative trends in indicators of agricultural phosphorus loading by calendar year 2020, and to maintain those reductions in perpetuity or until such time as this rule is revised to modify this requirement; and
  - (ii) Local nutrient control strategies shall specify the numbers, acres, and types of all agricultural operations within their areas, numbers of BMPs that will be implemented by enrolled operations and acres to be affected by those BMPs, estimated nitrogen and phosphorus loading reductions, schedule for BMP implementation, and operation and maintenance requirements.
- (e) **ANNUAL REPORTS.** The Local Advisory Committees shall be responsible for submitting annual reports for their counties to the Watershed Oversight Committee until such time as the Commission determines that annual reports are no longer needed to fulfill the purposes of this Rule. The Watershed Oversight Committee shall determine reporting requirements to meet these objectives. Those requirements may include information on BMPs implemented by individual farms, proper BMP operation and maintenance, BMPs discontinued, changes in agricultural land use or activity, and resultant net nitrogen loading and phosphorus trend indicator changes. The annual reports in 2016 and 2026 shall address agriculture's success in complying with the load reduction requirements described in Items (5)(a) and (5)(b) of this Rule and shall include adjustments to address deficiencies to achieve compliance.
- (f) **PROGRESS.** In 2016 the Division of Water Quality, in consultation with the Watershed Oversight Committee, shall submit a report to the Commission gauging the extent to which reasonable progress has been achieved towards the Stage I objectives described in this Rule.

*History Note: Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;*

*Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

**15A NCAC 02B .0281 FALLS WATER SUPPLY  
NUTRIENT STRATEGY: STORMWATER  
REQUIREMENTS FOR STATE AND FEDERAL  
ENTITIES**

The following is the stormwater strategy, as prefaced in Rule 02B .0275, for the activities of state and federal entities within the Falls watershed.

- (1) **PURPOSE.** The purposes of this Rule are as follows.
  - (a) To achieve and maintain, on new non-road development lands, the nonpoint source nitrogen and phosphorus percentage reduction

- objectives established for Falls Reservoir in 15A NCAC 02B .0275 relative to the baseline period defined in Rule, to provide the highest practicable level of treatment on new road development, and to achieve and maintain the percentage objectives on existing developed lands by reducing loading from state-maintained roadways and facilities, and from lands controlled by other state and federal entities in the Falls watershed;
- (b) To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows from state-maintained roadways and facilities and from lands controlled by other state and federal entities in the Falls watershed; and
- (c) To protect the water supply, aquatic life, and recreational uses of Falls Reservoir.
- (2) **APPLICABILITY.** This Rule shall apply to all existing and new development, both as defined in 15A NCAC 02B .0276, that lies within or partially within the Falls watershed under the control of the NC Department of Transportation (NCDOT), including roadways and facilities, and to all lands controlled by other state and federal entities in the Falls watershed.
- (3) **NON-NCDOT REQUIREMENTS.** With the exception of the NCDOT, all state and federal entities that control lands within the Falls watershed shall meet the following requirements:
  - (a) For any new development proposed within their jurisdictions that would disturb one quarter acre or more, non-NCDOT state and federal entities shall develop stormwater management plans for submission to and approval by the Division;
  - (b) The non-NCDOT state or federal entity shall include measures to ensure maintenance of best management practices (BMPs) implemented as a result of the provisions in Sub-Item (a) of this Item for the life of the development; and
  - (c) A plan to ensure enforcement and compliance with the provisions in Sub-Item (4) of this Rule for the life of the new development.
- (4) **PLAN APPROVAL REQUIREMENTS.** A developer's stormwater plan shall not be approved unless the following criteria are met:
  - (a) Nitrogen and phosphorus loads contributed by the proposed new development activity shall not exceed the following unit-area mass loading rates for nitrogen and phosphorus, respectively, expressed in units of pounds/acre/year: 2.2 and 0.33. Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline period, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements except to the extent that the developer shall provide stormwater control at least equal to the previous development. Proposed development that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option either to achieve at least the percentage loading reduction objectives stated in 15A NCAC 02B .0275 as applied to nitrogen and phosphorus loading from the previous development for the entire project site, or to meet the loading rate targets described in this item. These requirements shall supersede those identified in 15A NCAC 02B .0104(q). The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Sub-Item (4)(a) of 15A NCAC 02B .0277 or other equivalent method acceptable to the Division;
  - (b) The developer shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite offset measures. Before using an offsite offset option, a development shall implement onsite structural stormwater controls that achieve one of the following levels of reductions:
    - (i) Proposed new development activity disturbing at least one quarter acre but less than one acre of land, except as stated in this Item, shall achieve 30 percent or more

- of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in this item;
- (ii) Except as stated in this Item, proposed new development activity that disturbs one acre of land or more shall achieve 50 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in this Item; or
  - (iii) Proposed development that would replace or expand structures or improvements that existed as of December 2006, the end of the baseline period, and that increases impervious surface within a designated downtown area, regardless of area disturbed, shall achieve 30 percent of the needed load reduction in both nitrogen and phosphorus onsite, and shall meet any requirements for engineered stormwater controls described in this Item;
- (c) Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to comply with the loading rate targets set out in this Item. A developer may use any measure that complies with the requirements of Rules .0240 and .0282 of this Section;
  - (d) Proposed new development subject to NPDES, water supply, and other state-mandated stormwater regulations shall comply with those regulations and with applicable permit limits in addition to the other requirements of this sub-item. Proposed new development in any water supply watershed in the Falls watershed designated WS-II, WS-III, or WS-IV shall comply with the density-based restrictions, obligations, and requirements for engineered stormwater controls, clustering options, operation and maintenance responsibilities, vegetated setbacks, land application, and landfill provisions described in Sub-Items (3)(b)(i) and (3)(b)(ii) of the applicable rule among 15A NCAC 02B .0214 through .0216. Provided, the allowance in water supply watershed rules for 10 percent of a jurisdiction to be developed at up to 70 percent built-upon area without stormwater treatment shall not be available in the Falls watershed;
  - (e) Stormwater systems shall be designed to control and treat at a minimum the runoff generated from all surfaces in the project area by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division, or other at least technically equivalent standards acceptable to the Division;
  - (f) To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, at a minimum, the new development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event;
  - (g) New development may satisfy the requirements of this Rule by meeting the post-development hydrologic criteria set out in Chapter 2 of the *North Carolina Low Impact Development Guidebook* dated June 2009, or the hydrologic criteria in the most recent version of that guidebook; and
  - (h) Proposed new development shall demonstrate compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242.
- (5) NON-NCDOT STAGED AND ADAPTIVE IMPLEMENTATION REQUIREMENTS. For existing development, non-NCDOT state and federal entities shall develop and implement staged load reduction programs for achieving and maintaining nutrient load reductions from existing development based on the standards set out in this Item. Such entities shall submit these load-reducing programs for approval by the Commission that

include the following staged elements and meet the minimum standards for each stage of implementation:

- (a) In Stage I, entities subject to this rule shall implement a load reduction program that provides estimates of, and plans for offsetting by calendar year 2020, nutrient loading increases from lands developed subsequent to the baseline (2006) and not subject to the requirements of the Falls Lake new development stormwater program. For these existing developed lands, the current loading rate shall be compared to the loading rate for these lands prior to development for the acres involved, and the difference shall constitute the load reduction need in annual mass load, in pounds per year. Alternatively, a state or federal entity may assume uniform pre-development loading rates of 2.89 pounds per acre per year N and 0.63 pounds per acre per year P for these lands. The entity shall achieve this stage one load reduction by calendar year 2020. This Stage I program shall meet the criteria defined in Item (4) of 15A NCAC 02B.0278; and
- (b) By January 15, 2021, and every five years thereafter, a state or federal entity located in the Upper Falls Watershed as defined in Item (11) of 15A NCAC 02B .0276 shall submit and begin implementing a Stage II load reduction program or revision designed to achieve the percent load reduction objectives from existing developed lands under its control, that includes timeframes for achieving these objectives and that meets the criteria defined in Items (5) and (6) of this Rule.
- (6) ELEMENTS OF NON-NCDOT LOAD REDUCTION PROGRAMS. A non-NCDOT state or federal entity load reduction program shall address the following elements:
  - (a) State and federal entities in the Eno River and Little River subwatersheds shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce loading from discharging sand filters and malfunctioning septic systems owned or used by state or federal agencies discharging into waters of the State within those subwatersheds;
  - (b) State and federal entities in any Falls subwatershed in which chlorophyll a levels have exceeded 40 ug/L in more than seventy-five percent of the monitoring events in any calendar year shall, as part of their Stage I load reduction programs, begin and continuously implement a program to reduce nutrient loading into the waters of the State within that subwatersheds;
  - (c) The total amount of nutrient loading reductions in Stage I is not increased for state and federal entities by the requirements to add specific program components to address loading from malfunctioning septic systems and discharging sand filters or high nutrient loading levels pursuant to Sub-Items (a) and (b) of this Item;
  - (d) In preparation for implementation of their Stage I and Stage II load reduction programs, state and federal entities shall develop inventories and characterize load reduction potential to the extent that accounting methods allow for the following:
    - (i) Wastewater collection systems;
    - (ii) Discharging sand filter systems, including availability of or potential for central sewer connection;
    - (iii) Properly functioning and malfunctioning septic systems;
    - (iv) Restoration opportunities in utility corridors;
    - (v) Fertilizer management plans for state and federally owned lands;
    - (vi) Structural stormwater practices, including intended purpose, condition, potential for greater nutrient control; and
    - (vii) Wetlands and riparian buffers including potential for restoration opportunities.
  - (e) A state or federal entities load reduction need shall be based on the developed lands owned or used by the state or federal entity within the Falls watershed;
  - (f) Nitrogen and phosphorous loading from existing developed lands, including loading from onsite wastewater treatment systems to the extent accounting methods allow,

- shall be calculated by applying the accounting tool described in Item (13) and shall quantify baseline loads of nitrogen and phosphorus to surface waters from the lands under the entity's control as well as loading changes post-baseline. It shall also calculate target nitrogen and phosphorus loads and corresponding reduction needs;
- (g) Nitrogen and phosphorus loading from existing developed lands, including loading from onsite wastewater treatment systems to the extent accounting methods allow, shall be calculated by applying the accounting tool described in Item (13) of this Rule and shall quantify baseline loads of nitrogen and phosphorus to surface waters from state and federal entities as well as loading changes post-baseline. It shall calculate target nitrogen and phosphorus loads and corresponding load reduction needs;
- (h) The Commission shall recognize reduction credit for implementation of policies and practices implemented after January 1, 2007 and before January 15, 2011, to reduce runoff and discharge of nitrogen and phosphorus per Session Law 2009-486. The load reduction program shall identify specific load-reducing practices implemented subsequent to the baseline period and for which the entity is seeking credit. It shall estimate load reductions for these practices and their anticipated duration using methods provided for in Item (12);
- (i) The program shall include a proposed implementation schedule that includes annual implementation expectations. The load reduction program shall identify the types of activities the state or federal entity intends to implement and types of existing development affected, relative proportions or prioritization of practices, relative magnitude of reductions it expects to achieve from each, and the relative costs and efficiencies of each activity to the extent information is available. The program shall identify the duration of anticipated loading reductions, and may seek activities that provide long-term reductions;
- (j) The load reduction program shall identify anticipated funding mechanisms or sources and discuss steps taken or planned to secure such funding;
- (k) The program shall address the extent of load reduction opportunities intended from the following types of lands:
- (i) Lands owned or otherwise controlled by the state or federal entity; and
- (ii) Lands other than those on which the entity's load reduction need is based as described in this Item, including lands both within and outside its jurisdiction and third party sellers.
- (l) The program shall address the extent of load reduction proposed from, at a minimum, the following stormwater and ecosystem restoration activities:
- (i) Bioretention;
- (ii) Constructed wetland;
- (iii) Sand filter;
- (iv) Filter Strip;
- (v) Grassed swale;
- (vi) Infiltration device;
- (vii) Extended dry detention;
- (viii) Rainwater harvesting system;
- (ix) Treatment of Redevelopment;
- (x) Overtreatment of new development;
- (xi) Removal of impervious surface;
- (xii) Retrofitting treatment into existing stormwater ponds;
- (xiii) Off-line regional treatment systems;
- (xiv) Wetland or riparian buffer restoration; and
- (xv) Reforestation with conservation easement or other protective covenant.
- (m) The program shall evaluate the load reduction potential from the following wastewater activities:
- (i) Creation of surplus relative to an allocation established in 15A NCAC 02B .0279;
- (ii) Expansion of surplus allocation through regionalization;
- (iii) Connection of discharging sand filters and malfunctioning septic



- systems to central sewer or replacement with permitted non-discharge alternatives;
    - (iv) Removal of illegal discharges; and
    - (v) Improvement of wastewater collection systems.
  - (n) A state or federal entity may propose in its load reduction program the use of the following measures in addition to items listed in (l) and (m), or may propose other measures for which it can provide equivalent accounting methods acceptable to the Division:
    - (i) Redirecting runoff away from impervious surfaces;
    - (ii) Soil amendments;
    - (iii) Stream restoration;
    - (iv) Improved street sweeping; and
    - (v) Source control, such as waste and fertilizer controls.
  - (o) The program shall include evaluation of load reduction potential relative to the following factors:
    - (i) Extent of physical opportunities for installation;
    - (ii) Landowner acceptance;
    - (iii) Incentive and education options for improving landowner acceptance;
    - (iv) Existing and potential funding sources and magnitudes;
    - (v) Practice cost-effectiveness (e.g., cost per pound of nutrient removed);
    - (vi) Increase in per capita cost of a non-NCDOT state or federal entity's stormwater management program to implement the program;
    - (vii) Implementation rate without the use of eminent domain; and
    - (viii) Need for and projected role of eminent domain.
- (7) The Commission shall approve a non-NCDOT Stage I load reduction program if it meets the requirements of Items (5) and (6) of this Rule. The Commission shall approve a Stage II load reduction program if it meets the requirements of Items (5) and (6) of this Rule unless the Commission finds that the local non-NCDOT state or federal entity can, through the implementation of reasonable and cost-effective measures not included in the proposed program, meet the Stage II nutrient load reductions required by this Rule by a date earlier than that proposed by the non-NCDOT state or federal entity. If the Commission finds that there are additional or alternative reasonable and cost-effective measures, the Commission may require the non-NCDOT state or federal entity to modify its proposed program to include such measures to achieve the required reductions by the earlier date. If the Commission requires such modifications, the non-NCDOT state or federal entity shall submit a modified program within two months. The Division shall recommend that the Commission approve or disapprove the modified program within three months after receiving the modified program. In determining whether additional or alternative load reduction measures are reasonable and cost effective, the Commission shall consider factors including, but not limited to those identified in Sub-Item (6)(o) of this Rule. The Commission shall not require additional or alternative measures that would require a non-NCDOT state or federal entity to:
  - (a) Install a new stormwater collection system in an area of existing development unless the area is being redeveloped; or
  - (b) Reduce impervious surfaces within an area of existing development unless the area is being redeveloped.
- (8) A non-NCDOT state or federal entity shall have the option of working with the county or counties in which it falls, or with a municipality or municipalities within the same subwatershed, to jointly meet the loading targets from all lands within their combined jurisdictions within a subwatershed. The entity may utilize private or third party sellers. All reductions involving trading with other parties shall meet the requirements of 15A NCAC 02B .0282.
- (9) NCDOT REQUIREMENTS. The NCDOT shall develop a single Stormwater Management Program that will be applicable to the entire Falls watershed and submit this program for approval by the Division according to the standards set forth below. In addition, the program shall, at a minimum, comply with NCDOT's then-current stormwater permit. This program shall:
  - (a) Identify NCDOT stormwater outfalls from Interstate, US, and NC primary routes;
  - (b) Identify and eliminate illegal discharges into the NCDOT's stormwater conveyance system;
  - (c) Establish a program for post-construction stormwater runoff control for new development,

including new and widening NCDOT roads and facilities. The program shall establish a process by which the Division shall review and approve stormwater designs for new NCDOT development projects. The program shall delineate the scope of vested projects that would be considered as existing development, and shall define lower thresholds of significance for activities considered new development. In addition, the following criteria shall apply:

- (i) For new and widening roads, weigh stations, and replacement of existing bridges, compliance with the riparian buffer protection requirements of Rules 15A NCAC 02B .0233 and .0242 shall be deemed as compliance with the purposes of this Rule;
- (ii) New non-road development shall achieve and maintain the nitrogen and phosphorus percentage load reduction objectives established in 15A NCAC 02B .0275 relative to either area-weighted average loading rates of all developable lands as of the baseline period defined in 15A NCAC 02B .0275, or to project-specific pre-development loading rates. Values for area-weighted average loading rate targets for nitrogen and phosphorus, respectively, are expressed in units of pounds per acre per year: 2.2 and 0.33. The NCDOT shall determine the need for engineered stormwater controls to meet these loading rate targets by using the loading calculation method called for in Item (13) of this Rule or other equivalent method acceptable to the Division. Where stormwater treatment systems are needed to meet these targets, they shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. Such systems shall

be assumed to achieve the nutrient removal efficiencies identified in the July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division provided that they meet associated drawdown and other design specifications included in the same document. The NCDOT may propose to the Division nutrient removal rates for practices currently included in the BMP Toolbox required under its NPDES stormwater permit, or may propose revisions to those practices or additional practices with associated nutrient removal rates. The NCDOT may use any such practices approved by the Division to meet loading rate targets identified in this Sub-item. New non-road development shall also control runoff flows to meet the purpose of this Rule regarding protection of the nutrient functions and integrity of receiving waters; and

- (iii) For new non-road development, the NCDOT shall have the option of offsetting part of their nitrogen and phosphorus loads by implementing or funding offsite management measures. Before using an offsite offset option, a development shall implement structural stormwater controls that achieve 50 percent or more of the needed load reduction in both nitrogen and phosphorus loading onsite and shall meet any requirements for engineered stormwater controls described in this Item. Offsite offsetting measures shall achieve at least equivalent reductions in nitrogen and phosphorus loading to the remaining reduction needed onsite to

- comply with the loading rate targets set out in this Item. The NCDOT may use any measure that complies with the requirements of Rules .0240 and .0282 of this Section.
- (d) Establish a program to identify and implement load-reducing opportunities on existing development within the watershed. The long-term objective of this effort shall be for the NCDOT to achieve the nutrient load objectives in 15A NCAC 02B .0275 as applied to existing development under its control, including roads and facilities:
- (i) The NCDOT may achieve the nutrient load reduction objective in 15A NCAC 02B .0275 for existing roadway and non-roadway development under its control by the development of a load reduction program that addresses both roadway and non-roadway development in the Falls watershed. As part of the accounting process described in Item (13) of this Rule, baseline nutrient loads shall be established for roadways and industrial facilities using stormwater runoff nutrient load characterization data collected through the National Pollutant Discharge Elimination System (NPDES) Research Program under NCS0000250 Permit Part II Section G;
  - (ii) The program shall include estimates of, and plans for offsetting, nutrient load increases from lands developed subsequent to the baseline period but prior to implementation of its new development program. It shall include a technical analysis that includes a proposed implementation rate and schedule. This schedule shall provide for proportionate annual progress toward reduction objectives as practicable
- throughout the proposed compliance period. The program shall identify the types of activities NCDOT intends to implement and types of existing roadway and non-roadway development affected, relative proportions or a prioritization of practices, and the relative magnitude of reductions it expects to achieve from each;
- (iii) The program to address roadway and non-roadway development may include stormwater retrofits and other load reducing activities in the watershed including: illicit discharge removal; street sweeping; source control activities such as fertilizer management at NCDOT facilities; improvement of existing stormwater structures; use of rain barrels and cisterns; stormwater capture and reuse; and purchase of nutrient reduction credits;
  - (iv) NCDOT may meet minimum implementation rate and schedule requirements by implementing a combination of at least six stormwater retrofits per year for existing development in the Falls watershed or some other minimum amount based on more accurate reduction estimates developed during the accounting tool development process;
  - (v) To the maximum extent practicable, retrofits shall be designed to treat the runoff generated from all surfaces by one inch of rainfall, and shall conform to the standards and criteria established in the most recent version of the Division-approved NCDOT BMP Toolbox required under NCDOT's NPDES stormwater permit. To establish removal rates for nutrients for individual

- practices described in the Toolbox, NCDOT shall submit technical documentation on the nutrient removal performance of BMPs in the Toolbox for Division approval. Upon approval, NCDOT shall incorporate nutrient removal performance data into the BMP Toolbox. If a retrofit is proposed that is not described in the NCDOT BMP Toolbox, then to the maximum extent practicable, such retrofit shall conform to the standards and criteria set forth in the July 2007 version of the *Stormwater Best Management Practices Manual* published by the Division, or other technically equivalent guidance acceptable to the Division;
- (e) Initiate a "Nutrient Management Education Program" for NCDOT staff and contractors engaged in the application of fertilizers on highway rights of way. The purpose of this program shall be to contribute to the load reduction objectives established in 15A NCAC 02B .0275 through proper application of nutrients, both inorganic fertilizer and organic nutrients, to highway rights of way in the Falls watershed in keeping with the most current state-recognized technical guidance on proper nutrient management; and
  - (f) Address compliance with the riparian buffer protection requirements of 15A NCAC 02B .0233 and .0242 through a Division approval process.
- (10) NON-NCDOT RULE IMPLEMENTATION. For all state and federal entities that control lands within the Falls watershed with the exception of the NCDOT, this Rule shall be implemented as follows:
- (a) Upon Commission approval of the accounting methods required in Item (13) of this Rule, subject entities shall comply with the requirements of Items (3) and (4) of this Rule;
  - (b) By July 15, 2013, the Division shall submit a Stage I model local program to the Commission for approval that embodies the criteria described in Items (5) and (6) of this Rule. The Division shall work in cooperation with subject state and federal entities and other watershed interests in developing this model program, which shall include the following:
    - (i) Methods to quantify load reduction requirements and resulting load reduction assignments for individual entities;
    - (ii) Methods to account for discharging sand filters, malfunctioning septic systems, and leaking collection systems; and
    - (iii) Methods to account for load reduction credits from various activities;
  - (c) Within six months after the Commission's approval of the Stage I model local program, subject entities shall submit load reduction programs that meet or exceed the requirements of Items (5) and (6) of this Rule to the Division for review and preliminary approval and shall begin implementation and tracking of measures to reduce nutrient loads from existing developed lands owned or controlled by the responsible state or federal entity;
  - (d) Within 20 months of the Commission's approval of the Stage I model local program, the Division shall provide recommendations to the Commission on existing development load reduction programs. The Commission shall either approve the programs or require changes based on the standards set out in Item (4) of this Rule. Should the Commission require changes, the applicable state or federal entity shall have two months to submit revisions, and the Division shall provide follow-up recommendations to the Commission within two months after receiving revisions;
  - (e) Within three months after the Commission's approval of a Stage I existing development load reduction program, the affected entity shall complete adoption of and begin implementation of its existing development Stage I load reduction program;
  - (f) Upon implementation of the programs required under Item (4) of

- this Rule, state and federal entities subject to this Rule shall provide annual reports to the Division documenting their progress in implementing those requirements within three months following each anniversary of program implementation date until such time the Commission determines they are no longer needed to ensure maintenance of reductions or that standards are protected. State and federal entities shall indefinitely maintain and ensure performance of implemented load-reducing measures;
- (g) By January 15, 2021 and every five years thereafter until either accounting determines load reductions have been achieved, standards are met, or the Commission takes other actions per 15A NCAC 02B .0275, state and federal entities located in the upper Falls watershed as defined in Item (3) of 15A NCAC 02B .0275 shall submit and begin implementation of Stage II load reduction program or program revision to the Division. Within nine months after submittal, the division shall make recommendations to the Commission on approval of these programs. The Commission shall either approve the programs or require changes based on the standards set out in this Rule. Should the Commission require changes, the applicable state or federal entity shall submit revisions within two months, and the Division shall provide follow-up recommendations to the Commission within three months after receiving revisions. Upon approval, the state or federal entity shall adjust implementation based on its approved program;
  - (h) A state or federal entity may, at any time after commencing implementation of its load reduction program, submit program revisions to the Division for approval based on identification of more cost-effective strategies or other factors not originally recognized;
  - (i) Once either load reductions are achieved per annual reporting or water quality standards are met in the lake per 15A NCAC 02B .0275, state and federal entities shall submit programs to ensure no load increases and shall report annually per Sub-Item (10)(f) on compliance with no increases and take additional actions as necessary; and
  - (j) Beginning January 2016 and every five years thereafter, the Division shall review the accounting methods stipulated under Sub-Item (10)(a) to determine the need for revisions to those methods and to loading reductions assigned using those methods. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as nutrient removal efficiencies.
- (11) **NCDOT RULE IMPLEMENTATION.** For the NCDOT, this Rule, shall be implemented as follows:
- (a) By July 2013, the NCDOT shall submit the Stormwater Management Program for the Falls watershed to the Division for approval. This Program shall meet or exceed the requirements in Item (9) of this Rule;
  - (b) By January 15, 2014, the Division shall request the Commission's approval of the NCDOT Stormwater Management Program;
  - (c) By January 15, 2014, the NCDOT shall implement the Commission-approved Stormwater Management Program; and
  - (d) Upon implementation, the NCDOT shall submit annual reports to the Division summarizing its activities in implementing each of the requirements in Item (9) of this Rule. This annual reporting may be incorporated into annual reporting required under NCDOT's NPDES stormwater permit.
- (12) **RELATIONSHIP TO OTHER REQUIREMENTS.** A party may in its program submittal request that the Division accept its implementation of another stormwater program or programs, such as NPDES stormwater requirements, as satisfying one or more of the requirements set forth in Items (4) or (5) of this Rule. The Division shall provide determination on acceptability of any such alternatives prior to requesting Commission approval of programs under this Rule. The party shall include in its program

- (13) submittal technical information demonstrating the adequacy of the alternative requirements.
- (13) **ACCOUNTING METHODS.** By July 15, 2012, the Division shall submit a nutrient accounting framework to the Commission for approval. This framework shall include tools for quantifying load reduction assignments on existing development for parties subject to this Rule, load reduction credits from various activities on existing developed lands, and a tool that will allow subject parties to account for loading from new and existing development and loading changes due to BMP implementation. The Division shall work in cooperation with subject parties and other watershed interests in developing this framework. The Division shall periodically revisit these accounting methods to determine the need for revisions to both the methods and to existing development load reduction assignments made using the methods set out in this Rule. It shall do so no less frequently than every 10 years. Its review shall include values subject to change over time independent of changes resulting from implementation of this Rule, such as untreated export rates that may change with changes in atmospheric deposition. It shall also review values subject to refinement, such as BMP nutrient removal efficiencies.

*History Note: Authority G.S. 143-214.1; 143-214.3; 143-214.5; 143-214.7; 143-215.1; 143-215.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;*

*Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

**15A NCAC 02B .0282 FALLS WATER SUPPLY  
NUTRIENT STRATEGY: OPTIONS FOR OFFSETTING  
NUTRIENT LOADS**

**PURPOSE.** This Rule provides parties subject to other rules within the Falls nutrient strategy with options for meeting rule requirements by obtaining or buying credit for nutrient load-reducing activities conducted by others (sellers). It provides the potential for parties who achieve excess load reductions under the Falls nutrient strategy to recover certain costs by selling such credits, and it provides opportunity for third parties to produce reductions and sell credits. Overall it provides the potential for more cost-effective achievement of strategy reduction objectives. Accounting is required to ensure and track the availability and use of trading credits. This accounting will be compared against compliance accounting required under other rules of the Falls nutrient strategy to ensure that crediting is properly accounted for. This Rule furthers the adaptive management intent of the strategy to protect the water supply, aquatic life, and recreational uses of Falls Reservoir. The

- minimum requirements for the exchange of load reduction credits are:
- (1) **PREREQUISITES.** The following buyers shall meet applicable criteria identified here and in rules imposing reduction requirements on them before utilizing the option outlined in this Rule:
- (a) Agriculture Rule .0280: Owners of agricultural land shall receive approval from the Watershed Oversight Committee to obtain offsite credit pursuant to the conditions of Sub-Item (7)(b)(vii) of Rule .0280;
  - (b) New Development Rule .0277: Developers shall meet onsite reduction requirements enumerated in Sub-Item (4)(b) of Rule .0277 before obtaining offsite credit;
  - (c) Wastewater Rule .0279: New and expanding dischargers shall first make all reasonable efforts to obtain allocation from existing dischargers as stated in Sub-Items (7)(a)(ii) and (8)(a)(ii), respectively of Rule .0279; and
  - (d) State and Federal Entities Stormwater Rule .0281:
    - (i) Non-DOT entities shall meet onsite new development reduction requirements enumerated in Sub-Item (4)(b) of Rule .0281; and
    - (ii) NC DOT shall meet onsite non-road new development reduction requirements enumerated in Sub-Item (9)(c) of Rule .0281 before obtaining offsite credit.
- (2) The party seeking approval to sell load reduction credits pursuant to this Rule shall demonstrate to the Division that such reductions meet the following criteria:
- (a) Load reductions eligible for credit shall not include reductions that result from actions required to mitigate nutrient load-increasing actions under any regulation, except where a rule in this Section expressly allows such credit; and
  - (b) The party seeking to sell credits shall define the nature of the activities that would produce reductions and define the magnitude and duration of those reductions to the Division, including addressing the following items:
    - (i) Quantify and account for the relative uncertainties in reduction need estimates and load reduction estimates;

- (ii) Ensure that load reductions shall take place at the time and for the duration in which the reduction need occurs; and
  - (iii) Demonstrate means adequate for assuring the achievement and claimed duration of load reduction, including the cooperative involvement of any other involved parties;
- (c) Geographic Restrictions. Eligibility to use load reductions as credit is based on the following geographic criteria:
  - (i) Impacts in the upper Falls watershed as defined in Item (19) of 15A NCAC 02B .0276 may be offset only by load reductions achieved in the upper Falls watershed; and
  - (ii) Impacts in the lower Falls watershed as defined in Item (20) of 15A NCAC 02B .0276 shall be offset by load reductions achieved anywhere within the Falls watershed.
- (3) The party seeking approval to sell load reduction credits shall provide for accounting and tracking methods that ensure genuine, accurate, and verifiable achievement of the purposes of this Rule, and shall otherwise meet the requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments. The Division shall work cooperatively with interested parties at their request to develop such accounting and tracking methods to support the requirements of Item (2) of this Rule.
- (4) Local governments have the option of combining their reduction needs from NPDES dischargers assigned allocations in 15A NCAC 02B .0279 and existing development as described in 15A NCAC 02B .0278, including loads from properly functioning and malfunctioning septic systems and discharging sand filters, into one reduction and allocation requirement and meet them jointly.
- (5) Proposals for use of offsetting actions as described in this Rule shall become effective after determination by the Director that the proposal contains adequate scientific or engineering standards or procedures necessary to achieve and account for load reductions as required under Items (2) and (3) of this Rule, and that specific accounting tools required for

these purposes in individual rules have been adequately established. In making this determination, the Director shall also evaluate the potential for load offset elsewhere that results in localized adverse water quality impacts that contribute to impairment of classified uses of the affected waters.

- (6) A party seeking to purchase nutrient offset credit from the NC Ecosystem Enhancement Program or from a public or private seller of reduction credit shall meet the applicable requirements of Rule .0240 of this Section, which establishes procedural requirements for nutrient offset payments, in addition to applicable requirements of this Rule. Requirements of Rule .0240 include, but are not limited to, the requirement for non-governmental entities to purchase credit from a provider other than the NC Ecosystem Enhancement Program if such credit is available.
- (7) The Watershed Oversight Committee under Rule 15A NCAC 02B .0280 may satisfy the seller requirements of Items (2) and (3) of this Rule and the trading provisions of Rule .0280 for individual agricultural land owners by submitting to the Division for approval a trading program, or revisions to such a program, that demonstrates how individual trades shall meet the requirements of this Rule and Rule .0280, and by subsequently including in annual reports required under Rule .0280 separate tracking and accounting for such trades.

*History Note: Authority G S. 143-214.1; 1432-214.3; 143-214.5; 143-214.7; 143-215.1; 1432-15.3; 143-215.3(a)(1); 143-215.6A; 143-215.6B; 143-215.6C; 143-215.8B; 143B-282(c); 143B-282(d); S.L. 2005-190; S.L. 2006-259; S.L. 2009-337; S.L. 2009-486;*

*Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

**15A NCAC 02B .0315 NEUSE RIVER BASIN**

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

- (1) the Internet at <http://h2o.enr.state.nc.us/csu/>; and
- (2) the North Carolina Department of Environment and Natural Resources:
  - (A) Raleigh Regional Office  
3800 Barrett Drive  
Raleigh, North Carolina;
  - (B) Washington Regional Office  
943 Washington Square Mall  
Washington, North Carolina;
  - (C) Wilmington Regional Office  
127 Cardinal Drive  
Wilmington, North Carolina;

(D) Division of Water Quality  
Central Office  
512 North Salisbury Street  
Raleigh, North Carolina.

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

- (1) March 1, 1977 see Paragraph (c) of this Rule;
- (2) December 13, 1979 see Paragraph (d) of this Rule;
- (3) September 14, 1980 see Paragraph (e) of this Rule;
- (4) August 9, 1981 see Paragraph (f) of this Rule;
- (5) January 1, 1982 see Paragraph (g) of this Rule;
- (6) April 1, 1982 see Paragraph (h) of this Rule;
- (7) December 1, 1983 see Paragraph (i) of this Rule;
- (8) January 1, 1985 see Paragraph (j) of this Rule;
- (9) August 1, 1985 see Paragraph (k) of this Rule;
- (10) February 1, 1986 see Paragraph (l) of this Rule;
- (11) May 1, 1988 see Paragraph (m) of this Rule;
- (12) July 1, 1988 see Paragraph (n) of this Rule;
- (13) October 1, 1988 see Paragraph (o) of this Rule;
- (14) January 1, 1990 see Paragraph (p) of this Rule;
- (15) August 1, 1990;
- (16) December 1, 1990 see Paragraph (q) of this Rule;
- (17) July 1, 1991 see Paragraph (r) of this Rule;
- (18) August 3, 1992;
- (19) April 1, 1994 see Paragraph (t) of this Rule;
- (20) July 1, 1996 see Paragraph (u) of this Rule;
- (21) September 1, 1996 see Paragraph (v) of this Rule;
- (22) April 1, 1997 see Paragraph (w) of this Rule;
- (23) August 1, 1998 see Paragraph (x) of this Rule;
- (24) August 1, 2002 see Paragraph (y) of this Rule;
- (25) July 1, 2004 see Paragraph (z) of this Rule;
- (26) November 1, 2007 see Paragraph (aa) of this Rule;
- (27) January 15, 2011 see Paragraph (bb) of this Rule.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective March 1, 1977 with the a total of 179 streams in the Neuse River Basin reclassified from Class D to Class C.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective December 13, 1979 as follows: Little River [Index No. 27-57-(21.5)] from source to the dam at Wake Forest Reservoir has been reclassified from Class A-II to Class A-II and B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective September 14, 1980 as follows: The Eno River from Durham County State Road 1003 to U.S Highway 501 [Index No. 27-2-(16)] was reclassified from Class C and B to Class A-II and B.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 9,

1981 to remove the swamp water designation from all waters designated SA in the Neuse River Basin.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1982 as follows: The Trent River from the mouth of Brice Creek to the Neuse River [Index No. 27-101-(39)] was reclassified from Class SC Sw to Class SB Sw.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective April 1, 1982 as follows:

- (1) Longview Branch from source to Crabtree Creek [Index No. 27-33-(21)] was reclassified from Class C1 to Class C.
- (2) Watson Branch from source to Walnut Creek [Index No. 27-34-(8)] was reclassified from Class C1 to Class C.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1983 to add the Nutrient Sensitive Waters classification to the entire river basin above Falls dam.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1985 as follows: Nobel Canal from source to Swift Creek [Index No. 27-97-(2)] was reclassified from Class C1 to Class C.

(k) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective August 1, 1985 as follows:

- (1) Southeast Prong Beaverdam Creek from source to Beaverdam Creek [Index No. 27-33-15(2)] was reclassified from Class C1 to Class C.
- (2) Pigeon House branch from source to Crabtree Creek [Index No. 27-33-(18)] was reclassified from Class C1 to Class C.
- (3) Rocky Branch from source to Pullen Road [Index No. 27-34-6-(1)] was reclassified from Class C1 to Class C.
- (4) Chavis Branch from source to Watson Branch [Index No. 27-37-8-1] was reclassified from Class C1 to Class C.

(l) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective February 1, 1986 to reclassify all Class A-I and Class A-II streams in the Neuse River Basin to WS-I and WS-III.

(m) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective May 1, 1988 to add the Nutrient Sensitive Waters classification to the waters of the Neuse River Basin below the Falls Lake dam.

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

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.



- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.
- (o) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:
- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III B.
  - (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.
- (p) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:
- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
  - (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class SA NSW ORW.
- (q) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.
- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
  - (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
  - (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.
- (r) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.
- (s) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.
- (t) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:
- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
  - (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV B NSW.
  - (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III B NSW.
- (u) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III NSW and WS-III NSW CA to class C NSW.
- (v) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective September 1, 1996 with the reclassification of an unnamed tributary to Hannah Creek (Tuckers Lake) [Index No. 27-52-6-0.5] from Class C NSW to Class B NSW.
- (w) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1997 with the reclassification of the Neuse River (including tributaries) from mouth of Marks Creek to a point 1.3 miles downstream of Johnston County State Road 1908 to class WS-IV NSW and from a point 1.3 miles downstream of Johnston County State Road 1908 to the Johnston County Water Supply intake (located 1.8 miles downstream of Johnston County State Road 1908) to class WS-IV CA NSW [Index Nos. 27-(36) and 27-(38.5)].
- (x) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 1998 with the revision of the Critical Area and Protected Area boundaries surrounding the Falls Lake water supply reservoir. The revisions to these boundaries is the result of the Corps of Engineers raising the lake's normal pool elevation. The result of these revisions is the Critical and Protected Area boundaries (classifications) may extend further upstream than the current designations. The Critical Area for a WS-IV reservoir is defined as .5 miles and draining to the normal pool elevation. The Protected Area for a WS-IV reservoir is defined as 5 miles and draining to the normal pool elevation. The normal pool elevation of the Falls Lake reservoir

has changed from 250.1 feet mean sea level (msl) to 251.5 feet msl.

(y) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 1, 2002 with the reclassification of the Neuse River [portions of Index No. 27-(56)], including portions of its tributaries, from a point 0.7 mile downstream of the mouth of Coxes Creek to a point 0.6 mile upstream of Lenoir County proposed water supply intake from Class C NSW to Class WS-IV NSW and from a point 0.6 mile upstream of Lenoir County proposed water supply intake to Lenoir proposed water supply intake from Class C NSW to Class WS-IV CA NSW.

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

(aa) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective November 1, 2007 with the reclassification of the entire watershed of Deep Creek (Index No. 27-3-4) from source to Flat River from Class WS-III NSW to Class WS-III ORW NSW.

(bb) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin is amended effective January 15, 2011 with the reclassification of all Class C NSW waters and all Class B NSW waters upstream of the dam at Falls Reservoir from Class C NSW and Class B NSW to Class WS-V NSW and Class WS-V & B NSW, respectively. All waters within the Falls Watershed are within a designated Critical Water Supply Watershed and are subject to a special management strategy specified in Rules 15A NCAC 02B .0275 through .0283.

*History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1);*

*Eff. February 1, 1976;*

*Amended Eff. November 1, 2007; July 1, 2004 (see SL 2001-361); August 1, 2002; August 1, 1998; April 1, 1997; September 1, 1996; July 1, 1996; April 1, 1994; August 3, 1992; July 1, 1991;*

*Amended Eff. January 15, 2011 (this permanent rule replaces the temporary rule approved by the RRC on December 16, 2010).*

#### **15A NCAC 02D .0530 PREVENTION OF SIGNIFICANT DETERIORATION**

(a) The purpose of the Rule is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.

(b) For the purposes of this Rule the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 apply except the definition of "baseline actual emissions." For the purposes of this Rule:

(1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;

(ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;

(iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or

- maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;
- (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
- (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and
- (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;
- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
- (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units
- in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;
- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) is seven years;
- (3) The limitation specified in 40 CFR 51.166(b)(15)(ii) does not apply; and
- (4) Particulate matter PM<sub>2.5</sub> significant levels in 40 CFR 51.166(b)(23)(i) are incorporated by reference except as otherwise provided in this Rule. A net emission increase or the potential of a source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tons per year. Sulfur dioxide and nitrogen oxides are precursor to PM<sub>2.5</sub> in all attainment and unclassifiable areas. Volatile organic compounds and ammonia are not significant precursors to PM<sub>2.5</sub>.
- (c) All areas of the State are classified as Class II except that the following areas are Class I:
- (1) Great Smoky Mountains National Park;
- (2) Joyce Kilmer Slickrock National Wilderness Area;
- (3) Linville Gorge National Wilderness Area;
- (4) Shining Rock National Wilderness Area; and
- (5) Swanquarter National Wilderness Area.
- (d) Redesignations of areas to Class I or II may be submitted as state proposals to the Administrator of the Environmental Protection Agency (EPA), if the requirements of 40 CFR 51.166(g)(2) are met. Areas may be proposed to be redesignated as Class III, if the requirements of 40 CFR 51.166(g)(3) are met. Redesignations may not, however, be proposed which would violate the restrictions of 40 CFR 51.166(e). Lands within the boundaries of Indian Reservations may be redesignated only by the appropriate Indian Governing Body.
- (e) In areas designated as Class I, II, or III, increases in pollutant concentration over the baseline concentration shall be limited to the values set forth in 40 CFR 51.166(c). However, concentration of the pollutant shall not exceed standards set forth in 40 CFR 51.166(d).
- (f) Concentrations attributable to the conditions described in 40 CFR 51.166(f)(1) shall be excluded in determining compliance with a maximum allowable increase. However, the exclusions referred to in 40 CFR 51.166(f)(1)(i) or (ii) shall be limited to five years as described in 40 CFR 51.166(f)(2).
- (g) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the

language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).

(h) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-133.6 shall install best available control technology for NO<sub>x</sub> and SO<sub>2</sub>, regardless of applicability of the rest of this Rule.

(i) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.

(j) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

(k) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(l) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(m) Volatile organic compounds exempted from coverage in 40 CFR 51.100(s) shall be exempted when calculating source applicability and control requirements under this Rule.

(n) The degree of emission limitation required for control of any air pollutant under this Rule shall not be affected by:

- (1) that amount of a stack height, not in existence before December 31, 1970, that exceeds good engineering practice; or
- (2) any other dispersion technique not implemented before then.

(o) A substitution or modification of a model as provided for in 40 CFR 51.166(l) is subject to public comment procedures in accordance with the requirements of 40 CFR 51.102.

(p) Permits may be issued on the basis of innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(q) If a source to which this Rule applies impacts an area designated Class I by requirements of 40 CFR 51.166(e), notice to EPA shall be provided as set forth in 40 CFR 51.166(p)(1). If the Federal Land Manager presents a demonstration described in 40 CFR 51.166(p)(3) during the public comment period or

public hearing to the Director and if the Director concurs with this demonstration, the permit application shall be denied. Permits may be issued on the basis that the requirements for variances as set forth in 40 CFR 51.166(p)(4), (p)(5) and (p)(7), or (p)(6) and (p)(7) have been satisfied.

(r) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(s) Approval of an application with regard to the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(t) When a source or modification is subject to this Rule the following procedures apply:

- (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;
- (2) When a source or modification may affect visibility of a Class I area the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days prior to the publication of notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (3) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the application, an explanation of his decision or notice as to where the explanation can be obtained; and
- (4) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

(u) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant

deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(v) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that as of May 16, 2008 and does not include any subsequent amendments or editions to the referenced material.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;*

*Eff. June 1, 1981;*

*Amended Eff. December 1, 1992; August 1, 1991;*

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

*Amended Eff. January 2, 2011; September 1, 2010; May 1, 2008; July 28, 2006; July 1, 1997; February 1, 1995; July 1, 1994.*

#### **15A NCAC 02D .0531 SOURCES IN NONATTAINMENT AREAS**

(a) For the purpose of this Rule the definitions contained in 40 CFR 51.165(a)(1) and 40 CFR 51.301 apply except the

definition of "baseline actual emissions." For the purposes of this Rule:

- (1) "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Parts (A) through (C) of this Subparagraph:

(A) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following apply:

- (i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;
- (ii) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
- (iii) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent

- with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;
- (iv) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
- (v) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant; and
- (vi) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparts (ii) and (iii) of this Part;
- (B) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
- (C) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Part (A) of this Subparagraph, and for a new emissions unit in accordance with the procedures contained in Part (B) of this Subparagraph;
- (2) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.165(a)(1)(vi)(C)(1) is seven years; and
- (3) Particulate matter PM<sub>2.5</sub> significant levels in 40 CFR 51.165(a)(1)(x)(A) are incorporated by reference except as otherwise provided in this Rule. A net emission increase or the potential of a source to emit nitrogen oxide emissions shall be significant if the rate of emissions would equal or exceed 140 tpy. Sulfur dioxide and nitrogen oxides are precursor to PM<sub>2.5</sub> in all nonattainment areas. Volatile organic compounds and ammonia are not significant precursors to PM<sub>2.5</sub>.
- (b) Redesignation to Attainment. If any county or part of a county to which this Rule applies is later designated in 40 CFR 81.334 as attainment, all sources in that county subject to this Rule before the redesignation date shall continue to comply with this Rule.
- (c) Applicability. 40 CFR 51.165(a)(2) is incorporated by reference. This Rule applies to areas designated as nonattainment in 40 CFR 81.334, including any subsequent amendments or editions.
- (d) This Rule is not applicable to:
- (1) complex sources of air pollution regulated only under Section .0800 of this Subchapter and not under any other rule in this Subchapter;
  - (2) emission of pollutants at the new major stationary source or major modification located in the nonattainment area that are pollutants other than the pollutant or pollutants for which the area is nonattainment. (A major stationary source or major modification that is major for volatile organic compounds or nitrogen oxides is also major for ozone.);
  - (3) emission of pollutants for which the source or modification is not major;
  - (4) a new source or modification that qualifies for exemption under the provision of 40 CFR 51.165(a)(4); or
  - (5) emission of compounds listed under 40 CFR 51.100(s) as having been determined to have negligible photochemical reactivity except carbon monoxide.
- (e) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.
- (f) To issue a permit to a source to which this Rule applies, the Director shall determine that the source meets the following requirements:
- (1) The new major stationary source or major modification will emit the nonattainment pollutant at a rate no more than the lowest achievable emission rate;

- (2) The owner or operator of the proposed new major stationary source or major modification has demonstrated that all major stationary sources in the State that are owned or operated by this person (or any entity controlling, controlled by, or under common control with this person) are subject to emission limitations and are in compliance, or on a schedule for compliance that is federally enforceable or contained in a court decree, with all applicable emission limitations and standards of this Subchapter that EPA has authority to approve as elements of the North Carolina State Implementation Plan for Air Quality;
- (3) The owner or operator of the proposed new major stationary source or major modification will obtain sufficient emission reductions of the nonattainment pollutant from other sources in the nonattainment area so that the emissions from the new major source and associated new minor sources will be less than the emissions reductions by a ratio of at least 1.00 to 1.15 for volatile organic compounds and nitrogen oxides and by a ratio of less than one to one for carbon monoxide. The baseline for this emission offset shall be the actual emissions of the source from which offset credit is obtained. Emission reductions shall not include any reductions resulting from compliance (or scheduled compliance) with applicable rules in effect before the application. The difference between the emissions from the new major source and associated new minor sources of carbon monoxide and the emission reductions shall be sufficient to represent reasonable further progress toward attaining the National Ambient Air Quality Standards. The emissions reduction credits shall also conform to the provisions of 40 CFR 51.165(a)(3)(ii)(A) through (G) and (J); and
- (4) The North Carolina State Implementation Plan for Air Quality is being carried out for the nonattainment area in which the proposed source is located.

(g) New natural gas-fired electrical utility generating units for which cost recovery is sought pursuant to G. S. 62-133.6 shall install lowest achievable emission rate technology for NO<sub>x</sub> and SO<sub>2</sub>, regardless of the applicability of the rest of this Rule.

(h) 40 CFR 51.165(f) is incorporated by reference except that 40 CFR 51.165(f)(10)(iv)(A) is changed to read: "If the emissions level calculated in accordance with Paragraph (f)(6) of this Section is equal to or greater than 80 percent of the PAL level, the Director shall renew the PAL at the same level." 40 CFR 51.165(f)(10)(iv)(B) is not incorporated by reference.

(i) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then

the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.

(j) To issue a permit to a source of a nonattainment pollutant, the Director shall determine, in accordance with Section 173(a)(5) of the Clean Air Act and in addition to the other requirements of this Rule, that an analysis (produced by the permit applicant) of alternative sites, sizes, production processes, and environmental control techniques for the source demonstrates that the benefits of the source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(k) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".

(l) Approval of an application regarding the requirements of this Rule does not relieve the owner or operator of the responsibility to comply with applicable provisions of other rules of this Chapter and any other requirements under local, state, or federal law.

(m) Except as provided in 40 CFR 52.28(c)(6), for a source or modification subject to this Rule the following procedures shall be followed:

- (1) Notwithstanding any other provisions of this Paragraph, the Director shall, no later than 60 days after receipt of an application, notify the Federal Land Manager with the U.S. Department of Interior and U.S. Department of Agriculture of an application from a source or modification subject to this Rule;
- (2) The owner or operator of the source shall provide an analysis of the impairment to visibility that would occur because of the source or modification and general commercial, industrial and other growth associated with the source or modification;
- (3) When a source or modification may affect the visibility of a Class I area the Director shall provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application. The notification shall be at least 30 days before the publication of the notice for public comment on the application. The notification shall include a copy of all information relevant to the permit application including an analysis provided by the source of the potential impact of the proposed source on visibility;
- (4) The Director shall consider any analysis concerning visibility impairment performed by the Federal Land Manager if the analysis is received within 30 days of notification. If the Director finds that the analysis of the Federal Land Manager fails to demonstrate to his satisfaction that an adverse impact on visibility will result in the Class I area, the Director shall provide in the notice of public hearing on the

- application, an explanation of his decision or notice where the explanation can be obtained;
- (5) The Director shall issue permits only to those sources whose emissions will be consistent with making reasonable progress, as defined in Section 169A of the Clean Air Act, toward the national goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class I areas when the impairment results from manmade air pollution. In making the decision to issue a permit, the Director shall consider the cost of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source; and
  - (6) The Director may require monitoring of visibility in or around any Class I area by the proposed new source or modification when the visibility impact analysis indicates possible visibility impairment.

The requirements of this Paragraph do not apply to nonprofit health or nonprofit educational institutions.

(n) If the owner or operator of a source is using projected actual emissions to avoid applicability of nonattainment new source review, the owner or operator shall notify the director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.165(a)(1)(xxviii)(B)(3);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a nonattainment new source review evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.165(a)(6)(v)(A) through (C). The owner or operator shall make the information documented and maintained under this Paragraph available to

the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(o) The reference to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. Except for 40 CFR 81.334, the version of the CFR incorporated in this Rule is that as of May 16, 2008 and does not include any subsequent amendments or editions to the referenced material.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.108(b);*

*Eff. June 1, 1981;*

*Amended Eff. December 1, 1993; December 1, 1992;*

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

*Amended Eff. January 2, 2011; September 1, 2010; May 1, 2008; May 1, 2005; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994.*

#### **15A NCAC 02D .0544 PREVENTION OF SIGNIFICANT DETERIORATION REQUIREMENTS FOR GREENHOUSE GASES**

(a) The purpose of this Rule is to implement a program for the prevention of significant deterioration of air quality for greenhouse gases as required by 40 CFR 51.166. For purposes of greenhouse gases, the provisions of this Rule shall apply rather than the provisions of Rule .0530 of this Section. For all other regulated NSR pollutants, the provisions of Rule .0530 of this Section apply.

(b) For the purposes of this Rule, the definitions contained in 40 CFR 51.166(b) and 40 CFR 51.301 shall apply except the definition of "baseline actual emissions." "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated new source review (NSR) pollutant, as determined in accordance with Subparagraphs (1) through (3) of this Paragraph:

- (1) For an existing emissions unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Division for a permit required under this Rule. The Director shall allow a different time period, not to exceed 10 years immediately preceding the date that a complete permit application is received by the Division, if the owner or operator demonstrates that it is more representative of normal source operation. For the purpose of determining baseline actual emissions, the following shall apply:

- (A) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions;



- (B) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period;
  - (C) For an existing emission unit (other than an electric utility steam generating unit), the average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply. However, if the State has taken credit in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) for an emission limitation that is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under part 63 of the Code of Federal Regulations, the baseline actual emissions shall be adjusted to account for such emission reductions;
  - (D) For an electric utility steam generating unit, the average rate shall be adjusted downward to reflect any emissions reductions under G.S. 143-215.107D and for which cost recovery is sought pursuant to G.S. 62-133.6;
  - (E) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. A different consecutive 24-month period for each regulated NSR pollutant can be used for each regulated NSR pollutant; and
  - (F) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Parts (B) and (C) of this Subparagraph;
- (2) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit; and
- (3) For a plantwide applicability limit (PAL) for a stationary source, the baseline actual emissions shall be calculated for existing emissions units in accordance with the procedures contained in Subparagraph (1) of this Paragraph and for a new emissions unit in accordance with the procedures contained in Subparagraph (2) of this Paragraph.
    - (c) In the definition of "net emissions increase," the reasonable period specified in 40 CFR 51.166(b)(3)(ii) shall be seven years.
    - (d) The limitation specified in 40 CFR 51.166(b)(15)(ii) shall not apply.
    - (e) Major stationary sources and major modifications shall comply with the requirements contained in 40 CFR 51.166(i) and (a)(7) and by extension in 40 CFR 51.166(j) through (o) and (w). The transition provisions allowed by 40 CFR 52.21 (i)(11)(i) and (ii) and (m)(1)(vii) and (viii) are hereby adopted under this Rule. The minimum requirements described in the portions of 40 CFR 51.166 referenced in this Paragraph are hereby adopted as the requirements to be used under this Rule, except as otherwise provided in this Rule. Wherever the language of the portions of 40 CFR 51.166 referenced in this Paragraph speaks of the "plan," the requirements described therein shall apply to the source to which they pertain, except as otherwise provided in this Rule. Whenever the portions of 40 CFR 51.166 referenced in this Paragraph provide that the State plan may exempt or not apply certain requirements in certain circumstances, those exemptions and provisions of nonapplicability are also hereby adopted under this Rule. However, this provision shall not be interpreted so as to limit information that may be requested from the owner or operator by the Director as specified in 40 CFR 51.166(n)(2).
    - (f) 40 CFR 51.166(w)(10)(iv)(a) is changed to read: "If the emissions level calculated in accordance with Paragraph (w)(6) of this Section is equal to or greater than 80 percent of the PAL [plant wide applicability limit] level, the Director shall renew the PAL at the same level." 40 CFR 51.166(w)(10)(iv)(b) is not incorporated by reference.
    - (g) 15A NCAC 02Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the sources to which this Rule applies shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.
    - (h) When a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification to emit a pollutant, such as a restriction on hours of operation, then the provisions of this Rule shall apply to the source or modification as though construction had not yet begun on the source or modification.
    - (i) The provisions of 40 CFR 52.21(r)(2) regarding the period of validity of approval to construct are incorporated by reference except that the term "Administrator" is replaced with "Director".
    - (j) Permits may be issued based on innovative control technology as set forth in 40 CFR 51.166(s)(1) if the requirements of 40 CFR 51.166(s)(2) have been met, subject to the condition of 40 CFR 51.166(s)(3), and with the allowance set forth in 40 CFR 51.166(s)(4).

(k) A permit application subject to this Rule shall be processed in accordance with the procedures and requirements of 40 CFR 51.166(q). Within 30 days of receipt of the application, applicants shall be notified if the application is complete as to initial information submitted. Commencement of construction before full prevention of significant deterioration approval is obtained constitutes a violation of this Rule.

(l) Approval of an application with regard to the requirements of this Rule shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of other rules of this Subchapter or Subchapter 02Q of this Title and any other requirements under local, state, or federal law.

(m) If the owner or operator of a source is using projected actual emissions to avoid applicability of prevention of significant deterioration requirements, the owner or operator shall notify the Director of the modification before beginning actual construction. The notification shall include:

- (1) a description of the project;
- (2) identification of sources whose emissions could be affected by the project;
- (3) the calculated projected actual emissions and an explanation of how the projected actual emissions were calculated, including identification of emissions excluded by 40 CFR 51.166(b)(40)(ii)(c);
- (4) the calculated baseline actual emissions and an explanation of how the baseline actual emissions were calculated; and
- (5) any netting calculations if applicable.

If upon reviewing the notification, the Director finds that the project will cause a prevention of significant deterioration evaluation, then the Director shall notify the owner or operator of his findings. The owner or operator shall not make the modification until it has received a permit issued pursuant to this Rule. If a permit revision is not required pursuant to this Rule, the owner or operator shall maintain records of annual emissions in tons per year, on a calendar year basis related to the modifications for 10 years following resumption of regular operations after the change if the project involves increasing the emissions unit's design capacity or its potential to emit the regulated NSR pollutant; otherwise these records shall be maintained for five years following resumption of regular operations after the change. The owner or operator shall submit a report to the Director within 60 days after the end of each year during which these records must be generated. The report shall contain the items listed in 40 CFR 51.166(r)(6)(v)(a) through (c). The owner or operator shall make the information documented and maintained under this Paragraph available to the Director or the general public pursuant to the requirements in 40 CFR 70.4(b)(3)(viii).

(n) The references to the Code of Federal Regulations (CFR) in this Rule are incorporated by reference unless a specific reference states otherwise. The version of the CFR incorporated in this Rule is that published in the Federal Register June 3, 2010 and effective August 2, 2010 and does not include any subsequent amendments or editions to the referenced material. This Rule is applicable as of its effective date in accordance with 40 CFR 51.166(b)(48) and (b)(49)(iv) and (v).

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(5); 143-215.107(a)(7); 143-215.108(b); 150B-21.6;

*Eff. Pending Legislative Review.*

## **15A NCAC 02D .1206 HOSPITAL, MEDICAL, AND INFECTIOUS WASTE INCINERATORS**

(a) Applicability. This Rule applies to any hospital, medical, and infectious waste incinerator (HMIWI), except:

- (1) any HMIWI required to have a permit under Section 3005 of the Solid Waste Disposal Act;
- (2) any pyrolysis unit;
- (3) any cement kiln firing hospital waste or medical and infectious waste;
- (4) any physical or operational change made to an existing HMIWI solely for the purpose of complying with the emission standards for HMIWIs in this Rule. These physical or operational changes are not considered a modification and do not result in an existing HMIWI becoming subject to the provisions of 40 CFR Part 60, Subpart Ec;
- (5) any HMIWI during periods when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned, provided that the owner or operator of the HMIWI:
  - (A) notifies the Director of an exemption claim; and
  - (B) keeps records on a calendar quarter basis of the periods of time when only pathological waste, low-level radioactive waste, or chemotherapeutic waste is burned; or
- (6) any co-fired HMIWI, if the owner or operator of the co-fired HMIWI:
  - (A) notifies the Director of an exemption claim;
  - (B) provides an estimate of the relative weight of hospital, medical and infectious waste, and other fuels or wastes to be combusted; and
  - (C) keeps records on a calendar quarter basis of the weight of hospital, medical and infectious waste combusted, and the weight of all other fuels and wastes combusted at the co-fired HMIWI.

(b) Definitions. For the purpose of this Rule, the definitions contained in 40 CFR 60.51c shall apply in addition to the definitions in Rule .1202 of this Section.

(c) Emission Standards.

- (1) The emission standards in this Paragraph apply to all HMIWIs subject to this Rule except where Rules .0524, .1110, or .1111 of this Subchapter applies. However, when Subparagraphs (7) or (8) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more

- restrictive provision for each pollutant shall apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary;
- (2) Prior to July 1, 2013, each HMIWI for which construction was commenced on or before June 20, 1996, or for which modification is commenced on or before March 16, 1998, shall not exceed the requirements listed in Table 1A of Subpart Ce of 40 CFR Part 60;
  - (3) On or after July 1, 2013, each HMIWI for which construction was commenced on or before June 20, 1996, or for which modification is commenced on or before March 16, 1998, shall not exceed the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60;
  - (4) Each HMIWI for which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, shall not exceed the more stringent of the requirements listed in Table 1B of Subpart Ce and Table 1A of Subpart Ec of 40 CFR Part 60;
  - (5) Each small remote HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and which burns less than 2,000 pounds per week of hospital waste and medical or infectious waste shall not exceed emission standards listed in Table 2A of Subpart Ce of 40 CFR Part 60 before July 1, 2013. On or after July 1, 2013, each small remote HMIWI shall not exceed emission standards listed in Table 2B of Subpart Ce of 40 CFR Part 60;
  - (6) Visible Emissions. Prior to July 1, 2013, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than 10 percent opacity (6-minute block average). On or after July 1, 2013, the owner or operator of any HMIWI shall not cause to be discharged into the atmosphere from the stack of the HMIWI any gases that exhibit greater than six percent opacity six-minute block average);
  - (7) Toxic Emissions. The owner or operator of any HMIWI subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700; and
  - (8) Ambient Standards.
    - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply aggregately to all HMIWIs at a facility subject to this Rule:
      - (i) arsenic and its compounds  $2.3 \times 10^{-7}$
      - (ii) beryllium and its compounds  $4.1 \times 10^{-6}$
      - (iii) cadmium and its compounds  $5.5 \times 10^{-6}$
      - (iv) chromium (VI) and its compounds  $8.3 \times 10^{-8}$ ;
    - (B) The owner or operator of a facility with HMIWIs subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter; and
    - (C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with HMIWIs subject to this Rule as their allowable emission limits unless Rules .0524, .1110, or .1111 of this Subchapter requires more restrictive rates.
    - (d) Operational Standards.
      - (1) The operational standards in this Rule do not apply to any HMIWI subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply;
      - (2) Annual Equipment Inspection.
        - (A) Each HMIWI shall undergo an equipment inspection initially within 6 months upon this Rule's effective date and an annual equipment inspection (no more than 12 months following the previous annual equipment inspection);
        - (B) The equipment inspection shall include all the elements listed in 40 CFR 60.36e(a)(1)(i) through (xvii);
        - (C) Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to

- the Director for an extension of the 10 operating day period; and
- (D) The Director shall grant the extension if the owner or operator submits a written request to the Director for an extension of the 10 operating day period if the owner or operator of the small remote HMIWI demonstrates that achieving compliance by the time allowed under this Part is not feasible, the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed;
- (3) Air Pollution Control Device Inspection.
- (A) Each HMIWI shall undergo air pollution control device inspections, as applicable, initially within six months upon this Rule's effective date and annually (no more than 12 months following the previous annual air pollution control device inspection) to inspect air pollution control device(s) for proper operation, if applicable: ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment; and generally observe that the equipment is maintained in good operating condition. Any necessary repairs found during the inspection shall be completed within 10 operating days of the inspection unless the owner or operator submits a written request to the Director for an extension of the 10 operating day period; and
- (B) The Director shall grant the extension if the owner or operator of the HMIWI demonstrates that achieving compliance by the 10 operating day period is not feasible, the Director does not extend the time allowed for compliance by more than 30 days following the receipt of the written request, and the Director concludes that the emission control standards would not be exceeded if the repairs were delayed;
- (4) Any HMIWI, except for a small HMIWI for which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60, shall comply with 40 CFR 60.56c except for:
- (A) Before July 1, 2013, the test methods listed in Paragraphs 60.56c(b)(7) and (8), the fugitive emissions testing requirements under 40 CFR 60.56c(b)(14) and (c)(3), the CO CEMS requirements under 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), (g)(6) through (10), and (h); and
- (B) On or after July 1, 2013, sources subject to the emissions limits under Table 1B of Subject Ce of 40 CFR Part 60 or more stringent of the requirements listed in Table 1B of Subpart 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60 may, however, elect to use CO CEMS as specified under 40 CFR 60.56c(c)(4) or bag detection systems as specified under 40 CFR 60.57c(h);
- (5) Prior to July 1, 2013, the owner or operator of any small remote HMIWI shall comply with the following compliance and performance testing requirements:
- (A) conduct the performance testing requirements in 40 CFR 60.56c(a), (b)(1) through (b)(9), (b)(11)(mercury only), and (c)(1). The 2,000 pound per week limitation does not apply during performance tests;
- (B) establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits; and
- (C) following the date on which the initial performance test is completed, ensure that the HMIWI does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as three hour rolling averages, calculated each hour as the average of all previous three operating hours, at all times except during periods of start-up, shut-down and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall

- constitute a violation of the established operating parameters;
- (6) On or after July 1, 2013, any small remote HMIWI constructed on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60. The owner or operator shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding test methods listed in 40 CFR 60.56c(b)(7), (8), (12), (13) (Pb and Cd), and (14), the annual PM, CO, and HCl emissions testing requirements under 40 CFR 60.56c(c)(2), the annual fugitive emissions testing requirements under 40 CFR 60.56c(c)(3), the CO CEMS requirements under 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5) through (7), and (d) through (k);
- (7) On or after July 1, 2013, any small remote HMIWI For which construction was commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, subject to the requirements listed in Table 2A or 2B of Subpart Ce of 40 CFR Part 60, and not equipped with an air pollution control device shall meet the following compliance and performance testing requirements:
- (A) Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits. The 2,000 pounds per week limitation does not apply during performance tests;
- (B) The owner or operator shall not operate the HMIWI above the maximum charge rate or below the minimum secondary chamber temperature measured as 3-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s); and
- (C) Operation of an HMIWI above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a three-hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emissions limits. The owner or operator of an HMIWI may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted shall be conducted under process and control device operating conditions duplicating as nearly as possible those that indicated during the violation;
- (8) On or after July 1, 2013, any small HMIWI constructed commenced emissions guidelines as promulgated on September 15, 1997, meeting all requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60, which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burns less than 2,000 pounds per week of hospital, medical and infectious waste and is subject to the requirements listed in Table 2B of Subpart Ce of 40 CFR Part 60. The 2,000 pounds per week limitation does not apply during performance tests. The owner or operator shall comply with the compliance and performance testing requirements of 40 CFR 60.56c, excluding the annual fugitive emissions testing requirements under 40 CFR 60.56c(c)(3), the CO CEMS requirements under 40 CFR 60.56c(c)(4), and the compliance requirements for monitoring listed in 40 CFR 60.56c(c)(5)(ii) through (v), (c)(6), (c)(7), (e)(6) through (10), (f)(7) through (10), and (g)(6) through (10). The owner or operator may elect to use CO CEMS as specified under 40 CFR 60.56c(c)(4) or bag leak detection systems as specified under 40 CFR 60.57c(h); and
- (9) On or after July 1, 2013, the owner or operator of any HMIWI equipped with selective noncatalytic reduction technology shall:
- (A) Establish the maximum charge rate, the minimum secondary chamber temperature, and the minimum reagent flow rate as site specific operating parameters during the initial performance test to determine compliance with the emissions limits;
- (B) Ensure that the affected facility does not operate above the maximum charge rate, or below the minimum secondary chamber temperature or

the minimum reagent flow rate measured as three-hour rolling averages (calculated each hour as the average of the previous three operating hours) at all times. Operating parameter limits shall not apply during performance tests; and

- (C) Operation of any HMIWI above the maximum charge rate, below the minimum secondary chamber temperature, and below the minimum reagent flow rate simultaneously shall constitute a violation of the NO<sub>x</sub> emissions limit. The owner or operator may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the affected facility is not in violation of the applicable emissions limit(s). Repeat performance tests conducted pursuant to this paragraph shall be conducted using the identical operating parameters that indicated a violation.

(e) Test Methods and Procedures.

- (1) The test methods and procedures described in Section .2600 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis; and
- (2) The Director may require the owner or operator to test the HMIWI to demonstrate compliance with the emission standards listed in Paragraph (c) of this Rule.

(f) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an HMIWI subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter;
- (2) The owner or operator of an HMIWI subject to the requirements of this Rule shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an HMIWI that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems.

The Director shall require the owner or operator of an HMIWI with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the HMIWI. The Director may require the owner or operator of an HMIWI with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the HMIWI;

- (3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, the owner or operator of a HMIWI shall comply with the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b), (c), (d), (e), and (f), excluding 40 CFR 60.58c(b)(2)(ii) and (b)(7);
- (4) In addition to the requirements of Subparagraphs (1), (2) and (3) of this Paragraph, the owner or operator of a small remote HMIWI shall:
- (A) maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection;
- (B) submit an annual report containing information recorded in Part (A) of this Subparagraph to the Director no later than 60 days following the year in which data were collected. Subsequent reports shall be sent no later than 12 calendar months following the previous report. The report shall be signed by the HMIWI manager; and
- (C) submit the reports required by Parts (A) and (B) of this Subparagraph to the Director semiannually once the HMIWI is subject to the permitting procedures of 15A NCAC 02Q .0500, Title V Procedures;
- (5) Waste Management Guidelines. The owner or operator of a HMIWI shall comply with the requirements of 40 CFR 60.55c for the preparation and submittal of a waste management plan;
- (6) Except as provided in Subparagraph (7) of this Paragraph, the owner or operator of any HMIWI shall comply with the monitoring requirements in 40 CFR 60.57c;
- (7) The owner or operator of any small remote HMIWI shall:
- (A) install, calibrate, maintain, and operate a device for measuring and recording the temperature of the

- secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;
- (B) install, calibrate, maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and
- (C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the HMIWI is combusting hospital, medical, and infectious waste;
- (8) On or after July 1, 2013, any HMIWI, except for small remote HMIWI not equipped with an air pollution control device, subject to the emissions requirements in Table 1B or Table 2B of Subpart Ce of 40 CFR Part 60, or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60, shall perform the monitoring requirements listed in 40 CFR 60.57c;
- (9) On or after July 1, 2013, the owner or operator of a small remote HMIWI, not equipped with an air pollution control device and subject to the emissions requirements in Table 2B of Subpart Ce of 40 CFR Part 60 shall:
- (A) install, calibrate (to manufacturers' specifications), maintain, and operate a device for measuring and recording the temperature of the secondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;
- (B) install, calibrate (to manufacturers' specifications), maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI; and
- (C) obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data shall be obtained for 75 percent of the operating hours per day for 90 percent of the operating hours per calendar quarter that the designated facility is combusting hospital, medical and infectious waste;
- (10) On or after July 1, 2013, any HMIWI for which construction commenced on or before June 20, 1996, or for which modification was commenced on or before March 16, 1998, and is subject to requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60; or any HMIWI which construction was commenced after June 20, 1996 but no later than December 1, 2008, or for which modification is commenced after March 16, 1998 but no later than April 6, 2010, and subject to the requirements of Table 1B of this Subpart and Table 1A of Subpart Ec of 40 CFR Part 60, may use the results of previous emissions tests to demonstrate compliance with the emissions limits, provided that:
- (A) Previous emissions tests had been conducted using the applicable procedures and test methods listed in 40 CFR 60.56c(b);
- (B) The HMIWI is currently operated in a manner that would be expected to result in the same or lower emissions than observed during the previous emissions test and not modified such that emissions would be expected to exceed; and
- (C) The previous emissions test(s) had been conducted in 1996 or later;
- (11) On or after July 1, 2013, any HMIWI, (with the exception of small remote HMIWI and HMIWIs for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec), shall include the reporting and recordkeeping requirements listed in 40 CFR 60.58c(b); and
- (12) On or after July 1, 2013, any HMIWI for which construction was commenced no later than December 1, 2008, or for which modification is commenced no later than April 6, 2010, and subject to the requirements listed in Table 1B or the more stringent of the requirements listed in Table 1B of Subpart Ce of 40 CFR Part 60 and Table 1A of Subpart Ec of 40 CFR Part 60, is not required to maintain records required in 40 CFR 60.58c(b)(2)(xviii) (bag leak detection system alarms), (b)(2)(xix) (CO CEMS data), and (b)(7) (siting documentation).

(g) Excess Emissions and Start-up and Shut-down. All HMIWIs subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter. Emissions from bypass conditions shall not be exempted as provided under Paragraphs (c) and (g) of Rule 0.535 of this Subchapter.

(h) Operator Training and Certification.

- (1) The owner or operator of a HMIWI shall not allow the HMIWI to operate at any time unless a fully trained and qualified HMIWI operator is accessible, either at the facility or available within one hour. The trained and qualified HMIWI operator may operate the HMIWI directly or be the direct supervisor of one or more HMIWI operators;
- (2) Operator training and qualification shall be obtained by completing the requirements of 40 CFR 60.53c(c) through (g);
- (3) The owner or operator of a HMIWI shall maintain, at the facility, all items required by 40 CFR 60.53c(h)(1) through (h)(10);
- (4) The owner or operator of a HMIWI shall establish a program for reviewing the information required by Subparagraph (3) of this Paragraph annually with each HMIWI operator. The reviews of the information shall be conducted annually; and
- (5) The information required by Subparagraph (3) of this Paragraph shall be kept in a readily accessible location for all HMIWI operators. This information, along with records of training shall be available for inspection by Division personnel upon request.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 40 CFR 60.34e; Eff. October 1, 1991; Amended Eff. January 1, 2011; June 1, 2008; August 1, 2002; July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993.*

**15A NCAC 02T .0113 PERMITTING BY REGULATION**

(a) The following disposal systems as well as those in Permitting By Regulation rules in this Subchapter (i.e., Rules .0203, .0303, .0403, .1003, .1103, .1203, .1303, .1403, and .1503) are deemed to be permitted pursuant to G.S. 143-215.1(b) and it shall not be necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following disposal systems provided the system does not result in any violations of surface water or groundwater standards, there is no direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Swimming pool and spa filter backwash and drainage, filter backwash from aesthetic fountains, filter backwash from commercial or residential water features such as garden ponds or fish ponds that is discharged to the land surface;

- (2) Backwash from raw water intake screening devices that is discharged to the land surface;
- (3) Condensate from residential or commercial air conditioning units that is discharged to the land surface;
- (4) Discharges to the land surface from individual non-commercial car washing operations;
- (5) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions or new reclaimed water distribution lines;
- (6) Street wash water that is discharged to the land surface;
- (7) Discharges to the land surface from fire fighting activities;
- (8) Discharges to the land surface associated with emergency removal and treatment activities for spilled oil authorized by the federal or state on-scene coordinator when such removals are undertaken to minimize overall environmental damage due to an oil spill;
- (9) Discharges to the land surface associated with biological or chemical decontamination activities performed as a result of an emergency declared by the Governor or the Director of the Division of Emergency Management and that are conducted by or under the direct supervision of the federal or state on-scene coordinator and that meet the following criteria:
  - (A) the volume produced by the decontamination activity is too large to be contained onsite;
  - (B) the Division is informed prior to commencement of the decontamination activity; and
  - (C) the wastewater is not radiologically contaminated or classified as hazardous waste;
- (10) Drilling muds, cuttings and well water from the development of wells or from other construction activities including directional boring;
- (11) Purge water from groundwater monitoring wells;
- (12) Composting facilities for dead animals, if the construction and operation of the facilities is approved by the North Carolina Department of Agriculture and Consumer Services; the facilities are constructed on an impervious, weight-bearing foundation, operated under a roof; and the facilities are approved by the State Veterinarian pursuant to G.S. 106-403;
- (13) Overflow from elevated potable water storage facilities;
- (14) Mobile carwashes if:
  - (A) all detergents used are biodegradable;



- (B) no steam cleaning, engine or parts cleaning is being conducted;
- (C) notification is made prior to operation by the owner to the municipality or if not in a municipality then the county where the cleaning service is being provided; and
- (D) all non-recyclable washwater is collected and discharged into a sanitary sewer or wastewater treatment facility upon approval of the facility's owner;
- (15) Mine tailings where no chemicals are used in the mining process;
- (16) Mine dewatering where no chemicals are used in the mining process; and
- (17) Wastewater created from the washing of produce, with no further processing on-site, on farms where the wastewater is irrigated onto fields so as not to create runoff or cause a discharge.

(b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation shall be considered a violation of a condition of a permit. Further, nothing in this Rule shall be deemed to apply to or permit disposal systems for which a state NPDES permit is otherwise required.

(c) Any violation of this Rule or discharge to surface waters from the disposal systems listed in Paragraph (a) of this Rule or the activities listed in other Permitted By Regulation rules in this Subchapter shall be reported in accordance with 15A NCAC 02B .0506.

(d) Disposal systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in this Subchapter, until such time as the Director determines that they should not be deemed permitted in accordance with the criteria established in this Rule.

(e) The Director may determine that a disposal system should not be deemed to be permitted in accordance with this Rule or other Permitted By Regulation rules in this Subchapter and require the disposal system to obtain an individual permit or a certificate of coverage under a general permit. This determination shall be made based on existing or projected environmental impacts, compliance with the provisions of this Rule or other Permitted By Regulation rules in this Subchapter, and the compliance history of the facility owner.

*History Note: Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.1(b)(4)(e); 143-215.3(a),(d); Eff. September 1, 2006; Amended Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02T .0506 SETBACKS**

(a) The setbacks for irrigation sites shall be as follows:

|  | Spray<br>(feet) | Drip<br>(feet) |
|--|-----------------|----------------|
| Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site | 400             | 100            |
| Any habitable residence or place of public assembly owned by the permittee to be maintained as part of the project site          | 200             | 15             |
| Any private or public water supply source  | 100             | 100            |
| Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)                                       | 100             | 100            |
| Groundwater lowering ditches (where the bottom of the ditch intersects the SHWT)   | 100             | 100            |
| Surface water diversions (ephemeral streams, waterways, ditches)   | 25              | 25             |
| Any well with exception of monitoring wells  | 100             | 100            |
| Any property line  | 150             | 50             |
| Top of slope of embankments or cuts of two feet or more in vertical height   | 15              | 15             |
| Any water line from a disposal system  | 10              | 10             |
| Subsurface groundwater lowering drainage systems   | 100             | 100            |
| Any swimming pool  | 100             | 100            |
| Public right of way  | 50              | 50             |
| Nitrification field  | 20              | 20             |
| Any building foundation or basement  | 15              | 15             |

(b) The setbacks for treatment and storage units shall be as follows:

|  | (feet) |
|--|--------|
| Any habitable residence or place of public assembly under separate ownership or not to be maintained as part of the project site | 100    |
| Any private or public water supply source  | 100    |
| Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands)                                       | 50     |
| Any well with exception of monitoring wells  | 100    |
| Any property line  | 50     |

- (c) Achieving the reclaimed water effluent standards contained in 15A NCAC 02U .0301 shall permit the system to use the setbacks located in 15A NCAC 02U .0701(d) for property lines and the compliance boundary shall be at the irrigation area boundary.
- (d) Setback waivers shall be written, notarized, signed by all parties involved and recorded with the county Register of Deeds. Waivers involving the compliance boundary shall be in accordance with 15A NCAC 02L .0107.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
*Eff. September 1, 2006;*  
*Amended Eff. Pending Delayed Eff. Date.*

**15A NCAC 02T .0901 SCOPE**  
**15A NCAC 02T .0902 DEFINITIONS**  
**15A NCAC 02T .0903 PERMITTING BY REGULATION**  
**15A NCAC 02T .0904 APPLICATION SUBMITTAL –**  
**CONJUNCTIVE SYSTEMS**  
**15A NCAC 02T .0905 APPLICATION SUBMITTAL –**  
**NON-CONJUNCTIVE SYSTEMS**  
**15A NCAC 02T .0906 RECLAIMED WATER**  
**EFFLUENT STANDARDS**  
**15A NCAC 02T .0907 DESIGN CRITERIA FOR**  
**WASTEWATER TREATMENT FACILITIES –**  
**CONJUNCTIVE SYSTEMS**  
**15A NCAC 02T .0908 DESIGN CRITERIA FOR**  
**WASTEWATER TREATMENT FACILITIES – NON-**  
**CONJUNCTIVE SYSTEMS**  
**15A NCAC 02T .0909 DESIGN CRITERIA FOR**  
**DISTRIBUTION LINES**  
**15A NCAC 02T .0910 RECLAIMED WATER**  
**UTILIZATION**  
**15A NCAC 02T .0911 BULK DISTRIBUTION OF**  
**RECLAIMED WATER**  
**15A NCAC 02T .0912 SETBACKS**  
**15A NCAC 02T .0913 OPERATION AND**  
**MAINTENANCE PLAN**  
**15A NCAC 02T .0914 RESIDUALS MANAGEMENT**  
**PLAN**

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
*Eff. September 1, 2006;*  
*Repealed Eff. Pending Delayed Eff. Date.*

**15A NCAC 02T .0915 LOCAL PROGRAM APPROVAL**

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); S.L.  
 2006-250;  
*Eff. January 1, 2007;*  
*Repealed Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0101 PURPOSE**

(a) The rules in this Subchapter apply to reclaimed water systems. This includes the generation and utilization of tertiary treated wastewater effluent meeting the standards in Rule .0301 of this Subchapter, used in a beneficial manner and for the purpose of conservation of the State's water resources by reducing the use of a water resource (potable water, surface water, groundwater).

(b) The disposal of treated wastewater effluent that does not serve in place of the use of a water resource is covered by Subchapter 02T of this Chapter.

(c) Reclaimed water utilization systems permitted pursuant to this Subchapter do not exempt any discharge to waters of the State from meeting the permitting requirements established by the National Pollutant Discharge Elimination System (NPDES) permitting program pursuant to G.S. 143-215.1 and 15A NCAC 02H .0100.

(c) Any use of reclaimed water for Aquifer Storage and Recovery shall be in accordance with G.S. 143-214.2.

(e) Requirements for closed-loop recycle systems are provided in Section .1000 of Subchapter 02T of this Chapter.

(f) The rules in this subchapter set forth the requirements and procedures for application and issuance of permits for the following reclaimed water systems:

- (1) treatment works;
- (2) utilization systems;
- (3) bulk distribution programs; and
- (4) local program approval.

*History Note:* Authority G.S. 143-215.1; 143-215.1(f); 143-215.3(a)(1); 143-355.5;  
*Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0102 SCOPE**

The rules in this Subchapter apply to all persons proposing to construct, alter, extend, or operate any reclaimed water treatment works or utilization system. The rules in this Section are general requirements that apply to all program rules (found in individual sections) in this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a)(1);  
*Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0103 DEFINITIONS**

The terms used in this Subchapter are defined in G.S. 143-212 and 143-213, and 15A NCAC 02T .0103 except as provided in this Rule as follows:

- (1) "Beneficial manner" means the use of water as a necessary part of an activity or process to which the water is being added.
- (2) "Beneficial Reuse" means the utilization of reclaimed water in a beneficial manner and for the purpose of conservation of the State's water resources by reducing the use of other water resources (potable water, surface water, groundwater).
- (3) "Conjunctive system" means a system where the reclaimed water option is not necessary to

meet the wastewater disposal needs of the facility and where other wastewater utilization or disposal methods (e.g., NPDES permit) are available to the facility at all times.

- (4) "Direct contact irrigation" means application methods that result in the direct contact of reclaimed water on the portion of the crop intended for human consumption.
- (5) "Five-day side stream detention pond" means a basin capable of holding five days worth of treatment plant effluent (permitted flow capacity) in the event that the reclaimed water does not meet the required quality standards for the approved use.
- (6) "Indirect contact irrigation" means application methods that will preclude direct contact of reclaimed water on the portion of the crop intended for human consumption.
- (7) "Net environmental benefit" associated with wetlands augmentation sites is documented evidence supporting continued maintenance of natural conditions, and the protection of endangered species as required in Rule .0105(c)(10) of this Section. Wetland augmentation systems shall provide documentation of the protection of existing wetland uses in accordance with 15A NCAC 02B .0201(f) and .0231 and shall not result in net degradation of the wetland.
- (8) "Reclaimed Water" means treated wastewater effluent, meeting effluent standards established pursuant to Rule .0301 of this Subchapter, and used for beneficial reuse.

*History Note:* Authority G.S. 143-213; 143-215.3(a)(1);  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0104 ACTIVITIES WHICH REQUIRE A PERMIT**

No person shall do any of the things or carry out any of the activities contained in G.S. 143-215.1(a) until or unless the person has applied for and received a permit from the Division (or if appropriate a local program approved by the Division pursuant to this Subchapter) and has complied with the conditions prescribed in the permit or is deemed permitted by rules in this Subchapter.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a)(1);  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0105 GENERAL REQUIREMENTS**

General requirements shall be in accordance with 15A NCAC 02T .0105.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0106 SUBMISSION OF PERMIT APPLICATIONS**

Submission of permit applications shall be in accordance with 15A NCAC 02T .0106.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.1;  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0107 STAFF REVIEW AND PERMIT PREPARATION**

Staff review and permit preparation shall be in accordance with 15A NCAC 02T .0107.

*History Note:* Authority G.S. 143-215.1(b); 143-215.1(d);  
143-215.3(a)(1); 143-215.3(a)(4);  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0108 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION**

Final action on permit applications to the Division shall be in accordance with 15A NCAC 02T .0108.

*History Note:* Authority G.S. 143-215.1(a); 143-215.1(b);  
143-215.1(d); 143-215.3(a)(1);  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0109 PERMIT RENEWALS**

Requests for permit renewals shall be submitted to the Director at least 180 days prior to expiration unless the permit has been revoked by the Director in accordance with Rule .0110 of this Section or a request has been made to rescind the permit. Renewal requests shall be made in accordance with Rule .0105 and Rule .0106 of this Section.

*History Note:* Authority G.S. 143-215.3(a)(1);  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0110 MODIFICATION AND REVOCATION OF PERMITS**

Modification and revocation of permits shall be in accordance with 15A NCAC 02T .0110.

*History Note:* Authority G.S. 143-215.1(b)(2.); 143-  
215.3(a)(1);  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0111 CONDITIONS FOR ISSUING GENERAL PERMITS**

Conditions for issuing general permits are established in 15A NCAC 02T .0111.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a)(1);  
143-215.10C;  
Eff. Pending Delayed Eff. Date.

**15A NCAC 02U .0112 DELEGATION OF AUTHORITY**

Delegation of authority shall be in accordance with 15A NCAC 02T .0112.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.3(a)(4);  
*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0113 PERMITTING BY REGULATION**

(a) The following utilizations of reclaimed water are deemed to be permitted pursuant to G.S. 143-215.1(b) and it is not necessary for the Division to issue individual permits or coverage under a general permit for construction or operation of the following utilization systems provided the system does not result in any violations of surface water or groundwater standards, there is no unpermitted direct discharge to surface waters, and all criteria required for the specific system is met:

- (1) Discharges to the land surface from flushing and hydrostatic testing water associated with utility distribution systems, new sewer extensions or new reclaimed water distribution lines;
- (2) Overflow from elevated reclaimed water storage facilities where no viable alternative exists and all possible measures are taken to reduce the risk of overflow;
- (3) Any de minimus runoff from reclaimed water used during fire fighting or extinguishing, dust control, soil compaction for construction purposes, street sweeping, overspray on yard inlets, overspray on golf cart paths, or vehicle washing provided the use is approved in a permit issued by the Division;
- (4) Incidental discharge to a municipal separate storm sewer system (MS4) that occurs as a result of reclaimed water utilization activities provided the use is approved in a permit issued by the Division, and the discharge does not violate water quality standards. This does not exempt the reclaimed water user from complying with any applicable local ordinances that may prohibit such discharges;
- (5) Rehabilitation, repair, or replacement of reclaimed water lines in kind (i.e., size) with the same horizontal and vertical alignment;
- (6) In accordance with 15A NCAC 02H .0106(f)(5), flushing (including air release valve discharge) and hydrostatic testing water discharges associated with reclaimed water distribution systems provided that no water quality standards are violated;
- (7) Utilization of reclaimed water received from a reclaimed water bulk distribution program permitted under Rule .0601 of this Subchapter;
- (8) Irrigation of residential lots or commercial (non-residential) application areas less than one acre in size that are supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the requirements of Rules .0301, .0401, .0403, .0501, and .0701 of this Subchapter; Chapter 89G of the General Statutes; approved by the local building inspection department; and

installed by a North Carolina Licensed Irrigation Contractor pursuant to G.S. 89G. A scaled site map showing the location of the reclaimed water irrigation system and all features necessary to show compliance with applicable setbacks in Rule .0701 of this Subchapter shall be submitted to the reclaimed water provider;

- (9) Irrigation of agricultural crops supplied with reclaimed water as part of a conjunctive use reclaimed water system meeting the requirements of this Subchapter and approved by the reclaimed water provider; and
- (10) Drip irrigation sites supplied with reclaimed water as part of a conjunctive use reclaimed water system generated from an onsite wastewater treatment facility meeting the criteria of this Subchapter and where the conjunctive system has been approved by the Department and is permitted under 18A .1900.

(b) Nothing in this Rule shall be deemed to allow the violation of any assigned surface water, groundwater, or air quality standards, and in addition any such violation is a violation of a condition of a permit.

(c) The reclaimed water user shall report any violation of this Rule or discharge to surface waters from the utilization systems listed in Paragraph (a) of this Rule.

(d) Utilization systems deemed permitted under this Subchapter shall remain deemed permitted, notwithstanding any violations of surface water or groundwater standards or violations of this Rule or other Permitted By Regulation rules in this Subchapter, until such time as the Director determines that they should not be deemed permitted in accordance with the criteria established in this Rule.

(e) The Director may determine that a utilization system should not be deemed to be permitted in accordance with this Rule and require the utilization system to obtain an individual permit or a certificate of coverage under a general permit. This determination shall be made based on existing or projected environmental impacts, compliance with the provisions of this Rule and the compliance history of the facility owner.

*History Note:* Authority G.S. 130A-300; 143-215.1(a)(1); 143-215.1(b)(4)(e); 143-215.3(a),(d);  
*Eff. Pending Legislative Review.*

#### **15A NCAC 02U .0114 WASTEWATER DESIGN FLOW RATES**

Wastewater design flow rates shall be determined pursuant to 15A NCAC 02T .0114.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a)(1);  
*Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0115 OPERATIONAL AGREEMENTS**  
 Operational agreements shall be completed pursuant to 15A NCAC 02T .0115.

*History Note:* Authority G.S. 143-215.1(d1);

*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0116 CERTIFICATION OF COMPLETION**

Certification of completion shall be completed pursuant to 15A NCAC 02T .0116.

*History Note: Authority G.S. 143-215.1;*

*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0117 TREATMENT FACILITY OPERATION AND MAINTENANCE**

Treatment facility operation and maintenance shall be completed pursuant to 15A NCAC 02T .0117.

*History Note: Authority G.S. 143-215.3;*

*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0120 HISTORICAL CONSIDERATION IN PERMIT APPROVAL**

Historical consideration in permit approval shall be in accordance with 15A NCAC 02T .0120.

*History Note: Authority G.S. 143-215.1(b); 143-215.3(a);*

*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0201 APPLICATION SUBMITTAL – CONJUNCTIVE SYSTEMS**

(a) The requirements in this Rule apply to all new and expanding conjunctive facilities, as applicable.

(b) A soil evaluation of the utilization site where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner shall be provided to the Division by the applicant. Evaluations shall include recommended loading rates of liquids, solids, and other constituents. For systems that utilize reclaimed water through irrigation, the evaluation shall also include recommended maximum irrigation precipitation rates. If required by G.S. 89F, a soil scientist shall prepare this evaluation.

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

(c) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare engineering design documents. The following documents shall be provided to the Division by the applicant:

- (1) engineering plans for the entire system, including treatment, storage, application, and utilization facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and

- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C. In addition, the North Carolina Board of Examiners for Engineers and Surveyors has determined that design of residential reclaimed irrigations systems owned by the property owner does not constitute engineering under G.S. 89C.]

(d) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. The applicant shall provide site plans or maps for treatment and storage facilities and where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner, except where reclaimed water is utilized for irrigation to single-family residential lots, showing the location, orientation and relationship of facility components including:

- (1) a scaled map of the site showing all facility-related structures and fences within the treatment, storage, and utilization areas;
- (2) for land application sites and other ground absorption uses, the site map shall include topography; and
- (3) to the extent needed to determine compliance with setbacks, the location of all features included in Rule .0701 of this Subchapter.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

(e) The applicant shall provide property ownership documentation to the Division consisting of:

- (1) legal documentation of ownership (e.g., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map;
- (3) an easement running with the land indicating the intended use of the property and meeting the condition of 15A NCAC 02L .0107(f); or
- (4) written notarized lease agreement signed by both parties, indicating the intended use of the property, as well as a plat or survey map. When this Subparagraph is utilized to document property ownership, groundwater standards must be met across the entire site and a compliance boundary need not be provided.

(f) Public utilities shall submit a Certificate of Public Convenience and Necessity or a letter from the NC Utilities Commission to the Division stating that a franchise application has been received.

(g) The applicant shall provide a complete chemical analysis of the typical reclaimed water to be utilized for industrial waste. The analysis shall include:

- (1) Total Organic Carbon;
- (2) 5-day Biochemical Oxygen Demand (BOD5);
- (3) Chemical Oxygen Demand (COD);
- (4) Nitrate Nitrogen (NO3-N);
- (5) Ammonia Nitrogen (NH3-N);
- (6) Total Kjeldahl Nitrogen (TKN);
- (7) pH;
- (8) Chloride;
- (9) Total Phosphorus;
- (10) Phenol;
- (11) Total Volatile Organic Compounds;
- (12) Escherichia coli (E.coli) or Fecal Coliform;
- (13) Coliphage (Type 2 reclaimed water only);
- (14) Clostridium perfringens (Type 2 reclaimed water only);
- (15) Calcium;
- (16) Sodium;
- (17) Magnesium;
- (18) Sodium Adsorption Ratio (SAR);
- (19) Total Trihalomethanes;
- (20) Toxicity Test Parameters; and
- (21) Total Dissolved Solids.

(h) For irrigation sites, the applicant shall provide to the Division a project evaluation and a receiver site agronomic management plan and recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0202 APPLICATION SUBMITTAL – NON-CONJUNCTIVE SYSTEMS**

(a) The requirements in this Rule apply to all new and expanding non-conjunctive facilities, as applicable.

(b) Soils Report. A soil evaluation of the utilization site shall be provided to the Division by the applicant. If required by G.S. 89F, a soil scientist shall prepare this evaluation. This evaluation shall be presented in a report that includes the following:

- (1) Field description of soil profile, based on examinations of excavation pits and auger borings, within seven feet of land surface or to bedrock describing the following parameters by individual diagnostic horizons:
  - (A) thickness of the horizon;
  - (B) texture;
  - (C) color and other diagnostic features;
  - (D) structure;
  - (E) internal drainage;
  - (F) depth, thickness, and type of restrictive horizon(s); and
  - (G) presence or absence and depth of evidence of any seasonal high water table (SHWT);

Applicants shall dig pits when necessary for proper evaluation of the soils at the site;

- (2) Recommendations concerning loading rates of liquids, solids, other wastewater constituents and amendments; annual hydraulic loading rates shall be based on in-situ measurement of saturated hydraulic conductivity in the most restrictive horizon for each soil mapping unit; maximum irrigation precipitation rates shall be provided for each soil mapping unit;
- (3) A soil map delineating soil mapping units within each land application site and showing all physical features, location of pits and auger borings, legends, scale, and a north arrow; and
- (4) A representative soils analysis (i.e., Standard Soil Fertility Analysis) conducted on each land application site. The Standard Soil Fertility Analysis shall include the following parameters:
  - (A) acidity;
  - (B) base saturation (by calculation);
  - (C) calcium;
  - (D) cation exchange capacity;
  - (E) copper;
  - (F) exchangeable sodium percentage (by calculation);
  - (G) magnesium;
  - (H) manganese;
  - (I) percent humic matter;
  - (J) pH;
  - (K) phosphorus;
  - (L) potassium;
  - (M) sodium; and
  - (N) zinc.

[Note: The North Carolina Board for Licensing of Soil Scientists has determined, via letter dated December 1, 2005, that preparation of soils reports pursuant to this Paragraph constitutes practicing soil science under G.S. 89F.]

(c) Engineering design documents. If required by G.S. 89C, a professional engineer shall prepare these documents. The applicant shall provide the following documents to the Division:

- (1) engineering plans for the entire system, including treatment, storage, application, and utilization facilities and equipment except those previously permitted unless those previously permitted are directly tied into the new units or are critical to the understanding of the complete process;
- (2) specifications describing materials to be used, methods of construction, and means for ensuring quality and integrity of the finished product including leakage testing; and
- (3) engineering calculations including hydraulic and pollutant loading for each treatment unit, treatment unit sizing criteria, hydraulic profile of the treatment system, total dynamic head and system curve analysis for each pump, buoyancy calculations, and irrigation design.

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that preparation of engineering design documents pursuant to this Paragraph constitutes practicing engineering under G.S. 89C. In addition, the North Carolina Board of Examiners for Engineers and Surveyors has determined that design of residential reclaimed irrigations systems owned by the property owner does not constitute engineering under G.S. 89C.]

(d) Site plans. If required by G.S. 89C, a professional land surveyor shall provide location information on boundaries and physical features not under the purview of other licensed professions. The applicant shall provide site plans or maps to the Division where the reclaimed water is applied to the land surface or otherwise used in a ground absorption manner depicting the location, orientation and relationship of facility components including:

- (1) a scaled map of the site, with topographic contour intervals not exceeding 10 feet or 25 percent of total site relief and showing all facility-related structures and fences within the treatment, storage and utilization areas, soil mapping units shown on all utilization sites;
- (2) the location of all wells (including usage and construction details if available), streams (ephemeral, intermittent, and perennial), springs, lakes, ponds, and other surface drainage features within 500 feet of all waste treatment, storage, and utilization site(s) and delineation of the review and compliance boundaries;
- (3) setbacks as required by Rule .0701 of this Subchapter; and
- (4) site property boundaries within 500 feet of all waste treatment, storage, and utilization site(s).

[Note: The North Carolina Board of Examiners for Engineers and Surveyors has determined, via letter dated December 1, 2005, that locating boundaries and physical features, not under the purview of other licensed professions, on maps pursuant to this Paragraph constitutes practicing surveying under G.S. 89C.]

(e) A hydrogeologic description prepared by a Licensed Geologist, License Soil Scientist, or Professional Engineer if required by Chapters 89E, 89F, or 89C respectively of the subsurface to a depth of 20 feet or bedrock, whichever is less, shall be provided to the Division by the applicant for systems treating industrial waste and any system with a design flow of over 25,000 gallons per day. A greater depth of investigation is required if the respective depth is used in predictive calculations. This evaluation shall be based on borings for which the numbers, locations, and depths are sufficient to define the components of the hydrogeologic evaluation. In addition to borings, other techniques may be used to investigate the subsurface conditions at the site. These techniques may include geophysical well logs, surface geophysical surveys, and tracer studies. This evaluation shall be presented in a report that includes the following components:

- (1) a description of the regional and local geology and hydrogeology based on research of literature for the area;

- (2) a description, based on field observations of the site, of the site topographic setting, streams, springs and other groundwater discharge features, drainage features, existing and abandoned wells, rock outcrops, and other features that may affect the movement of the contaminant plume and treated wastewater;
- (3) changes in lithology underlying the site;
- (4) depth to bedrock and occurrence of any rock outcrops;
- (5) the hydraulic conductivity and transmissivity of the affected aquifer(s);
- (6) depth to the seasonal high water table;
- (7) a discussion of the relationship between the affected aquifers of the site to local and regional geologic and hydrogeologic features;
- (8) a discussion of the groundwater flow regime of the site prior to operation of the proposed facility and post operation of the proposed facility focusing on the relationship of the system to groundwater receptors, groundwater discharge features, and groundwater flow media; and
- (9) if the SHWT is within six feet of the surface, a mounding analysis to predict the level of the SHWT after wastewater application.

[Note: The North Carolina Board for Licensing of Geologists, via letter dated April 6, 2006, North Carolina Board for Licensing of Soil Scientists, via letter dated December 1, 2005, and North Carolina Board of Examiners for Engineers and Surveyors, via letter dated December 1, 2005, have determined that preparation of hydrogeologic description documents pursuant to this Paragraph constitutes practicing geology under G.S. 89E, soil science under G.S. 89F, or engineering under G.S. 89C.]

(f) The applicant shall provide property ownership documentation to the Division consisting of:

- (1) legal documentation of ownership (i.e., contract, deed or article of incorporation);
- (2) written notarized intent to purchase agreement signed by both parties, accompanied by a plat or survey map;
- (3) an easement running with the land specifically indicating the intended use of the property and meeting the condition of 15A NCAC 02L .0107(f); or
- (4) written notarized lease agreement signed by both parties, indicating the intended use of the property, as well as a plat or survey map. Groundwater standards shall be met across the entire site, and a compliance boundary shall not be provided.

(g) Public utilities shall submit a Certificate of Public Convenience and Necessity or a letter from the NC Utilities Commission stating that a franchise application has been received.

(h) The applicant shall provide to the Division a complete chemical analysis of the typical reclaimed water to be utilized for industrial waste. The analysis shall include:

- (1) Total Organic Carbon;
- (2) 5-day Biochemical Oxygen Demand (BOD<sub>5</sub>);
- (3) Chemical Oxygen Demand (COD);
- (4) Nitrate Nitrogen (NO<sub>3</sub>-N);
- (5) Ammonia Nitrogen (NH<sub>3</sub>-N);
- (6) Total Kjeldahl Nitrogen (TKN);
- (7) pH;
- (8) Chloride;
- (9) Total Phosphorus;
- (10) Phenol;
- (11) Total Volatile Organic Compounds;
- (12) Escherichia coli (E. coli) or Fecal Coliform;
- (13) Coliphage (Type 2 reclaimed water only);
- (14) Clostridium perfringens (Type 2 reclaimed water only);
- (15) Calcium;
- (16) Sodium;
- (17) Magnesium;
- (18) Sodium Adsorption Ratio (SAR);
- (19) Total Trihalomethanes;
- (20) Toxicity Test Parameters; and
- (21) Total Dissolved Solids.

(i) For irrigation sites, the applicant shall provide to the Division a project evaluation and a receiver site agronomic management plan and recommendations concerning cover crops and their ability to accept the proposed application rates of liquid, solids, minerals and other constituents of the wastewater.

(j) The applicant shall provide to the Division a residuals management plan as required by Rule .0802 of this Subchapter. A written commitment is not required at the time of application; however, it shall be provided prior to operation of the permitted system.

(k) The applicant shall provide a water balance to the Division that determines required storage based upon the most limiting factor of the hydraulic loading based on either the most restrictive horizon or groundwater mounding analysis; or nutrient management based on either agronomic rates for a specified cover crop or crop management requirements.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0301 RECLAIMED WATER EFFLUENT STANDARDS**

(a) Reclaimed water treatment processes classified as Type 2 by the rules in this Subchapter shall produce a tertiary quality effluent (filtered or equivalent) prior to storage, distribution, or utilization that meets the parameter limits listed below:

- (1) monthly average BOD<sub>5</sub> of less than or equal to 5 mg/l and a daily maximum BOD<sub>5</sub> of less than or equal to 10 mg/l;
- (2) monthly average TSS of less than or equal to 5 mg/l and a daily maximum TSS of less than or equal to 10 mg/l;
- (3) monthly average NH<sub>3</sub> of less than or equal to 1 mg/l and a daily maximum NH<sub>3</sub> of less than or equal to 2 mg/l;
- (4) monthly geometric mean Escherichia coli (E. coli) or fecal coliform level of less than or

equal to 3/100 ml and a daily maximum E. coli or fecal coliform level of less than or equal to 25/100 ml;

(5) monthly geometric mean Coliphage level of less than or equal to 5/100 ml and a daily maximum Coliphage level of less than or equal to 25/100 ml;

(6) monthly geometric mean Clostridium perfringens level of less than or equal to 5/100 ml and a daily maximum Clostridium perfringens level of less than or equal to 25/100 ml; and

(7) maximum Turbidity of 5 Nephelometric Turbidity Units (NTUs).

(b) Reclaimed water treatment processes classified as Type 1 by the rules in this Subchapter shall produce a tertiary quality effluent (filtered or equivalent) prior to storage, distribution, or utilization that meets the parameter limits listed below:

(1) monthly average BOD<sub>5</sub> of less than or equal to 10 mg/l and a daily maximum BOD<sub>5</sub> of less than or equal to 15 mg/l;

(2) monthly average TSS of less than or equal to 5 mg/l and a daily maximum TSS of less than or equal to 10 mg/l;

(3) monthly average NH<sub>3</sub> of less than or equal to 4 mg/l and a daily maximum NH<sub>3</sub> of less than or equal to 6 mg/l;

(4) monthly geometric mean E. coli or fecal coliform level of less than or equal to 14/100 ml and a daily maximum E. coli or fecal coliform level of less than or equal to 25/100 ml; and

(5) maximum Turbidity of 10 NTUs.

(c) Reclaimed water produced by industrial facilities are not required to meet the criteria in this Rule if the reclaimed water is used at the facility in an industrial process and the area of use has no public access and does not result in employee exposure.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0401 DESIGN CRITERIA FOR WASTEWATER TREATMENT FACILITIES – CONJUNCTIVE SYSTEMS**

(a) The requirements in this Rule apply to all new and expanding conjunctive facilities, as applicable.

(b) Continuous on-line monitoring and recording for turbidity or particle count and flow shall be provided prior to storage, distribution or utilization.

(c) Effluent from the treatment facility shall not be discharged to the storage, distribution or utilization system if either the turbidity exceeds 10 NTUs or if the permitted pathogen levels cannot be met. The facility shall have the ability to utilize alternate wastewater management options when the effluent quality is not sufficient.

(d) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the storage, distribution or utilization system shall be provided.



(e) The permit shall require an operator certified by the Water Pollution Control System Operators Certification Commission (WPCSOCC) of a grade equivalent or greater than the facility classification to be on call 24 hours per day.

(f) No storage facilities are required as long as it can be demonstrated that other permitted means of disposal are available if 100 percent of the reclaimed water cannot be utilized. When provided, storage basins shall meet the design requirements in Rule .0402(g) of this Section.

(g) Reclaimed water irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0201 of this Subchapter. Single family residential irrigation systems and commercial (non-residential) irrigation systems less than one acre in size that are permitted by regulation under Rule .0113(8) of this Subchapter do not require preparation of a soils report.

(h) Type 2 reclaimed water treatment facilities shall provide dual disinfection systems containing UV disinfection and chlorination or equivalent dual disinfection processes to meet pathogen control requirements.

(i) Type 2 reclaimed water treatment facilities shall provide documentation that the combined treatment and disinfection processes are capable of the following:

- (1) log 6 or greater reduction of E. coli;
- (2) log 5 or greater reduction of Coliphage; and
- (3) log 4 or greater reduction of Clostridium perfringens.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a).  
*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0402 DESIGN CRITERIA FOR WASTEWATER TREATMENT FACILITIES – NON-CONJUNCTIVE SYSTEMS**

(a) The requirements in this Rule apply to all new and expanding non-conjunctive facilities, as applicable.

(b) Aerated flow equalization facilities shall be provided with a capacity based upon either a representative diurnal hydrograph or at least 25 percent of the daily system design flow.

(c) Dual facilities shall be provided for all essential treatment units.

(d) Continuous on-line monitoring and recording for turbidity or particle count and flow shall be provided prior to storage, distribution, or utilization.

(e) Effluent from the treatment facility shall be discharged to a five-day side-stream detention pond if either the turbidity exceeds 10 NTUs or if the permitted pathogen levels cannot be met. The facility shall have the ability to return the effluent in the five-day side-stream detention pond back to the head of the treatment facility.

(f) There shall be no public access to the wastewater treatment facility or the five-day side-stream detention pond. The five-day side-stream detention pond shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that required of the natural material liner. Liner requirements of the five-day side-stream detention

pond or separation distances between the bottom of the five-day side-stream detention pond and the groundwater table may be reduced if it can be demonstrated by predictive calculations or modeling methods that satisfy the Director, that construction and use of the five-day side-stream detention pond will not result in contravention of assigned groundwater standards at the compliance boundary.

(g) The storage basin shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than  $1 \times 10^{-6}$  centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that required of the natural material liner. Liner requirements of the storage basin or separation distances between the bottom of storage basin and the groundwater table may be reduced if it can be demonstrated by predictive calculations or modeling methods that satisfy the Director, that construction and use of the storage basin will not result in contravention of assigned groundwater standards at the compliance boundary.

(h) Automatically activated standby power supply onsite, capable of powering all essential treatment units under design conditions shall be provided.

(i) The permit shall require an operator certified by the Water Pollution Control System Operators Certification Commission (WPCSOCC) of a grade equivalent or greater than the facility classification to be on call 24 hours per day.

(j) By-pass and overflow lines are prohibited.

(k) Multiple pumps shall be provided if pumps are used.

(l) A water-tight seal on all treatment/storage units or minimum of two feet protection from 100-year flood shall be provided.

(m) Reclaimed water irrigation system design shall not exceed the recommended precipitation rates in the soils report prepared pursuant to Rule .0202 of this Subchapter.

(n) A minimum of 30 days of residual storage shall be provided.

(o) Utilization areas shall be designed to maintain a one-foot vertical separation between the seasonal high water table and the ground surface.

(p) Influent pump stations shall meet the sewer minimum design criteria as provided in 15A NCAC 02T .0300.

(q) Type 2 reclaimed water treatment facilities shall provide dual disinfection systems containing UV disinfection or equivalent and chlorination or equivalent to provide pathogen control.

(r) Type 2 reclaimed water treatment facilities shall provide documentation that the combined treatment and disinfection processes are capable of the following:

- (1) log 6 or greater reduction of E. coli;
- (2) log 5 or greater reduction of Coliphage; and
- (3) log 4 or greater reduction of Clostridium perfringens.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0403 DESIGN CRITERIA FOR DISTRIBUTION LINES**

(a) The requirements in this Rule apply to all new distribution lines.

(b) All reclaimed water valves, storage facilities and outlets shall be tagged or labeled to warn the public or employees that the water is not intended for drinking.

(c) All reclaimed water piping, valves, outlets and other appurtenances shall be color-coded, taped, or otherwise marked to identify the source of the water as being reclaimed water as follows:

- (1) All reclaimed water piping and appurtenances shall be either colored purple (Pantone 522 or equivalent) and embossed or integrally stamped or marked "CAUTION: RECLAIMED WATER - DO NOT DRINK" or be installed with a purple (Pantone 522 or equivalent) identification tape or polyethylene vinyl wrap. The warning shall be stamped on opposite sides of the pipe and repeated every three feet or less;
- (2) Identification tape shall be at least three inches wide and have white or black lettering on purple (Pantone 522 or equivalent) field stating "CAUTION: RECLAIMED WATER - DO NOT DRINK". Identification tape shall be installed on top of reclaimed water pipelines, fastened at least every 10 feet to each pipe length and run continuously the entire length of the pipe; and
- (3) Existing underground distribution systems retrofitted for the purpose of utilizing reclaimed water shall be taped or otherwise identified as in Subparagraphs (1) or (2) of this Paragraph. This identification need not extend the entire length of the distribution system but shall be incorporated within 10 feet of crossing any potable water supply line or sanitary sewer line.

(d) All reclaimed water valves and outlets shall be of a type, or secured in a manner, that permits operation by personnel authorized by the entity that operates the reclaimed water system.

(e) Hose bibs shall be located in locked, below grade vaults that shall be labeled as being of nonpotable quality. As an alternative to the use of locked vaults with standard hose bib services, other locking mechanisms such as hose bibs which can only be operated by a tool may be placed above ground and labeled as nonpotable water.

(f) Cross-Connection Control

- (1) There shall be no direct cross-connections between the reclaimed water and potable water systems;
- (2) Where both reclaimed water and potable water are supplied to a reclaimed water use area in residential or commercial (irrigation) applications, a dual check valve device (or a device providing equal or better protection) shall be installed at the potable water service connection to the use area;
- (3) Where both reclaimed water and potable water are supplied to a reclaimed water use area in industrial or commercial (non-irrigation)

applications, a reduced pressure principle backflow prevention device or an approved air gap separation pursuant to 15A NCAC 18C shall be installed at the potable water service connection to the use area; and

- (4) Where potable water is used to supplement a reclaimed water system, there shall be an air gap separation, approved and regularly inspected by the potable water supplier, between the potable water and reclaimed water systems.

(g) Irrigation system piping shall be considered part of the distribution system for the purposes of this Rule.

(h) Reclaimed water distribution lines shall be located 10 feet horizontally from and 18 inches below any water line where practicable. Where these separation distances can not be met, the piping and integrity testing procedures shall meet water main standards in accordance with 15A NCAC 18C.

(i) Reclaimed water distribution lines shall not be less than 50 feet from a well unless the piping and integrity testing procedures meet water main standards in accordance with 15A NCAC 18C, but in no case shall they be less than 25 feet from a private well.

(j) Reclaimed water distribution lines shall meet the separation distances to sewer lines in accordance with 15A NCAC 02T .0305.

*History Note: Authority G.S. 143-215.1; 143-215.3(a.); Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0501 RECLAIMED WATER UTILIZATION**

(a) Reclaimed water utilized in a manner that includes application to the land surface shall meet the following criteria:

- (1) The reclaimed water shall meet requirements for Type 1 reclaimed water in Rule .0301(b) of this Subchapter;
- (2) Notification shall be provided by the permittee or its representative to inform the public and employees of the use of reclaimed water (Non Potable Water) and that the reclaimed water is not intended for drinking. Notification material shall be provided to employees in a language they understand;
- (3) The reclaimed water generator shall develop and maintain a record keeping program for distribution of reclaimed water;
- (4) The reclaimed water generator shall develop and maintain an education and approval program for all use of reclaimed water. Educational material shall be provided to employees in a language they understand;
- (5) The reclaimed water generator shall develop and maintain a routine review and inspection program for all uses of reclaimed water on property not owned by the generator;
- (6) The compliance boundary and the review boundary for groundwater are established at the irrigation area boundaries. No deed

restrictions or easements shall be required to be filed on adjacent properties. Land application of effluent shall be on property controlled by the generator unless an easement is provided in accordance with 15A NCAC 02L .0107 except in cases where a compliance boundary is not established; and

- (7) Reclaimed water irrigated on designed soil matrix, such as artificial or natural turf athletic fields with subsurface drainage shall meet the following conditions:

- (A) Annual hydraulic loading and maximum precipitation rates shall be designed to irrigate a volume not to exceed the design water capacity of the designed soil matrix above the drainage system; and
- (B) Outlets of the drainage system shall not be allowed to discharge directly to surface waters (intermittent or perennial) or to storm water conveyance systems that do not allow for infiltration prior to discharging to surface waters.

(b) Reclaimed water used for activities other than land application (such as industrial and commercial uses) shall meet the criteria below:

- (1) The reclaimed water shall meet requirements for Type 1 reclaimed water;
- (2) Notification shall be provided by the permittee or its representative to inform the public and employees of the use of reclaimed water (Non Potable Water) and that the reclaimed water is not intended for drinking, and notification material shall be provided to employees in a language they understand;
- (3) The reclaimed water generator shall develop and maintain an education and approval program for all reclaimed water users, and educational material shall be provided to employees in a language they understand;

- (4) The reclaimed water generator shall develop and maintain a record keeping program for distribution of reclaimed water;
- (5) The reclaimed water generator shall develop and maintain a routine review and inspection program for all reclaimed water users; and
- (6) Reclaimed water used for activities other than land application shall not be used in a manner that causes exposure to aerosols.

(c) Reclaimed water used in commercial or industrial facilities for the purposes of urinal and toilet flushing or fire protection in sprinkler systems shall be approved by the Director if the applicant can demonstrate to the Division that public health and the environment will be protected.

(d) Reclaimed water shall not be used for swimming pools, hot-tubs, spas or similar uses.

(e) Reclaimed water shall not be used for direct reuse as a raw potable water supply.

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

#### **15A NCAC 02U .0601 BULK DISTRIBUTION OF RECLAIMED WATER**

(a) Tank trucks and other equipment used to distribute reclaimed water shall be identified with advisory signs.

(b) Tank trucks used to transport reclaimed water shall not be used to transport potable water that is used for drinking or other potable purposes.

(c) Tank trucks used to transport reclaimed water shall not be filled through on-board piping or removable hoses that may subsequently be used to fill potable water tanks.

(d) The reclaimed water generator shall develop and maintain an education and approval program for all reclaimed water users.

(e) The reclaimed water generator shall develop and maintain a record keeping program for bulk distribution of reclaimed water.

(f) The reclaimed water generator shall develop and maintain a routine review and inspection program for reclaimed water users.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .0701 SETBACKS**

(a) Treatment and storage facilities associated with systems permitted under this Subchapter shall adhere to the setback requirements in 15A NCAC 02T .0500 except as provided in this Rule.

(b) Final effluent storage facilities shall meet all setback requirements for riparian buffer rules pursuant to 15A NCAC 02B as well as the following setbacks:

|  |      |
|--|------|
|  | feet |
| Any private or public water supply source  | 100  |
| Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) | 50   |
| Any well with exception of monitoring wells  | 100  |
| Any property line  | 50   |

Otherwise storage facilities shall meet the provisions of Paragraph (a) of this Rule.

(c) The setbacks for utilization areas where reclaimed water is discharged to the ground shall be as follows:

|  |      |
|--|------|
|  | feet |
| Surface waters (streams – intermittent and perennial, perennial waterbodies, |      |

|  |     |
|--|-----|
| and wetlands) not classified SA  | 25  |
| Surface waters (streams – intermittent and perennial, perennial waterbodies, and wetlands) classified SA | 100 |
| Any well with exception to monitoring wells  | 100 |
| (d) No setback between the application area and property lines is required.                              |     |

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
*Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0801 OPERATION AND MAINTENANCE PLAN**

An Operation and Maintenance Plan shall be maintained by the permittee for all reclaimed water systems. The plan shall:

- (1) describe the operation of the system in sufficient detail to show what operations are necessary for the system to function and by whom the functions are to be conducted;
- (2) include a sampling and monitoring plan to evaluate quality of reclaimed water within the distribution system to provide quality assurance at the time of reuse, and specify actions to be taken in response to unsatisfactory monitoring results;
- (3) provide a map of all distribution lines and record drawings of all utilization systems under the permittee's control;
- (4) describe anticipated maintenance of the system;
- (5) include provisions for safety measures including restriction of access to the site and equipment, as required in this Subchapter; and
- (6) include spill control provisions including:
  - (a) response to upsets and bypasses including control, containment, and remediation; and
  - (b) contact information for plant personnel, emergency responders, and regulatory agencies.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
*Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0802 RESIDUALS MANAGEMENT PLAN**

A Residuals Management Plan shall be maintained for all reclaimed water systems that generate residuals. The plan shall include the following:

- (1) an explanation as to how the residuals will be collected, handled, processed, stored and disposed;
- (2) an evaluation of the residuals storage requirements for the treatment facility based upon the maximum anticipated residuals production rate and ability to remove residuals;
- (3) a permit for residuals utilization, a written commitment to the Permittee of a Division approved residuals disposal/utilization program accepting the residuals which

demonstrates that the program has adequate capacity to accept the residuals, or that an application for approval has been submitted; and

- (4) if oil, grease, grit, or screenings removal and collection is a designed unit process, an explanation as to how the oil/grease will be collected, handled, processed, stored and disposed.

*History Note:* Authority G.S. 143-215.1; 143-215.3(a);  
*Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .0901 LOCAL PROGRAM APPROVAL**

(a) Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may apply to the Division for approval of programs for permitting construction, modification, and operation of reclaimed water distribution lines and permitting users under their authority, unless prohibited by other rules in this Subchapter. Construction of and modifications to treatment works, including pump stations for reclaimed water distribution, require Division approval. Permits issued by approved local programs shall serve in place of permits issued by the Division. Local program approval shall not be granted for non-conjunctive reclaimed water uses.

(b) Applications. Applications for approval of local programs shall provide adequate information to assure compliance with the requirements of this Subchapter and the following:

- (1) Include two copies of the permit application forms, intended permits including types of uses, minimum design criteria (specifications), flow chart of permitting, inspection and certification procedures, and other relevant documents to be used in administering the local program; and
- (2) Certification that the local authority has procedures in place for processing permit applications, setting permit requirements, enforcement, and penalties that are compatible with those for permits issued by the Division.

(c) Any amendments to the requirements of this Subchapter shall be incorporated into the local program within 60 days of the effective date of the amendments.

(d) If required by G.S. 89C, a North Carolina registered Professional Engineer shall be on the staff of the local program or retained as a consultant to review unusual situations or designs and to answer questions that arise in the review of proposed projects. The local program shall also provide staff or retain a consultant to review all other non-engineering related program areas.

(e) Each project permitted by the local program shall be inspected for compliance with the requirements of the local program at least once during construction.

(f) Approval of Local Programs. The Division staff shall acknowledge receipt of an application for a local program in writing, review the application, notify the applicant of additional information that may be required, and make a recommendation to the Commission on the acceptability of the proposed local program.

(g) All permitting actions, bypasses from distribution lines, enforcement actions, and monitoring of the distribution system shall be summarized and submitted to the Division at a minimum on an annual basis on forms provided by the Division. The report shall also provide a listing and summary of all enforcement actions taken or pending during the year. The report shall be submitted within 30 days after the end of each year.

(h) A copy of all program documents such as specifications, permit applications, permit shells and shell certification forms shall be submitted to the Division on an annual basis along with a summary of any other program changes. Program changes to note include staffing, processing fees, and ordinance revisions.

(i) Modification of a Local Program. After a local program has been approved by the Commission, any modification of the program procedures or requirements specified in this Rule shall be approved by the Director to assure that the procedures and requirements remain at least as stringent as the state-wide requirements in this Subchapter.

(j) Appeal of Local Decisions. Appeal of individual permit denials or issuance with conditions the permit applicant finds unacceptable shall be made according to the approved local ordinance. The Commission shall not consider individual permit denials or issuance with conditions to which a permittee objects. This Paragraph does not alter the enforcement authority of the Commission as specified in G.S. 143-215.1(f).

*History Note:* Authority G.S. 143-215.1; 143-215.3(a); 143-215.1(f);

*Eff. Pending Delayed Eff. Date.*

#### **15A NCAC 02U .1101 WETLANDS AUGMENTATION**

(a) Wetland augmentation shall be limited as follows:

- (1) Wetland augmentation shall be limited to pine flat and hardwood flat wetlands as defined in the most current version of the N.C. Wetland Assessment Method (NC WAM) User Manual developed by the N.C. Wetland Functional Assessment Team (NC WFAT), excluding riparian zones. The NC WAM User Manual can be accessed at the following web address: <http://portal.ncdenr.org/web/wq/swp/ws/pdu/ncwam>;
- (2) Reclaimed water discharge to Salt Water Wetlands (SWL) or Unique Wet Lands (UWL), as defined in 15A NCAC 02B .0101, is not permitted under the rules in this Subchapter; and
- (3) Reclaimed water discharge to wetlands areas shall be limited to times when the depth to

groundwater is greater than or equal to one foot.

(b) In addition to the requirements established in Rule .0201 or Rule .0202 of this Subchapter as applicable, all new and expanding wetlands augmentation facilities, as applicable, shall:

- (1) Identify the classification of the existing wetlands according to the most current version of the N.C. Wetlands Assessment Method (NC WAM) User Manual and information provided by the North Carolina Natural Heritage Program (NC NHP);
- (2) Identify the existing beneficial uses of the reclaimed water to the wetlands in accordance with 15A NCAC 02B .0231, and support any demonstration of net environmental benefit;
- (3) Determine the hydrologic regime of the wetlands, including depth and duration of inundation, and average monthly water level fluctuations. An estimated monthly water budget shall be provided by the applicant and compared to actual conditions during operation;
- (4) Identify class of reclaimed water to be discharged, associated parameter concentrations, and annual loading rates to the wetlands;
- (5) Determine whether the wetland occurs in a ground water recharge or discharge area;
- (6) Provide baseline monitoring information for wetlands sufficient to allow determination of reference conditions, to be performed for at least one representative year prior to initiation of discharge;
- (7) Provide a project evaluation and receiver site agronomic plan that includes a hydraulic loading recommendation based on the soils report, hydrogeologic description, agronomic investigation, wetland type, local topography, aquatic life, wildlife, and all other investigative results to support that there will be no negative effects on the uses of the wetlands including the biological criteria and net environmental benefits will be gained. Hydraulic loading recommendations shall reflect seasonal changes to wetlands including restrictions during times of high water table levels;
- (8) For non-conjunctive wetlands augmentation systems, provide 200 percent of the land requirements based on the recommended hydraulic loading rate. After five years of operation the Permittee may request and receive a reduction in the additional land requirement provided that operational data supports that sufficient utilization capacity exists for the reclaimed water generator;
- (9) 10 percent of the land requirements shall remain in a natural state to be used as a basis

- of comparison to the wetlands receiving reclaimed water;
- (10) For application of reclaimed water exhibiting parameter concentrations greater than 100 percent of the groundwater standards, provide a site-specific hydrogeologic investigation (i.e., evaluation of wetlands/groundwater interaction, groundwater recharge/discharge, gradient, project proximity to water supply wells) to show that hydrogeologic conditions are adequate to prevent degradation of groundwater quality and demonstrate through hydrogeological modeling that groundwater standards will not be exceeded at the compliance boundary; and
- (11) Provide documentation that any applicable NPDES program requirements have been met, pursuant to 15A NCAC 02H .0100.

(c) All renewal applications for wetlands augmentation facilities, shall submit documentation that the project continues to function as designed and that the net environmental benefit aspects remain applicable.

(d) Reclaimed water utilized for wetlands augmentation shall meet the following reclaimed water effluent standards:

- (1) Reclaimed water discharged to natural wetlands shall be treated to Type 1 reclaimed water standards;
- (2) In addition to water quality requirements associated with Type 1 reclaimed water, reclaimed water discharged to wetlands shall not exceed the following concentrations, unless net environmental benefits are provided:
  - (A) Total Nitrogen (as Nitrogen) of 4.0 mg/l; and
  - (B) Total Phosphorus (as Phosphorus) of 1 mg/l;
- (3) Metal concentrations in reclaimed water discharged to wetlands shall not exceed North Carolina surface water quality standards, unless acute whole effluent toxicity testing demonstrates absence of toxicity.

(e) Reclaimed water facilities utilizing wetlands augmentation, shall meet the criteria below:

- (1) Notification shall be provided by the permittee or its representative to inform the public of the use of reclaimed water (Non Potable Water) and that the reclaimed water is not intended for drinking;
- (2) The reclaimed water generator shall develop and maintain a wetlands monitoring program. This monitoring will be conducted during the first five growing seasons after initiation of the application of reclaimed water, after which the applicant may apply for and receive reduced monitoring. The monitoring requirements must include the following items:
  - (A) vegetation, macroinvertebrates, amphibians, fish, birds, and

threatened or endangered species surveys;

- (B) water chemistry;
- (C) surface water and ground water depth readings; and
- (D) groundwater monitoring plan except for those projects receiving reclaimed water characterized by average annual parameter concentrations less than or equal to 50 percent of ground water quality criteria, and less than 50 percent of required surface water discharge concentrations;

- (3) The reclaimed water generator shall develop and maintain an education program for all users of reclaimed water on property not owned by the generator;
- (4) The reclaimed water generator shall develop and maintain a routine review and inspection program for the wetlands augmentation system; and
- (5) The compliance boundary and the review boundary for groundwater shall be established at the property line. No deed restrictions or easements are required to be filed on adjacent properties. Land application of reclaimed water shall be on property controlled by the generator unless a contractual agreement is provided in accordance with 15A NCAC 02L .0107 except in cases where a compliance boundary is not established.

(f) Permitting of wetlands augmentation uses shall not be delegated to local programs.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); S.L. 2006-250;*

*Eff. Pending Delayed Eff. Date.*

**15A NCAC 02U .1401 IRRIGATION TO FOOD CHAIN CROPS**

(a) Irrigation to food chain crops shall be limited as follows:

- (1) Reclaimed water utilized for direct or indirect contact irrigation of food chain crops that will be peeled, skinned, cooked or thermally processed before consumption shall be treated to Type 1 reclaimed water standards;
- (2) For the purposes of this Rule, tobacco is not considered a food chain crop;
- (3) Reclaimed water shall not be utilized for direct contact irrigation of food chain crops that will not be peeled, skinned, cooked or thermally processed before consumption except as approved in Subparagraph (5) of this Paragraph;
- (4) Reclaimed water utilized for indirect contact irrigation of food chain crops that will not be peeled, skinned, cooked or thermally processed before consumption shall be treated to Type 2 reclaimed water standards; and

- (5) If requested, the Department shall authorize demonstration projects to collect and present data related to the direct application of reclaimed water on crops that are not peeled, skinned, cooked, or thermally processed before consumption. Crops produced during such demonstration projects may be used as animal feed or may be thermally processed, cooked, or otherwise prepared for human consumption in a manner approved by the North Carolina Department of Agriculture and Consumer Services. If the applicant, based on the data collected, demonstrates to the Department that public health will be protected if their reclaimed water is directly applied to crops which are not peeled, skinned, cooked, or thermally processed, the Department shall waive the prohibition described in Subparagraph (3) of this Paragraph for that project. When considering such demonstration projects, the Department shall seek the advice of the North Carolina Department of Agriculture and Consumer Services.

(b) In addition to the requirements established in Rule .0201 or Rule .0202 of this Subchapter as applicable, all new and expanding irrigation to food chain crops systems shall submit a representative soil analysis for standard soil fertility for each field to be irrigated. A Standard Soil Fertility Analysis shall include the following parameters:

- (1) Acidity;
- (2) Base Saturation (by calculation);
- (3) Calcium;
- (4) Cation Exchange Capacity;
- (5) Copper;
- (6) Exchangeable Sodium Percentage (by calculation);
- (7) Magnesium;
- (8) Manganese;
- (9) Percent Humic Matter;
- (10) pH;
- (11) Phosphorus;
- (12) Potassium;
- (13) Sodium; and
- (14) Zinc.

(c) When a water balance is required by Rule .0202(k) of this Subchapter the water balance shall include seasonal water requirements for the crops.

(d) For irrigation sites not owned by the permittee, a notarized land owner agreement shall be provided to the Division. The land owner agreement shall include the following:

- (1) a description of the approved uses and conditions for use of the reclaimed water consistent with the requirements of this Rule;
- (2) a condition requiring the reclaimed water supplier shall provide the landowner with the results of sampling performed to document compliance with the reclaimed water effluent standards; and

- (3) a condition requiring the landowner to report to the permittee any use of the reclaimed water inconsistent with the uses in the agreement.

(e) All renewal applicants for irrigation to food chain crop systems shall submit:

- (1) A representative soil analysis for standard soil fertility for each field to be irrigated. A Standard Soil Fertility Analysis shall include the following parameters:
  - (A) Acidity;
  - (B) Base Saturation (by calculation);
  - (C) Calcium;
  - (D) Cation Exchange Capacity;
  - (E) Copper;
  - (F) Exchangeable Sodium Percentage (by calculation);
  - (G) Magnesium;
  - (H) Manganese;
  - (I) Percent Humic Matter;
  - (J) pH;
  - (K) Phosphorus;
  - (L) Potassium;
  - (M) Sodium; and
  - (N) Zinc;
- (2) The inventory of commercial agricultural operations using reclaimed water to irrigate food chain crops required in Subparagraph (d)(7) of this Rule; and
- (3) For irrigation sites not owned by the permittee, a notarized land owner agreement pursuant to Paragraph (d) of this Rule.

(f) Reclaimed water facilities providing reclaimed water for the irrigation of food chain crops shall meet the criteria below:

- (1) Crops irrigated by direct contact with reclaimed water shall not be harvested within 24 hours of irrigation with reclaimed water;
- (2) Notification at the utilization site shall be provided by the permittee or its representative to inform the public of the use of reclaimed water (Non Potable Water) and that the reclaimed water is not intended for drinking;
- (3) The reclaimed water generator shall develop and maintain a record keeping program for distribution of reclaimed water;
- (4) The permittee shall develop and maintain an education program for users of reclaimed water for irrigation to food chain crops;
- (5) The reclaimed water generator shall provide all landowners receiving reclaimed water for irrigation of food chain crops a summary of all reclaimed water system performance as required in G.S. 143-215.1C;
- (6) The reclaimed water generator shall develop and maintain a routine review and inspection program for all irrigation to food chain crop systems; and
- (7) The permittee shall maintain an inventory of commercial agricultural operations using reclaimed water to irrigate food chain crops

for each year of operation. The inventory shall be maintained for five years. The inventory of food chain crop irrigation shall include the following:

- (A) name of the agricultural operation;
- (B) name and telephone number of the owner or operator of the agricultural operation;
- (C) address of the agricultural operation;
- (D) food chain crops irrigated with reclaimed water;
- (E) type of application (e.g., irrigation) method used; and
- (F) approximate area under irrigation on which food chain crops are grown.

*History Note: Authority G.S. 143-215.1; 143-215.3(a); S.L. 2006-250; Eff. Pending Delayed Eff. Date.*

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**15A NCAC 10B .0203 DEER (WHITE-TAILED)**

**(a) Open Seasons (All Lawful Weapons)**

- (1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

- (A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus\*, Cumberland, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Moore, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond\*\*, Robeson, Sampson, Scotland\*\*, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties.

\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

\*\*Refer to 15A NCAC 10D .0103(h) for seasons on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

- (B) Saturday before Thanksgiving through January 1 in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes\*, and Yadkin counties.

\*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.

- (C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.

- (D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties.

- (E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

- (F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties, except for South Mountain Game Land.

- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph: (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):

- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife



- Refuge, and in those parts of Currituck County known as the Currituck National Wildlife Refuge and the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Buncombe, \*Haywood, Henderson, Madison and Transylvania counties\*\* and the following parts of counties:  
 Avery: That part south of the Blue Ridge Parkway; and  
 Yancey: That part south of US 19 and US 19E.  
 \*except for that part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280  
 \*\*see 15A NCAC 10D .0103 for deer of either sex seasons on game lands that differ from the days identified in this Subparagraph
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Burke, Caldwell, McDowell, Mitchell, Polk and the following parts of counties:  
 Avery: That part north of the Blue Ridge Parkway;  
 Yancey: That part north of US 19 and US 19E.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (a)(1) of this Rule in all of Cleveland and Rutherford counties.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (a)(1) of this Rule in and east of Ashe, Watauga, Wilkes, Alexander, Catawba, Lincoln and Gaston counties and in the following parts of counties:  
 Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280; and  
 Henderson. That part east of NC 191 and north and west of NC 280.
- (b) Open Seasons (Bow and Arrow)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the third Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands.
- (B) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.
- (C) Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (a)(1) of this Rule and in Cleveland and Rutherford counties.

(D) Saturday on or nearest September 10 to the fourth Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(c) Open Seasons (Muzzle-Loading Rifles, Shotguns and Bow and Arrow)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms and bow and arrow during the following seasons:

- (A) The Saturday on or nearest October 1 to the Friday of the second week thereafter in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (a)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.
- (B) The third Saturday preceding Thanksgiving until the Friday of the second week thereafter in the counties\* and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (a)(1) of this Rule.  
\*Refer to 15A NCAC 10D .0103(h) for seasons on Buffalo Cove game land.
- (C) Monday on or nearest October 1 to the Saturday of the second week thereafter in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (a)(1) of this Rule.
- (D) The fourth Saturday preceding Thanksgiving until the Friday of the

second week thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (a)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms and bow and arrow season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Watauga, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms and bow and arrow season in all other counties.
- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms and bow and arrow seasons.
- (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms and bow and arrow seasons.

(d) Open Season (Urban Season)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (3) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow in participating cities in the state, as defined in G.S. 160A-1(2), from the second Saturday following January 1 to the fifth Saturday thereafter. Deer shall not be taken on any game land or part thereof that occurs within a city boundary.
- (2) Participation. Cities that intend to participate in the urban season must send a letter to that effect no later than April 1 of the year prior to the start of the urban season to the Executive Director or his designee. Cities must also submit a map of the city's boundaries within which the urban season shall apply.
- (3) Restrictions:
  - (A) Dogs shall not be used for hunting deer during the urban season.
  - (B) It is unlawful to carry any type of firearm while hunting with a bow during the urban season.
  - (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer shall be used during the urban season.

(e) In and east of Vance, Franklin, Wake, Harnett, Moore and Richmond counties, the possession limit is six deer, up to four of which may be deer with visible antlers. In all other counties of the state the possession limit is six deer, up to two of which may be deer with visible antlers. The season limit in all counties of the state is six deer. In addition to the bag limits described

above, a hunter may obtain multiple bonus antlerless deer harvest report cards from the Wildlife Resources Commission or any Wildlife Service Agent to allow the harvest of two additional antlerless deer per card on lands others than lands enrolled in the Commission's game land program during any open deer season in all counties and parts of counties of the State identified in Part (G) of Subparagraph (a)(2) of this Rule. Antlerless deer harvested and reported on the bonus antlerless harvest report card shall not count as part of the possession and season limit. Hunters may also use the bonus antlerless harvest report cards for deer harvested during the season described in Paragraph (d) of this Rule within the boundaries of participating municipalities, except on state-owned game lands. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The bag limits described above do not apply to deer harvested in areas covered in the Deer Management Assistance Program (DMAP) as described in G.S. 113-291.2(e) for those individuals using Commission-issued DMAP tags and reporting harvest as described on the DMAP license. Season bag limits shall be set by the number of DMAP tags issued and in the hunters' possession. All deer harvested under this program, regardless of the date of harvest, shall be tagged with these DMAP tags and reported as instructed on the DMAP license. The hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license for deer tagged with the DMAP tags. Any deer harvested on lands enrolled in the DMAP and not tagged with DMAP tags may only be harvested during the regularly established deer seasons subject to all the restrictions of those seasons, including bag limits, and reported using the big game harvest report card or the bonus antlerless harvest report card.

*History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;*  
*Eff. February 1, 1976;*  
*Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. July 1, 2000;*  
*Temporary Amendment Eff. July 1, 2002; July 1, 2001;*  
*Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);*  
*Temporary Amendment Eff. June 1, 2003;*  
*Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);*  
*Amended Eff. August 1, 2011; July 10, 2010; June 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.*

#### **15A NCAC 10B .0301 DEFINITIONS**

As used in this Section, the following definitions apply:

- (1) "Breakaway device" means any device incorporated into a snare or snare component that allows the loop to break open, and an animal to escape completely free of the snare, when a specified amount of force is applied.
- (2) "Collarum™-type trap" means any power-activated snare that is activated when the trigger is pulled and that is designed to capture

and restrain the animal by a cable around the neck.

- (3) "Leghold" and "foothold" mean any trap designed to hold an animal by the foot.
- (4) "Loop stop" means a device that is attached to the snare cable to prevent the loop from closing beyond a specified point.
- (5) "Power-activated" means a snare on which the loop closure (speed or direction) is initiated or augmented by some type of powering device (e.g., a spring).
- (6) "Relaxing lock" means a snare lock that allows the snare loop to release constriction pressure on the captured animal when the cable is not taut.
- (7) "Snare" means any restraining device made from a cable and a locking mechanism.
- (8) "Steel-jaw" means any leghold or foothold trap in which the jaw(s) are made of metal.

*History Note: Authority G.S. 113-134; 113-291.1; 113-291.2; 113-291.6;*  
*Eff. January 1, 2011.*

#### **15A NCAC 10B .0305 TRAPS**

(a) A steel-jaw or leghold trap set on dry land with a solid anchor shall not have a chain longer than eight inches unless the chain is fitted with a shock-absorbing device with at least 40 pounds and no more than 75 pounds of pressure to stretch or compress the device.

(b) A Collarum™-type trap shall:

- (1) Have a cable that is 3/16<sup>th</sup> inch in diameter, a loop stop with a minimum loop diameter of three inches, a relaxing lock, and a breakaway device that has been tested to break or disassemble at no more than 285 pounds of pull.
- (2) Have a set capture loop no less than 10 inches and no greater than 12 inches in diameter.
- (3) Be equipped with at least one swivel device between the loop and the anchor.
- (4) Be staked in a manner that does not allow the animal or the restraint device to reach any part of a fence or reach rooted, woody vegetation greater than ½ inch in diameter.
- (5) Not be set using a drag or used with a kill pole.

*History Note: Authority G.S. 113-134; 113-291.6;*  
*Eff. May 1, 2007;*  
*Recodified from Rule 10B .0304 Eff. January 1, 2011;*  
*Amended Eff. January 1, 2011.*

#### **15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS**

(a) Designation of Public Mountain Trout Waters. For the purposes of this Rule, artificial lure is defined as a fishing lure that neither contains nor has been treated by any substance that attracts fish by the sense of taste or smell. Natural bait is defined as any living or dead organism (plant or animal), or parts

thereof, or prepared substances designed to attract fish by the sense of taste or smell. The waters listed herein or in 15A NCAC 10D .0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (a)(1)(A) through (Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein.

(A) Alleghany County:

New River (not trout water)  
 Little River (Whitehead to McCann Dam)  
 Brush Creek (except where posted against trespass)  
 Big Pine Creek  
 (Big) Glade Creek  
 Bledsoe Creek  
 Pine Swamp Creek  
 South Fork New River (not trout water)  
 Prather Creek  
 Cranberry Creek  
 Piney Fork  
 Meadow Fork  
 Yadkin River (not trout water)  
 Roaring River (not trout water)  
 East Prong Roaring River (that portion on Stone Mountain State Park)  
 [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

(B) Ashe County:

New River (not trout waters)  
 North Fork New River (Watauga County line to Sharp Dam)  
 Helton Creek (Virginia State line to New River)

[Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River)

Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)

Big Laurel Creek  
 Three Top Creek (portion not on game lands)

South Fork New River (not trout waters)

Cranberry Creek (Alleghany County line to South Fork New River)

Nathans Creek  
 Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)

Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Roan Creek  
 Beaver Creek  
 Pine Swamp Creek (all forks)

Old Fields Creek  
 Mill Creek (except where posted against trespass)

(C) Avery County:

Nolichucky River (not trout waters)

North Toe River (headwaters to Mitchell County line, except where posted against trespass)

Squirrel Creek  
 Elk River (SR 1305 crossing immediately upstream of Big Falls to the Tennessee State line, including portions of tributaries on game lands)

Wildcat Lake  
 Catawba River (not trout water)

Johns River (not trout water)

- Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]  
 Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]  
 Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]  
 Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]  
 Boyde Coffey Lake  
 Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]  
 Milltimber Creek
- (D) Buncombe County:  
 French Broad River (not trout water)  
 Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)  
 Dillingham Creek (Corner Rock Creek to Ivy Creek)  
 Stony Creek  
 Corner Rock Creek (including tributaries, except Walker Branch)  
 Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)  
 Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)  
 Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)  
 Lake Powhatan  
 Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
- Catawba River (Muddy Creek to the City of Morganton water intake dam) [Special Regulations apply. See Subparagraph (a)(7) of this Rule.]  
 South Fork Catawba River (not trout water)  
 Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)  
 Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]  
 Johns River (not trout water)  
 Parks Creek (portion not on game lands not trout water)  
 Carroll Creek (game lands portion above SR 1405 including tributaries)  
 Linville River (portion within Linville Gorge Wilderness Area, including tributaries, and portion below Lake James powerhouse from upstream bridge on SR 1223 to Muddy Creek)
- (F) Caldwell County:  
 Catawba River (not trout water)  
 Johns River (not trout water)  
 Wilson Creek (game lands portion downstream of Lost Cove Creek to Brown Mountain Beach dam, except where posted against trespass) [Delayed Harvest Regulations apply to game lands portion between Lost Cove Creek and Phillips Branch. See Subparagraph (a)(5) of this Rule.)  
 Estes Mill Creek (not trout water)

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|     | Mulberry Creek (portion not on game lands not trout water)                                       |     | Cheoah River (not trout water)   |
|     | Boone Fork [not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]           |     | Yellow Creek   |
|     | Boone Fork Pond  |     | Santeetlah Reservoir (not trout water)   |
|     | Yadkin River (Happy Valley Ruritan Community Park to SR 1515)                                    |     | West   |
|     | Buffalo Creek (mouth of Joes Creek to McCloud Branch)  |     | Buffalo Creek  |
|     | Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek)                    |     | Little   |
| (G) | Cherokee County:   |     | Buffalo Creek  |
|     | Hiwassee River (not trout water)   |     | Santeetlah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek) |
|     | Shuler Creek (Joe Brown Highway (SR 1325) bridge to Tennessee line)                              |     | (Big) Snowbird Creek (old railroad junction to SR 1127 bridge, including portions of tributaries on game lands)  |
|     | Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)                         |     | Mountain Creek (game lands boundary to SR 1138 bridge)   |
|     | Valley River (headwaters to US 19 business bridge in Murphy)                                     |     | Long   |
|     | Hyatt Creek (including portions of tributaries on game lands)                                    |     | Creek (portion not on game lands)  |
|     | Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands) |     | Tulula   |
|     |  |     | Creek (headwaters to lower bridge on SR 1275)  |
|     |  |     | Cheoah Reservoir   |
|     |  |     | Fontana Reservoir (not trout water)  |
|     |  |     | Stecoah Creek  |
| (H) | Clay County:   |     | Panther Creek (including portions of tributaries on game lands)  |
|     | Hiwassee River (not trout water)   | (J) | Haywood County:  |
|     | Fires Creek (foot bridge in the US Forest Service Fires Creek Picnic Area to SR 1300)            |     | Pigeon River (Stamey Cove Branch to upstream US 19-23 bridge)  |
|     | Tusquitee Creek (headwaters to lower SR 1300 bridge)   |     | Cold Springs Creek (including portions of tributaries on game lands)   |
|     | Nantahala River (not trout water)  |     | Jonathan Creek (upstream SR 1302 bridge to Pigeon River, except where posted against trespass)   |
|     | Buck Creek (game land portion downstream of US 64 bridge)  |     | Richland Creek (Russ Avenue (US 276) bridge to US 23-74 bridge)  |
| (I) | Graham County:   |     | West Fork Pigeon River (Tom Creek to the first game land boundary upstream of  |
|     | Little Tennessee River (not trout water)   |     |  |
|     | Calderwood Reservoir (Cheoah Dam to Tennessee State line)  |     |  |

- Lake Logan) [Delayed Harvest Regulations apply to the portion from Queen Creek to the first game land boundary upstream of Lake Logan. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:
- (Rocky) Broad River (Rocky River Lane to Rutherford County line)
  - Green River - upper (mouth of Joe Creek to mouth of Bobs Creek)
  - Green River - lower (Lake Summit Dam to I-26 bridge)
  - (Big) Hungry River
  - Little Hungry River
- French Broad River (not trout water)
- Cane Creek (SR 1551 bridge to US 25 bridge)
  - Mud Creek (not trout water)
  - Clear Creek (SR 1591 bridge at Jack Mountain Lane to SR 1582)
  - Mills River (not trout water)
  - North Fork Mills River (game lands portion below the Hendersonville watershed dam). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (L) Jackson County:
- Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1534 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between the downstream NC 107 bridge and the falls located 275 yards upstreams of US 23-441 bridge as marked by a sign on each bank. See Subparagraph (a)(5) of this Rule.]
  - Scott Creek (entire stream, except where posted against trespass)
  - Dark Ridge Creek (Jones Creek to Scotts Creek)
  - Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
  - Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
  - Cullowhee Creek (Tilley Creek to Tuckasegee River)
  - Bear Creek Lake
- Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Wolf Creek Lake
  - Balsam Lake
- Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Tanasee Creek Lake
- (M) Macon County:
- Little Tennessee River (not trout water)
  - Nantahala River (Nantahala Dam to Swain County line) [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala hydropower discharge canal. See Subparagraph (a)(5) of this Rule.]
  - Queens Creek Lake
  - Burningtown Creek (including portions of tributaries on game lands)
  - Cullasaja River Sequoyah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Buck Creek and Turtle Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]
  - Skitty Creek
  - Cliffside Lake
  - Cartoogechaye Creek (downstream US 64 bridge to Little Tennessee River)
- (N) Madison County:
- French Broad River (not trout water)
  - Shut-In Creek (including portions of tributaries on game lands)
  - Spring Creek upper (junction of NC 209 and NC 63 to US Forest Service road 223)
  - Spring Creek-lower (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue) [Delayed Harvest Regulations apply. See

- Subparagraph (a)(5) of this Rule.]
- Meadow Fork Creek
- Roaring Fork
- (including portions of tributaries on game lands)
- Little Creek
- Max Patch Pond
- Big Laurel Creek (Mars Hill Watershed boundary to the SR 1318 bridge, also known as Big Laurel Road bridge, downstream of Bearpen Branch)
- Big Laurel Creek (NC 208 bridge to US 25-70 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Spillcorn Creek (entire stream, excluding tributaries)
- Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)
- Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Mill Creek
- (headwaters to confluence with Big Creek)
- Puncheon Fork
- (Hampton Creek to Big Laurel Creek)
- Big Pine Creek (SR 1151 bridge to French Broad River)
- Ivy Creek (not trout waters)
- Little Ivy Creek (confluence of Middle Fork and Paint Fork at Beech Glen to confluence with Ivy Creek at Forks of Ivy)
- (O) McDowell County:
- Catawba River (Catawba Falls Campground to Old Fort Recreation Park)
- Buck Creek (portion not on game lands, not trout water)
- Little Buck Creek
- (game land portion including portions of tributaries on game
- lands)
- Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch. [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- North Fork Catawba River (headwaters to SR 1569 bridge)
- Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
- Mill Creek (upper railroad bridge to I 40 bridge, except where posted against trespass) [Delayed Harvest Regulations apply to that portion between US 70 bridge and I 40 bridge. See Subparagraph (a)(5) of this Rule.]
- (P) Mitchell County:
- Nolichucky River (not trout water)
- Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)
- Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)
- Cane Creek (SR 1219 to NC 226 bridge)
- Cane Creek (NC 226 bridge to NC 80 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Grassy Creek (East Fork Grassy Creek to mouth)
- East Fork Grassy Creek
- North Toe River (Avery County line to SR 1121 bridge)
- North Toe River (US 19E bridge to NC 226 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (Q) Polk County:
- Broad River (not trout water)
- North Pacolet River (Joels Creek to NC 108 bridge)
- Green River (Fishtop Falls Access Area to the natural



- gas pipeline crossing)  
[Delayed Harvest  
Regulations apply to the  
portion from Fishtop Falls  
Access Area to Cove Creek.  
See Subparagraph (a)(5) of  
this Rule.]
- (R) Rutherford County:  
(Rocky) Broad River (Henderson  
County line to US 64/74 bridge,  
except where posted against  
trespass)
- (S) Stokes County:  
Dan River (Virginia State line  
downstream to a point 200 yards  
below the end of SR 1421)
- (T) Surry County:  
Yadkin River (not trout water)  
Ararat River (SR 1727  
bridge downstream to the  
NC 103 bridge)  
Araat River (NC 103 bridge  
to US 52 bridge) [Delayed  
Harvest Regulations apply.  
See Subparagraph (a)(5) of  
this Rule.]  
Stewarts Creek (not  
trout water)  
Pauls Creek  
(Virginia State line  
to 0.3 mile below  
SR 1625 bridge -  
lower Caudle  
property line)  
Fisher River  
(Cooper Creek) (Virginia  
State line to Interstate 77)  
Little Fisher River  
(Virginia State line to NC 89  
bridge)  
Mitchell River (0.6 mile  
upstream of the end of SR  
1333 to the SR 1330 bridge  
below Kapps Mill Dam)  
[Delayed Harvest  
Regulations apply. See  
Subparagraph (a)(5) of this  
Rule.]
- (U) Swain County:  
Little Tennessee River (not trout  
water)  
Calderwood Reservoir  
(Cheoah Dam to Tennessee  
State line)  
Cheoah Reservoir  
Fontana Reservoir (not trout  
water)
- Alarka Creek (game  
lands boundary to  
Fontana Reservoir)  
Nantahala River (Macon  
County line to existing  
Fontana Reservoir water  
level)  
Tuckasegee River (not trout  
water)  
Deep Creek (Great  
Smoky Mountains  
National Park boundary  
line to Tuckasegee  
River)  
Connelly Creek  
(including portions of  
tributaries on game  
lands)
- (V) Transylvania County:  
French Broad River (junction of  
west and north forks to US  
276 bridge)  
Davidson River (Avery  
Creek to lower US Forest  
Service boundary line)  
East Fork French Broad  
River (Glady Fork to French  
Broad River) [Delayed  
Harvest Regulations apply.  
See Subparagraph (a)(5) of  
this Rule.]  
Little River (confluence of  
Lake Dense outflow to 100  
yards downstream of Hooker  
Falls) [Delayed Harvest  
Regulations apply. See  
Subparagraph (a)(5) of this  
Rule.]  
Middle Fork French Broad  
River  
West Fork French Broad  
River (SR 1312 and SR 1309  
intersection to junction of  
west and north forks,  
including portions of  
tributaries within this section  
located on game lands)
- (W) Watauga County:  
New River (not trout waters)  
North Fork New River (from  
confluence with Maine and  
Mine branches to Ashe  
County line)  
Maine Branch (headwaters  
to North Fork New River)  
South New Fork River  
(not trout water)  
Meat Camp Creek  
Norris Fork Creek

|  |  |   |
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|  | Howard Creek<br>(downstream from lower falls)<br>Middle Fork New River<br>(Lake Chetola Dam to South Fork New River)<br>Yadkin River (not trout water)<br>Stony Fork (headwaters to Wilkes County line)<br>Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)<br>Watauga River (adjacent to the intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]<br>Beech Creek<br>Buckeye Creek Reservoir<br>Buckeye Creek (Buckeye Creek Reservoir dam to Grassy Gap Creek)<br>Coffee Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]<br>Beaverdam Creek<br>(confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)<br>Laurel Creek<br>Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)<br>Dutch Creek (second bridge on SR 1134 to mouth)<br>(X) Wilkes County:<br>Yadkin River (not trout water)<br>Roaring River (not trout water)<br>East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]<br>Stone Mountain Creek [Delayed | Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]<br>Middle Prong Roaring River (headwaters to second bridge on SR 1736)<br>Bell Branch Pond<br>Boundary Line Pond<br>West Prong Roaring River (not trout waters)<br>Pike Creek<br>Pike Creek Pond<br>Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)<br>Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]<br>Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)<br>South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)<br>North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)<br>Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)<br>Lewis Fork Creek (not trout water)<br>South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)<br>Fall Creek (except portions posted against trespass)<br>Elk Creek (portion on Leatherwood Mountains development) [Delayed Harvest Regulations apply. |
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- (Y) Yancey County:  
     Nolichucky River (not trout water)  
     Cane River [Bee Branch (SR 1110) to Bowlens Creek]  
     Bald Mountain Creek (except portions posted against trespass)  
     Indian Creek (not trout water)  
     Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)  
     North Toe River (not trout water)  
     South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)
- (2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless specifically classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.
- (A) Alleghany County:  
     Big Sandy Creek (portion on Stone Mountain State Park)  
     Stone Mountain Creek (that portion on Stone Mountain State Park)
- (B) Ashe County:  
     Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]  
     Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (C) Avery County:  
     Birchfield Creek (entire stream)  
     Cow Camp Creek (entire stream)  
     Cranberry Creek (headwaters to US 19E/NC 194 bridge)  
     Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
- (D) Buncombe County:  
     Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) Burke County:  
     All waters located on South Mountain State Park, except the main stream of Jacob Fork  
     Between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.
- (F) Caldwell County:  
     Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)  
     Jones Creek (Watauga County line to first falls upstream of the end of SR 1574)  
     Rockhouse Creek (entire stream)
- (G) Cherokee County:  
     Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]  
     Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]  
     North Shoal Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) Graham County:  
     Gragg Prong (entire stream)  
     Horse Creek (entire stream)  
     Jones Creek (entire stream)  
     Kentucky Creek (entire stream)  
     North Harper Creek (entire stream)  
     Plumtree Creek (entire stream)  
     Roaring Creek (entire stream)  
     Rockhouse Creek (entire stream)  
     South Harper Creek (entire stream)  
     Webb Prong (entire stream)  
     Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]

- Franks Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]  
 Little Buffalo Creek (entire stream)  
 South Fork Squally Creek (entire stream)
- (I) Squally Creek (entire stream)  
 Haywood County  
 Hemphill Creek [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of the Rule.]  
 Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) Jackson County:  
 Buff Creek (entire stream) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]  
 Gage Creek (entire stream)  
 North Fork Scott Creek (entire stream)  
 Shoal Creek (Glenville Reservoir pipeline to mouth) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]  
 Tanasee Creek (entire stream)  
 West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]  
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)  
 Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (K) Madison County:  
 Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (L) Mitchell County:  
 Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)  
 Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)  
 Wiles Creek (game land boundary to mouth)
- (M) Transylvania County:
- All waters located on Gorges State Park  
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (N) Watauga County:  
 Dugger Creek (portions on Reynolds Blue Ridge development, including tributaries. Anglers must check in at the development security office on Triplett Road prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]  
 Dutch Creek (headwaters to second bridge on SR 1134)  
 Howards Creek (headwaters to lower falls)  
 Laurel Creek (portions on Reynolds Blue Ridge development, including tributaries. Anglers must check in at the development security office on Triplett Road prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See subparagraph (a)(3) of this Rule.]  
 Pond Creek (headwaters to Locust Ridge Road bridge, excluding the pond adjacent to Coffee Lake) [Catch and Release/Artificial Lure Only Trout Waters Regulations Apply. See Subparagraph (a)(3) of this Rule.]  
 Watauga River (Avery County line to steel bridge at Riverside Farm Road)  
 Winkler Creek (lower bridge on SR 1549 to confluence with South Fork New River)
- (O) Wilkes County:  
 Big Sandy Creek (portion on Stone Mountain State Park)  
 Dugger Creek (portions on Reynolds Blue Ridge development, including tributaries. Anglers must check in at the development security office on Triplett Road prior to fishing) [Catch and Release/Artificial Lure Only Trout Waters Regulations apply. See Subparagraph (a)(3) of this Rule.]  
 Garden Creek (portion on Stone Mountain State Park)  
 Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]  
 Widow Creek (portion on Stone Mountain State Park)

- (P) Yancey County:  
Cattail Creek (Bridge at Mountain Farm Community Road (Private) to NC 197 bridge)  
Lickskillet Creek (entire stream)  
Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Ashe County:  
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)  
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:  
Wilson Creek (game land portion)
- (C) Buncombe County:  
Carter Creek (game land portion)
- (D) Burke County:  
Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:  
Flat Creek  
Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:  
Newberry Creek (game land portion)
- (G) Watauga County:  
Dugger Creek (portions on Reynolds Blue Ridge development, including tributaries. Anglers must check in at the development security office on Triplett Road prior to fishing)  
Laurel Creek (portions on Reynolds Blue Ridge development, including tributaries. Anglers must check in at the development security office on Triplett Road prior to fishing)  
Pond Creek (headwaters to Locust Ridge bridge, excluding the pond adjacent to Coffee Lake)
- (H) Wilkes County:  
Dugger Creek (portions on Reynolds Blue Ridge development, including tributaries. Anglers must check in at the development security office on Triplett Road prior to fishing)  
Harris Creek (portion on Stone Mountain State Park)
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Flies Only waters. Only artificial flies having one single hook may be used. No trout may be harvested or be in possession while fishing these streams:
- (A) Avery County:  
Elk River (portion on Lees-McRae College property, excluding the millpond)  
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:  
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:  
South Toe River (headwaters to Upper Creek, including tributaries)  
Upper Creek (entire stream)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait, use more than a single hook on an artificial lure, or harvest or possess trout while fishing these waters. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these waters are open for fishing under Hatchery Supported Waters rules for youth anglers only. Youth is defined as a person under 16 years of age. At 12:00 p.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules for all anglers:
- (A) Ashe County:  
Trout Lake  
Helton Creek (Virginia state line to New River)
- (B) Burke County:  
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Caldwell County:  
Wilson Creek (game lands portion downstream of Lost Cove Creek to Phillips Branch)

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| <p>(D) Haywood County:<br/>West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)</p> <p>(E) Henderson County:<br/>North Fork Mills River (game land portion below the Hendersonville watershed dam)</p> <p>(F) Jackson County:<br/>Tuckasegee River (downstream NC 107 bridge falls located 275 yards upstream of the US 23-441 bridge as marked by a sign on each bank)</p> <p>(G) Macon County:<br/>Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)</p> <p>(H) Madison County:<br/>Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)<br/>Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)<br/>Spring Creek (NC 209 bridge at Hot Springs city limits to iron bridge at end of Andrews Avenue)</p> <p>(I) McDowell County:<br/>Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)<br/>Mill Creek (US70 bridge to I 40 bridge)</p> <p>(J) Mitchell County:<br/>Cane Creek (NC 226 bridge to NC 80 bridge)<br/>North Toe River (US 19E bridge to NC 226 bridge)</p> <p>(K) Polk County:<br/>Green River (Fishtop Falls Access Area to confluence with Cove Creek)</p> <p>(L) Surry County:<br/>Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)<br/>Ararat River (NC 103 bridge to US 52 bridge)</p> <p>(M) Transylvania County:<br/>East Fork French Broad River (Gladly Fork to French Broad River)<br/>Little River (confluence of Lake Dense to 100 yards downstream of Hooker Falls)</p> <p>(N) Watauga County:<br/>Watauga River (adjacent to intersection of SR 1557 and SR 1558 to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)<br/>Coffee Lake</p> <p>(O) Wilkes County:</p> | <p>East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)</p> <p>Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)</p> <p>Reddies River (Town of North Wilkesboro water intake dam to confluence with Yadkin River)</p> <p>Elk Creek (portion on Leatherwood Mountains development)</p> <p>(6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].</p> <p>(A) Cherokee County:<br/>Bald Creek (game land portions)<br/>Dockery Creek (game land portions)<br/>North Shoal Creek (game land portions)</p> <p>(B) Graham County:<br/>Deep Creek<br/>Long Creek (game land portion)<br/>Franks Creek</p> <p>(C) Haywood County:<br/>Hemphill Creek (including tributaries)<br/>Hurricane Creek (including portions of tributaries on game lands)</p> <p>(D) Jackson County:<br/>Buff Creek<br/>Chattooga River (SR 1100 bridge to South Carolina state line)<br/>(lower) Fowler Creek (game land portion)<br/>Scotsman Creek (game land portion)<br/>Shoal Creek (Glenville Reservoir pipeline to mouth)<br/>West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)</p> <p>(E) Macon County:<br/>Chattooga River (SR 1100 bridge to South Carolina state line)<br/>Jarrett Creek (game land portion)<br/>Kimsey Creek<br/>Overflow Creek (game land portion)<br/>Park Creek<br/>Tellico Creek (game land portion)</p> |
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- (F) Turtle Pond Creek (game land portion)  
Madison County:  
Big Creek (headwaters to the lower game land boundary, including tributaries)
- (G) Transylvania County:  
North Fork French Broad River (game land portions downstream of SR 1326)  
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)

- (7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:

Burke County  
Catawba River (Muddy Creek to City of Morganton water intake dam).  
Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length; no bait restrictions; no closed season.

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.
- (A) Open Season. There is a year round open season for the licensed taking of trout.
- (B) Creel Limit. The daily creel limit is four trout.
- (C) Size Limit. The minimum size limit is seven inches.
- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess

natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).

- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

*History Note: Authority G.S. 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC) on 6/21/01 and 04/18/02; Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17 2003); Amended Eff. August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.*

**15A NCAC 10C .0211 POSSESSION OF CERTAIN FISHES**

(a) It is unlawful to transport, purchase, possess, or sell any live individuals of piranha, "walking catfish" (*Clarias batrachus*), snakehead fish (from the Family Channidae, formerly Ophiocephalidae), black carp (*Mylopharyngodon piceus*), rudd (*Scardinius erythrophthalmus*), round goby (*Neogobius melanostomus*), tubenose goby (*Proterorhinus marmoratus*), ruffe (*Gymnocephalus cernuus*), Japanese mysterysnail (*Cipangopaludina japonica*), Chinese mysterysnail (*Cipangopaludina chinensis malleata*), red-rim melania (*Melanoides tuberculatus*), virile crayfish (*Orconectes Gremicambarus virilis*), rusty crayfish (*Orconectes Procericambarus rusticus*), Australian red claw crayfish or "red claw" (*Cherax quadricarinatus*, or other species of "giant" crayfish species in the genus *Cherax*), white amur or "grass carp" (*Ctenopharyngodon idella*), swamp or "rice" eel (*Monopterus albus*), red shiner (*Cyprinella lutrensis*), or zebra mussel (*Dreissena polymorpha*) or quagga mussel (*Dreissena rostriformis bugensis*) or any mussel in the family Dreissenidae, or to stock any of them in the public or private waters of North Carolina.

(b) A person may buy, possess or stock triploid grass carp only for the purpose of controlling aquatic vegetation under a permit issued by the Executive Director when the director determines that conditions of such possession or stocking provide minimal probability of escape and threat to sensitive aquatic habitat and that the carp is certified to be sterile by genetic testing at a federal, state, or university laboratory.

*History Note: Authority G.S. 113-134; 113-274(c)(1c); 113-292; Eff. February 1, 1976; Amended Eff. September 1, 1984; Temporary Amendment Eff. July 1, 2001;*

*Amended Eff. July 18, 2002;  
Temporary Amendment Eff. September 1, 2002;*

*Amended Eff. August 1, 2011; June 1, 2009, June 1, 2005;  
August 1, 2004.*

**15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS**

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

| GAME FISHES   | DAILY CREEL LIMITS                 | MINIMUM SIZE LIMITS         | OPEN SEASON   |
|---|------------------------------------|-----------------------------|---|
| Mountain Trout:   |                                    |                             |   |
| Wild Trout Waters                                       | 4                                  | 7 in.                       | ALL YEAR (exc. (3))   |
| Hatchery Supported Trout Waters and undesignated waters | 7 (exc. (3))                       | None (exc. (3))             | All year, except March 1 to 7:00 a.m. on first Saturday in April (exc. (3)) |
| Muskellunge   | 1                                  | 42 in.                      | ALL YEAR  |
| Pickereel: Chain and Redfin                             | None                               | None                        | ALL YEAR  |
| Walleye   | 8 (exc. (9))                       | None (exc. (9))             | ALL YEAR  |
| Sauger  | 8                                  | 15 in.                      | ALL YEAR  |
| Black Bass:   |                                    |                             |   |
| Largemouth  | 5 (exc. (21))                      | 14 in. (excs. (8,10&21))    | ALL YEAR (exc. (17))  |
| Smallmouth and Spotted                                  | 5 (exc. (21))                      | 12 in. (excs (8,10&21))     | ALL YEAR  |
| Roanoke and Rock Bass                                   | None (exc. (24))                   | None (exc. (24))            | ALL YEAR  |
| White Bass  | 25                                 | None                        | ALL YEAR  |
| Sea Trout (Spotted or Speckled)                         | 10                                 | 14 in.                      | ALL YEAR  |
| Flounder  | 8                                  | 14 in.                      | ALL YEAR  |
| Red drum (channel bass, red fish, puppy drum)           | 1                                  | 18 in. (exc. (19))          | ALL YEAR  |
| Striped Bass and their hybrids (Morone Hybrids)         | 8 aggregate (excs. 1,2,5,6,11,&13) | 16 in. (excs.1,2,5,6,11&13) | ALL YEAR (excs. 6,13&15)  |
| Shad: (American and hickory)                            | 10 aggregate (exc. (22))           | None                        | ALL YEAR (exc. (18))  |
| Kokanee Salmon  | 7                                  | None                        | ALL YEAR  |
| Crappie and sunfish                                     | None (excs. 4,12&16)               | None (exc. (12))            | ALL YEAR (exc. (4))   |
| NONGAME FISHES  | None (excs 14,20,23&25)            | None (excs. 14,20,23&25)    | ALL YEAR (exc. (7))   |

(b) Exceptions

(1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam and in John H. Kerr Reservoir the creel limit on striped bass and Morone hybrids is two in the aggregate and the minimum size limit is 26 inches from October 1 through May 31. From June 1 through September 30 the daily creel limit on striped bass and Morone

hybrids is four in aggregate with no minimum size limit.  
(2) In the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in B. Everett Jordan Reservoir the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches. In Lake Gaston and Roanoke Rapids Reservoir the creel limit on striped bass and Morone hybrids



- is four in aggregate with a minimum size limit of 20 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30. In Lake Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit of 16 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30.
- (3) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Linville River within Linville Gorge Wilderness Area (including tributaries), Catawba River from Muddy Creek to the City of Morganton water intake dam, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Neuse, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and in all other inland fishing waters east of Interstate 95, subject to the exceptions listed in this Paragraph, the daily creel limit for striped bass and their hybrids is two fish in aggregate. The minimum length limit is 18 inches and no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches may be possessed. In these waters, the season for taking and possessing striped bass is closed from May 1 through September 30. In the inland fishing waters of the Cape Fear River and its tributaries, the season for taking and possessing striped bass is closed year-round. In the Pee Dee River and its tributaries from the South Carolina line upstream to Blewett Falls Dam, the season for taking and possessing striped bass and their hybrids is open year-round, the daily creel limit is three fish in aggregate and the minimum length limit is 18 inches.
- (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 30 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, Lake Raleigh in Wake County, Randleman Reservoir in Randolph and Guilford counties, Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95 (except Tar River Reservoir in Nash County), South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In Cane Creek Lake in Union County, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed. In Lake Norman the minimum size limit for black bass is 14 inches.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in Lake Thom-A-Lex in Davidson County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not

- more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir and in the Roanoke River and its tributaries downstream of Roanoke Rapids dam and in the Cashie, Middle, and Eastmost rivers and their tributaries. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: all public waters west of Interstate 77, South Yadkin River downstream of Cooleemee Dam, Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, Sutton Lake in New Hanover County, and Roanoke River and tributaries below Roanoke Rapids dam, as listed above. In Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits are the same as those established by rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) Size and creel limits on regulated areas, including Community Fishing Areas, Public Fishing Areas, and other cooperatively managed public waters shall be posted at each area, as specified in 15A NCAC 10E .0103.
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Tar River Reservoir Dam, Neuse River downstream of Falls Lake Dam, Haw River downstream of Jordan Lake Dam, Deep River downstream of Lockville Dam, Cape Fear River, Waccamaw River downstream of Lake Waccamaw Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other public fishing waters east of Interstate 95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (17) In Sutton Lake, no largemouth bass shall be possessed from December 1 through March 31.
- (18) The season for taking American and hickory shad with bow nets is March 1 through April 30.
- (19) No red drum greater than 27 inches in length may be possessed.
- (20) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, in all their tributaries, and in all other inland fishing waters east of Interstate 95.
- (21) In the Alleghany County portion of New River downstream of Fields Dam (Grayson County, Virginia) no black bass between 14 and 20 inches in length shall be possessed and only one black bass greater than 20 inches may be possessed in the daily creel limit. No minimum size limit applies to black bass less than 14 inches in length in this section of New River.
- (22) In the inland waters of Roanoke River and its tributaries, the daily creel limit for American and hickory shad is 10 in aggregate, only one of which may be an American shad. In Roanoke Rapids Reservoir, Lake Gaston and John H. Kerr Reservoir, no American shad may be possessed.
- (23) In Lake Norman and Badin Lake the daily creel limit for blue catfish greater than 32 inches in length is one fish.
- (24) In all public fishing waters east of Interstate 77, the minimum length for Roanoke and rock bass is 8 inches and the daily creel limit is two fish in aggregate.
- (25) In inland fishing waters the minimum length for gray trout (weakfish) is 12 inches and the daily creel limit is one fish.

*History Note:* Authority G.S. 113-134; 113-292; 113-304; 113-305;  
*Eff. February 1, 1976;*  
*Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;*  
*Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;*  
*Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;*  
*Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;*  
*Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;*  
*Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995;*  
*Temporary Amendment Eff. November 1, 1998;*  
*Amended Eff. April 1, 1999;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. July 1, 2000;*  
*Temporary Amendment Eff. July 1, 2001;*  
*Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];*  
*Amended Eff. August 1, 2002 (approved by RRC in April 2002);*  
*Temporary Amendment Eff. June 1, 2003;*  
*Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);*  
*Amended Eff. August 1, 2011; August 1, 2010; May 1, 2009; July 1, 2008; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.*

**15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE**

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point) and it is unlawful to possess more than 50 crabs per person per day or to exceed 100 crabs per vessel per day.
- (2) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries including Roanoke River downstream of Roanoke Rapids Dam, Tar River downstream of Rocky Mount Mill Dam, Neuse River downstream of Milburnie Dam, Cape Fear River downstream of Buckhorn Dam, Pee Dee River downstream of Blewett Falls Dam, the entire Lumber River including Drowning Creek, and in all other inland fishing waters east of Interstate 95.
- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island Reservoir and Lake

Wylie, except that one fish per day may be taken by bow and arrow.

- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.
- (6) The minimum size limit for gray trout (weakfish) is 12 inches and the daily creel limit is one fish.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters is the same as the trout fishing season.

(c) Nongame fishes, except alewife and blueback herring, excluding those less than six inches in length collected from Kerr Reservoir (Granville, Vance, and Warren counties), blue crab, and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Eels less than six inches in length may not be taken from inland waters for any purpose.

(d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It is unlawful to possess more than 200 freshwater mussels.

(e) Size and creel limits as set in this Rule on regulated areas, including Community Fishing Areas, Public Fishing Areas, and other cooperatively managed public waters shall be posted at each area, as specified in 15A NCAC 10E .0103.

(f) In Lake Norman and Badin Lake, the daily creel limit for blue catfish greater than 32 inches is one fish.

*History Note:* Authority G.S. 113-134; 113-272; 113-292;  
*Eff. February 1, 1976;*  
*Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992;*  
*Temporary Amendment Eff. December 1, 1994;*  
*Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995;*  
*Temporary Amendment Eff. July 1, 1999;*  
*Amended Eff. July 1, 2000;*  
*Temporary Amendment Eff. July 1, 2002; July 1, 2001;*  
*Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);*  
*Temporary Amendment Eff. June 1, 2003;*  
*Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);*  
*Amended Eff. August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; June 1, 2005.*

**15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE**

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. The Wildlife Resources Commission has identified the following areas on game lands that have additional restrictions on entry or usage:

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (5) Temporary Restricted Zone. Portions of game lands posted as "Temporary Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. An area of a game land shall be declared a Temporary Restricted Zone when there is a danger to the health or welfare of the public due to topographical features or activities occurring on the area.
- (6) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.
- (7) Scouting-only Zone. On portions of the game lands posted as "Scouting-only Zones" the discharge of firearms or bow and arrow is prohibited.
  - (b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.
  - (c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, unless the device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule does not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. Furthermore, only shotguns with any size shot and archery equipment as defined in 15A NCAC 10B .0116 may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.
  - (d) Game Lands License: Hunting and Trapping
    - (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses. A field trial participant is defined as a Judge, Handler, Scout or Owner.
    - (2) Exceptions
      - (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
      - (B) The resident and nonresident sportsman's licenses include game lands use privileges.
      - (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
      - (D) On the game lands described in Rule .0103(e)(1) of this Section, the game lands license is required only for hunting doves; all other activities are

subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident Handler, Scout or Owner participating therein may participate without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Dogs may not be trained or permitted to run unleashed from March 15 through June 15 on any game land located east of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run

unleashed during legal big game hunting hours on the dates of the special hunts. A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on the Hunting Creek Swamp Waterfowl Refuge;
- (6) on the John's River Waterfowl Refuge in Burke County; and
- (7) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Use of Weapons. In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon within 150 yards of any Game Lands building or designated Game Lands camping area, except where posted otherwise, or within 150 yards of any residence located on or adjacent to game lands, except no person shall discharge a firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is driving in the vehicle gallery of a scheduled bird dog field trial held on the Sandhills Game Land; or
- (2) is a disabled sportsman as defined in Paragraph (k) of this Rule or holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in Paragraph (n).

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for permit hunts for disabled sportsmen offered by the Commission and use of designated blinds during those hunts an individual shall

possess a Disabled Veteran Sportsman license, a Totally Disabled Sportsman license or a disabled sportsman hunt certification issued by the Commission. In order to qualify for the certification, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) missing 50 percent or more of one or more limbs, whether by amputation or natural causes;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) deafness.

On game lands where the privileges described in Paragraph (n) of this Rule apply, participants in the program may operate electric wheel chairs, all terrain vehicles or other passenger vehicles:

- (1) on ungated or open-gated roads normally closed to vehicular traffic; and
- (2) on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel.

Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion card issued by the Commission. Hunters who qualify under the Disabled Sportsman Program and their able-bodied companions may access special hunting blinds for people with disabilities during regularly scheduled, non-permit hunting days on a first come basis, except for those blinds located on the Restricted Area of Caswell Game Land.

(l) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, domesticated animals, except hunting dogs and raptors where otherwise permitted for hunting or training purposes, or feral animals, or hatchery-raised fish on game lands without prior written authorization. It is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall be given when release of such animals is determined by a North Carolina Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. Disabled persons as defined in Paragraph (k) of this Rule and people who have obtained a Disabled Access Program permit are exempt from the previous sentence but must comply with the terms of their permit. Furthermore, disabled persons, as defined under the federal Americans with Disabilities Act, may use wheelchairs or other mobility devices designed for indoor pedestrian use on any area where foot travel is allowed.

(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical

mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on any Commission-maintained road open for vehicular travel and those trails posted for vehicular travel and ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands, or parts thereof, where this Paragraph applies are designated in the game land rules and map book. This Paragraph does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It is unlawful for anyone other than disabled persons as defined in Paragraph (k) of this Rule and those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(p) Definitions: For the purpose of this Subchapter "Permanent Hunting Blind" is defined as any structure that is used for hunter concealment, constructed from man made or natural materials, and that is not disassembled and removed at the end of each day's hunt.

(q) Shooting Ranges. On state-owned game lands, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills or for other safe uses of firearms and archery equipment. All other uses, including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are prohibited, except that activities which have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than

such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Shooting ranges are open from sunrise to sunset on Monday through Saturday. Firearms shall be unloaded and cased when being transported to the shooting range while on Game Lands. No person, when using any shooting range, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Rule for the purpose of regulating the use of the area.

(r) Limited-access Roads. During the months of June, July and August, roads posted as "Limited-access Roads" are open to motorized vehicles from 5:00 a.m. to 10:00 p.m. only. These roads shall be posted with the opening and closing times.

*History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306;*

*Eff. February 1, 1976;*

*Amended Eff. July 1, 1993; April 1, 1992;*

*Temporary Amendment Eff. October 11, 1993;*

*Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994;*

*Temporary Amendment Eff. July 1, 1999;*

*Amended Eff. July 1, 2000;*

*Temporary Amendment Eff. August 31, 2001;*

*Amended Eff. August 1, 2002;*

*Amended Eff. June 1, 2004; (this amendment replaces the amendment approved by RRC on July 17, 2003);*

*Amended Eff. June 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; May 1, 2006; November 1, 2005.*

#### **15A NCAC 10D .0103 HUNTING ON GAME LANDS**

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition does not apply to lag-screw steps or

portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. On waterfowl impoundments that have a posted "Scouting-only Zone," trapping during the trapping season and waterfowl hunting on designated waterfowl hunting days are the only activities allowed on the portion of the impoundment outside of the posted "Scouting-only Zone." No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

(1) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.

(2) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.

(3) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons.

(f) Hunting with Dogs on Game Lands. Deer shall not be taken with the use of dogs on game lands in counties or parts of counties where taking deer with dogs is prohibited as described in 15A NCAC 10B .0109.

(g) Bear Sanctuaries. On Three Days per Week Areas and Six Days per Week Areas bears shall not be taken on lands designated and posted as bear sanctuaries except when authorized by permit only elsewhere in this Chapter. Wild boar shall not be taken with the use of dogs on bear sanctuaries.

Dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15 on bear sanctuaries in and west of the counties and parts of counties described in 15A NCAC 10B .0109.

(h) The listed seasons and restrictions apply in the following game lands:

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| <p>(1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.</p> <p>(2) Alligator River Game Land in Tyrrell County</p> <p>(A) Six Day per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.</p> <p>(3) Angola Bay Game Land in Duplin and Pender counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(4) Bachelor Bay Game Land in Bertie, Martin and Washington counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(5) Bertie County Game Land in Bertie County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(6) Bladen Lakes State Forest Game Land in Bladen County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.</p> <p>(D) On the Singletary Lake Tract deer and bear may be taken only by still hunting.</p> | <p>(E) Wild turkey hunting on the Singletary Lake Tract is by permit only.</p> <p>(F) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.</p> <p>(7) Brinkleyville Game Land in Halifax County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable deer with visible antlers season.</p> <p>(C) Horseback riding is prohibited.</p> <p>(8) Brunswick County Game Land in Brunswick County</p> <p>(A) Hunting is by permit only.</p> <p>(B) The use of dogs for hunting deer is prohibited.</p> <p>(9) Buckhorn Game Land in Orange County</p> <p>(A) Hunting is by permit only.</p> <p>(B) Horseback riding is prohibited.</p> <p>(10) Buckridge Game Land in Tyrrell County.</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.</p> <p>(11) Buffalo Cove Game Land in Caldwell and Wilkes Counties</p> <p>(A) Six Days per Week Area</p> <p>(B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the deer with visible antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.</p> <p>(C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is</p> |
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- prohibited from September 1 through May 15.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas, New Year's and Martin Luther King, Jr. Days and on the opening and closing days of the applicable waterfowl seasons. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding is prohibited.
- (E) Target shooting is prohibited
- (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
- (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
- (H) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (I) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- (14) Buxton Woods Game Land in Dare County:
- (A) Six Days per Week Area.
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (15) Cape Fear River Wetlands Game Land in Pender County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- (D) The use of dogs for hunting deer is prohibited on the portion of the game land that is west of the Black River, north of Roan Island, east of Lyon Swamp Canal to Canetuck Road and south of NC 210 to the Black River.
- (16) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) The use of dogs for hunting deer is prohibited.
- (17) R. Wayne Bailey-Caswell Game Land in Caswell County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Thursday and Friday preceding the Central muzzle-loading season with any legal weapon by participants in the Disabled Sportsman Program who acquire special hunt permits.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
- (D) The area encompassed by the following roads is permit-only for all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (E) On the posted waterfowl impoundment, waterfowl hunting is by permit only after November 1.
- (F) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.

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| <p>(18) Catawba Game Land in Catawba County</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.</p> <p>(19) Chatham Game Land in Chatham County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Wild turkey hunting is by permit only.</p> <p>(D) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.</p> <p>(E) Target shooting is prohibited.</p> <p>(20) Cherokee Game Land in Ashe County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.</p> <p>(21) Chowan Game Land in Chowan County</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.</p> <p>(22) Chowan Swamp Game Land in Bertie, Gates and Hertford counties.</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Bear hunting is restricted to the first three hunting days during the November bear season and the first three days during the December bear except that portion of Chowan Swamp Game Land in Gates County that is east of Highway 158/13, south of Highway 158, west of Highway 32, and north of Catherine Creek and the Chowan River where the bear season is the same as the season dates for the Gates County bear season.</p> <p>(D) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.</p> <p>(23) Cold Mountain Game Land in Haywood County</p> <p>(A) Six Days per Week Area</p> | <p>(B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.</p> <p>(C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.</p> <p>(24) Columbus County Game Land in Columbus County.</p> <p>(A) Three Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(25) Croatan Game Land in Carteret, Craven and Jones counties</p> <p>(A) Six Days per Week Area</p> <p>(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.</p> <p>(C) Waterfowl shall be taken only on the following days:</p> <p>(i) the opening and closing days of the applicable waterfowl seasons;</p> <p>(ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and</p> <p>(iii) Tuesdays and Saturdays of the applicable waterfowl seasons.</p> <p>(D) Dove hunting is by permit only for the first two open days of dove season on posted areas. During the rest of dove season, no permit is required to hunt doves.</p> <p>(26) Currituck Banks Game Land in Currituck County</p> <p>(A) Six Days per Week Area</p> <p>(B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only from November 1 through the end of the waterfowl season.</p> <p>(C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.</p> <p>(D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.</p> <p>(E) Dogs are allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.</p> <p>(F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.</p> |
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- (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (27) Dare Game Land in Dare County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) No hunting on posted parts of bombing range.
  - (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dover Bay Game Land in Craven County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (29) Dupont State Forest Game Lands in Henderson and Transylvania counties
  - (A) Hunting is by Permit only.
  - (B) The training and use of dogs for hunting is prohibited except by special hunt permit holders during scheduled permit hunts.
  - (C) Participants of the Disabled Sportsman Program who acquire special hunt permits may take deer of either sex with any legal weapon on the Saturday prior to the first segment of the season described in 15A NCAC 10B .0203(b)(1)(B).
- (30) Elk Knob Game Land in Watauga County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (31) Embro Game Land in Halifax and Warren counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
- (32) Goose Creek Game Land in Beaufort and Pamlico counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, waterfowl hunting is by permit only on the following waterfowl impoundments: Pamlico Point, Campbell Creek, Hunting Creek, Spring Creek, Smith Creek and Hobucken.
- (E) On Pamlico Point and Campbell Creek Waterfowl Impoundments all activities, except waterfowl hunting on designated waterfowl hunting days and trapping during the trapping season, are restricted to the posted Scouting-only Zone during the period November 1 through March 15.
- (F) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
- (G) Hunting and vehicular access on the Parker Farm Tract is restricted from September 1 to the end of February and April 1 to May 15 to individuals that possess a valid hunting opportunity permit.
- (33) Green River Game Land in Henderson, and Polk counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
- (34) Green Swamp Game Land in Brunswick County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (35) Gull Rock Game Land in Hyde County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons; and

- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl season.
  - (D) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
  - (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season, except for that portion designated as bear sanctuary.
- (36) Harris Game Land in Chatham, Harnett and Wake counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl shall be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
  - (D) The use or construction of permanent hunting blinds shall be prohibited.
  - (E) Wild turkey hunting is by permit only.
  - (F) Target shooting is prohibited.
- (37) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area.
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl may be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
  - (D) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
  - (E) On that portion north of the Bear Garden Road, west of Shaw Road to Baby Branch, east of the Northeast Cape Fear River, south of NC 53 and west of NC 50, deer hunting and bear hunting are permit only.
- (F) The use of dogs for hunting deer and bear is prohibited on that portion of the game land that is south of Baby Branch extending west to Stag Park Road, west of Shaw Road, north of Meeks Road extending west to Stag Park Road and east of Stag Park Road.
- (G) Hunting and vehicular access on the Pender 4 Tract is restricted from September 1 to the last day of February and April 1 to May 15 to individuals that possess valid hunting opportunity permits, unless otherwise authorized by the Wildlife Resources Commission.
- (H) Hunters who possess a Disabled Access Permit may operate an All Terrain Vehicle on and within 100 yards of trails designated for Disabled Sportsman Access.
- (38) Hyco Game land in Person County
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Target shooting is prohibited.
- (39) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (40) Johns River Game Land in Burke County
- (A) Hunting is by permit only.
  - (B) During permitted deer hunts deer of either-sex may be taken by permit holders.
  - (C) Entry on posted waterfowl impoundments is prohibited October 1 through March 31 except by lawful waterfowl hunting permit holders and only on those days written on the permits.
  - (D) The use or construction of permanent hunting blinds is prohibited.
- (41) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.

- (D) Horseback riding is prohibited except on those areas posted as American Tobacco Trail and other areas posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (G) The use of bicycles is restricted to designated areas, except that this restriction does not apply to hunters engaged in the act of hunting during the open days of the applicable seasons for game birds and game animals.
- (42) Juniper Creek Game Land in Brunswick and Columbus counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the Deer With Visible Antlers Season
  - (C) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.
- (43) Kerr Scott Game Land in Wilkes County
  - (A) Six Days per Week Area
  - (B) Use of centerfire rifles is prohibited.
  - (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season shall be prohibited.
  - (D) Tree stands shall not be left overnight and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
  - (E) Deer of either sex may be taken on all open days of the applicable deer with visible antlers season.
  - (F) Hunting on posted waterfowl impoundments is by permit only.
  - (G) The use of firearms for hunting wild turkey is prohibited.
- (44) Lantern Acres Game Land in Tyrrell and Washington counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) The use of dogs for hunting deer on the Godley Tract is prohibited.
- (E) Waterfowl hunting on posted waterfowl impoundments is by permit only.
- (45) Lee Game Land in Lee County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Target shooting is prohibited.
- (46) Light Ground Pocosin Game Land in Pamlico County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (47) Linwood Game Land in Davidson County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (48) Lower Fishing Creek Game Land in Edgecombe and Halifax counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
  - (D) The use of dogs for hunting deer is prohibited.
- (49) Mayo Game Land in Person County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
  - (D) Target shooting is prohibited.
- (50) Mitchell River Game Land in Surry County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.

- (51) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (52) Needmore Game Land in Macon and Swain counties.  
 (A) Six Days per Week Area  
 (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (53) Neuse River Game Land in Craven County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (54) New Lake Game Land in Hyde and Tyrrell counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (55) Nicholson Creek Game Land in Hoke County  
 (A) Three Days per Week Area  
 (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.  
 (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.  
 (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.  
 (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.  
 (F) The use of dogs for hunting deer is prohibited.  
 (G) Wild turkey hunting is by permit only.  
 (H) On Lake Upchurch, the following activities are prohibited:  
 (i) No person shall operate any vessel or vehicle powered by an internal combustion engine; and  
 (ii) Swimming.
- (56) North River Game Land in Camden and Currituck counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.  
 (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.  
 (D) Hunting on the posted waterfowl impoundment is by permit only.
- (57) Northwest River Marsh Game Land in Currituck County  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.  
 (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (58) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.  
 (D) Use of centerfire rifles is prohibited in that portion in Anson and Richmond counties North of US-74.  
 (E) Target shooting is prohibited.
- (59) Perkins Game Land in Davie County  
 (A) Three Days per Week Area  
 (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (60) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties  
 (A) Six Days per Week Area  
 (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.  
 (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat.  
 (D) Horseback riding is prohibited on the Black Bear (McDowell County), Linville River (Burke County), and Little Tablerock Tracts (Avery, McDowell, and Mitchell counties).
- (61) Pond Mountain Game Land in Ashe County  
 (A) Six Days per Week Area

- (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (D) Deer and bear hunting is by permit only.
- (62) Pungo River Game Land in Hyde County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (63) Rhodes Pond Game Land in Cumberland and Harnett counties
  - (A) Hunting is by permit only.
  - (B) Swimming is prohibited on the area.
- (64) Roanoke River Wetlands in Bertie, Halifax, Martin and Northampton counties
  - (A) Hunting is by Permit only.
  - (B) Vehicles are prohibited on roads or trails except those operated on Commission business or by permit holders.
  - (C) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas, provided, however, that camping is allowed at any time within 100 yards of the Roanoke River on the state-owned portion of the game land.
- (65) Roanoke Island Marshes Game Land in Dare County-Hunting is by permit only.
- (66) Robeson Game Land in Robeson County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (67) Rockfish Creek Game Land in Hoke County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the fourth Friday before Thanksgiving.
  - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter.
  - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (68) Rocky Run Game Land in Onslow County: Hunting is by permit only.
- (69) Sampson Game Land in Sampson County
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (70) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
  - (A) Three Days per Week Area
  - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the fourth Saturday before Thanksgiving through the Wednesday of the second week thereafter, and during the Deer With Visible Antlers season.
  - (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program who acquire special hunt permits, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, raccoon and squirrel seasons indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
  - (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons

- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds is prohibited from the third Sunday in September through the remainder of the hunting season.
- (G) Opossum, raccoon and squirrel (fox and gray) hunting on the field trial grounds is allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving and rabbit season on the field trial grounds will be from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.
- (H) The following areas are permit-only for all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part west of SR 1328 and north of Gardner Farm Lane and that part east of SR 1328 and north of Scotland Lake Lane.
- (I) Horseback riding on field trial grounds from October 22 through March 31 is prohibited unless riding in authorized field trials.
- (J) Camping and the presence of campers and tents in designated Hunter Camping Areas are limited to September 1 through the last day of February and April 7 through May 14.
- (71) Sandy Creek Game Land in Nash and Franklin Counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
  - (D) The use of dogs for hunting deer is prohibited.
- (72) Sandy Mush Game Land in Buncombe and Madison counties.
  - (A) Three Days per Week Area
  - (B) Deer of either sex may be taken the last open day of the applicable Deer with Visible Antlers season.
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
  - (D) Dogs shall only be trained on Mondays, Wednesdays and Saturdays and only as allowed in 15A NCAC 10D .0102(e).
- (E) Dove hunting is by permit only from the opening day through the second Saturday of dove season.
- (73) Second Creek Game Land in Rowan County-hunting is by permit only.
- (74) Shocco Creek Game Land in Franklin, Halifax, Nash and Warren counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
- (75) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
  - (A) Six Days per Week Area
  - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the third Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the Deer With Visible Antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 1 through the Saturday of the second week thereafter, and during the Deer With Visible Antlers season.
  - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
  - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
  - (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (76) Stones Creek Game Land in Onslow County
  - (A) Six-Day per Week Area.
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season
  - (C) Swimming in all lakes is prohibited.
  - (D) Waterfowl on posted waterfowl impoundments may be taken only on the following days:



- (i) the opening and closing days of the applicable waterfowl seasons;
  - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
  - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (77) Suggs Mill Pond Game Land in Bladen and Cumberland counties
  - (A) Hunting and trapping is by Permit only.
  - (B) Camping is restricted to September 1 through February 28 and April 7 through May 14 in areas both designated and posted as camping areas.
  - (C) Entry is prohibited on scheduled hunt or trapping days except for:
    - (i) hunters or trappers holding special hunt or trapping permits; and
    - (ii) persons using Campground Road to access Suggs Mill Pond Lake at the dam.
- (78) Sutton Lake Game Land in New Hanover and Brunswick counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Target shooting is prohibited.
- (79) Tar River Game Land in Edgecombe County – hunting is by permit only.
- (80) Three Top Mountain Game Land in Ashe County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
- (81) Thurmond Chatham Game Land in Alleghany and Wilkes counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program who acquire special hunt permits may also take either-sex deer with bow and arrow on the Saturday prior to the season described in 15A NCAC 10B .0203(b)(1)(B).
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. Participants must obtain a game lands license prior to horseback riding on this area.
- (D) The maximum period of consecutive overnight camping at any designated campground is 14 days within any 30 day period from May 1 through August 31. After 14 consecutive days of camping all personal belongings must be removed from the game land.
- (82) Tillery game Land in Halifax County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
  - (C) Horseback riding is prohibited.
  - (D) The use of dogs for hunting deer is prohibited.
  - (E) Wild turkey hunting is by permit only.
- (83) Toxaway Game Land in Jackson and Transylvania counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program who acquire special hunt permits may take deer of either sex with any legal weapon on the Saturday prior to the first segment of the bow and arrow season described in 15A NCAC 10B .0203(b)(1)(B).
  - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (84) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (85) Vance Game Land in Vance County
  - (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.

- (86) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (87) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
  - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
  - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
    - (i) the opening and closing days of the applicable waterfowl seasons;
    - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
    - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
  - (D) Beginning on the first open waterfowl season day in October and through the end of the waterfowl season, a permit is required for hunting posted waterfowl impoundments.
  - (E) The Huggins Tract and Morton Tracts have the following restrictions:
    - (i) Access on Hargett Avenue and Sloan Farm Road requires a valid Hunting Opportunity Permit;
    - (ii) Hunting is by permit only; and
    - (iii) The use of dogs for hunting deer is prohibited.
  - (F) Wild turkey hunting is by permit only.
- (88) Whitehall Plantation Game Land in Bladen County
- (A) Hunting and trapping is by permit only
  - (B) Camping is restricted to September 1 through the last day of February and April 7 through May 14 in areas both designated and posted as camping areas.

of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.

(j) The following game lands and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

Bertie, Halifax and Martin counties—Roanoke River Wetlands  
 Bertie County—Roanoke River National Wildlife Refuge  
 Bladen County—Suggs Mill Pond Game Lands  
 Burke County—John's River Waterfowl Refuge  
 Dare County—Dare Game Lands (Those parts of bombing range posted against hunting)  
 Dare County—Roanoke Sound Marshes Game Lands  
 Davie—Hunting Creek Swamp Waterfowl Refuge  
 Henderson and Transylvania counties—Dupont State Forest Game Lands

(k) Free-ranging swine may be taken by licensed hunters during the open season for any game animal using any legal manner of take allowed during those seasons, except in Cherokee, Clay, Graham, Jackson, Macon, and Swain counties. Dogs may not be used to hunt free-ranging swine except on game lands which allow the use of dogs for hunting deer or bear and during the applicable deer or bear season.

(l) Youth Waterfowl Day. On the day declared by the Commission to be Youth Waterfowl Day, youths may hunt on any game land and on any impoundment without a special hunt permit, including permit-only areas, except where specifically prohibited in Paragraph (h) of this Rule.

(m) Permit Hunt Opportunities for Disabled Sportsmen. The Commission may designate special hunts for participants of the disabled sportsman program by permit. The Commission may schedule these permit hunts during the closed season. Hunt dates and species to be taken shall be identified on each permit. If the hunt has a limited weapon choice, the allowed weapons will be clearly stated on each permit.

(n) As used in this Rule, horseback riding includes all equine species.

*History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305; 113-296;*

*Eff. February 1, 1976;*

*Temporary Amendment Eff. October 3, 1991;*

*Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994;*

*Temporary Amendment Eff. October 1, 1999; July 1, 1999;*

*Amended Eff. July 1, 2000;*

*Temporary Amendment Eff. July 1, 2002; July 1, 2001;*

*Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);*

*Temporary Amendment Eff. June 1, 2003;*

*Amended Eff. June 1, 2004 (this replaces the amendment approved by RRC on July 17, 2003);*

*Amended Eff. August 1, 2011; August 1, 2010; May 1, 2009; May 1, 2008; May 1, 2007; October 1, 2006; August 1, 2006; May 1, 2006; February 1, 2006; June 1, 2005; October 1, 2004.*

(i) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day

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**15A NCAC 13A .0116 SPECIAL PURPOSE COMMERCIAL HAZARDOUS WASTE FACILITY**

(a) The Department shall evaluate all commercial hazardous waste facilities to determine a score for each facility in accordance with Paragraph (c) of this Rule.

(b) A commercial hazardous waste facility (other than an incinerator or a land disposal facility) with a volume of waste of 20,000 tons or less per year of hazardous waste and having a total score pursuant to Paragraph (c) of this Rule of equal to or less than 40 is designated as a special purpose commercial hazardous waste facility. These facilities shall be classified as follows:

| Total Score        | Category |
|--------------------|----------|
| 1-11               | 1        |
| Greater than 11-18 | 2        |
| Greater than 18-25 | 3        |
| Greater than 25-32 | 4        |
| Greater than 32-40 | 5        |

(c) A score for each facility shall be determined by adding the total score for Paragraphs (d) through (k) of this Rule and subtracting the score for Paragraph (l) of this Rule.

(d) A score shall be assigned for size of the facility by adding the applicable score for storage and the applicable score for treatment using Table 1.

**TABLE 1**

| Size of Facility | Constructed Capacity | Score |
|------------------|----------------------|-------|
| Storage:         | Less than 10,000     | 1     |
| (gallons)        | 10,000-100,000       | 2     |
|                  | Greater than 100,000 | 3     |
| Treatment:       | Less than 10,000     | 1     |
| (gallons         | 10,000-100,000       | 2     |
| per day)         | Greater than 100,000 | 3     |

(e) A score shall be assigned for type of treatment permitted by adding the score for each type of treatment being performed by the facility using Table 2.

**TABLE 2**

| Type of Treatment Being Performed | Score |
|-----------------------------------|-------|
| Storage Only                      | 1     |
| Solvent Recovery                  | 2     |
| Metal Recovery                    | 2     |
| Energy Recovery                   | 2     |
| Fuel Blending                     | 2     |
| Aqueous Treatment                 | 3     |
| Stabilization                     | 2     |
| Incineration                      | 5     |
| Residuals Management              | 5     |
| Other Treatment                   | 2     |

(f) A score shall be assigned for the nature of hazardous waste being treated or stored by adding the score for each type of waste managed at the facility using Table 3. However, if the facility is permitted for storage only and no treatment is performed, the score for the nature of hazardous waste shall be reduced by one-half for each hazardous waste stream stored only.

**TABLE 3**

| Nature of Hazardous Waste<br>(from Annual Report as listed in the Permit) | Score |
|---|-------|
| Corrosive   | 1     |
| Ignitable   | 2     |
| Reactive  | 3     |
| Toxicity Characteristic   | 2     |
| Listed Toxic  | 2     |
| Acute   | 3     |

(g) A score shall be assigned for volume of hazardous waste by using the applicable score in Table 4.

**TABLE 4**

| Volume of Waste (Tons from Annual Report) | Score |
|---|-------|
| Less than 2,000                           | 1     |
| 2,000-10,000                              | 2     |
| 10,000-20,000                             | 3     |

(h) A score shall be assigned for uniformity, similarity and lack of diversity of waste streams by using the applicable score in Table 5.

TABLE 5

| Uniformity, Similarity, Lack of Diversity of Waste Streams (Number of EPA Waste Codes) As Listed in the Permit | Score |
|--|-------|
| Less than 5  | 1     |
| 5-75   | 2     |
| Greater than 75  | 3     |

(i) A score shall be assigned for predictability and treatability of site specific waste streams by using the applicable score in Table 6.

TABLE 6

| Predictability and Treatability of Waste Streams   | Score |
|--|-------|
| Simple Waste Streams and Treatment   | 1     |
| Complex Waste Streams and Treatment (Incompatibles, highly toxic, or multicode waste streams). | 2     |

(j) A score shall be assigned for compliance history for the past two years by using the highest applicable score in Table 7.

TABLE 7

| Compliance History for Past Two Years | Score |
|---------------------------------------|-------|
| Class II Violations                   | 1     |
| Class I Violations                    | 2     |
| Penalties                             | 3     |
| Injunctions                           | 5     |

(k) A score shall be assigned for annual changes, which increase/decrease "sensitive land use" within a ¼ mile radius of the commercial hazardous waste facility's property boundary by using the applicable score in Table 8. Each score shall be added together.

TABLE 8

| Changes in "sensitive land use"  | Score |
|--|-------|
| <b>Increases</b>   |       |
| Greater than 5 percent – less than 10 percent increase in the number of residential housing units as compared to the baseline.   | 1     |
| Greater than or equal to 10 percent increase in the number of residential housing units as compared to the baseline, or 30 percent increase in the number of total sensitive land uses over a period of the previous four years. | 2     |
| Greater than 50 percent increase in the number of non-residential sensitive land uses as compared to the baseline.   | 1     |
| <b>Decreases</b>   |       |
| Greater than 5 percent – less than 10 percent decrease in the number of residential housing units as compared to the baseline.   | -1    |
| Greater than or equal to 10 percent decrease in the number of residential housing units as compared to the baseline, or 30 percent decrease in the number of total sensitive land uses over a period of the previous four years. | -2    |
| Greater than 50 percent decrease in the number of non-residential sensitive land uses as compared to the baseline.   | -1    |

"Sensitive land use", as defined in G.S. 130A-295.01(f), includes residential housing, places of assembly, places of worship, schools, day care providers, and hospitals. Sensitive land use does not include retail businesses.

"Baseline", means:

- (1) for existing "Special Purpose Commercial Hazardous Waste Facilities" as the January 2008 data collected from the local government that has planning jurisdiction over the site on which the facility is located; and
- (2) for new "Special Purpose Commercial Hazardous Waste Facilities" as the data from the local government that has planning jurisdiction over the site on which the facility is located collected in the year in which the facility permit is first issued.

(l) A score shall be assigned for on-site reclamation by using the applicable score in Table 9.

TABLE 9

|                                       |       |
|---------------------------------------|-------|
| Reclamation (Credit Given)            | Score |
| Pretreatment for Off-site Reclamation | 1     |
| On-site Reclamation                   | 2     |

(m) The information referred to in Paragraphs (c) through (l) of this Rule shall be determined based on the facility's permit, the previous year's annual report, and compliance history. If no annual report was submitted, quarterly projections of waste volume shall be submitted to the Department by the facility. Each facility may be re-evaluated at any time new information is received by the Department concerning the factors in Paragraphs (c) through (l) of this Rule.

(n) The frequency of inspections at special purpose commercial hazardous waste facilities shall be determined by the facility's classification as follows:

|          |                     |
|----------|---------------------|
| Category | Minimum Inspections |
| 1        | 2 per month         |
| 2        | 4 per month         |
| 3        | 6 per month         |
| 4        | 8 per month         |
| 5        | 10 per month        |

*History Note: Authority G.S. 130A-295.02(j);*

*Temporary Adoption Eff. February 15, 1991 for a period of 180 days to expire on August 14, 1991;*

*ARRC Objection Lodged February 25, 1991;*

*ARRC Objection Removed March 21, 1991;*

*Eff. August 1, 1991;*

*Amended Eff. April 1, 1994;*

*Recodified from 15A NCAC 13A .0016 Eff. December 20, 1996;*

*Amended Eff. January 1, 2011.*

#### **15A NCAC 13A .0117 FEE SCHEDULES**

(a) A commercial hazardous waste storage, treatment, or disposal facility other than a special purpose facility shall pay monthly, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities as required by G.S. 130A-294.1, a charge of forty-one dollars (\$41.00) per hour of operation. The fee shall be paid for any time when hazardous waste is managed or during periods of maintenance, repair, testing, or calibration. Each facility shall submit an operational schedule to the Department on a quarterly basis.

(b) A special purpose commercial hazardous waste facility shall pay monthly, in addition to the fees applicable to all hazardous waste treatment, storage or disposal facilities as required by G.S. 130A-294.1, a charge per ton of hazardous waste received during the previous month and an additional charge based on the frequency of inspections as noted in the following schedules:

- (1) Effective April 1, 2011 to December 31, 2011, three dollars and fifty cents (\$3.50) per ton of hazardous waste received and:

|          |            |
|----------|------------|
| Category | Fee        |
| 1        | \$1,110.00 |
| 2        | \$2,220.00 |
| 3        | \$3,330.00 |
| 4        | \$4,440.00 |
| 5        | \$5,550.00 |

- (2) Effective January 1, 2012 to December 31, 2012, four dollars (\$4.00) per ton of hazardous waste received and:

|          |            |
|----------|------------|
| Category | Fee        |
| 1        | \$1,221.00 |
| 2        | \$2,442.00 |
| 3        | \$3,663.00 |
| 4        | \$4,884.00 |
| 5        | \$6,105.00 |

- (3) Effective January 1, 2013, four dollars and fifty cents (\$4.50) per ton of hazardous waste received and:

|          |            |
|----------|------------|
| Category | Fee        |
| 1        | \$1,332.00 |
| 2        | \$2,664.00 |
| 3        | \$3,996.00 |

|   |            |
|---|------------|
| 4 | \$5,328.00 |
| 5 | \$6,660.00 |

*History Note: Authority G.S. 130A-295.02(h);  
Temporary Adoption Eff. February 15, 1991 for a period of 180 days to expire on August 14, 1991;  
ARRC Objection Lodged February 25, 1991;  
ARRC Objection Removed March 21, 1991;  
Eff. August 1, 1991;  
Recodified from 15A NCAC 13A .0017 Eff. December 20, 1996;  
Amended Eff. April 1, 2011.*

## **TITLE 20 – DEPARTMENT OF STATE TREASURER**

### **20 NCAC 03 .0112 FEES**

(a) The following fees shall be charged for services rendered or to be rendered for each category of bonds and notes set forth:

- (1) Bonds sold pursuant to G.S. 159D, Article 2  
\$12,500.00
- (2) Bonds sold pursuant to G.S. 131A  
\$ 8,750.00
- (3) Bonds sold pursuant to G.S. 159B  
\$12,500.00
- (4) Bonds sold pursuant to G.S. 159C  
\$ 6,125.00  
(Except for bonds for industrial development or pollution control for which the fee shall be \$2,500.00.)
- (5) Bonds sold for Industrial Facilities and Pollution Control projects, pursuant to G.S. 159D, Article 1 (per participant) \$ 2,500.00
- (6) All other bonds sold pursuant to G.S. 159D  
\$ 2,500.00
- (7) Bonds sold pursuant to G.S. 159I  
\$12,500.00
- (8) All notes issued in anticipation of issuance of a bond for which a fee is set forth herein  
\$ 1,250.00
- (9) Revenue bonds sold pursuant to G.S. 159, Article 5 and all other approvals and issues of debt receiving Local Government Commission approval, other than general obligation bonds.  
\$12,500.00

(b) In addition to the fees set forth in this Rule, all travel and subsistence and all other expenses, including telephone and postage, incurred shall be for the account of the issuer. When paid by the state, they shall be billed to the issuer.

(c) In addition to expenses pursuant to Paragraph (b) of this Rule, the following fees shall be charged for the services set forth herein:

- (1) Approvals to counties pursuant to G.S. 105-487(c) \$ 625.00
- (2) Approvals to municipalities pursuant to G.S. 105-487(c) \$ 625.00
- (3) Approvals of installment purchase contracts under G.S. 160A-20 where no public offering is proposed \$ 1,250.00

- (4) Approvals of installment purchase contracts under G.S. 160A-20 where a public offering, including certificates of participation, is proposed \$12,500.00

*History Note: Authority G.S. 159-3(f); 159-6;  
Eff. August 1, 1983;  
Amended Eff. January 1, 2011; January 1, 2004; November 1, 1990; August 1, 1987; November 1, 1983.*

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### **20 NCAC 09 .0602 FEES AND EXPENSES**

(a) A non-refundable application fee is required of all institutions applying to the agency. The application fee is 0.1 percent (one tenth of one percent) of the par amount of the issue with a minimum fee of two thousand dollars (\$2,000), plus any and all fees charged by the Local Government Commission.

(b) An annual fee of one thousand dollars (\$1,000) per year is required.

(c) In addition to the fee set forth in this Rule, the agency shall bill the institution for all travel and subsistence incurred, and all material amounts of telephone, outside legal, outside financial consulting and postage expenses when paid by the state.

(d) The agency shall not incur expenses other than in Paragraph (c) of this Rule without prior agreement of the applicant to reimburse the agency for all related costs.

*History Note: Authority G.S. 159D-39(17);  
Temporary Adoption Eff. September 30, 1987 for a Period of 153 Days to Expire on March 1, 1988;  
Eff. March 1, 1988;  
Amended Eff. January 1, 2011.*

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 08 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS**

#### **21 NCAC 08A .0301 DEFINITIONS**

(a) The definitions set out in G.S. 93-1(a) apply when those defined terms are used in this Chapter.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in this Chapter:

- |   |   |
|---|---|
| <p>(1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Retired" or "Inactive" status;</p> <p>(2) "Agreed upon procedures" means a professional service whereby a CPA is engaged to issue a report of findings based on specific procedures performed on financial information prepared by a responsible party;</p> <p>(3) "AICPA" means the American Institute of Certified Public Accountants;</p> <p>(4) "Applicant" means a person who has applied to take the CPA examination or applied for a certificate of qualification;</p> <p>(5) "Attest service or assurance service" means:</p> <p style="padding-left: 20px;">(A) any audit or engagement to be performed in accordance with the Statements on Auditing Standards, Statements on Generally Accepted Governmental Auditing Standards, and Public Company Accounting Oversight Board Auditing Standards;</p> <p style="padding-left: 20px;">(B) any review or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services;</p> <p style="padding-left: 20px;">(C) any compilation or engagement to be performed in accordance with the Statements on Standards for Accounting and Review Services; or</p> <p style="padding-left: 20px;">(D) any agreed-upon procedure or engagement to be performed in accordance with the Statements on Standards for Attestation Engagements;</p> <p>(6) "Audit" means a professional service whereby a CPA is engaged to examine financial statements, items, accounts, or elements of a financial statement, prepared by management, in order to express an opinion on whether the financial statements, items, accounts, or elements of a financial statement are presented in conformity with generally accepted accounting principles or other comprehensive basis of accounting;</p> <p>(7) "Calendar year" means the 12 months beginning January 1 and ending December 31;</p> <p>(8) "Candidate" means a person whose application to take the CPA examination has been accepted by the Board and who may sit for the CPA examination;</p> <p>(9) "Client" means a person or an entity who orally or in writing agrees with a licensee to receive any professional services performed or delivered in this State;</p> <p>(10) "Commission" means compensation, except a referral fee, for recommending or referring any</p> | <p>product or service to be supplied by another person;</p> <p>(11) "Compilation" means a professional service whereby a CPA is engaged to present, in the form of financial statements, information that is the representation of management without undertaking to express any assurance on the statements;</p> <p>(12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;</p> <p>(13) "CPA" means certified public accountant;</p> <p>(14) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership which uses "certified public accountant(s)" or "CPA(s)" in or with its name or offers to or renders any attest services in the public practice of accountancy;</p> <p>(15) "CPE" means continuing professional education;</p> <p>(16) "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;</p> <p>(17) "FASB" means the Financial Accounting Standards Board;</p> <p>(18) "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions the entity expects to exist and the course of action the entity expects to take;</p> <p>(19) "GASB" means the Governmental Accounting Standards Board;</p> <p>(20) "Inactive," when used to refer to the status of a person, describes one who has requested inactive status and been approved by the Board and who does not use the title "certified public accountant" nor does he or she allow anyone to refer to him or her as a "certified public accountant," and neither he nor she nor anyone else refers to him or her in any representation as described in 21 NCAC 08A .0308(b).</p> <p>(21) "IRS" means the Internal Revenue Service;</p> <p>(22) "Jurisdiction" means any state or territory of the United States or the District of Columbia;</p> <p>(23) "License year" means the 12 months beginning July 1 and ending June 30;</p> |
|---|---|

- (24) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;
- (25) "NASBA" means the National Association of State Boards of Accountancy;
- (26) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (27) "North Carolina office" means any office physically located in North Carolina;
- (28) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;
- (29) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;
- (30) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;
- (31) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- (32) "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who verifies to the Board that the applicant does not receive or intend to receive in the future any earned compensation for current personal services in any job whatsoever and will not return to active status. However, retired status does not preclude volunteer services for which the retired CPA receives no direct or indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA;
- (33) "Revenue Department" means the North Carolina Department of Revenue;
- (34) "Review" means a professional service whereby a CPA is engaged to perform procedures, limited to analytical procedures and inquiries, to obtain a reasonable basis for expressing limited assurance on whether any material modifications should be made to the financial statements for them to be in conformity with generally accepted accounting principles or other comprehensive basis of accounting;
- (35) "Reviewer" means a member of a review team including the review team captain;

- (36) "Suspension" means a revocation for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension;
- (37) "Trade name" means a name used to designate a business enterprise;
- (38) "Work papers" mean the CPA's records of the procedures applied, the tests performed, the information obtained, and the conclusions reached in attest services, tax, consulting, special report, or other engagement. Work papers include programs used to perform professional services, analyses, memoranda, letters of confirmation and representation, checklists, copies or abstracts of company documents, and schedules of commentaries prepared or obtained by the CPA. The forms include handwritten, typed, printed, word processed, photocopied, photographed, computerized data, or any other form of letters, words, pictures, sounds or symbols;
- (39) "Work product" means the end result of the engagement for the client which may include a tax return, attest or assurance report, consulting report, and financial plan. The forms include handwritten, typed, word processed, photocopied, photographed, computerized data, or in any other form of letters, words, pictures, sounds, or symbols.

(c) Any requirement to comply by a specific date to the Board that falls on a weekend or federal holiday shall be received as in compliance if postmarked by U.S. Postal Service cancellation, by that date, if received by a private delivery service by that date, or received in the Board office on the next business day.

*History Note: Authority G.S. 93-1; 93-12;*

*Eff. February 1, 1976;*

*Readopted Eff. September 26, 1977;*

*Amended Eff. February 1, 2011; January 1, 2006; January 1, 2004; April 1, 1999; August 1, 1998; February 1, 1996; April 1, 1994; September 1, 1992.*

## **21 NCAC 08A .0309 CONCENTRATION IN ACCOUNTING**

(a) A concentration in accounting includes:

- (1) at least 30 semester hours, or the equivalent in quarter hours, of undergraduate accountancy courses which shall include no more than six semester hours of accounting principles and no more than three semester hours of business law; or
- (2) at least 20 semester hours or the equivalent in quarter hours, of graduate accounting courses that are open exclusively to graduate students; or
- (3) a combination of undergraduate and graduate courses which would be equivalent to Subparagraph (1) or (2).



(b) In recognition of differences in the level of graduate and undergraduate courses, one semester (or quarter) hour of graduate study in accounting is considered the equivalent of one and one-half semester (or quarter) hours of undergraduate study in accounting.

(c) Up to four semester hours, or the equivalent in quarter hours, of graduate income tax courses completed in law schools may count toward the semester hour requirement of Paragraph (a) of this Rule.

(d) Where, in the Board's determination, an accounting course duplicates another course previously taken, only the semester (or quarter) hours of one of the courses shall be counted in determining if the applicant has a concentration in accounting.

(e) Accounting courses include such courses as principles courses at the elementary, intermediate and advanced levels; managerial accounting; business law; cost accounting; fund accounting; auditing; and taxation. There are many college courses offered that would be helpful in the practice of accountancy, but are not included in the definition of a concentration in accounting. Such courses include business finance, business management, computer science, economics, writing skills, accounting internships, and CPA exam review.

*History Note: Authority G.S. 93-12(5);  
Eff. May 1, 1989;  
Amended Eff. February 1, 2011; January 1, 2001; April 1, 1994.*

**21 NCAC 08C .0126 HEARING EXHIBITS**

(a) The Board staff shall serve upon the Respondent copies of documents it plans to offer as evidence at a contested case hearing at least 14 business days prior to the scheduled hearing.

(b) Respondent shall likewise serve upon the Board staff copies of documents Respondent plans to offer as evidence at the hearing at least 14 business days prior to the scheduled hearing.

(c) Additional exhibits may be introduced by the Board staff or Respondent and admitted into evidence at the hearing if the presiding officer determines that the document(s) were not otherwise available to the party 14 business days prior to the hearing or the documents(s) are offered in response to documents served by the other party.

(d) Respondents shall supply at the hearing 16 copies of any document(s) that is of this Rule not served upon the Board staff in advance as prescribed in Paragraph (b) of this Rule.

*History Note: Authority G.S. 93-12; 150B-41;  
Eff. February 1, 2011.*

**21 NCAC 08F .0302 EDUCATION AND WORK EXPERIENCE REQUIRED PRIOR TO CPA EXAM**

(a) Applicants who intend to demonstrate their possession of sufficient education to become a CPA by showing that they possess a bachelor's degree shall submit official transcripts with their application to take the CPA examination. Official transcripts shall show the grades the applicant received on courses completed and shall also show degrees awarded. An official transcript bears the seal of the school and the signature of the registrar or assistant registrar.

(b) The Board may approve an application to take the CPA examination prior to the receipt of a bachelor's degree, if:

- (1) the concentration in accounting which shall be included in or supplement the bachelor's degree is already complete or is reasonably expected to be completed by the end of the school term within which the examination falls; and
- (2) an applicant reasonably expects to receive the bachelor's degree within 120 days after the application is received by the Board. However, if the applicant fails to receive the degree within the specified time, the CPA examination grades shall not be released and if the applicant wishes to retake the examination, the applicant shall reapply.

*History Note: Authority G.S. 93-12(3); 93-12(5);  
Eff. February 1, 1976;  
Readopted Eff. September 26, 1977;  
Amended Eff. February 1, 2011; August 1, 1998; April 1, 1994;  
May 1, 1989; September 1, 1988; April 1, 1987.*

**21 NCAC 08F .0304 WAIVER OF EDUCATION REQUIRED PRIOR TO EXAMINATION**

*History Note: Authority G.S. 93-12(5); 93-12(7);  
Eff. June 16, 1980;  
Amended Eff. September 1, 1983;  
Recodified from 8F .0406 Eff. October 1, 1984;  
Amended Eff. January 1, 2006; May 1, 1989; January 1, 1988;  
July 1, 1987;  
Repealed Eff. February 1, 2011.*

**21 NCAC 08F .0401 WORK EXPERIENCE REQUIRED OF CANDIDATES FOR CPA CERTIFICATION**

(a) G.S. 93-12(5)c sets forth work experience alternatives, one of which is required of candidates applying for CPA certification. In connection with those requirements, the following provisions apply:

- (1) The work experience shall be acquired prior to the date a candidate applies for certification.
- (2) All experience which is required to be under the direct supervision of a CPA shall be under the direct supervision of a CPA on active status.

(b) The following provisions apply to all candidates seeking to meet the work experience requirement of G.S. 93-12(5)c.3 by working in the field of accounting:

- (1) One year of work experience is 52 weeks of full-time employment. The candidate is employed full-time when the candidate is expected by the employer to work for the employer at least 30 hours each week for an indefinite period or for a set period of at least one year. Any other work is working part-time.
- (2) All weeks of actual full-time employment are added to all full-time equivalent weeks in order to calculate how much work experience

- a candidate has acquired. Dividing that number by 52 results in the years of work experience the candidate has acquired.
- (3) Full-time-equivalent weeks are determined by the number of actual part-time hours the candidate has worked. Actual part-time hours do not include hours paid for sick leave, vacation leave, attending continuing education courses or other time not spent directly performing accounting services. For each calendar week during which the candidate worked actual part-time hours of 30 hours or more, the candidate receives one full-time-equivalent week. The actual part-time hours worked in the remaining calendar weeks are added together and divided by 30. The resulting number is the additional number of full-time-equivalent weeks to which the candidate is entitled.
- (4) The candidate shall submit experience affidavits on a form provided by the Board from all of the relevant employers; provided that when such experience was not acquired while employed with a CPA firm, the candidate shall also submit details of the work experience and supervision on a form provided by the Board. Experience affidavits for part-time work shall contain a record of the actual part-time hours the candidate has worked for each week of part-time employment. Both the experience affidavit and the form for additional detail shall be certified by the employer's office supervisor or an owner of the firm who is a certificate holder.

(c) 21 NCAC 08F .0409 applies to teaching experience acquired pursuant to G.S. 93-12(5)c.2 and 4.

*History Note:* Authority G.S. 93-12(3); 93-12(5);  
Eff. February 1, 1976;

*Readopted Eff.* September 26, 1977;

*Temporary Amendment Eff.* June 17, 1982 for a period of 120 days to expire on October 12, 1982;

*Legislative Objection Lodged Eff.* July 20, 1982;

*Amended Eff.* February 1, 2011; January 1, 2006; August 1, 1998; March 1, 1990; July 1, 1989; December 1, 1988; September 1, 1988.

#### **21 NCAC 08F .0410 EDUCATION REQUIRED OF CANDIDATES FOR CPA CERTIFICATION**

(a) G.S. 93-12(5)a sets forth the education required of candidates applying for CPA certification. The 150 semester hours required include a concentration in accounting, as defined by 21 NCAC 08A .0309, and 24 semester hours of coursework which include one three semester hour course from at least eight of the following 10 fields of study:

- (1) communications;
- (2) computer technology;
- (3) economics;
- (4) ethics;

- (5) finance;
- (6) humanities/social science;
- (7) international environment;
- (8) law;
- (9) management; or
- (10) statistics.

(b) Anyone applying for CPA certification who holds a Master's or more advanced degree in accounting, tax law, economics, finance, business administration, or a law degree from an accredited college or university or the equivalent thereof is in compliance with Paragraph (a) of this Rule.

*History Note:* Authority G.S. 93-12(5);

*Eff.* January 1, 2001;

*Amended Eff.* February 1, 2011; January 1, 2006.

#### **21 NCAC 08H .0101 RECIPROCAL CERTIFICATES**

(a) A person from another jurisdiction who desires to offer or render professional services as a CPA to his or her employer or a client in this State shall meet all the requirements imposed on an applicant under G.S. 93-12(5) or the requirements of G.S. 93-12(6).

(b) The fee for a reciprocal certificate shall be the maximum amount allowed by G.S. 93-12(7a).

(c) An applicant for a reciprocal certificate shall meet the following requirements:

- (1) The applicant has the legal authority to use the CPA title and to practice public accountancy in a jurisdiction.
- (2) The applicant has received a passing score on each part of the Uniform CPA Examination.

*History Note:* Authority G.S. 93-12(6); 93-12(7a);

*Eff.* February 1, 1976;

*Readopted Eff.* September 26, 1977;

*Amended Eff.* February 1, 2011; January 1, 2006; April 1, 2003; April 1, 1999; August 1, 1998; September 1, 1992; March 1, 1990; May 1, 1989; June 1, 1988.

#### **21 NCAC 08J .0101 ANNUAL RENEWAL OF CERTIFICATE, FORFEITURE, AND REAPPLICATION**

(a) All active CPAs shall renew their certificates annually by the first day of July. The fee for such renewal is the maximum amount allowed by statute.

(b) To renew a certificate a CPA shall submit to the Board:

- (1) a completed certificate renewal application form;
- (2) a completed CPE report, as required by 21 NCAC 08G .0406(a); and
- (3) the annual renewal fee.

(c) Upon failure of a CPA to comply with any applicable part of Paragraph (b) of this Rule by July 1, the Board shall send notice of such failure in the form of a demand letter to the CPA at the most recent mailing address the Board has on file. Completed renewal application packages shall be postmarked with proper postage not later than 30 days after the mailing date of the demand letter, unless that date falls on a weekend, in which case the renewal package must be postmarked or received in the Board office on the next business day. For renewal packages

sent via the U.S. Postal Service, only a U.S. Postal Service cancellation shall be considered as the postmark. If the renewal package is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark. Subsequent failure of the CPA to comply with any applicable part of Paragraph (b) of this Rule within 30 days after such notice is mailed automatically results in forfeiture of the CPA's certificate, as required by G.S. 93-12(15).

(d) Upon forfeiture of a certificate, the certificate holder is no longer a CPA and the Board shall send notice of such forfeiture to the certificate holder by certified mail to the most recent mailing address the Board has on file. The certificate holder shall return the certificate to the Board office within 15 days after receipt of notice of forfeiture or, if the certificate has been destroyed or lost, shall submit an affidavit, on a form supplied by the Board, within 15 days of receipt of such notice that the certificate has been destroyed or has been lost and shall be returned to the Board if found.

(e) A person who has forfeited a certificate pursuant to G.S. 93-12(15) for failure to renew his or her certificate may apply for reissuance under 21 NCAC 08J .0106.

(f) If a check or credit card authorization for the annual renewal fee fails to clear the bank, the annual renewal shall be deemed incomplete and returned.

(g) Any active CPA serving in the armed forces of the United States and to whom an extension of time to file a tax return is granted pursuant to G.S. 105-249.2, is granted the same extension of time to comply with the requirements of Paragraphs (a) and (b) of this Rule.

*History Note: Authority G.S. 93-12(7a); 93-12(8); 93-12(8a); 93-12(8b); 93-12(15), 93B-15; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Legislative Objection Lodged Eff. July 20, 1982; Amended Eff. August 1, 1982; Curative Amended Eff. August 1, 1982; Temporary Amendment Eff. May 13, 1983 for a period of 111 days to expire on September 1, 1983; Amended Eff. February 1, 2011; August 1, 1998; February 1, 1996; April 1, 1994; March 1, 1990; May 1, 1989.*

**21 NCAC 08J .0105 RETIRED AND INACTIVE STATUS: CHANGE OF STATUS**

(a) A CPA may apply to the Board for change of status to retired status or inactive status provided the CPA meets the description of the appropriate status as defined in 21 NCAC 08A .0301. Application for any status change may be made on the annual certificate renewal form or another form provided by the Board.

(b) A CPA who does not meet the description of inactive or retired as defined in 21 NCAC 08A .0301 may not be or remain on inactive or retired status.

(c) A CPA on retired status may change to active status by:

- (1) paying the certificate renewal fee for the license year in which the application for change of status is received;

- (2) furnishing the Board with evidence of satisfactory completion of 40 hours of acceptable CPE courses during the 12-month period immediately preceding the application for change of status. Eight of the required hours must be credits derived from non-self study CPE and eight of the required hours must be from a course or examination in North Carolina accountancy statutes and rules (including the Code of Professional Ethics and Conduct contained therein) as set forth in 21 NCAC 08G .0401(a); and

- (3) three certificates of moral character and endorsements as to the eligibility signed by CPAs holding valid certificates granted by any state or territory of the United States or the District of Columbia.

(d) A CPA on retired status may request change to inactive status by application to the Board.

(e) Any individual on inactive status may change to active status by complying with the requirements of 21 NCAC 08J .0106(c).

*History Note: Authority G.S. 93-12(8); 93-12(8b); Eff. December 1, 1982; Curative Adopted Eff. January 25, 1983; Legislative Objection Lodged Eff. January 31, 1983; Amended Eff. February 1, 2011; August 1, 1998; August 1, 1995; April 1, 1994; March 1, 1990; May 1, 1989.*

**21 NCAC 08J .0108 CPA FIRM REGISTRATION**

(a) All CPA firms shall register with the Board within 30 days after opening a North Carolina office or beginning a new CPA firm unless they are a professional corporation, professional limited liability company, or registered limited liability partnership, in which case they shall register prior to formation pursuant to 21 NCAC 08K .0104 and .0301.

(b) In addition to the registration required by Paragraph (a) of this Rule, all CPA firms shall renew annually by January 31 with the Board upon forms provided by the Board.

(c) The information provided by the registration shall include:

- (1) Either an application for exemption from peer review, a request to be deemed in compliance with peer review or registration for peer review, pursuant to 21 NCAC 08M .0105;
- (2) For all CPA firms not exempt from the peer review program, with the registration immediately following its review, the information required by 21 NCAC 08M .0106(a);
- (3) For all North Carolina offices, an office registration form indicating the name of the office supervisor, the location of the office and its telephone number;
- (4) For all partnerships or registered limited liability partnerships, a list of all resident and nonresident partners of the partnership;
- (5) For all professional limited liability companies, the information set forth in 21 NCAC 08K .0104(d);

- (6) For all incorporated CPA firms, the information set forth in 21 NCAC 08K .0104(d);
- (7) For all CPA firms, the appropriate registration fees as set forth in 21 NCAC 08J .0110; and
- (8) For all new CPA firms, the percentage of ownership held individually by each non-CPA owner who has five percent or more of ownership:
  - (A) in the new CPA firm; and
  - (B) at the year-end in each CPA firm in which that owner was an owner during the preceding two years.
- (9) For all changes in ownership of a CPA firm, the percentage of ownership held individually by each owner who has five percent or more of ownership.

(d) All information provided for registration with the Board shall pertain to events of and action taken during the year preceding the year of registration. The last day of the preceding calendar year is the "year end."

(e) With regard to Paragraph (c)(3) of this Rule, one representative of a CPA firm may file all documents with the Board on behalf of the CPA firm's offices in North Carolina. However, responsibility for compliance with this Rule remains with each office supervisor.

(f) With regard to Paragraph (c)(4) or (c)(5) of this Rule, one annual listing by a representative of the partnership, registered limited liability partnership, or professional limited liability company shall satisfy the requirement for all owners of the CPA firm. However, each owner remains responsible for compliance with this Rule. The absence of a filing under Paragraph (c)(4) or (c)(5) of this Rule shall be construed to mean that no partnership, registered limited liability partnership, or professional limited liability company exists.

(g) Notice that a CPA firm has dissolved or any change in the information required by Paragraph (c)(3) of this Rule shall be delivered to the Board's office within 30 days after the change or dissolution occurs. A professional corporation or professional limited liability company which is dissolving shall deliver the Articles of Dissolution to the Board's office within 30 days of filing with the Office of the Secretary of State.

(h) Upon written petition by a CPA firm, the Board shall grant the CPA firm a conditional registration for a period of 60 days or less, if the CPA firm shows that circumstances beyond its control prohibited it from registering with the Board, completing a peer review or notifying the Board of change or dissolution pursuant to Paragraphs (a), (b), (c), and (g) of this Rule. The Board may grant a second extension under continued extenuating circumstances.

(i) A complete registration, as required by Paragraphs (b) and (c) of this Rule, shall be postmarked with proper postage or received in the Board office not later than the last day of January unless that date falls on a weekend or federal holiday, in which case that day shall be the next business day. Only a U.S. Postal Service cancellation is considered as the postmark. If a registration is sent to the Board office via a private delivery service, the date the package is received by the delivery service is considered as the postmark.

*History Note: Authority G.S. 55B-10; 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(8a); 93-12(8c);*  
*Eff. June 1, 1985;*  
*Amended Eff. February 1, 2011; January 1, 2004; April 1, 1999; August 1, 1998; August 1, 1995; April 1, 1994; April 1, 1991; May 1, 1989.*

**21 NCAC 08J .0109 CPA FIRM PRACTICE PRIVILEGE NOTIFICATION**

Notice pursuant to G.S. 93-10(c)(3) shall be made on a form supplied by the Board.

*History Note: Authority G.S. 93-10;*  
*Eff. February 1, 2011.*

**21 NCAC 08M .0105 PEER REVIEW REQUIREMENTS**

(a) A CPA or CPA firm providing any of the following services to the public shall participate in a peer review program:

- (1) audits;
- (2) reviews of financial statements;
- (3) compilations of financial statements; and
- (4) agreed-upon procedures.

(b) A CPA or CPA firm not providing any of the services listed in Paragraph (a) of this Rule is exempt from peer review until the issuance of the first report provided to a client.

(c) A CPA, a new CPA firm or a CPA firm exempt from peer review now providing any of the services in Paragraph (a) of this Rule shall furnish to the peer review program selected financial statements, corresponding work papers, and any additional information or documentation required for the peer review program within 24 months of the issuance of the first report provided to a client.

(d) Participation in and completion of one of the following peer review programs is required:

- (1) AICPA Peer Review Program; or
- (2) Any other peer review program found to be substantially equivalent to Subparagraph (1) of this Paragraph in advance by the Board.

(e) CPA firms shall not rearrange their structure or act in any manner with the intent to avoid participation in peer review.

(f) A CPA firm which does not have offices in North Carolina and which has provided any services as listed in G.S. 93-10(c)(3) to North Carolina clients is required to participate in a peer review program.

(g) Subsequent peer reviews of a CPA firm are due three years and six months from the year end of the 12 month period of the first peer review unless granted an extension by the peer review program.

*History Note: Authority G.S. 93-12(7b); 93-12(8c);*  
*Eff. January 1, 2004;*  
*Amended Eff. February 1, 2011; January 1, 2006.*

**21 NCAC 08N .0207 VIOLATION OF TAX LAWS**

A CPA shall not knowingly violate any state or federal tax laws or regulations in handling the CPA's personal business affairs, or the business affairs of an employer or client, or the business affairs of any company owned by the CPA.

*History Note:* Authority G.S. 93-12(9);  
*Eff. April 1, 1994;*  
*Amended Eff. February 1, 2011.*

**21 NCAC 08N .0215 INTERNATIONAL FINANCIAL ACCOUNTING STANDARDS**

(a) International Financial Accounting Standards. A CPA shall not express an opinion that financial statements are presented in accordance with international financial accounting standards if such statements contain any departure from an accounting standard which has a material effect on the statements, taken as a whole, unless the CPA can demonstrate that due to unusual circumstances the financial statements would otherwise have been misleading.

(b) International Financial Accounting Standards consist of the following:

- (1) International Financial Reporting Standards (IFRS) issued after 2001;
- (2) International Accounting Standards (IAS) issued before 2001;
- (3) Interpretations originated from the International Financial Reporting Interpretations Committee (IFRIC) issued after 2001; and
- (4) Standing Interpretations Committee (SIC) issued before 2001.

(c) Departures. The CPA's report must describe the departure, the approximate effect thereof if practicable and the reasons why compliance with the standard would result in a misleading statement.

(d) Copies of Standards. Copies of International Financial Accounting Standards may be inspected in the office of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the International Accounting Standards Board, IASC Foundation Publications Department, 30 Cannon Street, London, EC4M6XH, United Kingdom. They are available at cost, which is approximately thirty-four dollars (\$34.00) in paperback form or three hundred eighty-three dollars (\$383.00) in loose-leaf subscription form.

*History Note:* Authority G.S. 55-12; 57C-2-01; 93-12(9);  
*Eff. February 1, 2011.*

**21 NCAC 08N .0302 FORMS OF PRACTICE**

(a) Authorized Forms of Practice. A CPA who uses CPA in or with the name of the business or offers or renders attest or assurance services in the public practice of accountancy to clients shall do so only through a registered sole proprietorship, partnership, Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Ownership. A CPA firm may have an ownership of up to 49 percent by non-CPAs. A CPA firm shall have ownership of at least 51 percent and be controlled in law and fact by holders of valid CPA certificates who have the unrestricted privilege to use the CPA title and to practice public accountancy in a jurisdiction and at least one of whom shall be licensed by this Board.

(c) CPA Firm Registration Required. A CPA shall not offer or render professional services through a CPA firm which is in

violation of the registration requirements of 21 NCAC 08J .0108, 08J .0110, or 08M .0105.

(d) Supervision of CPA Firms. Every North Carolina office of a CPA firm registered in North Carolina shall be actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

(e) CPA Firm Requirements for CPA Ownership. A CPA firm and its designated supervising CPA is accountable for the following in regard to a CPA owner:

- (1) A CPA owner shall be a natural person or a general partnership or a limited liability partnership directly owned by natural persons.
- (2) A CPA owner shall actively participate in the business of the CPA firm.
- (3) A CPA owner who, prior to January 1, 2006, is not actively participating in the CPA firm may continue as an owner until such time as his or her ownership is terminated.

(f) CPA Firm Requirements for Non-CPA Ownership. A CPA firm and its designated supervising CPA partner is accountable for the following in regard to a non-CPA owner:

- (1) a non-CPA owner shall be a natural person or a general partnership or limited liability partnership directly owned by natural persons;
- (2) a non-CPA owner shall actively participate in the business of the firm or an affiliated entity as his or her principal occupation;
- (3) a non-CPA owner shall comply with all applicable accountancy statutes and the rules;
- (4) a non-CPA owner shall be of good moral character and shall be dismissed and disqualified from ownership for any conduct that, if committed by a licensee, would result in a discipline pursuant to G.S. 93-12(9);
- (5) a non-CPA owner shall report his or her name, home address, phone number, social security number and Federal Tax ID number (if any) on the CPA firm's registration; and
- (6) a non-CPA owner's name may not be used in the name of the CPA firm or held out to clients or the public that implies the non-CPA owner is a CPA.

*History Note:* Authority G.S. 55B-12; 57C-2-01; 93-12(9);  
*Eff. April 1, 1994;*  
*Amended Eff. February 1, 2011; January 1, 2006; April 1, 2003;*  
*April 1, 1999; August 1, 1995.*

**21 NCAC 08N .0306 ADVERTISING OR OTHER FORMS OF SOLICITATION**

(a) Deceptive Advertising. A CPA shall not seek to obtain clients by advertising or using other forms of solicitation in a manner that is deceptive.

(b) Specialty Designations. A CPA may advertise the nature of services provided to clients but the CPA shall not advertise or indicate a specialty designation or other title unless the CPA has met the requirements of the granting organization for the separate title or specialty designation and the individual is

currently on active status and in good standing with the granting organization for the separate title or specialty designation.

(c) The CPA firm shall offer to perform or perform professional services only in the exact name of the CPA firm as registered with the Board. The exact CPA firm name as registered with the Board shall be used on the following documents:

- (1) Letterhead;
- (2) contracts;
- (3) engagement letters;
- (4) tax returns; and
- (5) all professional services reports.

(d) The CPA firm may advertise professional services using the exact name of the CPA firm, a portion of the CPA firm name, initials or acronyms derived from the exact CPA firm name as registered with the Board.

(e) Any CPA or CPA firm offering to or performing professional services via the Internet shall include the following information on the Internet:

- (1) CPA business or CPA firm name as registered with the Board;
- (2) principal place of business;
- (3) business phone; and
- (4) North Carolina certificate number and North Carolina as state of certification.

(f) The use of the phrase "certified public accountant(s)" or "CPA(s)" in the name of any business entity on letterhead, professional services reports, business cards, brochures, building signage, office signs, telephone directories, contracts, engagement letters, tax returns, Internet directories or any other advertisements or forms or solicitation is prohibited except for registered CPA firms.

*History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. February 1, 2011; April 1, 1999; February 1, 1996.*

#### **21 NCAC 08N .0307 CPA FIRM NAMES**

(a) Deceptive Names Prohibited. A CPA or CPA firm shall not trade upon the CPA title through use of any name that would have the capacity or tendency to deceive. The name or initials of one or more members of a new CPA firm, as defined in 21 NCAC 08A .0301, shall be included in the CPA firm name. The name of former members and the initials of former members that are currently in the CPA firm name and the name of current members and the initials of current members may be included in a new CPA firm name. The name, the portion of the name, the initials of the name or the acronym derived from the name of a firm association or firm network that includes names that were not previous CPA members or are not current CPA members of the CPA firm and the name or initials of a non-CPA member in a CPA firm name is prohibited.

(b) Style of Practice. It is misleading if a CPA firm practices under a name or style which would tend to imply the existence of a partnership or registered limited liability partnership or a professional corporation or professional limited liability company of more than one CPA shareholder or CPA member or an association when in fact there is no partnership nor is there more than one CPA shareholder or CPA member of a CPA firm.

For example, no CPA firm having just one CPA member may have as a part of its name the words "associates," "group," "firm," or "company" or their abbreviations. It is also misleading if a CPA renders non-attest professional services through a non-CPA firm using a name that implies any non-licensees are CPAs.

(c) Any CPA firm that has continuously used an assumed name approved by the Board prior to April 1, 1999, may continue to use the assumed name. A CPA firm (or a successor firm by sale, merger, or operation of law) using the name, or a portion of a name, or the initials of the name, or the acronym derived from the name of a firm association or firm network that was approved by the Board prior to April 1, 1999 may continue to use that name so long as that use is not deceptive. A CPA firm (or a successor firm by sale, merger, or operation of law) may continue to use the surname of a retired or deceased partner or shareholder in the CPA firm's name so long as that use is not deceptive.

*History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. February 1, 2011; January 1, 2006; April 1, 1999; August 1, 1995.*

#### **21 NCAC 08N .0402 INDEPENDENCE**

(a) A CPA, or the CPA's firm, who is performing an engagement in which the CPA, or the CPA's firm, will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and appearance.

(b) Independence is impaired if, during the period of the professional engagement, a covered person:

- (1) Had or was committed to acquire any direct or material indirect financial interest in the client.
- (2) Was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client; and
  - (A) The covered person (individually or with others) had the authority to make investment decisions for the trust or estate;
  - (B) The trust or estate owned or was committed to acquire more than 10 percent of the client's outstanding equity securities or other ownership interests; or
  - (C) The value of the trust's or estate's holdings in the client exceeded 10 percent of the total assets of the trust or estate.
- (3) Had a joint closely held investment that was material to the covered person.
- (4) Except as permitted in the AICPA Professional Standards Code of Professional Conduct and Bylaws, had any loan to or from the client or any officer or director of the client, or any individual owning 10 percent or more of the

client's outstanding equity securities or other ownership interests.

(c) Independence is impaired if during the period of the professional engagement, a shareholder, a member, a partner or professional employee of the firm, his or her immediate family and close relatives, (as defined in the AICPA Code of Professional Conduct and Bylaws) or any group of such persons acting together owned more than five percent of a client's outstanding equity securities or other ownership interests.

(d) Independence is impaired if, during the period covered by the financial statements, or during the period of the professional engagement, a shareholder, a member, a partner or professional employee of the firm was simultaneously associated with the client as a:

- (1) Director, officer, employee, or in any capacity equivalent to that of a member of management;
- (2) Promoter, underwriter, or voting trustee; or
- (3) Trustee for any pension or profit-sharing trust of the client.

(e) For the purposes of this Rule "Covered" person is

- (1) An individual on the attest engagement team;
- (2) An individual in a position to influence the attest engagement;
- (3) A partner or manager who provides nonattest services to the attest client beginning once he or she provides 10 hours of nonattest services to the client within any fiscal year and ending on the later of the date:

(A) the firm signs the report on the financial statements for the fiscal year during which those services were provided; or

(B) he or she no longer expects to provide 10 or more hours of nonattest services to the attest client on a recurring basis;

- (4) A partner in the office in which the lead attest engagement partner primarily practices in connection with the attest engagement;
- (5) The firm, including the firm's employee benefit plans; or
- (6) An entity whose operating, financial, or accounting policies can be controlled (as defined by generally accepted accounting principles (GAAP) for consolidation purposes) by any of the individuals or entities described in Subparagraphs (1) through (5) of this Paragraph or by two or more such individuals or entities if they act together;

(f) The impairments of independence listed in this Rule are not intended to be all-inclusive.

*History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. February 1, 2011; April 1, 2003.*

## **21 NCAC 08N .0409 GOVERNMENT AUDITING STANDARDS**

(a) Standards for Government Audits. A CPA shall not render audit services to a government entity or entity that receives government awards and is required to receive an audit in accordance with Government Auditing Standards unless the CPA has complied with the applicable Generally Accepted Government Auditing Standards.

(b) Government Auditing Standards. The Government Auditing Standards issued by the United States Government Accountability Office, including subsequent amendments and additions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered Generally Accepted Government Auditing Standards for the purpose of Paragraph (a) of this Rule.

(c) Departure. Departures from the standards listed in Paragraph (b) of this Rule must be justified by those who do not follow them as set out in the standards.

(d) Copies of the Standards. Copies of the Government Auditing Standards may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the Government Printing Office, Washington, D.C. 20402-0001. They are available at a cost, which is approximately twelve dollars and fifty cents (\$12.50) in paperback form.

*History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. February 1, 2011.*

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## **CHAPTER 14 – BOARD OF COSMETIC ART EXAMINERS**

### **21 NCAC 14H .0105 SANITARY RATINGS AND POSTING OF RATINGS**

(a) The sanitary rating of a beauty establishment shall be based on a system of grading outlined in this Subchapter. Based on the grading, all establishments shall be rated in the following manner:

- (1) all establishments receiving a rating of at least 90 percent or more, shall be awarded a grade A;
- (2) all establishments receiving a rating of at least 80 percent, and less than 90 percent, shall be awarded grade B;
- (3) all establishments receiving a rating of at least 70 percent or more, and less than 80 shall be awarded grade C.

(b) Every beauty establishment shall be given a sanitary rating. A cosmetic art school shall be graded no less than three times a year, and a cosmetic art shop shall be graded once a year.

(c) The sanitary rating given to a beauty establishment shall be posted in a conspicuous place at all times.

(d) All new establishments must receive a rating of at least 90 percent before a license will be issued.

(e) The willful operation of a beauty establishment which fails to receive a sanitary rating of at least 70 percent (grade C) shall be sufficient cause for revoking or suspending the letter of approval or permit.

- (f) A re-inspection for the purpose of raising the sanitary rating of a beauty establishment shall not be given within 30 days of the last inspection, unless the rating at the last inspection was less than 80 percent.
- (g) A whirlpool and footspa sanitation record must be kept on each whirlpool and footspa for inspection on a form provided by the Board.

*History Note: Authority G.S. 88B-4; 88B-23; 88B-24;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 2011; June 1, 2009; June 1, 2007;*  
*August 1, 1998; June 1, 1994; April 1, 1991; January 1, 1989.*

**21 NCAC 14H .0107 WATER SUPPLY**

- (a) A beauty establishment shall have a supply of running hot and cold water in the clinic area, approved by the local health department.
- (b) When a service is provided in a room closed off by a door, the water supply required in this Rule must be within 20 feet of the door or 25 feet from the service table or chair. The restroom sink shall not be used to meet this requirement.

*History Note: Authority G.S. 88B-4;*  
*Eff. February 1, 1976;*  
*Amended Eff. January 1, 2011; September 1, 2004; January 1, 1989.*

**21 NCAC 14H .0112 CLEANLINESS OF CLINIC AREA**

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

- (A) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) or tuberculocidal, that is mixed and used according to the manufacturer's directions; or
- (B) 1 and 1/3 cup of 5.25 percent household bleach to one gallon of water for 10 minutes.

The disinfectant shall not shorten the service life of the comb, brush, esthetics or manicuring instrument. In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant manufacturer.

- (3) They shall be rinsed with hot tap water and dried with a clean towel before their next use. They shall be stored in a clean, closed cabinet or container until they are needed.

- (f) Disposable and porous implements must be discarded after use or upon completion of the service.
- (g) Product that comes into contact with the patron must be discarded upon completion of the service.
- (h) Clean items and items needing to be disinfected shall be kept in separate containers.
- (i) A covered receptacle may have an opening so soiled items may be dropped into the receptacle.

*History Note: Authority G.S. 88B-4; 88B-14;*  
*Eff. February 1, 1976;*  
*Amended Eff. June 1, 1994; April 1, 1991; January 1, 1989;*  
*April 1, 1988;*  
*Temporary Amendment Eff. January 20, 1999;*  
*Amended Eff. January 1, 2011; December 1, 2008; October 1, 2006; November 1, 2005; August 1, 2000.*

**21 NCAC 14H .0120 WHIRLPOOL, FOOTSPA AND FACIAL STEAMER SANITATION**

- (a) As used in this Rule whirlpool or footspa means any basin using circulating water.
- (b) After each patron each whirlpool or footspa must be cleaned and disinfected as follows:
- (1) All water must be drained and all debris removed from the basin;
  - (2) The basin must be disinfected by filling the basin with water and circulating:
    - (A) Two tablespoons of automatic dishwashing powder and ¼ cup of 5.25 percent household bleach to one gallon of water through the unit for 10 minutes; or
    - (B) Surfactant or enzymatic soap with an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity used according to manufacturer's instructions through the unit for 10 minutes;



- (3) The basin must be drained and rinsed with clean water; and
- (4) The basin must be wiped dry with a clean towel.
- (c) At the end of the day each whirlpool or footspa must be cleaned and disinfected as follows:
  - (1) The screen must be removed and all debris trapped behind the screen removed;
  - (2) The screen and the inlet must be washed with surfactant or enzymatic soap or detergent and rinsed with clean water;
  - (3) Before replacing the screen one of the following procedures must be performed:
    - (A) The screen must be totally immersed in a household bleach solution of ¼ cup of 5.25percent household bleach to one gallon of water for 10 minutes; or
    - (B) The screen must be totally immersed in an EPA registered disinfectant with bactericidal, fungicidal and virucidal activity in accordance to the manufacturer's instructions for 10 minutes;
  - (4) The inlet and area behind the screen must be cleaned with a brush and surfactant soap and water to remove all visible debris and residue; and
  - (5) The spa system must be flushed with low sudsing surfactant or enzymatic soap and warm water for at least 10 minutes and then rinsed and drained.
- (d) Every week after cleaning and disinfecting pursuant to Paragraphs (a) and (b) of this Rule each whirlpool and footspa must be cleaned and disinfected in the following manner:
  - (1) The whirlpool or footspa basin must be filled with water and ¼ cup of 5.25 percent household bleach for each one gallon of water;
  - (2) The whirlpool or footspa system must be flushed with the bleach and water solution pursuant to Subparagraph (d)(1) of this Rule for 10 minutes and allowed to sit for at least six hours; and
  - (3) The whirlpool or footspa system must be drained and flushed with water before use by a patron.
- (e) A record must be made of the date and time of each cleaning and disinfecting as required by this Rule including the date, time, reason and name of the staff member that performed the cleaning. This record must be kept and made available for at least 90 days upon request by either a patron or inspector.
- (f) The water in a vaporizer machine must be emptied daily and the unit disinfected.

*History Note: Authority G.S. 88B-4; 88B-14; Eff. February 1, 2004; Amended Eff. January 1, 2011; December 1, 2008; May 1, 2007; October 1, 2006; November 1, 2005.*

**21 NCAC 14H .0121 PROHIBITED PRACTICES**

- (a) Licensees must not use or possess in a shop any of the following products:
    - (1) Methyl Methacrylate Liquid Monomer a.k.a. MMA;
    - (2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses;
    - (3) Permanent makeup, defined as beautifying the face by inserting or implanting facial cosmetic pigment under the surface of the skin or mucosa;
    - (4) FDA rated Class III devices;
    - (5) Any adulterated chemical exfoliating substances;
    - (6) Carbolic acid (phenol) over two percent strength;
    - (7) Animals including insects, fish, amphibians, reptiles, birds or mammals to perform any service; or
    - (8) Variable speed electrical nail file on the natural nail unless it has been designed for use on the natural nail.
  - (b) A licensee must not:
    - (1) Use product in any other manner than the product's intended use;
    - (2) Diagnose any medical condition or treat any medical condition unless referred by a physician;
    - (3) Provide any service unless trained prior to performing the service;
    - (4) Perform services on a client if the licensee has reason to believe the client has any of the following:
      - (A) a communicable disease;
      - (B) a contagious condition;
      - (C) an inflamed, infected, broken, raised or swollen skin or nail tissue; or
      - (D) an open wound or sore in the area to be worked on that would contraindicate the efficacy of the service;
    - (5) Alter or duplicate a license issued by the Board; or
    - (6) Advertise or solicit clients in any form of communication in a manner that is false or misleading.
  - (c) Class II devices may be used by licensees while under the supervision of a licensed physician.
- History Note: Authority G.S. 88B-2; 88B-4; Eff. April 1, 2004; Amended Eff. January 1, 2011; January 1, 2008; May 1, 2007; December 1, 2004.*

**21 NCAC 14N .0103 GENERAL EXAMINATION INSTRUCTIONS**

- (a) Examinations conducted by the Board shall be administered by a testing agency contracted by the Board.

(b) Once a candidate has scheduled an examination the testing company shall provide:

- (1) the date, time and place of examination;
- (2) information on how to obtain a Candidate Information Bulletin (CIB). The CIB contains the admission requirements, exam requirements and supplies needed for the examination; and
- (3) a name and telephone number for further assistance.

*History Note: Authority G.S. 88B-4; 88B-7; 88B-9; 88B-10; 88B-11; 88B-18;*

*Eff. June 1, 1992;*

*Temporary Amendment Eff. April 1, 1999; January 1, 1999;*

*Amended Eff. January 1, 2011; January 1, 2006; August 1, 2000.*

## **21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS**

(a) No licensee shall receive continuing education credit for course duplication completed during the licensing cycle.

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

(c) All licensees must complete courses in their subject area.

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

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

(f) Out-of-state continuing education hours shall be submitted for approval to the Board.

(g) The Board shall approve out-of-state continuing education hours provided the course is a lecture or hands-on. The actual course must be at least two hours and the licensee must submit the following:

- (1) Out-of-state continuing education form, created by the Board which contains the following:
  - (A) Licensee's name, telephone number and mailing address;
  - (B) Licensee license number;
  - (C) Provider name and contact information;
  - (D) Date and location of course;
  - (E) Course description;
  - (F) Length of class;
  - (G) Instructor original signature; and
  - (H) Licensee's original signature; and
- (2) Attached to the form the following:
  - (A) Provider curriculum for the course;

(B) Itinerary; and

(C) timed outline.

All material required in Subparagraph (2) of this Paragraph must be typed. The licensee must submit all the above within 30 days of completing the course,

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

(i) Continuing education course instructors shall receive credit for any approved continuing education class taught once during the renewal period.

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

(k) As used in this Subchapter an internet course is defined as a course that is accessible only through a computer that has internet access including emailed information and video.

(l) As used in this Subchapter a correspondence course is defined as a course that is accessible via mail or DVD with exercises and test which upon completion are returned to the CE provider by mail for grading.

(m) As used in this Subchapter a classroom course is provided by the licensee physically attending the class.

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

*Eff. May 1, 2004;*

*Amended Eff. January 1, 2011; July 1, 2010; December 1, 2008; January 1, 2006; December 1, 2004.*

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## **CHAPTER 36 - BOARD OF NURSING**

### **21 NCAC 36 .0201 REGULAR RENEWAL**

(a) Renewal notices shall be sent no less than 60 days prior to expiration date of a license to all registrants whose licenses are due for biennial renewal. The notices will be mailed to each eligible registrant's address as it appears in the records of the Board. A license is issued for the following biennium when:

- (1) all required information is submitted as requested on the application form; and
- (2) all payment of required fees are received.

(b) It shall be the duty of each registrant to keep the Board informed of a current mailing address.

(c) Renewal applications must be postmarked on or before the date the current license expires.

(d) A member of the United States Armed Services is exempt from compliance if on active duty and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

*History Note: Authority G.S. 90-171.29; 90-171.23(b); 90-171.34; 90-171.37; 93B-15; 105-249.2;*

*Eff. February 1, 1976;*

*Amended Eff. January 1, 2011; December 1, 2008; April 1, 1989; May 1, 1982.*

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## CHAPTER 57 – APPRAISAL BOARD

**21 NCAC 57A .0204 CONTINUING EDUCATION**

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the renewal of their registration, license or certificate in every odd-numbered year, present evidence satisfactory to the Board of having obtained continuing education as required by this Section. Trainees and appraisers who initially registered with the Board after January 1 of an odd numbered year are not required to show continuing education credit for renewal of their registration in that odd numbered year.

(b) Each trainee, licensee and certificate holder who must complete continuing education pursuant to Paragraph (a) of this Rule must complete 28 hours of continuing education before June 1 of every odd numbered year. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes, at schools approved by the Board to offer such courses. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, and licensed and certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification shall not be applied toward the continuing education requirement. Trainees, licensees and certificate holders shall not take the same continuing education course more than once during the two year continuing education cycle.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, licensee or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must, as part of the 28 hours of continuing education required in Paragraph (b) of this Rule, complete the seven hour National USPAP update course, as required by the Appraiser Qualifications Board of the Appraisal Foundation, or its equivalent. USPAP is updated every other even numbered year, and each trainee, licensee and certificate holder shall take the most recent USPAP update course prior to June 1 of every even numbered year.

(e) A licensee who elects to take approved continuing education courses in excess of the requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a certificate of course completion to each trainee, licensee and certificate holder

successfully completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 15 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) as set out in G.S. 93E-1-8(d) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. Up to 14 hours of continuing education credit may be granted in each continuing education cycle for participation in appraisal education activities. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit are deemed to have taken an equivalent course and are not subject to the fee prescribed in G.S. 93E-1-8 (d), provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every two years, regardless of how often he teaches the course. Requests for equivalent approval for continuing education credit must be received before June 15 of an odd-numbered year to be credited towards the continuing education requirement for that odd-numbered year. Equivalent approval shall be granted only for courses that are 7 hours or longer, and shall only be granted for a minimum of 7 hours.

(h) A trainee, licensee or certificate holder may receive continuing education credit by taking any of the Board-approved precertification courses, other than Basic Appraisal Principles and Basic Appraisal Procedures, or their approved equivalents. These courses shall not be used for both continuing education credit and for credit for licensing purposes. Trainee, licensees and certificate holders who wish to use a precertification course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder who resides in another state and is currently licensed by the appraiser

certification board of that state may satisfy the requirements of this Rule by providing a current letter of good standing from the resident state showing that the licensee has met all continuing education requirements in the resident state. A trainee, licensee or certificate holder who became licensed in North Carolina by reciprocity and now resides in North Carolina may renew by letter of good standing for his or her first renewal as a resident of North Carolina only if the trainee or appraiser moved to North Carolina on or after January 1 of an odd numbered year. If a trainee or appraiser was a resident of this state before January 1 of an odd-numbered year, the trainee or appraiser must comply with the requirements of this section regardless of how the registration, license or certificate was obtained.

(j) A trainee, licensee or certificate holder who returns from active military duty on or after February 1 of an odd-numbered year is allowed to renew his or her registration, license or certificate in that odd-numbered year even if the required continuing education is not completed before June 1 of that year. All required continuing education must be completed within 180 days of when the trainee, licensee or certificate holder returns from active duty. Failure to complete the required continuing education within 180 days is grounds for revocation. This Rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

*History Note:* Authority G.S. 93B-15; 93E-1-7(a); 93E-1-10; Eff. July 1, 1994;  
Amended Eff. July 1, 2011; July 1, 2010; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2005; July 1, 2003; August 1, 2002; April 1, 1999.

## **21 NCAC 57A .0206 EXPIRED REGISTRATION, LICENSE OR CERTIFICATE**

(a) Expired registrations, licenses and certificates may be reinstated within 12 months after expiration upon application, payment to the Board of the renewal and late filing fees as set out in G.S. 93E-1-7 and provision of proof of having obtained the continuing education that would have been required had the registration, license or certificate been continuously renewed.

(b) If a registration or certificate has been expired for more than 12 months, but less than 24 months, an applicant may apply for reinstatement. In order to be considered for reinstatement, the applicant must pay the filing fee as set out in G.S. 93E-1-7 and include in the application proof that the applicant has obtained the continuing education that would have been required had the registration or certificate been continuously renewed. In addition, the Board shall consider whether the applicant for reinstatement has any prior or current disciplinary actions, and shall examine the applicant's fitness for registration or certification before granting the request for reinstatement. A completed application for reinstatement must be received by June 1 of the second 12 months or it shall not be accepted.

(c) An application for reinstatement shall not be granted if the registration or certificate has been expired for more than 24 months.

(d) Reinstatement is effective the date it is issued by the Board. It is not retroactive.

(e) A trainee or appraiser whose registration or certification has expired and who is returning from active military duty will be allowed to renew his or her registration or certificate when the trainee or appraiser returns from active duty without payment of a late filing fee as long as the trainee or certificate holder renews the registration or certificate within 180 days of when the trainee or certificate holder returns from active duty. This Rule applies to an individual who is serving in the armed forces of the United States and to whom G.S. 105 249.2 grants an extension of time to file a tax return.

(f) A license holder whose license has been expired for more than 12 months may not apply for reinstatement.

*History Note* Authority G.S. 93B-15; 93E-1-6(b); 93E-1-7; 93E-1-10;  
Eff. July 1, 1994;  
Amended Eff. July 1, 2011; September 1, 2008; March 1, 2007; July 1, 2005; August 1, 2002; April 1, 1999.

## **21 NCAC 57A .0405 APPRAISAL REPORTS**

(a) Each written appraisal report prepared by or under the supervision of a licensed or certified real estate appraiser shall bear the signature of the licensed or certified appraiser, the license or certificate number of the licensee or certificate holder in whose name the appraisal report is issued, and the designation "licensed residential real estate appraiser," "certified residential real estate appraiser," or "certified general real estate appraiser," as applicable. Each such appraisal report shall also indicate whether or not the licensed or certified appraiser has personally inspected the property, and shall identify any other person who assists in the appraisal process other than by providing clerical assistance. Such identification must be placed in the body of the report. Appraisers shall personally affix their signature to their appraisal reports and shall not allow any other person or entity to affix their signature. Trainees are not required to affix their signatures to appraisal reports, but if they do so, they must personally affix their signature and shall not allow any other person or entity to affix their signature. Trainees and appraisers shall sign their reports with the same name and in the same manner as it printed on their pocket cards.

(b) Every licensed and certified real estate appraiser shall affix or stamp to all appraisal reports a seal which shall set forth the name and license or certificate number of the appraiser in whose name the appraisal report is issued and shall identify the appraiser as a "licensed residential real estate appraiser", a "certified residential real estate appraiser", or as a "certified general real estate appraiser", as applicable. The seal must be legible, must conform to the seal authorized by the Board at time of initial licensure or certification, and must be a minimum of 1 inch in diameter. Appraisers shall personally affix their seal to their appraisal reports and shall not allow any other person or entity to affix their seal. Registered trainees are prohibited from using a seal on appraisal reports.

(c) A licensed or certified real estate appraiser who signs an appraisal report prepared by another person, in any capacity, is responsible for the content and conclusions of the report.

(d) A written appraisal report shall be issued on all real estate appraisals performed in connection with federally related transactions.

(e) Appraisers shall keep a log of all appraisals performed. The log shall contain the appraiser's license or certificate number, the street address of the subject property, the date the report was signed, the name of anyone assisting in the preparation of the report and the name of the client. These logs shall be updated at least every 30 days.

(f) Any appraiser who signs an appraisal report is entitled to make or retain a copy of that appraisal report, as long as the copy is made at the time the report is prepared. Any appraiser who signs an appraisal report must be given a copy of the appraisal report and the work file upon request for the purpose of submission of the report and work file to the Appraisal Board, compliance with due process of law, such as a subpoena, submission to a peer review committee, or in accordance with retrieval arrangements made by the appraiser and the person or entity retaining the report and work file.

(g) Appraisal reports transmitted electronically to clients shall be sent in a secure format, such as Adobe PDF.

*History Note: Authority G.S. 93E-1-10;*

*Eff. July 1, 1994;*

*Amended Eff. July 1, 2011; July 1, 2010; September 1, 2008; January 1, 2008; March 1, 2007; March 1, 2006; July 1, 2003; August 1, 2002; April 1, 1999.*

## **21 NCAC 57A .0410 APPRAISAL MANAGEMENT COMPANIES**

An appraiser who performs an appraisal for an appraisal management company shall assure that the company is properly registered with the North Carolina Appraisal Board pursuant to G.S. 93B-2-4 before accepting the assignment.

*History Note: Authority G.S. 93E-2-1; 93E-2-3; 93E-2-4(a); Eff. January 1, 2011.*

## **21 NCAC 57C .0101 FORM OF COMPLAINTS AND OTHER PLEADINGS**

(a) There is no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the trainee, appraiser or appraisal management company and shall reasonably apprise the Board of the facts which form the basis of the complaint.

(b) When investigating a complaint, the scope of the investigation is not limited to the persons or transactions described or alleged in the complaint.

(c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.

(d) There is no specific form required for answers, motions or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests and other pleadings may be made on the record during the course of the hearing before the Board.

(e) During the course of an investigation of a licensee, the Board, through its legal counsel or staff, may send a trainee, appraiser or appraisal management company one or more Letters of Inquiry requesting the trainee, appraiser or appraisal

management company to respond. The initial Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. Upon receipt of a Letter of Inquiry, the trainee, appraiser or appraisal management company shall respond within 30 calendar days. The response shall include copies of all documents requested in a Letter of Inquiry.

(f) Hearings in contested cases before the Board are governed by the provisions of Article 3A of Chapter 150B of the General Statutes.

*History Note: Authority G.S. 93E-1-10; 93E-2-3, 93E-2-8;*

*Eff. July 1, 1994;*

*Amended Eff. January 1, 2011; July 1, 2003; August 1, 2002.*

## **21 NCAC 57D .0101 FORM**

An appraisal management company that wishes to file an application for an appraisal management company certificate of registration may obtain the required form upon request to the Board. The form calls for information such as:

- (1) the legal name of the applicant;
- (2) the name under which the applicant will do business in North Carolina;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the applicant's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) a completed application for approval of the compliance manager;
- (7) any past criminal conviction of and any pending criminal charge against any person or entity that owns 10 percent or more of the appraisal management company;
- (8) any past revocation, suspension or denial of an appraisal license of any person or entity that owns 10 percent or more of the appraisal management company;
- (9) if a general partnership, a description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (10) if a business entity other than a corporation, limited liability company or partnership, a description of the organization of the applicant entity, including a copy of its organizational documents; and
- (11) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings.

Incomplete applications shall not be acted upon by the Board.

*History Note: Authority G.S. 93E-2-4;*

*Eff. January 1, 2011.*

**21 NCAC 57D .0102 FILING AND FEES**

- (a) Each application for registration shall be accompanied by the required application fee. The Board shall reject and return to the applicant any application which is incomplete or not accompanied by the required fee or fees. Application fees accompanying complete applications are not refundable.
- (b) The application fee shall be three thousand five hundred dollars (\$3,500).
- (c) Payment of application fees shall be made by certified check, bank check or money order payable to the North Carolina Appraisal Board.

*History Note:* Authority G.S. 93E-2-3; 93E-2-4; 93E-2-6;  
*Eff. January 1, 2011.*

**21 NCAC 57D .0202 REGISTRATION RENEWAL**

- (a) All registrations expire on June 30, 2012 and every June 30 of each year thereafter unless renewed before that time.
- (b) A holder of an appraisal management company registration desiring the renewal of such registration shall apply in writing upon the form provided by the Board and shall forward the renewal fee. The renewal fee shall be two thousand dollars (\$2,000). Forms are available upon request to the Board. The renewal fee is not refundable under any circumstances.
- (c) Any company who acts or holds itself out as a registered appraisal management company while its appraisal management company registration is expired is subject to disciplinary action and penalties as prescribed in G.S. 93E-2-8 and G.S. 93E-2-10.

*History Note:* Authority G.S. 93E-2-3; 93E-2-6;  
*Eff. January 1, 2011.*

**21 NCAC 57D .0203 EXPIRED REGISTRATION**

- (a) Expired registrations may be reinstated within six months after expiration upon proper application and payment to the Board of the renewal fee of two thousand dollars (\$2,000) and the late filing fee of twenty dollars (\$20.00) for each month or part thereof that the registration is lapsed, not to exceed one hundred twenty dollars (\$120.00).
- (b) Reinstatement is not retroactive.

*History Note:* Authority G.S. 93E-2-3; 93E-2-6;  
*Eff. January 1, 2011.*

**21 NCAC 57D .0204 PAYMENT OF FEES TO THE BOARD**

Checks given the Board in payment of fees that are returned unpaid are cause for registration denial, suspension or revocation.

*History Note:* Authority G.S. 93E-2-3; 93E-2-8(a)(7);  
*Eff. January 1, 2011.*

**21 NCAC 57D .0301 USE OF REGISTRATION NUMBER**

A real estate appraisal management company shall state its North Carolina registration number on any appraisal order for a property located in North Carolina.

*History Note:* Authority G.S. 93E-2-3;  
*Eff. January 1, 2011.*

**21 NCAC 57D .0302 CHANGE OF NAME OR CONTACT INFORMATION**

Appraisal management companies shall notify the Board in writing of each change of trade name, business address, telephone number, or email address within 10 days of said change. The address shall be sufficiently descriptive to enable the Board to electronically correspond with and physically locate the appraisal management company.

*History Note:* Authority G.S. 93E-2-3; 93E-2-9;  
*Eff. January 1, 2011.*

**21 NCAC 57D .0304 APPRAISER QUALIFICATIONS**

An appraisal management company shall assure that any appraiser being added to its appraiser panel to appraise properties in North Carolina holds a license in good standing in this State pursuant to the North Carolina Appraisers Act. The appraisal management company shall verify the status of the appraiser by contacting the North Carolina Appraisal Board or by utilizing the National Registry of the Appraisal Subcommittee.

*History Note:* Authority G.S. 93E-2-3; 93E-2-4(f);  
*Eff. January 1, 2011.*

**21 NCAC 57D .0305 APPRAISER COMPETENCY**

Before an appraiser is added to a panel, an appraisal management company shall require the appraiser to declare in writing the appraiser's areas of geographic competency, the types of properties the appraiser is competent to appraise, and the methodologies the appraiser is competent to perform. The appraisal management company shall require the appraiser to update this information at least annually, and shall keep copies of all such declarations for a period of five years from the date they are submitted.

*History Note:* Authority G.S. 93E-2-3; 93E-2-4(b);  
*Eff. January 1, 2011.*

**21 NCAC 57D .0306 APPRAISAL REVIEW**

An appraisal management company shall review the work of all independent appraisers that are performing real estate appraisal services for the appraisal management company to validate that the real estate appraisal services are being conducted in accordance with USPAP. An appraisal management company is not required to review all appraisals performed by each appraiser, but may choose a representative sample of each appraiser's reports. An appraisal management company must review each appraiser's work at least once a year, and shall keep records of such reviews for a period of five years from the date they are done.

*History Note:* Authority G.S. 93E-2-3; 93E-2-4(b); 93E-2-9;  
*Eff. January 1, 2011.*

**21 NCAC 57D .0307 RECORDS**

(a) An appraisal management company shall maintain a record of each request it receives for its services in North Carolina. If an appraisal is ordered, the record shall include the name of the appraiser who performs the appraisal, the physical address or legal identification of the subject property, the name of the appraisal management company's client for the appraisal, and the amount paid to the appraiser.

(b) The Board shall maintain a list of all applicants for registration under this Article that includes for each applicant the date of application, the name and primary business location of the applicant, phone and email contact information, and whether the registration was granted or refused.

(c) A registered appraisal management company shall maintain the accounts, correspondence, memoranda, papers, books, and other records related to services provided by the appraisal management company. Such records may be maintained in electronic form. All records shall be preserved for five years.

(d) If the information contained in any document filed with the Board is or becomes inaccurate or incomplete in any material respect, the appraisal management company shall file a correcting amendment to the information contained in the document to the Board within 10 days of the change.

*History Note: Authority G.S. 93E-2-3; 93E-2-9;  
Eff. January 1, 2011.*

**21 NCAC 57D .0308 PRODUCTION OF RECORDS**

If an appraisal management company is requested to produce books and records to the Appraisal Board pursuant to G.S. 93E-2-8(g) or 93E-2-8(i), the appraisal management company shall produce those records so that they may be viewed in the Appraisal Board's office in Raleigh, North Carolina. Books and records shall be produced in writing, by computer disc or by electronic delivery. If the appraisal management company is unable to comply, the company shall pay all costs associated with viewing the records in another location.

*History Note: Authority G.S. 93E-2-3; 93E-2-8;  
Eff. January 1, 2011.*

**21 NCAC 57D .0309 COMPLAINTS AGAINST APPRAISERS**

If an appraisal management company has a good faith belief that a real estate appraiser licensed in this State has violated applicable law or the Uniform Standards of Professional Appraisal Practice, or engaged in unethical conduct, it shall file a complaint with the Board. The complaint shall be filed within 90 days of the date the appraisal is submitted to the appraisal management company.

*History Note: Authority G.S. 93E-2-3; 93E-2-4(c);  
Eff. January 1, 2011.*

**21 NCAC 57D .0310 PAYMENT OF FEES TO APPRAISERS**

If an appraisal management company decides that it will not pay a fee to an appraiser for an appraisal, the appraisal management company shall notify the appraiser in writing of the reason for

nonpayment. Such notice shall be sent to the appraiser within 30 days after the date the appraiser transmits the appraisal to the appraisal management company. The notice shall be sent by registered mail, return receipt requested, to the appraiser's business address contained in the records of the Appraisal Board. The notice shall state the address of the subject property of the appraisal, the name of the appraiser(s) signing the report, and the reason why the fee shall not be paid. The notice shall also notify the appraiser of any dispute resolution process that the appraisal management company may have in place.

*History Note: Authority G.S. 93E-2-3; 93E-2-4(d);  
Eff. January 1, 2011.*

**21 NCAC 57D .0311 REMOVAL OF AN APPRAISER FROM AN APPRAISER PANEL**

If an appraisal management company decides to remove an appraiser from its list of qualified appraisers, the appraisal management company shall notify the appraiser in writing of the reason for removal. Such notice shall be sent to the appraiser by registered mail, return receipt requested, to the appraiser's address business address contained in the records of the Appraisal Board. The notice shall include a description of the appraiser's illegal conduct, substandard performance, or otherwise improper or unprofessional behavior, or of any violation of the Uniform Standards of Professional Appraisal Practice or state licensing standards. It shall also notify the appraiser of any dispute resolution process that the appraisal management company may have in place through which the appraiser may dispute the removal.

*History Note: Authority G.S. 93E-2-3; 93E-2-7(a);  
Eff. January 1, 2011.*

**21 NCAC 57D .0312 REQUESTING ADDITIONAL INFORMATION FROM AN APPRAISER**

An appraisal management company may request that a real estate appraiser who performs an appraisal for the appraisal management company consider additional appropriate property information, provide further detail, substantiation, or explanation for the appraiser's value conclusion, or to correct errors in an appraisal report. If the appraisal management company requests that an appraiser consider additional information, such request shall be sent to the appraiser in writing or by electronic means within 30 days of the date the appraisal is transmitted by the appraiser to the appraisal management company.

*History Note: Authority G.S. 93E-2-3; 93E-2-7;  
Eff. January 1, 2011.*

**21 NCAC 57D .0401 BUSINESS PRACTICES**

An appraisal management company may not:

- (1) prohibit an appraiser from stating on an appraisal the fee the appraiser was paid by the company for the appraisal;
- (2) prohibit an appraiser from stating on an appraisal the appraiser's primary business address; or

- (3) prohibit an appraiser from informing a property owner, lender, or any other person or entity the appraiser's primary business address.

*History Note:* Authority G.S. 93E-2-3; 93E-7;  
Eff. January 1, 2011.

## **TITLE 25 – OFFICE OF STATE PERSONNEL**

### **25 NCAC 01E .0103 LEAVE OFFSETTING**

If employees work time outside their normal schedule in an overtime period, as defined in 25 NCAC 01D .1900, in which they also have taken time off, the time outside their normal schedule offsets the time that the employee intended to cover with available leave. The number of leave hours must be reduced by the number of additional hours worked. This offset is mandatory; the employee shall not be paid both for the leave time and the time outside the normal schedule. This applies to all types of leave except Holiday Leave, Civil Leave and Other Management Approved Leave.

*History Note:* Authority G.S. 126-4;  
Eff. January 1, 2011.

### **25 NCAC 01E .0203 VACATION LEAVE CREDITS**

(a) Vacation leave credits shall be provided to employees subject to the State Personnel Act who are full-time or part-time (half-time or over) and have a permanent, trainee, time-limited or probationary appointment and who are in pay status for one-half of the regularly scheduled workdays and holidays in a pay period. The rate shall be based on G.S. 126, the length of total state service as defined in 25 NCAC 01D .0112, and the leave practices of the State's competitors. Competitors include State governments, local governments, non-profit organizations, and private industry. The State Personnel Commission may adjust the rates to maintain competitiveness, taking into consideration the State's total compensation package and the average of the State's major competitors, but shall not be less than the following:

| Years of Total<br>State Service | Hours<br>Granted<br>Each Year | Days<br>Granted<br>Each Year |
|---------------------------------|-------------------------------|------------------------------|
| Less than 5 years               | 112                           | 14                           |
| 5 but less than 10 years        | 136                           | 17                           |
| 10 but less than 15 years       | 160                           | 20                           |
| 15 but less than 20 years       | 184                           | 23                           |
| 20 years or more                | 208                           | 26                           |

(b) Newly appointed employees may receive Incentive Leave in accordance with 25 NCAC 01E .1801 through .1809.

*History Note:* Authority G.S. 126-4; 126-8;  
Eff. February 1, 1976;  
Amended Eff. July 1, 1983; January 1, 1983;

*Temporary Amendment Eff. January 1, 1989 for a Period of 180 Days to Expire June 29, 1989;  
Amended Eff. January 1, 2011; November 1, 2004; July 1, 1995;  
March 1, 1989.*

### **25 NCAC 01E .1801 POLICY**

(a) Incentive leave may be used as a recruitment tool to assist in the employment of individuals who are middle or late career applicants employed outside of State government and who are interested in accepting employment with the State of North Carolina.

(b) An agency may award incentive leave to a middle or late career applicant who is newly appointed to a position that the agency has identified as critical to the agency mission and for which the agency has documented recruitment difficulty attracting qualified applicants, or who is newly appointed to an executive management position.

*History Note:* Authority G.S. 126-4;  
Eff. January 1, 2011.

### **25 NCAC 01E .1802 DEFINITIONS**

As used in this Section:

- (1) Employed Outside of State Government means employed with an organization that is not part of the State of North Carolina government or not an organization for which the State currently accepts transferred accrued vacation leave upon hire.
- (2) Executive Management Position means a senior management position that reports directly to an appointed or elected agency head and is delegated authority to make decisions that impact the overall direction of the agency and whose duties typically involve planning, strategy, policy-making and line-management. Typical job titles include chief executive officer, chief operating officer, chief financial officer, and deputy secretary.
- (3) Middle Management Position means a position that reports directly to an executive management position and supervises lower level management positions and is delegated authority to make decisions that impact the overall direction of a department or division of an agency and whose duties typically involve program planning and coordination, organization structure, determining goals and standards, determination and interpretation of policy, and fiscal control.
- (4) Middle or Late Career Applicant means an applicant with 10 or more years of directly related experience in their profession.
- (5) Newly Appointed means the initial appointment as an employee of the State of North Carolina, or an appointment following a break in service of at least 12 months from a previous appointment as an employee of the State of North Carolina.



- (6) Recruitment Difficulties means positions that are highly competitive in the labor market due to specialized competencies, licenses, or certifications, or geographic location or those positions in which there is a high turnover which impacts the agency's efforts to recruit and provide services. Recruitment typically involves active recruitment efforts utilizing multiple recruitment resources that require an extended period of recruitment and results in a limited qualified applicant pool.

*History Note: Authority G.S. 126-4;  
Eff. January 1, 2011.*

**25 NCAC 01E .1803 RECRUITMENT DOCUMENTATION**

If recruitment difficulties are the basis for the application of the rules in this Section, the agency shall maintain written documentation related to difficulties in recruiting to fill positions of applicants offered incentive leave. The agency shall provide this documentation to the Office of State Personnel upon request. Documentation shall include high turnover rates, special required competencies, types of specialized recruitment resources used during the recruitment period, beginning and ending dates of active recruitment, number of qualified applicants in the applicant pool, and any additional documentation such as number of applicants that may have rejected offers including a reason why, or applicants that may have withdrawn their application from consideration.

*History Note: Authority G.S. 126-4;  
Eff. January 1, 2011.*

**25 NCAC 01E .1804 ELIGIBILITY REQUIREMENTS**

To be eligible for incentive leave, the employee must be newly appointed and have the following:

- (1) All qualification and competency requirements of the position;
- (2) At least 10 years of experience that is directly related to the position; and
- (3) A full-time or part-time (half-time or more) permanent, probationary or time-limited appointment.

*History Note: Authority G.S. 126-4;  
Eff. January 1, 2011.*

**25 NCAC 01E .1805 AMOUNT OF LEAVE**

An agency may award a one-time accrual up to 20 days (160 hours) of incentive leave to an eligible new employee upon hire. The one-time leave award shall be pro-rated for part-time employees. Management may negotiate the amount of leave to award to the selected applicant taking into consideration the applicant's current annual vacation leave accrual.

*History Note: Authority G.S. 126-4;  
Eff. January 1, 2011.*

**25 NCAC 01E .1806 RELATIONSHIP TO OTHER LEAVE**

- (a) The employee is eligible to earn other accrued leave as allowed by rules adopted by the State Personnel Commission.
- (b) Incentive leave shall be maintained and accounted for in a separate account from other accrued leave.
- (c) If an employee has any earned compensatory time such as holiday, overtime, gap hours, on-call, or travel, the compensatory time shall be used before incentive leave.
- (d) Incentive leave shall be restored (offset) to the employee's incentive leave account for later use if an employee worked in excess of the employee's established work schedule during the applicable overtime work cycle.

*History Note: Authority G.S. 126-4;  
Eff. January 1, 2011.*

**25 NCAC 01E .1807 CARRY-OVER AND PAYMENT OF LEAVE**

Unused incentive leave carries over from year to year and shall be used only as paid leave. Under no circumstance shall it be:

- (1) transferred to sick leave,
- (2) paid out upon separation,
- (3) credited toward retirement, or
- (4) donated as voluntary shared leave.

*History Note: Authority G.S. 126-4;  
Eff. January 1, 2011.*

**25 NCAC 01J .0614 DEFINITIONS**

As used in this Subchapter:

- (1) Current Unresolved Incident means conduct or performance that:
  - (a) constitutes a violation of this Section; and
  - (b) for which no disciplinary action has been previously imposed or issued by agency or university management.
- (2) Disciplinary Demotion means a personnel action taken, without employee agreement, to discipline the employee, which results in:
  - (a) reduction in salary within the employee's current classification;
  - (b) an assignment to a position in a lower salary grade without a corresponding loss of salary; or
  - (c) an assignment to a position in a lower salary grade with a corresponding loss of salary.
- (3) Disciplinary Suspension Without Pay means the removal of an employee from work for disciplinary purposes without paying the employee.
- (4) Dismissal means the involuntary termination or ending of the employment of an employee for disciplinary purposes or failure to obtain or maintain necessary credentials.
- (5) Gross Inefficiency (Grossly Inefficient Job Performance) means a type of unsatisfactory job performance that occurs in instances in

- which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and, that failure results in
- (a) the creation of the potential for death or serious bodily injury to an employee(s) or to members of the public or to a person(s) over whom the employee has responsibility; or
  - (b) the loss of or damage to state property or funds that result in a serious impact on the State or work unit.
- (6) Inactive Disciplinary Action means any disciplinary action issued after October 1, 1995 is deemed inactive for the purpose of this Section if:
- (a) the manager or supervisor notes in the employee's personnel file that the reason for the disciplinary action has been resolved or corrected;
  - (b) the purpose for a performance-based disciplinary action has been achieved, as evidenced by a summary performance rating of level 3 (Good) or other official designation of performance at an acceptable level or better and at least a level 3 or better in the performance area cited in the warning or disciplinary action, following the disciplinary warning or action; or
  - (c) 18 months have passed since the warning or disciplinary action, the employee does not have another active warning or disciplinary action which occurred within the last 18 months.
- (7) Insubordination means the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning.
- (8) Unacceptable Personal Conduct means:
- (a) conduct for which no reasonable person should expect to receive prior warning;
  - (b) job-related conduct which constitutes a violation of state or federal law;
  - (c) conviction of a felony or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the State;
  - (d) the willful violation of known or written work rules;
  - (e) conduct unbecoming a state employee that is detrimental to state service;
  - (f) the abuse of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility or an animal owned by the State;
  - (g) absence from work after all authorized leave credits and benefits have been exhausted; or
  - (h) falsification of a state application or in other employment documentation.
- (9) Unsatisfactory Job Performance means work-related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan, or as directed by the management of the work unit or agency.

*History Note: Authority G.S. 126-4; 126-35; Eff. October 1, 1995; Amended Eff. January 1, 2011.*

**25 NCAC 01J .0615 SPECIAL PROVISIONS**

(a) **PLACEMENT ON INVESTIGATION** - Investigation status is used to temporarily remove an employee from work status. Placement on investigation with pay does not constitute a disciplinary action as defined in this Section or in G.S. 126-35. Management must notify an employee in writing of the reasons for investigatory placement not later than the second scheduled work day after the beginning of the placement. An investigatory placement with pay may last no longer than 30 calendar days without written approval of extension by the agency head and the State Personnel Director. The State Personnel Director shall approve an extension of the period of investigatory status with pay, for no more than an additional 30 calendar days, for one or more of the following reasons:

- (1) The matter is being investigated by law enforcement personnel, and the investigation is not complete;
- (2) A management individual who is necessary for resolution of the matter is temporarily unavailable; or
- (3) A person or persons whose information is necessary for resolution of the matter is/are temporarily unavailable.

(b) When an extension beyond the 30-day period is required, the agency must advise the employee in writing of the extension, the length of the extension, and the reasons for the extension. If no action has been taken by an agency by the end of the 30-day period and no further extension has been granted, the agency shall either take appropriate disciplinary action on the basis of the findings upon investigation or return the employee to active work status. It is not permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

(c) It is permissible to place an employee in investigation status with pay only under the following circumstances:

- (1) To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action;
- (2) To provide time within which to schedule and conduct a pre-disciplinary conference; or
- (3) To avoid disruption of the work place and to protect the safety of persons or property.

(d) **CREDENTIALS** - Some duties assigned to positions in the state service may be performed only by persons who are licensed, registered or certified as required by the relevant law, rule, or provision. All such requirements and restrictions shall be specified in the statement of essential qualifications or recruitment standards for classifications established by the State Personnel Commission. Employees in such classifications shall obtain and maintain current, valid credentials as required by law. Failure to obtain or maintain the legally required credentials constitutes a basis for dismissal without prior warning, consistent with dismissal for unacceptable personal conduct or grossly inefficient job performance. An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for unacceptable personal conduct or grossly inefficient job performance. Falsification of employment credentials or other documentation in connection with securing employment constitutes just cause for disciplinary action. When credential or work history falsification is discovered after employment with a state agency, disciplinary action shall be administered as follows:

- (1) If an employee was determined to be qualified and was selected for a position based upon falsified work experience, education, registration, licensure or certification information that was a requirement for the position, the employee must be dismissed in accordance with 25 NCAC 01J .0608.
- (2) In all other cases of post-hiring discovery of false or misleading information, disciplinary action shall be taken, but the severity of the disciplinary action shall be at the discretion of the agency head.
- (3) When credential or work history falsification is discovered before employment with a state agency, the applicant shall be disqualified from consideration for the position in question.

(e) Every disciplinary action shall include notification to the employee in writing of any applicable appeal rights.

(f) Warnings and placement on investigation with pay are not grievable unless an agency specifically provides for such a grievance in its agency grievance procedure. Absent an allegation of a violation of G.S. 126-25, warnings shall not be appealable to the State Personnel Commission.

(g) An agency shall furnish to an employee as an attachment to the written documentation of any grievable disciplinary action, a copy of the agency grievance procedure.

(h) Each state agency shall adopt and submit to the State Personnel Commission an internal grievance procedure that includes as an attachment an agency employee relations policy which:

- (1) Sets out the manner and mechanism with which employees are notified of changes in agency policy and State Personnel Commission rules;
- (2) Sets out the policy on the use of disciplinary suspension and the procedure for the issuance of warnings;
- (3) Sets out the policy on the retention of warnings and other disciplinary actions in employee personnel files; and
- (4) Sets out the policy on how an employee may access the employee's personnel file.

(i) Each state agency shall maintain records and provide the OSP information and statistics on the discipline and dismissal process commencing in January 1996 and every year thereafter.

(j) Each state agency shall insure that designated personnel are trained in the administration of this Section.

*History Note: Authority G.S. 126-4; 126-25; 126-35; Eff. October 1, 1995; Amended Eff. January 1, 2011; April 1, 2005.*

#### **25 NCAC 01N .0601 PURPOSE**

The rules in this Section set requirements for agencies with regard to nursing mothers.

*History Note: Authority G.S. 126-4; Eff. January 1, 2011.*

#### **25 NCAC 01N .0602 POLICY**

It is the policy of the State to assist working mothers who are nursing children during their transition back to work following the birth of a child by providing lactation support. A lactation support program allows a nursing mother to express breast milk periodically during the work day.

*History Note: Authority G.S. 126-4; Eff. January 1, 2011.*

#### **25 NCAC 01N .0603 OFFICE OF STATE PERSONNEL RESPONSIBILITY**

The Office of State Personnel shall designate a program coordinator to assist agencies with questions regarding this Section.

*History Note: Authority G.S. 126-4; Eff. January 1, 2011.*

#### **25 NCAC 01N .0604 AGENCY RESPONSIBILITIES**

State agencies shall provide space, privacy, and time for nursing mothers to express breast milk by doing the following:

- (1) Providing private space that is not in a restroom or other common area. The space shall have a door that can be secured or locked, lighting and seating, and electrical outlets for pumping equipment.
- (2) Providing time to express breast milk. The agency may require the employee to use the regularly scheduled paid break time. If time is

needed beyond the regularly scheduled paid break times, the agency shall make reasonable efforts to allow employees to use paid leave or unpaid time for this purpose.

*History Note:* Authority G.S. 126-4;  
*Eff. January 1, 2011.*

**25 NCAC 01N .0605 EMPLOYEE RESPONSIBILITY**  
The employee is responsible for storage of the expressed breast milk.

*History Note:* Authority G.S. 126-4;  
*Eff. January 1, 2011.*

*This Section contains information for the meeting of the Rules Review Commission on Thursday, February 17, 2011 and Thursday January 20, 2011 9:00 a.m. at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3100. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Jim R. Funderburk - 1st Vice Chair  
David Twiddy - 2nd Vice Chair  
Ralph A. Walker  
Jerry R. Crisp  
Jeffrey P. Gray

**Appointed by House**

Jennie J. Hayman - Chairman  
Daniel F. McLawhorn  
Curtis Venable  
Ann Reed

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Bobby Bryan (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

February 17, 2011      March 18, 2011  
April 21, 2011      May 19, 2011

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**RULES REVIEW COMMISSION****December 16, 2010****MINUTES**

The Rules Review Commission met on Thursday, December 16, 2010, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Jerry Crisp, Jim Funderburk, Jeff Gray, Jennie Hayman, Dan McLawhorn, David Twiddy, Curtis Venable and Ralph Walker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Tammara Chalmers, and Dana Vojtko.

The following people were among those attending the meeting:

|                    |   |
|--------------------|---|
| Bert Bennett       | DHHS/Division of Medical Assistance                             |
| Erin Glendening    | DHHS/Division of Health Service Regulation                      |
| Andrew Holton      | Local Government Commission & Capital Facilities Finance Agency |
| Jeff Horton        | DHHS/Division of Health Service Regulation                      |
| Jon Risgaard       | DENR/Division of Water Quality                                  |
| Lori Montgomery    | DENR/Division of Water Quality                                  |
| Jon Granger        | DENR/Division of Environmental Health                           |
| Joelle Burleson    | DENR/Division of Air Quality                                    |
| Patrick Knowlson   | DENR/Division of Air Quality                                    |
| Gary Saunders      | DENR/Division of Air Quality                                    |
| Roberta Ouellette  | NC Appraisal Board  |
| John Huisman       | DENR/Division of Water Quality                                  |
| Robert Hamilton    | ABC Commission  |
| Joel Walker        | DENR/Division of Environmental Health/Radiation Protection      |
| Jenny Rollins      | DENR/Division of Environmental Health/Radiation Protection      |
| Norman Young       | DOJ/Wildlife Resources Commission                               |
| Lee Cox            | DENR/Division of Environmental Health/Radiation Protection      |
| Amy Sawyer         | DENR/Division of Environmental Health/Radiation Protection      |
| Elizabeth Robinson | NCRMA   |
| Andy Ellen         | NCRMA   |
| Elizabeth Cannon   | Department of Environment and Natural Resources                 |

|                     |  |
|---------------------|--|
| Mike Brailsford     | Department of Environment and Natural Resources            |
| Kate Pipkin         | NC Wildlife Resources Commission                           |
| David McLeod        | Department of Agriculture and Consumer Services            |
| Tracy Hayes         | DOJ on behalf of DHHS                                      |
| Ian Palmquist       | Equality NC  |
| Karen Waddell       | Department of Insurance                                    |
| Christian Waters    | NC Wildlife Resources Commission                           |
| James Albright      | DENR/Division of Environmental Health/Radiation Protection |
| Robert Brooks       | Board of Certified Public Accountant Examiners             |
| Dana Rees Folley    | DENR/Division of Water Quality                             |
| Terriss Richardson  | Dana G. Jones & Associates                                 |
| Catharine Goldsmith | DHHS/Division of Medical Assistance                        |
| Lynda Elliott       | Board of Cosmetic Art Examiners                            |
| Steven Levitas      | Kilpatrick Stockton  |

New Commissioner Ann Reed was welcomed and introduced by both Chairman Hayman and Commissioner Funderburk. She was then sworn in by Judge Ralph Walker.

### **APPROVAL OF MINUTES**

The meeting was called to order at 9:09 a.m. with Mr. Funderburk presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e). Vice Chairman Funderburk asked for any discussion, comments, or corrections concerning the minutes of the November 29, 2010 meeting. There were none and the minutes were approved as distributed.

### **FOLLOW-UP MATTERS**

02 NCAC 34 .0331, .1103 – Structural Pest Control Commission. Rule .0331 was returned to the agency at the agency's request. The Commission approved rewritten Rule .1103.

21 NCAC 36 .0201 – Board of Nursing. The Commission approved the rewritten rule submitted by the agency.

Ms. Hayman assumed the role of Chair at 9:17 a.m.

21 NCAC 39 .0101, .0102, .0201, .0301, .0401-.0404, .0501, .0601-.0605, .0701-.0703 – Onsite Wastewater Contractors and Inspectors Certification Board. No rewritten rules have been submitted and no action was taken.

2012 NC Building Code – 424.1.13, 425.1, 1008.1.9.3, G101.4, 1704.1.1, 1704.1.3, 1807.2.4, 1807.2.5, 1810.3.5.2.5, 2210.3.1, 2210.3.3, 2303.4.1.4, 2303.4.3, 3603.6, 3604.1, 3604.2, 3604.3, 3606.1, 3606.7, 3607.2 – Building Code Council. No rewritten rules have been submitted and no action was taken.

2012 NC Fire Code – Chapter 2, 1008.1.9.3, 2206.2.3.1 – Building Code Council. No rewritten rules have been submitted and no action was taken.

2012 NC Fuel Gas Code – Chapter 2 – Building Code Council. No rewritten rules have been submitted and no action was taken.

2012 NC Mechanical Code – Chapter 2 – Building Code Council. No rewritten rules have been submitted and no action was taken.

2012 NC Plumbing Code – 607.1, 701.4, 803.5 – Building Code Council. No rewritten rules have been submitted and no action was taken.

### **LOG OF FILINGS**

Chairman Hayman presided over the review of the log of permanent rules.

#### **Board of Agriculture**

All permanent rules and repeals were approved unanimously with the following exception:

02 NCAC 48A .0246 - The Commission objected to this Rule based on Item (3)(b), line 18, the rule is unclear in the behavior it intends to regulate. It appears that the intent is to require interstate truckers to continuously keep their motors running, even when stopped. However it appears that the actual intent was to have these operators move through the state as quickly as possible and not stop except to refuel. If that is the intended requirement then the rule is unclear. It also would probably be beyond the agency's authority to write such a rule.

**Alcoholic Beverage Control Commission**

All permanent rules were approved unanimously with the following exception:

04 NCAC 02S .1006 – The Commission objected to this Rule based on lack of statutory authority and ambiguity. It is unclear who is bound by the prohibitions in (c), (d), and (e) on page two of the rule. Most of the restrictions cited as authority pertain to restrictions on a permittee and not, e.g., a liquor or beer manufacturer or wholesaler (unless they are permittees). Assuming they are not permittees it is not clear that those provisions of this rule do not apply to them. If they are intended to apply to them, then it appears to be outside the ABC Commission's authority to impose such broad restrictions.

The Commission granted the Agency's Request for Waiver of OAH Rule 26 NCAC 05 .0108(a) and approved re-written rule 04 NCAC 02S .1006.

**Medical Care Commission**

10A NCAC 13B .3302 was approved unanimously.

**Home Inspector Licensure Board**

All permanent rules were approved unanimously with the following exception:

11 NCAC 08 .1012 was withdrawn by the agency.

**Department of Insurance**

Prior to the review of the rules from the Department of Insurance, Commissioner Twiddy recused himself and did not participate in any discussion or vote concerning these rules because he is a chairman of a bank owned insurance agency.

All permanent repeals were approved unanimously.

**Sheriffs Education and Training Standards Commission**

All permanent rules were approved unanimously.

**Environmental Management Commission**

Prior to the review of the rules from the Environmental Management Commission, Commissioner McLawhorn recused himself and did not participate in any discussion or vote concerning the rules in 15A NCAC 02B, 02T, 02U because of his employer's financial interest.

Prior to the review of the rules from the Environmental Management Commission, Commissioner Reed recused herself and did not participate in any discussion or vote concerning the rules in 15A NCAC 02B, 02T, 02U because her husband has clients involved in these matters.

All permanent rules were approved unanimously. The Commission received more than 10 written letters of objection to 15A NCAC 02D .0544, 15A NCAC 02U .0113 and 15A NCAC 02U .0501. These rules are now subject to legislative review and a delayed effective date.

**Wildlife Resources Commission**

All permanent rules were approved unanimously.

**Department of Environment and Natural Resources**

15A NCAC 11 .1105 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the processing fee (in essence a late fee) set in (c). In 2009, the statutes were amended to repeal authority for all fees except annual fees.

15A NCAC 11 .1106 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the fees set in (d), (e) and (g). The only authority cited is to set annual fees.

15A NCAC 11 .1423 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the reinstatement fee set in (l). This objection applies to existing language in the rule.

**Commission for Public Health**

15A NCAC 13A .0116 was approved unanimously.

**Department of Environment and Natural Resources**

15A NCAC 13A .0117 was approved unanimously.

**Local Government Commission**

20 NCAC 03 .0112 – The Commission objected to this rule based on ambiguity. In (a), it is not clear what is meant by "Up to the amount listed below." Assuming that means the listed amount is a maximum amount, it is not clear how the exact amount is determined. Commissioners Crisp, Gray, Funderburk, Twiddy and Walker voted for the motion. Commissioners McLawhorn and Venable voted against the motion

The Commission granted the Agency's Request for Waiver of Rule 26 NCAC 05 .0108(a) and approved re-written Rule 20 NCAC 03 .0112.

**Capital Facilities Finance Agency**

21 NCAC 09 .0602 - The Commission objected to this rule based on ambiguity. In (d), it is not clear what constitutes "extraordinary" expenses. Commissioners Crisp, Gray, Funderburk, Twiddy and Walker voted for the motion. Commissioners McLawhorn and Venable voted against the motion.

The Commission granted the Agency's Request for Waiver of Rule 26 NCAC 05 .0108(a) and approved re-written Rule 20 NCAC 09 .0602.

**Board of Certified Public Accountant Examiners**

All permanent rules were approved unanimously with the following exceptions:

21 NCAC 08F .0101 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. It is not clear who the "examination vendors" mentioned in this rule are, nor how they are selected. There does not appear to be any authority cited for the board to delegate to some undesignated entities the authority to determine when the exam will be administered. In (c), it is not clear what is meant by "computer access to operating hours and locations." This objection applies to existing language in the rule.

21 NCAC 08F .0103 - The Commission objected to this Rule based on ambiguity. In (k), it is not clear what is meant by "the Notice to Schedule." The phrase is not otherwise used in this Subchapter. This objection applies to existing language in the rule.

21 NCAC 08F .0105 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (c)(3), it is not clear who is the examination vendor. There does not appear to be any authority for the board to delegate to some undesignated entity the authority to define terms used in the rules. This objection applies to existing language in the rule.

21 NCAC 08J .0111 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the civil penalties set in this rule. G.S. 93-12(9) is the statute cited with authority for civil penalties. Failing to register or pay fees does not fall into any of the categories that allow the assessment of penalties. This objection applies to existing language in the rule.

21 NCAC 08K .0105 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. In (a), it is not clear what supplemental reports other than those mentioned in (b) the board deems appropriate from professional corporations and professional limited liability companies. There is no authority cited to set the requirements outside rulemaking. This objection applies to existing language in the rule.

21 NCAC 08M .0106 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for the Board to set the civil penalties the rule does in (c). This objection applies to existing language in the rule.

21 NCAC 08N .0206 - The Commission objected to this Rule based on ambiguity. It is not clear what the Board would consider to be "a timely manner." This objection applies to existing language in the rule.

**Board of Cosmetic Art Examiners**

All permanent rules were approved unanimously with the following exceptions:



21 NCAC 14R .0102 - The Commission objected to this Rule based on ambiguity. In (a)(8), it is not clear what is meant by "the applicant is providing current sanitation regulations." In (b)(3), it is not clear what is meant by "sanitation only." In (b)(5), it is not clear what is meant by "That contains duplication of information in course contents." It is not clear if (d) applies to all continuing education providers or just to internet providers. It is not clear what is meant by "review process" or "disable timing methodology."

21 NCAC 14R .0103 - The Commission objected to this Rule based on ambiguity. In (j), it is not clear what is meant by "A course must not be approved in segments of an hour."

#### **Appraisal Board**

All permanent rules were approved unanimously with the following exceptions:

21 NCAC 57D .0201 - The Commission objected to this Rule based on lack of statutory authority. Paragraph (d) is not consistent with G.S. 93E-2-11(b). The rule makes it the applicant's responsibility to get a criminal records check from an agency it delegates. The statute gives the Board the responsibility to give the needed information to the Department of Justice for a search of the criminal records by the SBI and FBI. There is no authority cited for the Board to adopt its own procedure rather than following the statutory procedure.

21 NCAC 57D .0303 - The Commission objected to this Rule based on lack of statutory authority. Paragraph (c) is not consistent with G.S. 93E-2-11(b). The rule makes it the compliance manager's responsibility to get a criminal records check from an agency it delegates. The statute gives the Board the responsibility to give the needed information to the Department of Justice for a search of the criminal records by the SBI and FBI. There is no authority cited for the Board to adopt its own procedure rather than following the statutory procedure.

#### **State Personnel Commission**

All permanent rules were approved unanimously with the following exceptions:

25 NCAC 01E .1808 - The Commission objected to this Rule based on lack of statutory authority. There is no authority cited for Paragraph (b) of this Rule. The State Personnel Commission has no authority to prohibit non-State government employers from accepting transferred leave.

25 NCAC 01E .1809 - The Commission objected to this Rule based on lack of statutory authority and ambiguity. It is not clear when incentive leave may be used. The State Personnel Commission rules on vacation leave do not list any reasons when vacation leave may or may not be used. There is no authority cited to set any requirements outside rulemaking.

#### **TEMPORARY RULES**

Chairman Hayman presided over the review of the log of temporary rules.

#### **HHS – Division of Medical Assistance**

Prior to the review of the temporary rules from the Division of Medical Assistance, Commissioner Venable recused himself and did not participate in any discussion or vote concerning these rules because he participated in the drafting.

All temporary rules were approved unanimously.

#### **Environmental Management Commission**

Prior to the review of the rules from the Environmental Management Commission, Commissioner McLawhorn recused himself and did not participate in any discussion or vote concerning the rules in 15A NCAC 02B, 02T, 02U because of his employer's financial interest.

Prior to the review of the rules from the Environmental Management Commission, Commissioner Reed recused herself and did not participate in any discussion or vote concerning the rules in 15A NCAC 02B, 02T, 02U because her husband has clients involved in these matters.

All temporary rules were approved unanimously.

#### **2011 State Medical Facilities Plan**

The Governor had not yet approved the plan so no action was taken.

#### **COMMISSION PROCEDURES AND OTHER BUSINESS**

The meeting adjourned at 11:15 a.m.

The next scheduled meeting of the Commission is Thursday, January 20 at 9:00 a.m.

Respectfully Submitted,

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Dana Vojtko  
Publications Coordinator

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**AGENDA**  
**RULES REVIEW COMMISSION**  
**Thursday, February 17, 2011 9:00 A.M.**

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
  - II. Approval of the minutes from the last meeting
  - III. Follow-Up Matters:
    - A. Coastal Resources Commission – 15A NCAC 07M .0402 (DeLuca)
  - IV. Review of Log of Filings (Permanent Rules) for rules filed between December 21, 2010 and January 20, 2011
  - V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days of the RRC Meeting
  - VI. Commission Business
    - Next meeting: March 17, 2011
- 

**Commission Review**  
**Log of Permanent Rule Filings**  
**December 21, 2010 through January 20, 2011**

**INSURANCE, DEPARTMENT OF**

The rules in Chapter 1 are departmental rules including those covering general matters (.0100); departmental rules (.0200); declaratory rulings (.0300); administrative hearings (.0400); and departmental policies (.0600).

|   |    |      |    |       |
|---|----|------|----|-------|
| <u>Declaratory Rulings: General Information</u> | 11 | NCAC | 01 | .0301 |
| Amend/*   |    |      |    |       |

The rules in Chapter 6 are from the Agent Services Division.

The rules in Subchapter 6A cover general provisions (.0100); forms (.0200); examinations (.0300); licensing (.0400); license renewals and cancellations (.0500); license denials (.0600); preclicensing education (.0700); continuing education (.0800); and public adjusters (.0900).

|                    |    |      |     |       |
|--------------------|----|------|-----|-------|
| <u>Definitions</u> | 11 | NCAC | 06A | .0801 |
| Amend/*            |    |      |     |       |

|                            |    |      |     |       |
|----------------------------|----|------|-----|-------|
| <u>Approval of Courses</u> | 11 | NCAC | 06A | .0809 |
| Amend/*                    |    |      |     |       |

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>Agent Education on LTCP Policies: Company Responsibility</u> | 11 | NCAC | 06A | .0814 |
| Adopt/*   |    |      |     |       |

The rules in Chapter 11 concern financial evaluation of insurance companies.

The rules in Subchapter 11F are actuarial rules including general provisions (.0100); health insurance minimum reserve standards (.0200); actuarial opinion and memorandum (.0300); commissioner's reserve valuation method (.0400); new annuity valuation mortality tables (.0500); recognition of the 2001 CSO mortality table for use in determining minimum reserve liabilities and non-forfeiture benefits (.0600); determining minimum reserve liabilities for credit life insurance (.0700); and preferred class structure mortality table (.0800).

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Limited Use of Anticipated Withdrawal Rates</u> | 11 | NCAC | 11F | .0406 |
| Amend/*  |    |      |     |       |

The rules in Chapter 13 are from the Agent Services Division - Non-Insurance Entities including general provisions (.0100); insurance premium finance companies (.0300); motor clubs (.0400); and bail bondsmen and runners (.0500).

|   |    |      |    |       |
|---|----|------|----|-------|
| <u>Collateral Security Required by Bondsmen</u> | 11 | NCAC | 13 | .0512 |
| Amend/*   |    |      |    |       |

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

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

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>Specialized Instructor Certification</u> | 12 | NCAC | 09B | .0304 |
| Amend/*                                     |    |      |     |       |

### **ENVIRONMENTAL MANAGEMENT COMMISSION**

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards used to classify the waters of the state (.0200); stream classifications (.0300); effluent limitations (.0400); monitoring and reporting requirements (.0500); and water quality management plans (.0600).

|                              |     |      |     |       |
|------------------------------|-----|------|-----|-------|
| <u>White Oak River Basin</u> | 15A | NCAC | 02B | .0312 |
| Amend/*                      |     |      |     |       |

The rules in Subchapter 2H concern procedures for permit approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500); laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); and discharges to isolated wetlands and isolated waters (.1300).

|                |     |      |     |       |
|----------------|-----|------|-----|-------|
| <u>Purpose</u> | 15A | NCAC | 02H | .0901 |
| Amend/*        |     |      |     |       |

|              |     |      |     |       |
|--------------|-----|------|-----|-------|
| <u>Scope</u> | 15A | NCAC | 02H | .0902 |
| Amend/*      |     |      |     |       |

|                            |     |      |     |       |
|----------------------------|-----|------|-----|-------|
| <u>Definition of Terms</u> | 15A | NCAC | 02H | .0903 |
| Amend/*                    |     |      |     |       |

|                                       |     |      |     |       |
|---------------------------------------|-----|------|-----|-------|
| <u>Required Pretreatment Programs</u> | 15A | NCAC | 02H | .0904 |
| Amend/*                               |     |      |     |       |

|  |     |      |     |       |
|--|-----|------|-----|-------|
| <u>POTW Pretreatment Program Implementation Requirements</u> | 15A | NCAC | 02H | .0905 |
| Amend/*  |     |      |     |       |

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|--|-----|------|-----|-------|
| <u>Submission for Program Approval</u> | 15A | NCAC | 02H | .0906 |
| Amend/*                                |     |      |     |       |

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**RULES REVIEW COMMISSION**

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|--|-----|------|-----|-------|
| <u>Procedures for Program Approval, Revision and Withdrawal</u><br>Amend/*     | 15A | NCAC | 02H | .0907 |
| <u>Reporting/Record Keeping Requirements for POTWS/Industria...</u><br>Amend/* | 15A | NCAC | 02H | .0908 |
| <u>National Pretreatment Standards: Prohibited Discharges</u><br>Amend/*       | 15A | NCAC | 02H | .0909 |
| <u>National Pretreatment Standards: Categorical Standards</u><br>Amend/*       | 15A | NCAC | 02H | .0910 |
| <u>Adjustments for Fundamentally Different Factors</u><br>Amend/*              | 15A | NCAC | 02H | .0912 |
| <u>Public Access to Information</u><br>Amend/*                                 | 15A | NCAC | 02H | .0913 |
| <u>Upset Provision</u><br>Amend/*  | 15A | NCAC | 02H | .0914 |
| <u>Net/Gross Calculation</u><br>Amend/*  | 15A | NCAC | 02H | .0915 |
| <u>Pretreatment Permits</u><br>Amend/*   | 15A | NCAC | 02H | .0916 |
| <u>Pretreatment Permit Submission and Review</u><br>Amend/*                    | 15A | NCAC | 02H | .0917 |
| <u>Bypass</u><br>Amend/*   | 15A | NCAC | 02H | .0919 |
| <u>Pretreatment Facility Operation and Maintenance</u><br>Amend/*              | 15A | NCAC | 02H | .0920 |
| <u>Revision to Reflect POTW Removal of Pollutant</u><br>Amend/*                | 15A | NCAC | 02H | .0921 |
| <u>Hearings</u><br>Adopt/*   | 15A | NCAC | 02H | .0922 |

**WILDLIFE RESOURCES COMMISSION**

The rules in Chapter 10 are promulgated by the Wildlife Resources Commission and concern wildlife resources and water safety.

The rules in Subchapter 10A cover general WRC practices and procedures including petitions for rulemaking (.0400); declaratory rulemaking (.0500); warning tickets (.1000); and waivers (.1100).

|                                    |     |      |     |       |
|------------------------------------|-----|------|-----|-------|
| <u>Emergency Powers</u><br>Adopt/* | 15A | NCAC | 10A | .1201 |
|------------------------------------|-----|------|-----|-------|

**MEDICAL BOARD**

The rules in Chapter 32 are from the Medical Board.

The rules in Subchapter 32A concern organization.

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>Suspension of Authority to Expend Funds</u><br>Adopt/* | 21 | NCAC | 32A | .0114 |
|---|----|------|-----|-------|

The rules in Subchapter 32B concern license to practice medicine including general provisions (.0100); license by written examination (.0200); license by endorsement (.0300); temporary license by endorsement of credentials (.0400); resident's training license (.0500); special limited license (.0600); certificate of registration for visiting professors (.0700); medical school facility license (.0800); special volunteer license (.0900) prescribing (.1000); reactivation of full license (.1100); reinstatement of full license (.1200); general (.1300); resident's training license (.1400); and faculty limited license (.1500).

|                                   |    |      |     |       |
|-----------------------------------|----|------|-----|-------|
| <u>Application and Limitation</u> | 21 | NCAC | 32B | .0601 |
|-----------------------------------|----|------|-----|-------|

|   |    |      |     |       |
|---|----|------|-----|-------|
| Repeal/*  |    |      |     |       |
| <u>Certification of Graduation</u>                                  | 21 | NCAC | 32B | .0602 |
| Repeal/*  |    |      |     |       |
| <u>Definition of Practice</u>                                       | 21 | NCAC | 32B | .0801 |
| Repeal/*  |    |      |     |       |
| <u>Eligibility Requirements</u>                                     | 21 | NCAC | 32B | .0802 |
| Repeal/*  |    |      |     |       |
| <u>Application</u>  | 21 | NCAC | 32B | .0803 |
| Repeal/*  |    |      |     |       |
| <u>Fee</u>  | 21 | NCAC | 32B | .0804 |
| Repeal/*  |    |      |     |       |
| <u>Certified Photograph and Certificate of Graduation</u>           | 21 | NCAC | 32B | .0805 |
| Repeal/*  |    |      |     |       |
| <u>Verification of Medical Licensure</u>                            | 21 | NCAC | 32B | .0806 |
| Repeal/*  |    |      |     |       |
| <u>Letters of Recommendation</u>                                    | 21 | NCAC | 32B | .0807 |
| Repeal/*  |    |      |     |       |
| <u>Personal Interview</u>   | 21 | NCAC | 32B | .0808 |
| Repeal/*  |    |      |     |       |
| <u>Definitions</u>  | 21 | NCAC | 32B | .1301 |
| Amend/*   |    |      |     |       |
| <u>Application for Physician License</u>                            | 21 | NCAC | 32B | .1303 |
| Amend/*   |    |      |     |       |
| <u>Reentry to Active Practice</u>                                   | 21 | NCAC | 32B | .1370 |
| Adopt/*   |    |      |     |       |
| <u>Scope of Practice Under Medical School Faculty Limited Li...</u> | 21 | NCAC | 32B | .1501 |
| Adopt/*   |    |      |     |       |
| <u>Application for Medical School Faculty Limited License</u>       | 21 | NCAC | 32B | .1502 |
| Adopt/*   |    |      |     |       |

The rules in Subchapter 32F deal with the biennial registration.

|            |    |      |     |       |
|------------|----|------|-----|-------|
| <u>Fee</u> | 21 | NCAC | 32F | .0103 |
| Amend/*    |    |      |     |       |

The rules in Subchapter 32M concern licensing and practice of nurse practitioners.

|                              |    |      |     |       |
|------------------------------|----|------|-----|-------|
| <u>Prescribing Authority</u> | 21 | NCAC | 32M | .0109 |
| Amend/*                      |    |      |     |       |

The rules in Subchapter 32S regulate licensing and practice of physician assistants.

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Qualifications and Requirements for License</u> | 21 | NCAC | 32S | .0202 |
| Amend/*  |    |      |     |       |

#### **NC MEDICAL BOARD/PERFUSION ADVISORY COMMITTEE**

The rules in Subchapter 32V are rules covering licensure of perfusionists and the practice of perfusion. Perfusion primarily concerns operating cardiopulmonary bypass systems during cardiac surgery cases.

|                                   |    |      |     |       |
|-----------------------------------|----|------|-----|-------|
| <u>Qualifications for License</u> | 21 | NCAC | 32V | .0103 |
| Amend/*                           |    |      |     |       |

#### **MEDICAL BOARD**

The rules in Subchapter 32W concern the regulations of anesthesiologist assistants.

|                                   |    |      |     |       |
|-----------------------------------|----|------|-----|-------|
| <u>Qualifications for License</u> | 21 | NCAC | 32W | .0102 |
| Amend/*                           |    |      |     |       |

The rules in Subchapter 32X concern practitioner information.

|   |    |      |     |       |
|---|----|------|-----|-------|
| <u>Publishing Certain Misdemeanor Convictions</u> | 21 | NCAC | 32X | .0104 |
| Amend/*   |    |      |     |       |

### **OPTOMETRY, BOARD OF EXAMINERS IN**

The rules in Subchapter 42B concern license to practice optometry including license by examination (.0100); responsibility to supply information (.0200); and professional corporations and limited liability companies (.0300).

|                                    |    |      |     |       |
|------------------------------------|----|------|-----|-------|
| <u>Graduate of Approved School</u> | 21 | NCAC | 42B | .0101 |
| Amend/*                            |    |      |     |       |

|                            |    |      |     |       |
|----------------------------|----|------|-----|-------|
| <u>Written Examination</u> | 21 | NCAC | 42B | .0107 |
| Amend/*                    |    |      |     |       |

|                             |    |      |     |       |
|-----------------------------|----|------|-----|-------|
| <u>Continuing Education</u> | 21 | NCAC | 42B | .0302 |
| Amend/*                     |    |      |     |       |

|  |    |      |     |       |
|--|----|------|-----|-------|
| <u>Suspension of Authority to Expend Funds</u> | 21 | NCAC | 42B | .0305 |
| Adopt/*  |    |      |     |       |

### **BUILDING CODE COUNCIL**

|   |         |
|---|---------|
| <u>NC Energy Conservation Code - HVAC System Verification</u> | 503.2.9 |
| Amend/*   |         |

|   |                              |
|---|------------------------------|
| <u>2012 NC Energy Conservation Code</u> | 2009 IECC with NC Amendments |
| Adopt/*                                 |                              |

|   |        |
|---|--------|
| <u>NC Residential Code - Townhouse Sprinkler Option</u> | R302.2 |
| Amend/*   |        |

|   |        |
|---|--------|
| <u>NC Residential Code - Townhouse Sprinkler Option</u> | R313.1 |
| Amend/*   |        |

|                                 |                             |
|---------------------------------|-----------------------------|
| <u>2012 NC Residential Code</u> | 2009 IRC with NC Amendments |
| Adopt/*                         |                             |

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Randall May  
A. B. Elkins II  
Joe Webster

| <u>AGENCY</u>  | <u>CASE<br/>NUMBER</u> | <u>ALJ</u> | <u>DATE</u> | <u>PUBLISHED<br/>DECISION<br/>REGISTER<br/>CITATION</u> |
|--|------------------------|------------|-------------|---|
| <b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>  |                        |            |             |   |
| ABC Commission v. Fusion Foods, Inc., T/A Coastal Blue   | 09 ABC 4672            | Lassiter   | 11/08/10    |   |
| ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Regional Road)                         | 09 ABC 5421            | Brooks     | 04/19/10    |   |
| ABC Commission v. Ghulam Khan v. T/A West Green Market   | 09 ABC 4303            | Brooks     | 04/19/10    |   |
| ABC Commission v. Sarabjit Kaur v. T/A G&S Food Market   | 09 ABC 5257            | Brooks     | 04/19/10    |   |
| ABC Commission v. Quickstops of Guilford County, Inc., T/A Road Runner Express (Lee Street)                            | 09 ABC 5422            | May        | 06/09/10    |   |
| ABC Commission v. Boulos 2, Inc., T/A Akron Texaco   | 10 ABC 0027            | May        | 04/21/10    |   |
| ABC Commission v. Startown Lounge, Inc. T/A 5 O'clock Somewhere  | 10 ABC 0153            | Gray       | 06/25/10    |   |
| ABC Commission v. Diversified Investments and Growth, LLC, T/A Petro Mart 6  | 10 ABC 0576            | Webster    | 07/09/10    |   |
| ABC Commission v. Talmar Inc. D/B/A E-City Restaurant and Lounge, Mary Ann Davidson and Ratanya Walker                 |                        |            |             |   |
| ABC Commission v. Scooby's Bar & Restaurant, Sherri Lynn Bridgeman   | 10 ABC 2512            | Gray       | 08/02/10    |   |
| ABC Commission v. Alpha 3 Enterprises LLC, T/A Liquid Room   | 10 ABC 2659            | Lassiter   | 07/14/10    |   |
| ABC Commission v. Taqueria Guadalajara II, Inc, Jaime Fuentes Vice President   | 10 ABC 3107            | Brooks     | 07/15/10    |   |
| ABC Commission v. Ab3 LLC T/A On the Roxx  | 10 ABC 4120            | Brooks     | 10/08/10    |   |
| ABC Commission v. El Corona Mexican Restaurant Inc., T/A Corona II   | 10 ABC 4122            | May        | 09/24/10    |   |
| ABC Commission v. Speed Dee Superette, Tonya Marchisella   | 10 ABC 4583            | Brooks     | 11/04/10    |   |
| ABC Commission v. Ben Long Wang, T/A Sapporo Bistro  | 10 ABC 4843            | May        | 10/15/10    |   |
| Bobby Larry Avery Jr. Larry's v. State of North Carolina ABC Commission  | 10 ABC 5360            | Lassiter   | 12/14/10    |   |
| <b><u>BOARD OF SOCIAL WORK CERTIFICATION AND LICENSURE</u></b>   |                        |            |             |   |
| Miriam Deborah Kahn Sichel v. Social Work Certification and Licensure Board  | 10 BSW 2454            | Overby     | 06/25/10    |   |
| <b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>  |                        |            |             |   |
| Tammy S. Barbone v. Crime Victims Compensation Comm.   | 08 CPS 2667            | Brooks     | 07/16/10    |   |
| Christine G. Mroskey v. Crime Victims Compensation   | 09 CPS 0451            | Gray       | 06/24/10    |   |
| Ace Wrecker Service Inc, Secretary of Crime Control and Public Safety  | 09 CPS 2292            | Overby     | 03/31/10    |   |
| William G. Fisher v. Victims and Justice Services  | 09 CPS 4024            | Brooks     | 11/15/10    |   |
| Terry L. Schermerhorn v. North Carolina State Highway Patrol   | 09 CPS 4547            | Lassiter   | 10/21/10    |   |
| William Pickard Trucking, Inc., William Pickard v. Dept. of Crime Control and Public Safety, State Highway Patrol      | 09 CPS 4692            | Brooks     | 06/09/10    |   |
| California Overland Ltd., NC State Highway Patrol, Motor Carrier Enforcement Section                                   | 09 CPS 5225            | Overby     | 05/12/10    |   |
| Earl Stanley Peters III v. Victims Compensation Service Division   | 09 CPS 5444            | Elkins     | 08/30/10    |   |
| John Rose (Fliptastic, Inc) v. Department of Crime Control and Public Safety   | 09 CPS 5985            | Gray       | 08/25/10    | 25:11 NCR 1345  |
| Lynch's Auto Sales Salvage & Wrecker Service, inc v. Crime Control and Public Safety, Division of State Highway Patrol | 09 CPS 6158            | Lassiter   | 09/10/10    |   |
| Alice Conrad v. Crime Victims Compensation Commission  | 09 CPS 6168            | Brooks     | 04/01/10    |   |
| Marius A. Christian v. State Highway Patrol  | 09 CPS 6368            | Overby     | 08/13/10    |   |
| Jose H. Geronimo Ramirez v. Victims and Justice Services   | 09 CPS 6454            | May        | 06/23/10    |   |
| Neill Grading and Construction Co., Inc., v. North Carolina State Highway Patrol Motor Carrier                         | 09 CPS 6516            | Gray       | 11/24/10    |   |

# CONTESTED CASE DECISIONS

|  |             |          |          |               |
|--|-------------|----------|----------|---------------|
| Enforcement Section  |             |          |          |               |
| David Leon Darby v. Division of Crime Control and Public Safety  | 09 CPS 6703 | Overby   | 08/17/10 |               |
| Selective Clearing and Grading, Inc., Danny Creech, Lynn Creech v. Crime Control and Public Safety         | 09 CPS 6726 | Gray     | 07/29/10 |               |
| Harry L. Foy Jr., Department of Crime Control and Public Safety, Div. of State Highway Patrol              | 09 CPS 6728 | Overby   | 08/17/10 |               |
| Motor Carrier Enforcement Section  |             |          |          |               |
| James M. Abdella v. Department of Crime Control and Public Safety v. Motor Carrier Enforcement Div         | 09 CPS 6740 | Overby   | 08/18/10 |               |
| AD Gustafson Inc., Andrew Gustafson v. State Highway Patrol  | 10 CPS 0071 | Lassiter | 07/30/10 |               |
| Covenant Trucking Company, Inc v. Crime Control and Public Safety, Division of State Highway Patrol,       | 10 CPS 0212 | Lassiter | 10/21/10 |               |
| Motor Carrier Enforcement Section  |             |          |          |               |
| Benjamin C. Simmons III, Precision Custom Farming, LLC v. DMV  | 10 CPS 0419 | Elkins   | 06/29/10 | 25:04 NCR 515 |
| Keon J. Jones v. Victims Compensation Commission   | 10 CPS 0848 | Webster  | 07/26/10 |               |
| X&M Trucking, Xavier Artis v. Dept State Highway Patrol, DMV   | 10 CPS 0855 | Lassiter | 07/20/10 |               |
| Preferred Materials Inc v. Department of Crime Control & Public Safety, DMV                                | 10 CPS 0931 | Elkins   | 08/30/10 |               |
| AD Gustafson, Inc., Andrew Gustafson v. Secretary of Crime Control   | 10 CPS 2072 | Gray     | 06/15/10 |               |
| Tracy James Drake, SR v. Victims and Justice Services  | 10 CPS 2073 | Brooks   | 08/30/10 |               |
| Victim: Tyler A. Wright/Guardian Claire S. Casale v. Crime Victims Compensation Commission                 | 10 CPS 2178 | Overby   | 12/20/10 |               |
| Michael A. Rossi Sr., v. Dept. of Crime Control and Public Safety, Div. of Victims Compensation Services   | 10 CPS 2478 | Lassiter | 08/30/10 |               |
| McLain, LLC, Phillip McLain v. NC State Highway Patrol   | 10 CPS 2515 | Brooks   | 07/02/10 |               |
| Vincent John Hall v. Crime Victims Compensation Commission, Maxton Police Department, Officer Duron Burney | 10 CPS 2811 | Gray     | 10/04/10 |               |
| Anne F. Palmer v. Victim and Justice Services  | 10 CPS 3604 | Lassiter | 09/08/10 |               |
| Nivia Velandra v. Crime Victims Compensation Commission  | 10 CPS 4061 | Gray     | 11/15/10 |               |

A list of Child Support Decisions may be obtained by accessing the OAH Website: <http://www.ncoah.com/hearings/decisions/>

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

|   |             |          |          |                |
|---|-------------|----------|----------|----------------|
| Peterkin & Associates Inc v. DHHS   | 09 DHR 1883 | Gray     | 10/15/10 |                |
| Vance County Home Health, Nwa Kpuda v. DHHS   | 09 DHR 2815 | Webster  | 10/27/10 |                |
| C&W Alternative Family Living Facility, Inc., v. CenterPoint Human Services and DHHS  | 09 DHR 3377 | Brooks   | 06/16/10 |                |
| Kevin Summers v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry  | 09 DHR 3766 | Overby   | 08/12/10 |                |
| Ward Drug Co. of Nashville Gary Glisson v. DHHS   | 09 DHR 3830 | Webster  | 04/29/10 |                |
| Mekre Francis v. DHHS, Div. of Health Service Regulation  | 09 DHR 3935 | Gray     | 05/27/10 |                |
| Mattie Lowe/Angela Lowe, Lowe Family Care Home #3 v. DHHS, Division of Health Service Regulation  | 09 DHR 4148 | Gray     | 08/27/10 |                |
| Kid Ventures Inc., d/b/a Health Park Child Development Center v. Div. of Child Development DHHS   | 09 DHR 4887 | Overby   | 06/22/10 |                |
| Nicol Smith v. DHHS   | 09 DHR 4932 | Overby   | 09/01/10 | 25:11 NCR 4932 |
| Kimberly N. Carter (Davis) v. DHHS, Div. of Health Service Regulation   | 09 DHR 5133 | Webster  | 08/03/10 |                |
| A+ Child Development Center LLC, v. DHHS, Division of Child Development   | 09 DHR 5443 | May      | 04/27/10 |                |
| Gail N. Highsmith v. DHHS   | 09 DHR 5513 | Brooks   | 05/13/10 |                |
| Sarah J. Bridges v. DHHS  | 09 DHR 5583 | Brooks   | 05/27/10 |                |
| Onslow MRI, LLC v. DHHS, Div. of Health Service Regulation, Certificate of Need Section and Jacksonville Diagnostic Imaging, LLC d/b/a Coastal Diagnostic Imaging   | 09 DHR 5617 | Overby   | 06/24/10 |                |
| Jacksonville Diagnostic Imaging, LLC d/b/a Coastal Diagnostic Imaging v. DHHS, Division of Health Service Regulation, CON Section and Onslow MRI, LLC   | 09 DHR 5638 | Overby   | 06/24/10 |                |
| Kimberly Denise Harrison v. DHHS, Division of Health Service Regulation   | 09 DHR 5702 | Webster  | 11/09/10 |                |
| Rex Hospital, Inc, d/b/a Rex Hospital and UNC and Wake Radiology Oncology Services v. DHHS, Division of Health Service Regulation, Certificate of Need Section and Parkway Urology,P.A.   | 09 DHR 5769 | Gray     | 07/20/10 |                |
| University of North Carolina Hospitals at Chapel Hill, and Rex Hospital, Inc. d/b/a Rex Healthcare and Wake Radiology Oncology Services, PLLC v. DHHS   | 09 DHR 5770 | Gray     | 07/20/10 |                |
| Wake Radiology Oncology Services, PLLC and University of North Carolina Hospitals at Chapel Hill and Rex Hospital, Inc. d/b/a Rex Healthcare v. DHHS, Division of Health Service Regulation, CON Section and Parkway Urology, P.A. d/b/a Cary Urology, P.A. | 09 DHR 5785 | Gray     | 07/20/10 |                |
| The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas Rehabilitation-Mount Holly and d/b/a Carolinas Health Care System v. DHHS, Div of Health Service Regulation CON Section and Caromont Health, Inc. and Gaston Memorial Hospital, Inc           | 09 DHR 6116 | Brooks   | 07/26/10 | 25:08 NCR 1010 |
| June Rae Crittenden v. Health Care Registry Section, DHHS   | 09 DHR 6166 | Overby   | 03/29/10 |                |
| Kelvin Donelle Lewis v. Health Care Personnel Registry , Nurse Aide Registry  | 09 DHR 6196 | Webster  | 04/05/10 |                |
| Elizabeth Ann Holt v. DHHS, Division of Health Service Regulation   | 09 DHR 6347 | Brooks   | 03/31/10 |                |
| Gloria Manley v. DHHS-DCD   | 09 DHR 6816 | Overby   | 06/24/10 |                |
| Estate of Nora L. Edwards, Wanda Harrington v. DHHS, Div. of Medical Assistance   | 09 DHR 6836 | Overby   | 03/16/10 |                |
| Jerry Flood, Forever Young Group Care v. DHHS, Div. of Health Service Regulation  | 09 DHR 6839 | Gray     | 10/01/10 |                |
| Teresa Dargan Williams v. DHHS, Division of Health Service Regulation   | 10 DHR 0246 | Gray     | 05/21/10 |                |
| Lai-Fong Li v. DHHS, Division of Health Service Regulation  | 10 DHR 0248 | May      | 09/02/10 | 25:11 NCR 0248 |
| Fredrick DeGraffenreid v. DHHS, Division of Health Service Regulation   | 10 DHR 0326 | Lassiter | 08/18/10 |                |
| Helen Graves v. DHHS  | 10 DHR 0334 | Elkins   | 08/30/10 |                |
| Carolyn E. Hall v. DHHS   | 10 DHR 0348 | Lassiter | 11/09/10 |                |
| Samuel and Nita Gaskin v. DHHS  | 10 DHR 0420 | Overby   | 06/09/10 |                |



# CONTESTED CASE DECISIONS

|  |             |          |          |                |
|--|-------------|----------|----------|----------------|
| Zulu Nwankwo v. DHHS, Div. of Health Service Regulation Mental Health Licensure and Cert.  | 10 DHR 0449 | Webster  | 10/08/10 | 25:15 NCR 1847 |
| TLC Adult Group Home, Sonja Hazelwood v. DHHS, Div. of Health Service Regulation   | 10 DHR 0485 | Lassiter | 06/11/10 |                |
| Tamekia Cain v. DHHS, Division of Health Service   | 10 DHR 0488 | Gray     | 05/20/10 |                |
| Alternative Life Programs Inc. Marchell F. Gunter v. DHHS  | 10 DHR 0558 | Webster  | 10/22/10 |                |
| Forever Young Group Care, Jerry Flood v. DHHS, Division of Health Service Regulation   | 10 DHR 0647 | Gray     | 10/29/10 |                |
| Margarette Snow v. DHHS  | 10 DHR 0648 | Mann     | 09/07/10 |                |
| Elizabeth Locke v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry   | 10 DHR 0678 | Webster  | 06/17/10 |                |
| Cassandra Johnson v. Div. of Child Development, DHHS   | 10 DHR 0683 | Brooks   | 06/29/10 |                |
| Karen Stutts v. DHHS   | 10 DHR 0719 | May      | 08/18/10 |                |
| Candy Bynum-Anderson v. DHHS, Division of Facility Services, Health Care Personnel Registry  | 10 DHR 0793 | Gray     | 07/29/10 |                |
| John J. Hannan v. Wake County Finance Dept   | 10 DHR 0831 | Webster  | 08/27/10 |                |
| Donald Eugene Gordon v. DHHS   | 10 DHR 0932 | May      | 11/10/10 |                |
| Ryan Bonscot Shearin v. Walter B. Jones Alcohol & Drug Treatment Center  | 10 DHR 0957 | Gray     | 08/02/10 |                |
| Jessica Monnot v. Wake Med EMS   | 10 DHR 0960 | Elkins   | 09/20/10 |                |
| Filmore Academy Educational Institute Inc v. DHHS, Div. of Child Development   | 10 DHR 1032 | Elkins   | 08/30/10 |                |
| Omega Independent Living Services Inc, Site IV v. Div. of Health Service Regulation  | 10 DHR 1173 | Elkins   | 08/30/10 |                |
| Group Homes of Forsyth, Inc., Independence Group Home MHL #034-151 v. DHHS, Div. of Health Service Regulation  | 10 DHR 1165 | May      | 07/16/10 |                |
| Diana Hood v. DHHS   | 10 DHR 1167 | Brooks   | 10/28/10 |                |
| Timothy S. Wilson v. DHHS  | 10 DHR 1252 | Brooks   | 06/18/10 |                |
| Park Village Rehab and Health v. DHHS  | 10 DHR 1305 | Elkins   | 09/15/10 |                |
| Felicia J. Stewart v. DHHS, Div. of Health Service Regulation  | 10 DHR 1348 | Lassiter | 06/21/10 |                |
| Phillip D. Hollifield, Administrator of the Estate of Phillip W. Hollifield v. DHHS  | 10 DHR 1448 | Brooks   | 06/16/10 |                |
| Wee Wiggles Child Care Center a/k/a P&L Services LLC, Patricia York, and Ramona Jones  | 10 DHR 1514 | May      | 07/20/10 |                |
| Carrollton Home Care Inc d/b/a Community Home Care & Hospice; Community Home Care & Hospice Inc. d/b/a Community Home Care & Hospice; and Community Home Care of Vance County Inc. d/b/a Community Home Care & Hospice v. DHHS, Div. of Health Service Regulation, CON Section and DHHS, Div. of Health Service Regulation Acute and Home Care Licensure and Certification Section | 10 DHR 1614 | Overby   | 08/11/10 |                |
| Triad ENT Debbie Beck v. DHHS, Division of Medical Assistance  | 10 DHR 1668 | May      | 08/04/10 |                |
| Elizabeth House Blackwell v. DHHS, Div. of Health Service Regulation   | 10 DHR 1670 | Overby   | 07/15/10 |                |
| Sandbox Academy Child Care Center, Cynthia Martin v. OAH, DHHS   | 10 DHR 1837 | Mann     | 08/27/10 |                |
| Patrice Michelee Harris-Powell v. DHHS, Div. of Health Service Regulation  | 10 DHR 2067 | Elkins   | 07/26/10 |                |
| Joseph B. Twine III v. DHHS  | 10 DHR 2068 | Elkins   | 08/30/10 |                |
| Lenora Wesley v. Division of Child Development, DHHS   | 10 DHR 2069 | Gray     | 08/17/10 |                |
| Deborah Gail Robinson v. DHHS, Health Service Regulation   | 10 DHR 2448 | Elkins   | 10/18/10 |                |
| Tracy Herron v. Division of Child Development/DHHS   | 10 DHR 2594 | Mann     | 10/05/10 |                |
| Happy Feet Learning Center, Tamika Herron v. Division of Child Development, DHHS   | 10 DHR 2658 | Mann     | 08/20/10 |                |
| Community Helps Network, LLC v. Alamance-Caswell Local Management Entity f/k/a Alamance-Caswell MH/DD/SA   | 10 DHR 2660 | Brooks   | 07/02/10 |                |
| Michael Parks c/o Fresh Start Residential Services Inc v. Div. of Medical Assistance Program Integrity/BHRS  | 10 DHR 2661 | Overby   | 07/21/10 |                |
| Shelia D. Gaskins v. DHHS, Health Care Registry  | 10 DHR 2870 | Brooks   | 10/22/10 |                |
| Cassandra Yvette Fuiell v. Division of Child Development/DHHS  | 10 DHR 2871 | Brooks   | 10/21/10 |                |
| Laytoya Daniels v. DHHS, Div. of Health Service Regulation, Health Care Personnel Registry   | 10 DHR 2913 | Webster  | 08/27/10 |                |
| The Circle of Courage Faith House (formerly Birges House) LaRonda Woods-Freeman v. DHHS Ms. Emery E. Milliken General Counsel  | 10 DHR 2937 | Overby   | 08/13/10 |                |
| Baker's Counseling and Mentoring Center, Inc., v. The Division of Mental Health, Developmental Disabilities and Substance Abuse Services   | 10 DHR 2989 | Brooks   | 08/24/10 |                |
| Ultimate Care LLC, Fostoria Pierson v. DHHS-NC State Atty Gen Office   | 10 DHR 3052 | Brooks   | 08/23/10 |                |
| Community Support Specialists, Annie Della Kenion v. Dept. of Mental Health, Substance Abuse and Development Disabilities, DHHS  | 10 DHR 3060 | Overby   | 08/04/10 |                |
| Positive Connection Community Services, Inc., DHHS   | 10 DHR 3128 | Gray     | 07/30/10 |                |
| Peggy's Home Health Care, Inc., DHHS   | 10 DHR 3309 | Gray     | 07/30/10 |                |
| Straight Walk Family Services, Inc., DHHS  | 10 DHR 3411 | Gray     | 07/30/10 |                |
| Gary Peeler v. DHHS, Office of the Controller  | 10 DHR 3436 | May      | 11/10/10 |                |
| Our Future Child Care, Gloria Williams v. Div. of Child Development/DHHS   | 10 DHR 3448 | Brooks   | 09/07/10 |                |
| Vivian U. Enyinnaya v. DHHS, Division of Health Service Regulation   | 10 DHR 3470 | Gray     | 09/07/10 |                |
| The Lawson's House v. Division of Mental Health/Developmental Disabilities and Substance Abuse Services  | 10 DHR 3472 | Gray     | 09/09/10 |                |
| Felecia Moore Rhyne v. DHHS, Division of Health Service Regulation   | 10 DHR 3578 | Brooks   | 09/07/10 |                |
| Tiffany Horne v. DHHS  | 10 DHR 3579 | Brooks   | 09/07/10 |                |
| Pamela Terry-President/Administrator People Achieving Living Skills Inc. (PALS) v. DHHS, Div Of Health Service Regulation Mental Health Licensure & Certification  | 10 DHR 3883 | Lassiter | 08/18/10 |                |
| Peggy Ann Blackburn v. Health Care Personnel Registry  | 10 DHR 4117 | May      | 11/13/10 |                |
| Cherry Crisp at Lillies Place LLC v. DHHS  | 10 DHR 4400 | Lassiter | 11/04/10 |                |
| Clara Yancey v. DHHS   | 10 DHR 4401 | Lassiter | 11/04/10 |                |
| Alexander Path Child Enrichment Center v. Division of Child Development, DHHS  | 10 DHR 4404 | Overby   | 10/26/10 |                |
| Anita R. Weak v. Health Care Registry  | 10 DHR 4690 | Overby   | 11/08/10 |                |
| King's Memorial Christian Academy v. DHHS, Div. of Child Development   | 10 DHR 4719 | Gray     | 09/30/10 |                |
| Patricia Hill, Building Joy in Healthcare v. DHSR  | 10 DHR 4842 | Lassiter | 09/23/10 |                |
| Travis Davis v. Health Care Personnel Registry   | 10 DHR 4985 | Gray     | 11/02/10 |                |
| Crandell's Enterprises Inc., Mary Ann Crandell-MHL #-092-669   | 10 DHR 5201 | Overby   | 10/15/10 |                |
| Shira Roseboro v. DHHS, Division of Health Service Regulation  | 10 DHR 5457 | Brooks   | 12/02/10 |                |

## CONTESTED CASE DECISIONS

|  |             |          |          |
|--|-------------|----------|----------|
| Andy Faircloth Stephen Hambrick v. DHHS  | 10 DHR 5655 | Overby   | 12/20/10 |
| Melinda Durden v. DHHS, Division of Health Service Regulation                              | 10 DHR 5719 | Gray     | 11/23/10 |
| Stop N Shop (WIC Vendor #7674) Jayendra Patel v. DHHS, Dept. of Public Health, WIC Program | 10 DHR 6437 | Lassiter | 12/01/10 |

### DEPARTMENT OF CORRECTION

|                        |             |          |          |
|------------------------|-------------|----------|----------|
| Robert Lee Hood v. DOC | 10 DOC 4838 | Lassiter | 10/11/10 |
|------------------------|-------------|----------|----------|

### DEPARTMENT OF JUSTICE

|  |             |          |          |               |
|--|-------------|----------|----------|---------------|
| Jay Eduard Krueger v. Criminal Justice Education and Training Standards Commission           | 06 DOJ 0578 | Webster  | 06/29/10 |               |
| Scott Ray Berkley v. Criminal Justice Education and Training Standards Commission            | 09 DOJ 3750 | Gray     | 06/25/10 |               |
| Tony Blaine Drake v. Criminal Justice Education and Training Standards Commission            | 09 DOJ 4151 | Lassiter | 04/14/10 |               |
| Daniel Brannon Gray v. Sheriff's Education and Training Standards Commission                 | 09 DOJ 4364 | May      | 03/15/10 |               |
| Phyllis Ann Johnson v. DOJ, Company Police Program   | 09 DOJ 5295 | Elkins   | 05/03/10 | 25:01 NCR 111 |
| Joseph Thomas DePrisco v. Criminal Justice Education and Training Standards Commission       | 09 DOJ 5354 | Lassiter | 06/01/10 |               |
| Michael Gray Solomon, Jr v. Sheriffs' Education and Training Standards Commission            | 09 DOJ 5648 | Gray     | 06/30/10 |               |
| Lang Lemorris Harrison v. Sheriffs' Education and Training Standards Commission              | 09 DOJ 5649 | May      | 07/30/10 |               |
| Kenneth Maidene, Jr v. Sheriff's Education and Training Standards Commission                 | 09 DOJ 5650 | Overby   | 04/19/10 |               |
| Dustin RY Hussey v. Sheriffs' Education and Training Standards Commission                    | 09 DOJ 5857 | Brooks   | 07/27/10 |               |
| Jeffrey Gray Royall v. Sheriffs' Education and Training Standards Commission                 | 09 DOJ 5859 | May      | 07/28/10 |               |
| Mitchell Ray Satterthwaite v. Criminal Justice Education and Training Standards Commission   | 09 DOJ 6326 | Lassiter | 07/16/10 |               |
| Dustin Matthew James v. Sheriffs' Education and Training Standards Commission                | 09 DOJ 6254 | Gray     | 05/07/10 |               |
| Robert Clay Thompson v. Sheriffs' Education and Training Standards Commission                | 10 DOJ 0064 | Webster  | 07/26/10 |               |
| Frankie Durwood Hill v. Sheriffs' Education and Training Standards Commission                | 10 DOJ 0065 | Overby   | 07/24/10 |               |
| Charles Lovelace Williams v. Sheriffs' Education and Training Standards Commission           | 10 DOJ 0066 | Gray     | 05/26/10 |               |
| Richard Anthony Simpson v. Sheriffs' Education and Training Standards Commission             | 10 DOJ 0155 | Lassiter | 07/21/10 |               |
| Phillip Daniel Griffin v. Sheriffs' Education and Training Standards Commission              | 10 DOJ 0156 | Gray     | 07/21/10 |               |
| Anthony Paul Britt v. Sheriffs' Education and Training Standards Commission                  | 10 DOJ 0157 | Gray     | 06/02/10 |               |
| Wayne Keith Timmons v. Sheriffs' Education and Training Standards Commission                 | 10 DOJ 0158 | Gray     | 05/26/10 |               |
| Jeffrey Edward Byrd v. Sheriffs' Education and Training Standards Commission                 | 10 DOJ 0389 | May      | 05/26/10 |               |
| Timothy Wayne Hudson v. Sheriffs' Education and Training Standards Commission                | 10 DOJ 0390 | Webster  | 10/05/10 |               |
| John David Dykes v. Criminal Justice Education and Training Standards Commission             | 10 DOJ 0391 | Lassiter | 08/10/10 |               |
| Christopher Ben Huff v. Criminal Justice Education and Training Standards Commission         | 10 DOJ 0392 | May      | 08/13/10 |               |
| Jason Robert Bryant v. Sheriffs' Education and Training Standards Commission                 | 10 DOJ 0394 | Lassiter | 09/29/10 |               |
| James William Carpenter, Jr. v. Criminal Justice Education and Training Standards Commission | 10 DOJ 0395 | May      | 11/17/10 |               |
| William Lee Walter v. Private Protective Services Board                                      | 10 DOJ 0528 | Webster  | 04/22/10 |               |
| Mark Mauldin v. Criminal Justice Education and Training Standards Commission                 | 10 DOJ 0583 | Gray     | 07/29/10 |               |
| Hosea James v. DOJ, Company Police Program   | 10 DOJ 0703 | Webster  | 09/30/10 |               |
| Chad Aaron Webster v. Criminal Justice Education and Training Standards Commission           | 10 DOJ 0722 | May      | 10/06/10 |               |
| Kenya Solomon v. Private Protective Services Board   | 10 DOJ 1004 | Lassiter | 12/03/10 |               |
| Thomas Bernard Clark v. Private Protective Services Board                                    | 10 DOJ 1009 | Lassiter | 07/23/10 |               |
| Michael H. Robinson v. DOJ, Company Police Program   | 10 DOJ 1093 | Brooks   | 07/29/10 |               |
| Michael Luther Cole v. Private Protective Service Board                                      | 10 DOJ 1102 | Lassiter | 07/26/10 |               |
| Frederick Charles Newingham v. Private Protective Services Board                             | 10 DOJ 1103 | Lassiter | 07/23/10 |               |
| Guy Yuri Fongging v. DOJ, Campus Police Program  | 10 DOJ 1131 | Brooks   | 08/23/10 |               |
| Steven Daniel Blue v. Private Protective Service Board                                       | 10 DOJ 1250 | Webster  | 08/03/10 |               |
| Brian Scott Bradshaw v. Alarm Systems Licensing Board  | 10 DOJ 1738 | Webster  | 08/03/10 |               |
| Emery Roland Anderson v. Criminal Justice Education and Training Standards Commission        | 10 DOJ 1842 | Webster  | 11/17/10 |               |
| Tony Harold Shelton v. Sheriffs' Education and Training Standards Commission                 | 10 DOJ 2373 | Brooks   | 08/31/10 |               |
| Bruce John Vosefski v. Sheriffs' Education and Training Standards Commission                 | 10 DOJ 2377 | Overby   | 09/30/10 |               |
| Geoffrey Paul Doucette v. Sheriffs' Education and Training Standards Commission              | 10 DOJ 2378 | Overby   | 08/20/10 |               |
| Leroy Wilson, Jr. v. Private Protective Services Board                                       | 10 DOJ 3179 | Overby   | 09/21/10 |               |
| Vincent Vanlear McMillan v. Sheriffs' Education and Training Standards Commission            | 10 DOJ 3185 | Gray     | 10/04/10 |               |
| Timothy Tracy Walker v. Criminal Justice Education and Training Standards Commission         | 10 DOJ 3288 | Gray     | 09/13/10 |               |
| James Albert Bowditch Sr. v. Criminal Justice Education and Training Standards Commission    | 10 DOJ 3792 | Lassiter | 11/01/10 |               |
| James Oneil Shannon v. Private Protective Service Board                                      | 10 DOJ 4286 | Overby   | 09/20/10 |               |
| Timothy Bobby Adams v. Alarm Systems Licensing Board   | 10 DOJ 4324 | Gray     | 10/08/10 |               |
| Joshua N. Jacobs v. Private Protective Services Board  | 10 DOJ 4633 | Gray     | 10/08/10 |               |
| Richard H. Rundus v. Alarm Systems Licensing Board   | 10 DOJ 4839 | Gray     | 10/08/10 |               |
| Rory Franklin Jones v. Private Protective Services Board                                     | 10 DOJ 5155 | Gray     | 11/05/10 |               |

### DEPARTMENT OF LABOR

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| Mac VIII Enterprises Inc, d/b/a Instant Imprints Michael McDonald v. DOL, John Hoomani Legal Counsel | 10 DOL 3556 | May | 09/29/10 |
| Nader Behrouzjou v. Office of Administrative Hearings  | 10 DOL 3719 | May | 09/24/10 |

### DEPARTMENT OF TRANSPORTATION

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| Andrew Scott Treadway v. Commissioner of Division of Motor Vehicles, Mr. Robertson | 10 DOT 3746 | May | 08/19/10 |
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### DEPARTMENT OF STATE TREASURER

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| Michael L. Bost Sr., v. Retirement System                      | 09 DST 3781 | May    | 04/15/10 |               |
| Jane C. Brocious v. State Treasurer Retirement System Division | 09 DST 4066 | Gray   | 03/25/10 | 25:03 NCR 350 |
| Russell Ray Rouse v. DOT, Retirement Systems Division          | 10 DST 0068 | Overby | 07/21/10 |               |

**STATE BOARD OF EDUCATION**

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| Marine Sciences High School, Inc v. State Board of Education | 10 EDC 1104 | Webster | 09/16/10 |  |
| Bear Grass Charter School, Inc v. State Board of Education   | 10 EDC 1420 | Elkins  | 10/27/10 |  |
| Benjamin Franklin Wyche Jr. v. State Board of Education      | 10 EDC 2449 | Overby  | 07/20/10 |  |
| Renie E. Johnston v. Dept. of Public Instruction             | 10 EDC 2513 | Overby  | 11/09/10 |  |
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**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

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| U.S. Department of the Interior (DOI), Fish and Wildlife Service(FWS) v. DENR, Division of Air Quality And PCS Phosphate Company, Inc (PCS Phosphate) | 08 EHR 1067 | Morrison | 11/12/10 | 25:15 NCR 1857 |
| Quality Built Homes Inc. v. DENR, Division of Water Quality   | 09 EHR 2650 | May      | 07/22/10 |                |
| Windy Woods, LLC v. DENR, Division of Water Quality   | 09 EHR 4621 | Gray     | 06/04/10 | 25:05 NCR 674  |
| Rufus E. Murray v. DENR, Division of Marine Fisheries   | 09 EHR 5042 | Gray     | 07/23/10 |                |
| Gleason James v. DENR   | 09 EHR 5294 | Overby   | 09/02/10 |                |
| Burt Benson, CEO, Benson Construction, Inc v. DENR, Division of Air Quality   | 09 EHR 6251 | Elkins   | 08/27/10 |                |
| Joel F. Hollowell Oil Co, Inc 18,582.02 v. DENR   | 10 EHR 0287 | Elkins   | 10/18/10 |                |
| Joel F. Hollowell Oil Co, Inc 16,969.43 v. DENR   | 10 EHR 0288 | Elkins   | 10/18/10 |                |
| Joel F. Hollowell Oil Co, Inc 7,576.10 v. DENR  | 10 EHR 0289 | Elkins   | 10/18/10 |                |
| Little Miracles Child Care, Margaret Mosley v. Moore County Health Department, DENR   | 10 EHR 0624 | Gray     | 08/11/10 |                |
| Wyatt Aldridge Construction Inc. v. DENR, The Sedimentation Pollution Control Act of 1973   | 10 EHR 0796 | Overby   | 10/14/10 |                |
| Bradford M. Kimzey v. DENR, Division of Environmental Health  | 10 EHR 0876 | Overby   | 06/23/10 |                |
| Thom Road Development, LLC v. DENR, Div. of Land Resources  | 10 EHR 2723 | Gray     | 09/13/10 |                |
| Peter Pallas v. Association of Local Health Directors   | 10 EHR 2972 | Overby   | 09/02/10 |                |
| Saul Romero v. DENR, Div. of Environmental Health   | 10 EHR 3061 | Gray     | 09/17/10 |                |
| Northview Mobile Home Park, James Rice v. DENR  | 10 EHR 3132 | Gray     | 09/27/10 |                |
| Bill M. Klimvakis, Bill's Plumbing v. DENR, Division of Waste Management  | 10 EHR 3286 | Overby   | 08/23/10 |                |
| David McMillan, McMillan Contracting, Inc. v. DENR, Division of Air Quality   | 10 EHR 4059 | Gray     | 11/19/10 |                |
| KV Shah & Jay Shah v. DENR  | 10 EHR 4635 | Overby   | 10/27/10 |                |
| B&K Coastal LLC, d/b/a Cape Fear Paving v. DENR   | 10 EHR 6584 | Lassiter | 12/14/10 |                |

**DEPARTMENT OF INSURANCE**

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| Tammy A. Lee v. Blue Cross Blue Shield of NC                         | 09 INS 6817 | Overby | 05/03/10 |  |
| Benton E. Miles, Jr., State Health Plan                              | 10 INS 0720 | Brooks | 06/08/10 |  |
| James Edward Summerlin v. State Health Plan                          | 10 INS 2520 | Gray   | 09/21/10 |  |
| Paul Henry Brodish v. State Health Plan Blue Cross Blue Shield of NC | 10 INS 1171 | Elkins | 08/25/10 |  |
| Lloyd Nelson v. State Health Plan Blue Cross Blue Shield of NC       | 10 INS 2177 | Overby | 09/08/10 |  |

**MISCELLANEOUS**

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| Tony Wallace v. Dept. of Mental Health | 10 MIS 1838 | Elkins | 10/27/10 |  |
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**OFFICE OF STATE PERSONNEL**

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| Linda Cheryl Strider v. Vance County Board of Social Services   | 08 OSP 0904 | Lassiter | 06/25/10 |               |
| Gwendolyn E. White v. DHHS, Department of Information Resource Management (DIRM) Privacy and Security Office                            | 08 OSP 0991 | Webster  | 06/14/10 | 25:04 NCR 519 |
| Jewel C. Mosley v. Wilson County Health Department, Felix Meyer, Director   | 08 OSP 2140 | Gray     | 07/20/10 |               |
| Spencer Batchelor v. NCSU Campus Police   | 09 OSP 0059 | Lassiter | 03/29/10 | 25:03 NCR 358 |
| Nedra T. Rollins v. NC State University   | 09 OSP 1536 | Overby   | 06/07/10 |               |
| Bobby L. Murray v. NCCU   | 09 OSP 2149 | Gray     | 06/18/10 | 25:07 NCR 933 |
| Frederick Gooch v. Central Regional Hospital, DHHS  | 09 OSP 2398 | Gray     | 10/28/10 |               |
| John Long v. Central Regional Hospital, DHHS  | 09 OSP 2400 | Gray     | 10/28/10 |               |
| Patricia Swann v. Central Regional Hospital, DHHS   | 09 OSP 2402 | Gray     | 10/28/10 |               |
| Mekre Francis v. DHHS, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Murdoch Developmental Center | 09 OSP 2813 | Gray     | 05/27/10 |               |
| Willie Hubbs v. Broughton Hospital  | 09 OSP 3326 | Brooks   | 04/19/10 | 25:03 NCR 372 |
| Esther K. Dunn v. Dept. of Commerce, Div. of Tourism, Film and Sports Development   | 09 OSP 3582 | Gray     | 08/24/10 |               |
| Pamela D. Shoffner v. Agricultural and Technical State University, Mr. Linc Butler, Assistant Vice Chancellor for Human Resources       | 09 OSP 4432 | Brooks   | 05/19/10 |               |
| Charolettee Hope v. Cumberland County Department of Social Services   | 09 OSP 4436 | Gray     | 04/15/10 |               |
| Isham Spann v. Marva G. Scott and Edgecombe County, Dept. of Social Services  | 09 OSP 4625 | Gray     | 09/27/10 |               |
| O'Tonious T. Raynor v. DHHE, Emery Milliken   | 09 OSP 4648 | Webster  | 07/26/10 | 25:07 NCR 948 |
| Camela O. Warren v. NC A&T  | 09 OSP 4811 | Brooks   | 10/22/10 |               |
| Charles T. Hodge Jr. v. Mike Totolo, Vance County Public Schools  | 09 OSP 4977 | Elkins   | 08/30/10 |               |
| Natalie Jones v. NCSU   | 09 OSP 5041 | Elkins   | 10/19/10 |               |
| Michael Karr v. DHHS, Division of Vocational Rehabilitation Services  | 09 OSP 5157 | Elkins   | 07/19/10 | 25:07 NCR 960 |
| Purnell Sowell v. DOT, Div. of Motor Vehicles   | 09 OSP 5262 | Brooks   | 08/31/10 |               |
| Robert L. Hamm v. Department of Correction  | 09 OSP 5320 | May      | 04/15/10 |               |
| Horace Blakeney v. UNC Charlotte  | 09 OSP 5352 | Brooks   | 07/14/10 |               |
| Andria Lambert v. DOC   | 09 OSP 5551 | Webster  | 12/02/10 |               |
| Steven Dancy v. Appalachian State University  | 09 OSP 5566 | Brooks   | 08/02/10 |               |
| Quintino Brooks v. NCCU   | 09 OSP 5567 | Webster  | 04/28/10 | 25:03 NCR 379 |
| Thomas C. Wetherington v. Dept. of Crime Control and Public Safety, NC Highway Patrol   | 09 OSP 5768 | Gray     | 09/03/10 |               |

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**CONTESTED CASE DECISIONS**

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| Dwight Steven Murphy v. DHHS, Div. of Services for the Blind  | 09 OSP 5924 | Webster  | 05/13/10 |
| Russell Alan Swindell Sr. v. NCSU BMO   | 09 OSP 6599 | Overby   | 11/10/10 |
| LaCinda L. McKenzie v. O'Berry Center   | 09 OSP 6785 | Lassiter | 06/21/10 |
| Glenn Hodge v. DOT  | 10 OSP 0229 | Lassiter | 06/14/10 |
| Nathan Anthony Swanson v. DHHS, Div. of Mental Health   | 10 OSP 0929 | Elkins   | 10/18/10 |
| Melissa M. Reed v. Cumberland County, Dept. of Social Services  | 10 OSP 1090 | Webster  | 11/15/10 |
| Anthony E. Scott v. Dept. of Crime Control and Public Safety, NC Highway Patrol   | 10 OSP 1105 | Morrison | 10/26/10 |
| Vinson Jerome Horton v. NCCU  | 10 OSP 1168 | Elkins   | 11/17/10 |
| Stephen R. West v. UNC  | 10 OSP 1567 | Overby   | 09/02/10 |
| Janice F. Stokes v. DOC, Division of Community Corrections  | 10 OSP 2316 | Gray     | 08/20/10 |
| Beverly Ann Wynn v. DOC, Div. of Community Corrections and Div. of Prisons  | 10 OSP 2415 | Elkins   | 09/20/10 |
| Alvin L. Bess v. The County of Cumberland   | 10 OSP 2517 | Overby   | 06/25/10 |
| Ingrid Matenge v. DOT, Div. of Motor Vehicles   | 10 OSP 2519 | Gray     | 10/21/10 |
| Cynthia Lloyd v. Vance County   | 10 OSP 2577 | Overby   | 08/30/10 |
| John Anthony McDonald, II v. DHHS, Division of Information Resource Management  | 10 OSP 2786 | Gray     | 06/24/10 |
| Tammy R. Northern v. County of Durham Criminal Justice Resources Center   | 10 OSP 2904 | Gray     | 08/20/10 |
| Cornelia G. Snow v. Wendy Godwin/Longleaf Neuro-Medical Treatment Center  | 10 OSP 2909 | Lassiter | 06/29/10 |
| Angela R. Harris v. DOC   | 10 OSP 3007 | Lassiter | 08/31/10 |
| Vance L. Yates v. DJJDP Dept. of Juvenile Justice & Delinquency Prevention  | 10 OSP 3155 | Overby   | 08/20/10 |
| Maureen Marie Schepis v. DHHS, J. Iverson Riddle Developmental Center, Emery Milliken, DHHS General Counsel   | 10 OSP 3346 | Gray     | 08/30/10 |
| George A. McLamb v. DOC   | 10 OSP 4398 | Gray     | 10/20/10 |
| Montressa B. DeRosa v. DOC  | 10 OSP 4797 | Lassiter | 11/18/10 |
| Michael Bramwell v. DHHS  | 10 OSP 5016 | Overby   | 11/10/10 |
| Louis G. Antonellis v. Cumberland County Board of Education Superintendent (Frank Till) Asst. Superintendent (Joseph Locklear) Board Attorney (David Phillips) Principal (Vanessa Alford) | 10 OSP 5393 | Lassiter | 10/29/10 |
| Elizabeth Plummer v. Vance County, Department of Social Services, Kay Fields, Director  | 10 OSP 5695 | Elkins   | 12/16/10 |

**OFFICE OF SECRETARY OF STATE**

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| Jenny S. Thompson v. Department of SOS              | 09 SOS 2342 | Lassiter | 03/17/10 |
| Jessica Nicole Blackwell Lewis v. Dept. of SOS      | 09 SOS 6174 | Elkins   | 08/30/10 |
| Seaton W. Howell v. Dept. of SOS                    | 10 SOS 1350 | Webster  | 11/08/10 |
| James D. Harrison v. Notary Public Commission       | 10 SOS 1515 | May      | 06/15/10 |
| Donald R. Beason and Mark C. Beason v. Dept. of SOS | 10 SOS 1913 | Morrison | 11/22/10 |

**TEACHING FELLOWS COMMISSION**

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| Elizabeth Danial Dominique v. NC Teaching Fellows Commission | 09 TFC 6833 | Webster | 09/24/10 | 25:11 NCR 1366 |
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**UNC HOSPITALS**

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|---------------------------------|-------------|--------|----------|
| Alexander Lee v. UNC Hospitals  | 10 UNC 1095 | Elkins | 08/30/10 |
| Edwin Matthews v. UNC Hospitals | 10 UNC 2576 | Overby | 09/13/10 |

STATE OF NORTH CAROLINA

Filed

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF DURHAM

2010 OCT 22 PM 3:11

10 DHR 0558

ALTERNATIVE LIFE PROGRAMS INC. ) Office of  
MARCHELL F GUNTER ) Administrative Hearings

Petitioner, )

v. )

**DECISION**

DEPARTMENT OF HEALTH )  
AND HUMAN SERVICES )

Respondent. )

THIS MATTER came on for hearing on September 1 and 2, 2010, before the Honorable Joe L. Webster, Administrative Law Judge, in Raleigh, North Carolina. The Petitioner was pro se. The Respondent was represented by Jane R. Thompson, Assistant Attorney General.

**EXHIBITS**

**For Petitioner:** Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13a, 13b, 14 and 15 admitted

**For Respondent:** Exhibits 1-41 admitted

**WITNESSES**

**For Petitioner:**

Rita Bland  
Syria Blackwell  
Jane Whitfield  
Jacquelyn Taylor  
Yolanda Mitchell  
Chelce Johnson

**For Resondent:**

Lori Davis  
Jallenta Plummer  
Linda Plummer  
Tashiba McCoy

**ISSUE**

Whether the Respondent properly revoked Alternative Life Programs, Inc.'s maternity home license based on a lack of compliance with maternity home licensing rules.

**FINDINGS OF FACT**

1. Petitioner is the Executive Director of Alternative Life Programs, Inc. (ALP), an umbrella organization with three licenses from the Respondent. ALP was licensed through the Division of Health Service Regulation for a Level 3 group home on Kent Street in Durham. ALP no longer has that license. ALP was also issued a maternity home license and a child placing agency license by the Respondent's Division of Social Services. ALP has had a maternity home license since 2004. It was renewed in 2006 and again in June 2008 for a two year period.

2. On February 16, 2010, the Respondent sent ALP a Notice of Administrative Action, revoking ALP's maternity home license for non-compliance with licensing rules, citing nineteen rule violations. Petitioner filed a petition for contested case hearing. A hearing was originally scheduled for June 28, 2010, but was rescheduled at the request of the Petitioner.

3. The program consultant for ALP from the Division's Regulatory and Licensing Services has been Lori Davis. Her supervisor is Rita Bland. Ms. Davis made an onsite visit to ALP in May and June 2008 prior to the last renewal of the maternity home license. ALP was licensed for three maternity home residents in each of its two homes, Fayetteville Road and Manford Road, both in Durham. ALP places clients 18 or over in the Fayetteville Road home and clients under 18 in the Manford Road home, although licensing regulations do not require separate facilities by age.

4. ALP receives \$59.00 per day for residents who receive State Maternity Home funding. Residents who are also in the custody of a county DSS receive a higher funding rate.

5. During the 2008 relicensure process, Ms. Davis found rule violations around record keeping and asked ALP to address these in a Corrective Action Plan (CAP). This CAP was approved on 7/24/08. Respondent's Exhibit 1. Ms. Davis and Ms. Bland made an onsite visit to ALP on 12/10/08 and found improvement in the maternity home records. However, two areas of concern were documented in a 12/12/08 letter – the need for ALP to update all policies and procedures by 1/31/09 to comply with October 2008 rule changes and the need to thoroughly evaluate maternity home admissions for clients with serious emotional or mental health problems to make sure their needs could be met. Respondent's Exhibit 2.

6. In May 2009 Ms. Davis received a report of inadequate food at the Fayetteville Road home. She made an unannounced visit on 5/18/09 and found an inadequate food supply and lack of proper menus. A rule change in July 2009 required maternity home staff to be present at all times when clients were present. On an unannounced visit on 8/27/09, Ms Davis found one resident present with no staff in the home. On that same date she conducted a record review at the ALP office and found numerous rule violations in client and staff records.

7. During a 9/03/09 unannounced visit to the Manford Road home, Ms. Davis found a Cumberland DSS foster child, MW, who had come to the home from a Level 3 facility that could no longer keep her because she had to be off her medications during her pregnancy. She was also on juvenile court probation for indecent liberties with a minor and yet had been left alone with a staff member's small child. Ms. Davis required a safety plan for the resident before she left that day.

8. A CAP was approved on 10/5/09 to address rule violations from the August and September visits and record reviews. While that CAP was in the approval process, ALP was asked to suspend further maternity home admissions because of the scope of violations and the continuing lack of updated policies and procedures.

9. In October 2009 Ms Davis received pictures of a staff person at Fayetteville Road apparently asleep during work hours. An unannounced visit to Manford Road home on 10/26/09 found continued menu rule violations. There were also concerns that residents were responsible for providing their own food and were being told to apply for food stamps. On that same date, Ms. Davis and Ms. Bland met with some members of the ALP board, including Marchell Gunter and three others. The board was concerned about an unannounced visit by Ms. Davis to an ALP foster home, but did not express concern about the maternity homes. Ms. Davis and Ms. Bland were told that ALP staff should be present for any future record reviews and that a disgruntled employee was "out of get" Ms. Gunter.

10. Ms. Davis attempted to meet with Ms. Gunter in December 2009, but was not able to set up a meeting with her until 1/28/10. Prior to that meeting Ms. Davis learned from a county DSS of a child protective services investigation into a physical argument on 11/24/09 between the staff person at the Manford Road home and client MW, who had come from the Level 3 facility. Respondent is required by rule to be notified of any CPS reports within 72 hours.

11. Attending the 1/28/10 meeting were Ms. Davis, Ms. Taylor, an ALP social worker, Ms. Gunter, and Ms. Bland. They discussed the updated policies and procedures Ms. Gunter had sent to Ms. Davis in November and December 2009, which were not adequate or complete. They reviewed the previous CAP dealing with food and menu issues and the health of a staff member who had been photographed asleep in the maternity home. The CAP had not been completed, and Ms. Gunter agreed to complete all corrective action by 2/02/10, except the doctor's statement regarding the staff person's fitness to work, which would be completed by 2/19/09. Based on the history of continuing unresolved rule violations, Ms. Gunter was informed that Ms. Davis and Ms. Bland would recommend revocation of her maternity home license.

12. Ms. Gunter did not complete the corrective action due on 2/02/10 until 2/23/10 when she sent a proposed CAP on menu and food issues, which did not adequately address the rule violations.

13. Ms. Davis, Ms. Bland and their supervisor, Bob Hensley, discussed ALP's maternity license and determined that the level of rule violations and lack of timely or complete corrective action that had been present since the last relicensing in June 2008 and had escalated

since May 2009 was unacceptable, posing a risk to current and future residents. A Notice of Administrative Action revoking ALP's maternity home license was sent on 2/16/10.

14. Maternity home rules require that meal menus be prepared a week in advance by, or in consultation with, a licensed dietician or nutritionist. 10A NCAC 70K .0204(i). Adequate food must always be provided. 10A NCAC 70K .0207(b)(4). These rules became an issue in May 2009 when Respondent received a complaint of lack of sufficient food at the Fayetteville Road home. During her unannounced visit on 5/18/09, Ms. Davis found very little food in the home, but was told Ms. Gunter would be going food shopping the next day. The only menus present had been developed by the staff and residents. Ms. Gunter responded in a 6/19/09 letter, Respondent's Exhibit 3, that ALP did not use the services of a dietician, that she thought "the WIC program covers the issue of nutrition fully."

15. Tabisha McCoy, a former ALP employee, contacted Pat Tapp at the Lincoln Center about appropriate menus and was given a brochure called "Tips for a Healthy Pregnancy." Ms. McCoy told Ms. Gunter to follow up with Ms. Tapp for help with menus. When contacted by Ms. Davis, Ms. Tapp responded on 6/25/09 that her only contact with ALP consisted of providing the brochure. During another unannounced visit on 8/27/09, Ms. Davis again found very little food at the Fayetteville Road home, the bacon was gray, and meat in the freezer looked freezer burned. There were no fresh vegetables or fruit, although the staff person, Ms. Whitfield, had a fresh fruit basket for her personal use. No menus were present. On 8/17/09 Ms. Gunter had stated she met with dietician Sheila White 8/10/09, and she would work with ALP. Respondent's Exhibit 5. Respondent never received confirmation from Ms. White. On 9/2/09 Ms. Gunter faxed menus from womansday.com and another unknown source without the name of a consulting dietician. Respondent's Exhibit 6.

16. On 10/10/09 Ms. Davis heard from nutritionist Mary Groce that she had been contacted by Ms. Gunter about preparing menus, but there was no confirmation that consultation actually took place. On 10/15/09 Ms. Gunter provided another one week menu and listed Rosemary Everett's name as ALP's dietician. The same day Ms. Davis asked for confirmation that Ms. Everett was now approving menus for ALP. Respondent's Exhibit 7. She did not hear from Ms. Everett until 2/15/10 when she received a faxed letter from Ms. Everette, a Head Start nutritionist, stating, "I am writing to acknowledge my assistance in formulating menus for Ms. Gunter for her clients." Two menus were attached to the letter. One appeared to be the same Woman's Day menus with added words, such as "milk." Ms. Everette said the menus had also been reviewed by a registered dietician, but supplied no name, and did not indicate for how long she had been consulting with ALP. Moreover, the letter was received nine months after the original menu violations were brought to Ms. Gunter's attention. Respondent's Exhibit 12.

17. There were no menus posted when Ms. Davis made another unannounced visit on 10/26/09. Neither Tabisha McCoy, an ALP employee from April 2008 to August 2009, nor Chelce Johnson, a maternity home resident at Fayetteville Street home from 5/28/09 to Labor Day weekend 2009, ever saw menus posted at either home and never saw menus approved by a dietician or nutritionist. In addition, both Ms. McCoy and Ms. Johnson observed insufficient food in the maternity homes. If a resident's WIC vouchers ran out before the end of the month, she would not have milk, juice, or cheese until new vouchers arrived. Ms. Johnson was told she



would have to provide her own food and was told to go to Durham DSS to apply for food stamps. When Ms. Davis challenged this practice, Ms. Gunter stated that Ms. Taylor, the ALP social worker, did not have her approval to write the letter, Respondent's Exhibit 8, that Ms. Johnson must help with her own food.

18. Effective July 1, 2009, each maternity home must have direct care staff present when any resident is present. 10A NCAC 70K .0201(c). No staff was present with resident Chelce Johnson at the Fayetteville Road home during an unannounced visit by Ms. Davis on 8/27/09. Ms. Johnson was told she should leave during the day after Ms. Whitfield left around 8 am and not return until Ms. Love reported for work around 2pm. If Chelce was in the home during those hours, she was unsupervised. On 8/27/09, Ms Taylor arrived at the home about 45 minutes after Ms. Davis, stating she was the direct care staff and had been held up at a school meeting. She had never been designated as direct care staff to Ms. Davis prior to that date, and Ms. Johnson had never seen her act as direct care staff. Ms Taylor testified at the hearing that she became aware of the 7/01/09 rule change regarding staffing when discussing it with Ms. Davis on 8/27/09.

19. In October 2009 Ms. Johnson took pictures with her cell phone of Ms. Whitfield asleep with her head on the kitchen table and while behind the wheel of a car, as well as standing at the kitchen counter. These pictures were taken in the evening before Chelce was supposed to be in her room for the night. Ms Gunter was shown these pictures and acknowledged that Ms. Whitfield had health issues that affected her ability to stay awake during work hours. Ms. McCoy also observed Ms. Whitfield sleeping during work hours and was concerned that she would not drive the residents at night or in bad weather. Respondent asked that ALP provide a doctor's statement that Ms. Whitfield was fit to perform her job as direct care staff and that the doctor first be given her job description and written concerns regarding her sleeping while on duty. Respondent's Exhibit 7 (CAP). Ms. Whitfield testified she took a copy of her job description to her appointment, but could not confirm that any written description of her sleep problems was given to the doctor, and the doctor's report does not mention sleep issues. Respondent's Exhibit 15. Ms. Whitfield was not seen by a doctor until February 2010.

20. On August 27, 2009, Ms. Davis reviewed the personnel file for Syria Blackwell, the only direct care staff at Manford Road home, for compliance with 10A NCAC 70F .0206 and .0207 and found numerous violations. Ms. Blackwell was hired in January 2009 without a valid driver's license and drove residents from January 2009 until May 2009. A criminal record check showing she had been cited for driving with license revoked in September 2008 was in her file, but there was no documentation that Ms. Gunter had determined why the license was revoked. And Ms. Gunter relied on Ms. Blackwell's unsupported statement that her license was actually valid until May 2009 in allowing her to drive until then. Respondent's Exhibits 16-20. Although Ms. Gunter stated Ms. Blackwell did not drive after May 2009, Ms. McCoy observed her driving residents until Ms. McCoy left in August 2009.

21. Ms. Blackwell's personnel file also did not contain the required three references, a check of the NC Sex Offender and Public Protection Registry and a check of the Responsible Individual's List (RIL), which lists those who have been found responsible for the serious neglect or abuse of a child. By rule, all are required prior to employment. A check of the Sex

Offender registry was faxed on 9/2/09, dated 8/28/09, the day after Ms. Davis' visit and nine months after Ms. Blackwell was hired. Respondent's Exhibit 23. No references were provided until the hearing, Petitioner's Exhibit 2, and they are dated from 2006 and 2008, during Ms. Blackwell's first employment with ALP and not when she returned in January 2009. No RIL check was ever provided.

22. Ms. Blackwell's file also contained a medical exam dated May 2009 when by rule she must have one within 12 months prior to employment. In addition, her TB test was not checked on time and had to be redone in September 2009. Petitioner's Exhibit 2, first page. Thus, eight months passed without confirmation that Ms. Blackwell was free from TB while she worked with maternity home residents. In addition, no pre-employment medical exam for Ms. Blackwell's son, who live with her at the home, had been completed; it was also five months late.

23. Numerous rule violations were also found in client files that were checked on 8/27/09. Ms. Davis reviewed the files of the only three maternity home residents in 2009 for compliance with 10A NCAC 70K .0203. Two were missing a summary of the referral source for the admission, background information and an assessment of services needed. All three were missing a complete medical and obstetrical history and exam. The lack of a medical exam and pre-admission summaries were issues addressed in ALP's June 2008 CAP. Also an issue dating from June 2008, a maternity home admission application was not found in one file. Instead, Ms. Gunter substituted the resident's previous Level 3 mental health placement admission. Ms. Taylor testified that she did not know the Level 3 application could not be used as a maternity home application until told by Ms. Davis. None of the three records included a record of medical or dental services received by the residents after placement, visitation or contact plans, or a signed acknowledgement of client rights. Ms. Gunter's response to these missing documents was to state they were somewhere else in the agency, but they were never produced for the Respondent, except for one outdated visitation plan form and acknowledgement of client rights forms that did not relate to maternity home care.

24. Two of the client files were missing timely case plans or out of home family services agreements. This document is created based on a discussion with the client and her family, contains her goals and a specific action plan, and must be developed within 30 days of admission, then reviewed within 60 days and then 90 days. The case plans in these two files were not signed until over 80 days after admission. One was completed by Cumberland DSS for the resident in its custody as her foster care, not maternity home, plan. Ms. Gunter states in her Prehearing Statement (page 11) that these existing case plans can be transferred to the maternity home file, but in fact there must be a maternity home specific plan. At trial, Ms. Taylor provided a case plan for Chelce Johnson that was dated within 30 days of her admission, but was not signed by Chelce or her mother. Ms. Taylor admitted not knowing the mandated time frames for case plans until speaking with Ms. Davis in August 2009, so she had created and backdated that case plan.

25. The same August 2009 client file review revealed that resident MK had been admitted to the maternity home on 7/11/09, from ALP's Level 3 facility, but her baby had been born on 7/09/09. Maternity home rule, 10A NCAC 70K .0204(o), does not allow admission after

the birth of the child. Ms. Gunter stated that the correct admission date was 6/30/09. Respondent's Exhibit 32 is an ALP Consumer Placement Record showing MK's maternity home admission date as 7/11/09. Ms. Gunter then provided Respondent with the same form changed to read 6/30/09. Exhibit 33. Respondent's Exhibit 34 is the Discharge Form from the ALP Level 3 facility with the 7/11/09 discharge date crossed out and replaced with 6/30/09. Both changes include an "error corrected" note beside them. Respondent's Exhibit 35 is a daily social work note from Manford maternity home for MK, dated 7/09/09, that begins "consumer moving to Manford Home." ALP's Level 3 Kent Street home billed for MK at that facility through July 16, 2009. Ms. Gunter states in her Prehearing Statement that she was checking to see how any billing inaccuracy happened. The Court finds by a preponderance of the evidence that MK was admitted to the Manford Maternity Home after her baby was born in violation of Rule 10A NCAC 70K .0204(o).

26. The final rule violations concern the admission of MW to the Manford home in May 2009 and the lack of a critical incident report concerning a fight between MW and Ms. Blackwell in November 2009. MW came to Manford from a Level 3 group home because she could not stay on her medication during her pregnancy. MW was a 17 year old foster child in the custody of Cumberland DSS. She had several mental health diagnoses, including conduct disorder, mood disorder, as well as abuse of marijuana. She had a history of verbal and physical aggression and was on juvenile court probation for indecent liberties with a minor. Ms. Blackwell told Ms. Davis she thought MW was on probation for assault and so testified at the hearing. Neither Ms. Blackwell nor Ms. Gunter knew the conditions of her probation prior to MW's admission. Ms. Davis obtained the order in September 2009, four months after MW's admission, and one of the terms was that she has no contact with children under 15. Ms. Blackwell's 18 month old son lived with her at the home, and MW had unsupervised time with him.

27. Ms. Gunter told Ms. Davis she had informed Ms. Blackwell of MW's mental health issues, but Ms. Blackwell was not able to explain their meaning or how she would handle problems arising from them. Ms. Gunter told Ms. Davis that Ms. Blackwell was an appropriate caregiver for MW, and she would work with her to become more qualified. Beyond her high school education, there was nothing in Ms. Blackwell's personnel file to indicate she was qualified to appropriately care for MW. The risks of serving young women with mental health needs without a thorough assessment and knowledgeable staff had been discussed with Ms. Gunter on 12/10/08 and reiterated in a 12/12/08 letter, Respondent's Exhibit 2. Ms. McCoy testified that Ms. Blackwell did not complete training needed to deal with MW's issues and told her she was overwhelmed, but needed a place to stay. Ms. Blackwell did not receive a salary as the direct care staff at Manford home, but received free room and board.

28. On 11/24/09, MW and Ms. Blackwell began to argue after MW accused Ms. Blackwell of smoking marijuana in the maternity home. MW pulled the phone out of the wall and cut off the power at the circuit box. They pushed each other onto the porch; MW locked Ms. Blackwell out of the house and called the police and Ms. Taylor. Durham DSS received a child protective services report on 11/25/09. By rule 10A NCAC 70K .0210(c)(2), a critical incident report must be sent to the Respondent within 72 hours following a report of abuse or neglect. They are sent by email so they can be electronically stored confidentially. Respondent learned of

the CPS report by accident from DSS in January 2010. No critical incident report was ever received by email or fax. Ms. Gunter states in her Prehearing Statement that the report was sent to the Respondent, but no mention of it was made during any conversations, emails, or meetings with ALP staff after 11/25/09. A critical incident report was brought to the hearing, and Ms. Taylor testified she faxed it to the Respondent, but she had no fax transmittal sheet with the report, like those attached to other exhibits for the Petitioner. The Court finds by a preponderance of the evidence that this critical incident report was not sent to the Respondent by ALP.

29. The undersigned finds that the testimony of Tashiba McCoy was extremely credible and shed great light on the business practices of Petitioner. Her testimony was not refuted by Petitioner, Marchell F. Gunter, who elected not to testify on her own behalf.

### **CONCLUSIONS OF LAW**

1. The office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in the matter. To the extent that the Findings of Fact contain Conclusions of law, or that the Conclusions of law are Findings of Fact, they should be considered without regard to the given labels.

2. Petitioner bears the burden of proof by a preponderance of the evidence that the Respondent Department of Health and Human Services exceeded its authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule when it decided to revoke Petitioner's license to operate a maternity home in Durham County. Petitioner has not carried its burden of proof in this appeal.

3. The undersigned finds as a matter of law that the Petitioner violated the following North Carolina Administrative Code provisions:

- a. 10A NCAC 70K .0201(c)
- b. 10A NCAC 70F .0206 and .0207
- c. 10A NCAC 70K .023
- d. 10A NCAC 70K .0204 (o)
- e. 10A NCAC 70K .0210(c)(2)
- f. 10A NCAC 70K .0204 (i)

4. The undersigned does not find as a matter of law that Petitioner did not provide sufficient food for its residents in violation of 10 NCAC 70K .0207(b)(4).

5. The undersigned finds as a matter of law that the combination of the rule violations set forth in Conclusion of Law #3 above are sufficient justification for Respondent to revoke Petitioner's license to operate a maternity home.

6. The undersigned finds as a matter of law that the testimony of Tashiba McCoy was extremely credible and shed great light on the business practices of Petitioner. Her testimony was not refuted by Petitioner, Marchell F. Gunter, who elected not to testify on her own behalf.

**DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned finds that the Respondent's decision to revoke Petitioner's maternity home license should be **UPHELD.**

**ORDER**

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).


**NOTICE**

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision according to the standards found in G.S. 150B-36(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services.

**IT IS SO ORDERED.**

This the 21<sup>st</sup> day of October, 2010

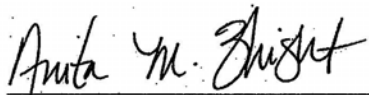
  
Joel L. Webster  
Administrative Law Judge

A copy of the foregoing was mailed to:

Alternative Life Programs Inc.  
Marchell F Gunter  
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Durham, NC 27717  
PETITIONER

Jane Rankin Thompson  
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ATTORNEY FOR RESPONDENT

This the 25th day of October, 2010.



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Filed

STATE OF NORTH CAROLINA

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IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF HYDE

Office of  
Administrative Hearings

08 EHR 1067

U.S. Department of the Interior (DOI), )  
Fish and Wildlife Service (FWS) )  
Petitioner, )

v. )

N.C. Department of Environment and )  
Natural Resources, Division of Air )  
Quality (NCDENR) )  
Respondent, )

and )

PCS Phosphate Company, Inc. (PCS )  
Phosphate) )  
Respondent Intervenor. )

**DECISION**

In this contested case, the United States Department of the Interior (DOI), Fish and Wildlife Service (FWS), has appealed the decision by the North Carolina Department of Environment and Natural Resources, Division of Air Quality (NCDENR), to issue PSD Air Permit, No. 04176T37 to the PCS Phosphate Company, Inc. (PCS Phosphate) on January 4, 2008. The permit was issued under North Carolina's Prevention of Significant Deterioration (PSD) regulatory program, and authorized PCS Phosphate to make major modifications to its phosphate fertilizer manufacturing facility located near Aurora, North Carolina.

On January 22, 2009, an administrative hearing on cross-motions for summary

judgment was held. On March 5, 2009, a Decision was issued by the Administrative Law Judge, which included findings of fact and conclusions of law. The Decision granted the FWS' Motion for Summary Judgment.

The Decision was presented to the Environmental Management Commission for a final agency decision on July 9, 2009. The Commission issued an Order, dated July 17, 2009, stating "the case is remanded to the Administrative Law Judge with instructions to enter a decision recommending dismissal of the case consistent with the finding of mootness stated herein." When the Commission's Order was transmitted to the Administrative Law Judge, the NCDENR filed a Motion to Dismiss for Mootness on September 16, 2009. The Administrative Law Judge requested briefing on the mootness issue and the NCDENR and the FWS filed briefs. After receiving the parties' briefs, the Administrative Law Judge pointed out that he had determined that the case was not moot prior to rendering his Decision Granting Summary Judgment. He further determined that pursuant to statute the agency could only remand for a hearing. Consequently, the case was set for hearing. The NCDENR and the FWS agreed to a Stipulation of Facts "in lieu of the hearing scheduled for March 1, 2010", and submitted proposed decisions with supporting briefs. Because the NCDENR cited to the transcript of a discovery deposition as well as the stipulated facts in its filings, an administrative hearing was scheduled and held on July 13 and 14, 2010, in Raleigh, North Carolina.

#### ISSUES

1. Whether the NCDENR violated North Carolina's law and regulations by failing to notify the FWS of the PCS Phosphate pre-application meeting and of



the filing of PCS Phosphate's permit application?

2. Whether the NCDENR violated North Carolina's law and regulations by failing to timely furnish the Federal Land Manager with a copy of all information relevant to the permit application, including an analysis provided by the source of the potential impact of the proposed source on visibility at the Swanquarter Wilderness Area?
3. Whether the NCDENR violated North Carolina's law and regulations by failing to provide or require PCS Phosphate to provide the Federal Land Manager (FLM) with an appropriate and meaningful analysis of the potential impact of the proposed source on visibility at the Swanquarter Wilderness Area?
4. Whether the NCDENR violated North Carolina's law and regulations by issuing the permit without giving the FLM a valid opportunity to make a determination of whether the emissions from the proposed source would have an adverse effect on Swanquarter, and thus without considering the FLM's determination?

#### **STATUTES AND REGULATIONS AT ISSUE**

The federal Clean Air Act, 42 USC §7401, et seq. (CAA); EPA regulations, 40 CFR Part 51, and Appendix W.

North Carolina regulations at 15A NCAC 2D.0530.

#### **CASE CITATIONS**

*American Corn Growers Ass'n v. EPA*, 351 U.S. App. D.C. 351; 291 F.3d 1 (D.C.

Cir. 2000) (Corn Growers); *Util. Air Regulatory Group v. EPA*, 471 F.3d 1333 (2006); *Center for Energy and Economic Development v. EPA*, 398 F.3d 653 (2005); *In re: Prairie State Generating Company PSD Permit No. 189808AAB*, PSD Appeal No. 05-05, slip op. at 148 (EAB Aug. 24, 2006) (Prairie State); *aff'd sub nom, Sierra Club v. U.S. EPA*, 499 F.3d 653 (7<sup>th</sup> Cir. 2007); *In re Knauf Fiber Glass, GmbH*, 8 E.A.D. 121, 155 (EAB 1999) (In re Knauf);

### STIPULATED FACTS

1. The PCS Phosphate manufacturing facility at issue is located 32 km west of the Swanquarter Wilderness Area, a federal Class 1 air quality area.
2. The DOI's agency, the FWS, manages Swanquarter, and the Assistant Secretary for Fish and Wildlife and Parks is the Federal Land Manager (FLM).
3. At its manufacturing facility near Aurora, North Carolina, PCS Phosphate conducts a phosphate ore mining operation; refines the ore and mixes it with sulfuric acid to produce phosphoric acid.
4. The sulfuric acid used in the manufacturing process is produced on-site by a process that involves burning sulfur.
5. On October 31, 2005, PCS Phosphate submitted the subject permit application to the NCDENR.
6. The subject permit will allow PCS Phosphate to construct a new sulfuric acid plant to replace two existing on-site plants.
7. The new plant will produce over 4,500 tons of sulfuric acid a day, an increase of over 1,000 tons a day over the present output of the existing plants.

8. The resulting net air pollution emissions increases from the modified plant are 49.5 tpy nitrogen oxides, and 44.3 tpy of sulfuric acid mist.
9. The NCDENR did not send the EPA a copy of the application when it was filed.
10. The EPA did not notify the FWS of the application when it was filed.
11. The FWS did not receive a copy of the application when it was filed.
12. The NCDENR does not require the applicant to prepare the AQRV (visibility) modeling if the applicant does not exceed the Class 1 increment.
13. The AQRV (visibility) modeling protocol submitted by the applicant to the NCDENR addressed AQRV (visibility) modeling for Class 1 areas and used a background of current conditions.
14. The FWS first became aware that current conditions had been used as the background for AQRV (visibility) modeling in the PCS Phosphate permit application when it was sent a copy of the permit application and associated materials on November 26, 2007.
15. The FWS submitted comments on December 5, 2007, two days before the comment period deadline.
16. One of the FWS comments was that "the incorrect background visual range" was used in the AQRV (visibility) modeling.
17. The NCDENR did not require the permit applicant to use natural conditions as the background for the AQRV (visibility) modeling that it performed for this permit application.
18. The NCDENR does not require PSD permit applicants to use natural conditions.

as the AQRV (visibility) modeling background.

19. The Federal Land Manager has an affirmative responsibility to protect AQRVs (including visibility) in Class 1 areas under the Clean Air Act.
20. When the Federal Land Manager makes an impact determination it uses natural conditions as background for comparison.

#### **FINDINGS OF FACT**

1. The FWS was not notified of the pre-application meeting and contacts between PCS Phosphate and the NCDENR.
2. Typically, air quality modeling is discussed at the pre-application meeting.
3. A modeling protocol is usually agreed upon at the pre-application meeting, in which the types of air quality models and the settings to be used are agreed upon.
4. The NCDENR interprets the term "may affect" found in its regulation at 15 NCAC 2D.0530(t) to be synonymous with "has the potential to exceed a Class I increment".
5. During the pre-application meeting, it is not possible for the NCDENR to make a determination of whether a Class I increment will be exceeded.
6. When the PCS Phosphate permit was issued, the NCDENR did not notify the FWS "[b]ecause it wasn't required in the PSD regulations".
7. PCS Phosphate did not submit revised modeling to satisfy the FWS' concern that "natural conditions" was not used as the background visual range in its model because the

NCDENR made it known to PCS Phosphate's consultants that the NCDENR's policy was to use "current conditions" instead.

8. The NCDENR's position is that it has no duty to notify a Federal Land Manager of either a pre-application meeting or the filing of a PSD permit application, or to send a Federal Land Manager a draft permit and preliminary determination, unless a Class 1 increment will be exceeded.

9. The NCDENR has never had a PSD permit issued with a Class 1 increment being exceeded, and in only "a handful of times" has a permit application initially shown the potential for a Class 1 increment being exceeded.

10. The NCDENR Division of Air Quality has taken the position that the test of whether or not visibility in a Class 1 area is going to be affected is the same as the test of whether or not a Class 1 increment is going to be exceeded.

11. In order to avoid being put into a "difficult position", the NCDENR has a policy of advising PSD permit applicants to use "current conditions" as the background for the modeling done to determine whether a new source or major modification will have an adverse impact on visibility at a Class 1 area, rather than "natural conditions" as requested by the Federal Land Managers.

12. The NCDENR, citing to 40 CFR 51.166(p)(3) for its authority, takes the position that the NCDENR decides what the adverse impact determination should look like, rather than the Federal Land Manager.

13. The FWS has only appealed five PSD permits in the past 30 years, and two of them were issued by North Carolina.

14. The document known as FLAG was developed because of “request[s] from permitting authorities as well as permit applicants for the Federal Land Managers (FLMs) to have a more consistent and transparent process in evaluating air quality-related values.”

15. FLAG is a guidance document and an agreement between the National Park Service, the Fish and Wildlife Service, and the Forest Service as Federal Land Managers, on how the FLMs will review permit applications and assess air quality impacts on air quality-related values (AQRVs) of the lands that they administer.

16. In the context of the PSD permitting process, FLAG is the guidance that the FLMs provide explaining how PSD permit applicants should perform the analysis required by the Clean Air Act in order to provide the FLMs with the information they need to make an informed decision on whether impacts expected to occur from the permitted source would cause an adverse impact on AQRVs at a Class 1 area.

17. The FLMs would perform the same function of reviewing PSD permit applications and making adverse impact determinations and would use the same standards for review if FLAG did not exist.

18. As expressed in FLAG, the FLMs have decided that “natural conditions” is the appropriate background visual range for visibility modeling used to determine whether

emissions from a proposed source will have an adverse impact on visibility at a Class 1 area.

19. For the Swanquarter Wilderness Area, "natural conditions" for the background visual range is 182 kilometers.

20. The distances in kilometers used by the FLMs as "natural conditions" for the background visual range for visibility models is the best science currently available and was developed in the NAPAP report, which is a report provided to Congress by a number of research scientists.

21. The Class 1 increment only addresses three pollutants: SO<sub>2</sub>, NO<sub>2</sub> and PM-10 particulate matter.

22. The pollutants that effect visibility are usually different from those covered by the Class 1 increment and include SO<sub>4</sub> and NO<sub>3</sub>.

23. Visibility at a Class 1 area can be adversely affected despite the emissions from a source not exceeding the Class 1 increment.

24. An inverse relationship can exist between the Class 1 increment and the effect that emissions from a source have on visibility at a Class 1 area where as the increment pollutants are decreased the pollutants that have an adverse affect on visibility increase.

**CONCLUSIONS OF LAW**

1. The Office of Administrative Hearings has jurisdiction to hear this matter. The case should not be dismissed for mootness. “The general rule that an appeal presenting a moot question will be dismissed is subject to some exceptions, one of which is that where the question involved is a matter of public interest the court has the duty to make a determination.” 25 NC App 394, 397. Keeping our air as clean as possible is certainly a matter of public interest. Also, the issues in this case are “capable of repetition”. Furthermore, upon failing to adopt my former decision granting summary judgment to Petitioner, the agency only had statutory authority to remand for a hearing which I have conducted. To the extent that my Findings of Fact contain Conclusions of Law, or that my Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.
2. The U.S. Environmental Protection Agency (EPA) has the authority under the CAA to publish governing regulations and to approve and oversee state regulatory PSD programs.
3. The North Carolina PSD permitting program is implemented by regulations at 15A NCAC 2D.0530 and is modeled after and incorporates by reference EPA regulations, including regulations at 40 CFR 51.300 *et seq.* and 40 CFR 51.166.
4. The “purpose” of North Carolina’s rule, 15A NCAC 2D.0530, as stated in subsection (a), “is to implement a program for the prevention of significant deterioration of air quality as required by 40 CFR 51.166.”



5. North Carolina's regulations at 15A NCAC 2D.0530(t) require the NCDENR to "provide written notification to all affected Federal Land Managers within 30 days of receiving the permit application or within 30 days of receiving advance notification of an application" when a proposed source or major modification "may affect" a Class 1 area.

6. The term "may affect" in 15A NCAC 2D.0530(t) is not otherwise defined in North Carolina's regulations; therefore, the interpretation given that term by the EPA for its counterpart regulation governs. EPA's position is that:

If a proposed major source or major modification may affect a Class 1 area, the Federal PSD regulations require the reviewing authority to provide written notification of any such proposed source to the FLM (and the USDI and USDA officials delegated permit review responsibility). The meaning of the term "may affect" is interpreted by EPA policy to include all major sources or major modifications which propose to locate within 100 kilometers (km) of a Class 1 area. Also, if a major source proposing to locate at a distance greater than 100 km is of such size that the reviewing agency or FLM is concerned about potential emission impacts on a Class 1 area, the reviewing agency can ask the applicant to perform an analysis of the source's potential emissions impacts on the Class 1 area. This is because certain meteorological conditions, or the quantity or type of air emissions from large sources locating further than 100 km, may cause adverse impacts on a Class 1 area. A reviewing agency should exclude no major new source or major modification from performing an analysis of the proposed source's impact if there is some potential for the source to affect a Class 1 area. EPA's New Source Review Manual at E.16, page 254. See also Prairie State p. 148; In re Knauf p. 155(lexis p. 78).

7. The notification required by 15A NCAC 2D.0530(t) and the visibility determination made by the FLM under the authority of 15A NCAC 2D.0530(t)(2) are not related to or contingent upon the analysis performed to determine whether the proposed source will consume a Class 1 increment.

8. The NCDENR failed to notify the FWS as required by 15A NCAC 2D.0530(t) of the pre-application meeting and of the filing of the permit application.
9. The NCDENR failed to comply with 15A NCAC 2D.0530(t) by failing to timely furnish the FWS a copy of all information relevant to the permit application, including an appropriate analysis provided by the source of the potential impact of the proposed source on visibility at Swanquarter.
10. North Carolina's PSD regulations at 15A NCAC 2D.0530(g), incorporating by reference 40 CFR 51.166(n), require "the owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under procedures established in accordance with this section."
11. The visibility analysis required by 15A NCAC 2D.0530(t) is for the FLM to use in making a determination of whether or not emissions from the proposed source will have an adverse impact on visibility at the Class 1 area.
12. The FLMs have been given an obligation to protect the air quality at Class 1 areas by reviewing PSD permit applications submitted by sources which may affect the Air Quality Related Values at a Class 1 area, and are required by both Federal and State regulations to use natural conditions as the background for comparison when making adverse impact determinations for visibility.
13. North Carolina's PSD regulations do not address what background visual range to use for the visibility analysis required by 15A N.C.A.C. 2D.0530(t). The NCDENR has decided to implement a policy of using "current conditions" as the

background visual range instead of “natural conditions” which the FLMs have agreed to use in the Federal Land Managers’ Air Quality Related Values Workgroup report (FLAG).

14. Using a background visual range of “natural conditions” is consistent with the “national [visibility] goal of preventing any future, and remedying any existing, impairment of visibility in mandatory Class 1 Federal areas which impairment results from manmade air pollution”. 40 CFR 51.300(a).
15. Using a background visual range of “natural conditions” is required by both Federal and State regulations when the FLMS are fulfilling their duty to determine whether the proposed source or modification would have an adverse impact on visibility at a Class 1 area. 40 CFR 51.166(p)(2) and 51.307(a)(3). See also 40 CFR 51.301.
16. Because the visibility analysis required by 15A NCAC 2D.0530(t) is for the use of the FLMs, and the FLMs are required to use “natural conditions” as a background visual range for visibility determinations, the decision by the NCDENR to implement a policy that “current conditions” should be used as the background visual range in the visibility analysis required by 15A NCAC 2D.0530(t) is erroneous. Also, since the NCDENR policy has not been promulgated as a rule, it is invalid.
17. By furnishing the FWS with a visibility analysis that does not contain the data that the FWS needs to make its visibility determination, the NCDENR has failed to fulfill its obligation under 15A NCAC 2D.0530(t).

18. The NCDENR failed to furnish or to require PCS Phosphate to furnish the FWS with a visibility analysis that contained an appropriate and meaningful analysis of the potential impact of the proposed source on visibility at Swanquarter as required by 15A NCAC 2D.0530(t), thus preventing the FWS from having an opportunity to make its determination of whether the emissions from the proposed source would have an adverse impact on visibility at Swanquarter.
19. Because of its actions, the NCDENR violated the terms of 15A NCAC 2D.0530(t) and issued the subject PSD permit to PCS Phosphate without reviewing a determination by the FWS of whether the emissions from the proposed source would have an adverse impact on visibility at Swanquarter.
20. Subsequent to the subject permit being issued and to the FWS being furnished by PCS Phosphate with visibility modeling using natural conditions as the background, the FWS exercised its authority under 15A NCAC 2D.0530(t) and determined that the emissions from the proposed source would not have an adverse impact on visibility at Swanquarter, which determination validated the issuance of the permit.

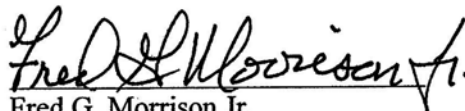
#### **DECISION**

Based on the forgoing Findings of Fact and Conclusions of Law, it is hereby decided that judgment be entered for the Petitioner and that this appeal be sustained. It is additionally decided that the subject permit not be suspended or revoked because the FWS has determined that emissions from the proposed source will not have an adverse impact on the Class I area.

**NOTICE**

The agency that will make the final decision in this contested case is the North Carolina Environmental Management Commission. The Agency is required to give each party an opportunity to file exceptions to and written arguments concerning this Decision. The Agency is further required to serve a copy of the Final Agency Decision on all parties or their attorneys of record and on the Office of Administrative Hearings.

This the 12~~th~~ day of November, 2010.

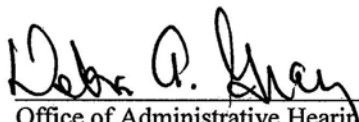
  
Fred G. Morrison Jr.  
Senior Administrative Law Judge

A copy of the foregoing was mailed to:

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This the 12<sup>th</sup> day of November, 2010.

  
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