

NORTH CAROLINA REGISTER

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February 15, 2016

I. EXECUTIVE ORDERS	
Executive Order No. 85	1719 – 1720
Executive Order No. 86	1721 – 1723
II. IN ADDITION	
Building Code Council – Notice of Rulemaking Proceedings	1724 – 1728
III. PROPOSED RULES	
Administrative Hearings, Office of	
Rules Review Commission	1821 – 1823
Environmental Quality, Department of	
Public Health, Commission for	1803 – 1818
Environmental Management Commission	1730 – 1803
Health and Human Services, Department of	
Radiation Protection Commission	1729 – 1730
Occupational Licensing Boards and Commissions	
Dental Examiners, Board of	1818 – 1821
IV. RULES REVIEW COMMISSION	1824 – 1843
V. CONTESTED CASE DECISIONS	
Index to ALJ Decisions	1844 – 1852
Text of ALJ Decisions	
15 SAP 00750	1853 – 1856

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2016 – December 2016

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment Period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 th day from publication in the Register
30:13	01/04/16	12/08/15	01/19/16	03/04/16	03/21/16	05/01/16	01/2017	09/30/16
30:14	01/15/16	12/21/15	01/30/16	03/15/16	03/21/16	05/01/16	01/2017	10/11/16
30:15	02/01/16	01/08/16	02/16/16	04/01/16	04/20/16	06/01/16	01/2017	10/28/16
30:16	02/15/16	01/25/16	03/01/16	04/15/16	04/20/16	06/01/16	01/2017	11/11/16
30:17	03/01/16	02/09/16	03/16/16	05/02/16	05/20/16	07/01/16	01/2017	11/26/16
30:18	03/15/16	02/23/16	03/30/16	05/16/16	05/20/16	07/01/16	01/2017	12/10/16
30:19	04/01/16	03/10/16	04/16/16	05/31/16	06/20/16	08/01/16	01/2017	12/27/16
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31:01	07/01/16	06/10/16	07/16/16	08/30/16	09/20/16	11/01/16	01/2017	03/28/17
31:02	07/15/16	06/23/16	07/30/16	09/13/16	09/20/16	11/01/16	01/2017	04/11/17
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31:05	09/01/16	08/11/16	09/16/16	10/31/16	11/21/16	01/01/17	01/2017	05/29/17
31:06	09/15/16	08/24/16	09/30/16	11/14/16	11/21/16	01/01/17	01/2017	06/12/17
31:07	10/03/16	09/12/16	10/18/16	12/02/16	12/20/16	02/01/17	05/2018	06/30/17
31:08	10/17/16	09/26/16	11/01/16	12/16/16	12/20/16	02/01/17	05/2018	07/14/17
31:09	11/01/16	10/11/16	11/16/16	01/03/17	01/20/17	03/01/17	05/2018	07/29/17
31:10	11/15/16	10/24/16	11/30/16	01/17/17	01/20/17	03/01/17	05/2018	08/12/17
31:11	12/01/16	11/07/16	12/16/16	01/30/17	02/20/17	04/01/17	05/2018	08/28/17
31:12	12/15/16	11/22/16	12/30/16	02/13/17	02/20/17	04/01/17	05/2018	09/11/17

This publication is printed on permanent, acid-free paper in compliance with G.S. 125-11.13

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) text of proposed rules;
- (3) text of permanent rules approved by the Rules Review Commission;
- (4) emergency rules
- (5) Executive Orders of the Governor;
- (6) 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; and
- (7) 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 rul



State of North Carolina

PAT McCRORY
GOVERNOR

January 20, 2016

EXECUTIVE ORDER NO. 85

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

Section 1.

I hereby declare that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in the State of North Carolina due to the approach and potential impacts of upcoming winter storms. The emergency area as defined in N.C.G.S. §§ 166A-19.3(7) and N.C.G.S. 166A-19.20(b) is the State of North Carolina.

Section 2.

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

Section 3.

I delegate to Frank L. Perry, the Secretary of Public Safety, or his designee, all power and authority granted to me and required of me by Article 1A of Chapter 166A of the General Statutes for the purpose of implementing the State's Emergency Operations Plan and deploying the State Emergency Response Team to take the appropriate actions as is necessary to promote and secure the safety and protection of the populace in North Carolina.

Section 4.

Further, Secretary Perry, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. § 143B-602.

Section 5.

I further direct Secretary Perry or his designee, to seek assistance from agencies of the United States Government as may be needed to meet the emergency and seek reimbursement for costs incurred by the State of North Carolina in responding to this emergency.

Section 6.

I hereby order this declaration: (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 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 declaration.

Section 7.

This declaration does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).

Section 8.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. §§ 75-37 and 75-38 in the declared emergency area.

Section 9.

This declaration is effective immediately and shall remain in effect until rescinded.

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 twentieth day of January in the year of our Lord two thousand and sixteen, and of the Independence of the United States of America the two hundred and forty.


Pat McCrory
Governor



ATTEST:


Elaine F. Marshall
Secretary of State



State of North Carolina

PAT McCRORY

GOVERNOR

January 20, 2016

EXECUTIVE ORDER NO. 86

TEMPORARY SUSPENSION OF MOTOR VEHICLE REGULATIONS TO ENSURE RESTORATION OF UTILITY SERVICES AND TRANSPORTING ESSENTIALS

WHEREAS, due to the approach and potential impacts of upcoming winter storms, vehicles bearing equipment and supplies for utility restoration and debris removal, carrying essentials such as food and medicine, transporting livestock and poultry and feed for livestock and poultry need to be moved on the highways of North Carolina; and

WHEREAS, I have declared that a state of emergency as defined in N.C.G.S. §§ 166A-19.3(6) and 166A-19.3(19) exists in North Carolina due to the likely impact of these winter storms; and

WHEREAS, the prompt restoration of utility services and uninterrupted supply of electricity, gasoline and other essentials in commerce to citizens of North Carolina is essential to their safety and well-being; and

WHEREAS, under the provisions of N.C.G.S. § 166A-19.30(b)(3) the Governor, with the concurrence of the Council of State, may regulate and control the flow of vehicular traffic and the operation of transportation services; and

WHEREAS, with the concurrence of the Council of State, I have found that vehicles bearing equipment and supplies for utility restoration, carrying essentials and for debris removal must adhere to the registration requirements of N.C.G.S. § 20-86.1 and 20-382, fuel tax requirements of N.C.G.S. § 105-449.47, and the size and weight requirements of N.C.G.S. §§ 20-116, 20-118, and 20-119. I have further found that citizens in this state may suffer imminent widespread damage within the meaning of N.C.G.S. § 166A-19.3(3) and N.C.G.S. § 166A-19.21(b); and

WHEREAS, pursuant to N.C.G.S. § 166A-19.70(g) on the recommendation of the Commissioner of Agriculture, upon a finding that there is an imminent threat of severe economic loss of livestock or poultry, the Governor shall direct the Department of Public Safety to temporarily suspend weighing those vehicles used to transport livestock and poultry and feed for livestock and poultry; and

WHEREAS, 49 CFR § 390.23 allows the Governor of a state to suspend the rules and regulations under 49 CFR Parts 390-399 for up to 30 days if the Governor determines that an emergency condition exists; and

WHEREAS, under N.C.G.S. § 166A-19.70, the Governor may declare that the health, safety, or economic well-being of persons or property requires 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, feed for livestock and poultry, transporting livestock and poultry and for vehicles used in the restoration of utility services.

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 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 Public Safety pursuant to N.C.G.S. § 20-381.

Section 2.

The Department of Public Safety in conjunction with the Department of Transportation shall waive certain size and weight restrictions and penalties arising under N.C.G.S. §§ 20-116, 20-118, and 20-119. This order also waives certain registration requirements and penalties arising under N.C.G.S. §§ 20-86.1, 20-382, 105-449.47, and 105-449.49 for vehicles transporting equipment and supplies for the restoration of utility services, carrying essentials, and for equipment for any debris removal. The Department of Public Safety shall suspend weighing pursuant to N.C.G.S. § 20-118.1 vehicles used to transport livestock and poultry and carrying livestock and poultry feed in the emergency area.

Section 3.

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 and vehicle combination exceeds 12 feet in width and a total overall vehicle combination length of 75 feet from bumper to bumper.
- d. Vehicles and vehicle combinations subject to exemptions or permits by authority of this Executive Order shall not be exempt from the requirement of having 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 loads exceeding 8 feet 6 inches in width.

Section 4.

Vehicles referenced under Sections 2 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 5.

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 6.

The waiver of regulations under Title 49 of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) does not apply to the CDL and Insurance Requirements. This waiver shall be in effect for 30 days or the duration of the emergency, whichever is less.

Section 7.

The North Carolina State Highway Patrol shall enforce the conditions set forth in Sections 1 through 6 of this Executive Order in a manner which will implement these provisions 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 bearing equipment and supplies for utility restoration, debris removal, carrying essentials in commerce, carrying feed for livestock and poultry, or transporting livestock and poultry in the State of North Carolina.

Section 9.

This Executive Order does not prohibit or restrict lawfully possessed firearms or ammunition or impose any limitation on the consumption, transportation, sale or purchase of alcoholic beverages as provided in N.C.G.S. § 166A-19.30(c).


Section 10.

Pursuant to N.C.G.S. § 166A-19.23, this declaration triggers the prohibition against excessive pricing as provided in N.C.G.S. §§ 75-37 and 75-38 in the declared emergency area.

Section 11.


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 twentieth day of January in the year of our Lord two thousand and sixteen, and of the Independence of the United States of America the two hundred and forty.


Pat McCrory
Governor



ATTEST:


Elaine F. Marshall
Secretary of State

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Electrical, Building, Plumbing, and Residential Codes.*

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

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

Public Hearing: **Tuesday, March 15, 2016, 9:00AM, NC Department of Insurance, 322 Chapanoke Road, Classroom Downstairs, Raleigh, NC 27603.** *Comments on both the proposed rule and any fiscal impact will be accepted.*

Comment Procedures: *Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comments on both the proposed rule and any fiscal impact will be accepted. Comment period expires on April 15, 2016.*

Statement of Subject Matter:

1. Request by Darrell Johnson, representing himself, to amend the 2012 NC Plumbing Code, Section 416.5 as follows:

416.5. Tempered water for public hand-washing facilities. ~~Deleted.~~ When hot water is provided to a public hand-washing facility, such water shall be tempered water delivered through an approved water-temperature limiting device that conforms to ASSE 1070 or CSA B125.3.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This rule is to specify standards to be used temper hot water, where provided, to prevent scalding at public hand-washing facilities.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

2. Request by Rick Baxley, P.E., representing Brick Industry Association (BIA), to amend the 2012 NC Residential Code, Section R703.7.4.2 as follows:

R703.7.4.2 Air space. The veneer shall be separated from the sheathing by an air space of a minimum of a nominal 1 inch (25 mm) but not more than 4 ½ inches (114 mm). An air space that provides drainage and contains mortar from construction shall be permitted.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This proposal is to acknowledge that the airspace may contain some mortar from construction as long as it provides drainage.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

3. Request by Bryan D. Robinson/Leon Skinner, representing the City of Raleigh Development Services, to amend the 2012 NC Building Code, Section 1109.2.1 as follows:

1109.2.1 Family or assisted-use toilet and bathing rooms. In assembly and mercantile occupancies, an *accessible* family or assisted-use toilet room shall be provided where an aggregate of six or more female water closets is required. In buildings of mixed occupancy, only those water closets required for the assembly or mercantile occupancy shall be used to determine the family or assisted-use toilet room requirement. In recreational facilities where separate-sex bathing rooms are provided, an *accessible* family or assisted-use bathing room shall be provided. Fixtures located within family or assisted-use toilet and bathing rooms shall be included in determining the number of fixtures provided in an occupancy.

Exceptions:

1. Where each separate-sex bathing room has only one shower or bathtub fixture, a family or assisted-use bathing room is not required.

2. In an Assembly occupancy that meets the definition of a nightclub in 902.1, the family or assisted-use toilet room is not required.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – The purpose of this amendment is to eliminate the requirement for an assisted use toilet room in a nightclub. These toilets are typically installed to provide assistance to small children and elderly adults.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

4. Request by Bill Collins, representing Baker Residential, to amend the 2012 NC Residential Code, Section R905.10 as follows:

R905.10 Metal roof panels. The installation of metal roof panels shall comply with the provisions of this section. Ridge/Hip Flashing and sealant shall be installed per the manufacturer's instructions.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This purpose of this proposal is to ensure the highest possible quality of workmanship and to emphasize the manufacturers' installation instructions for local code enforcement officials.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

5. Request by Clint Latham, representing the NC Plumbing Inspector's Association, to amend the 2012 NC Plumbing Code, Section 202 as follows:

~~**INDIRECT WASTE RECEPTOR.** A plumbing fixture designed to collect and dispose of liquid waste from other plumbing fixtures, plumbing equipment or appliances that are required to discharge to the drainage system through an air gap. The following types of fixtures fall within the classification of indirect liquid waste receptors: floor sinks, mop receptors, service sinks and standpipe drains with integral air gaps.~~

WASTE RECEPTOR. A floor sink, standpipe, hub drain or a floor drain that receives the discharge of one or more indirect waste pipes.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This 2015 IPC definition is a terminology update that applies to all waste receptors for indirect waste.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

6. Request by Clint Latham, representing the NC Plumbing Inspector's Association, to amend the 2012 NC Plumbing Code, Section 802.3 as follows:

~~**802.3 Waste receptors.** Every waste receptor shall be of an approved type. A removable strainer or basket shall cover the waste outlet of waste receptors. Waste receptors shall be installed in ventilated spaces. Waste receptors shall not be installed in bathrooms or toilet rooms or in any inaccessible or unventilated space such as a closet or storeroom. Ready access shall be provided to waste receptors. For other than hub drains that receive only clear-water waste and standpipes, a removable strainer or basket shall cover the waste outlet of waste receptors. Waste receptors shall not be installed in concealed spaces. Waste receptors shall not be installed in plenums, crawl spaces, attics, interstitial spaces above ceilings and below floors. Ready access shall be provided to waste receptors.~~

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This proposal reflects the intent for waste receptor uses and allowable locations.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

7. Request by Clint Latham, representing the NC Plumbing Inspector’s Association, to amend the 2012 NC Plumbing Code, Section 802.3.2 as follows:

802.3.2 ~~Open hub waste receptors.~~ Hub drains. A hub drain ~~Waste receptors~~ shall be permitted in the form of a hub or pipe extending not less than 1 inch (25.4 mm) above a water-impervious floor ~~and are not required to have a strainer.~~

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – This is a terminology update that applies to all waste receptors for indirect waste.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

8. Request by Tim Fowler, NC Building Code Council, to amend the 2014 NEC, Section 338.10 (B)(4)(a) as follows:

(4) Installation Methods for Branch Circuits and Feeders.

Remove existing code language:

~~(a) Interior Installations. In addition to the provisions of this article, Type SE service entrance cable used for interior wiring shall comply with the installation requirements of Part II of Article 334, excluding 334.80.~~

~~Where installed in thermal insulation the ampacity shall be in accordance with the 60°C (140°F) conductor temperature rating. The maximum conductor temperature rating shall be permitted to be used for ampacity adjustment and correction purposes, if the final derated ampacity does not exceed that for a 60°C (140°F) rated conductor.~~

Add new code language:

(a) Interior Installations. In addition to the provisions of this article, Type SE service entrance cable used for interior wiring shall comply with the installation requirements of Part II of Article 334, excluding 334.80.

For Type SE cable with ungrounded conductor sizes 10 AWG and smaller, where installed in thermal insulation, the ampacity shall be in accordance with 60°C (140°F) conductor temperature rating.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – The purpose of this amendment is to update this requirement to the 2017 NEC.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with no net decrease/increase in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

9. Request by Leah Barrett/Wade White, NC Building Code Council, to amend the 2014 NEC, Section 210 (B)(4)(a) as follows:

210.12 (B)

(2) A listed outlet branch-circuit type AFCI located at the first receptacle outlet of the existing branch circuit.

Exception: AFCI protection shall not be required where the extension of the existing conductors is not more than ~~4.8 m (6 ft)~~ 15.24 m (50 ft) and does not include any additional outlets or devices.

Motion/Second/Approved – The request was granted. The proposed effective date of this rule is September 1, 2016 (earliest through RRC), unless the BCC assigns a delayed effective date (January 1, 2017).

Reason Given – The purpose of this amendment is to provide a more reasonable maximum length for work on existing circuits.

Fiscal Statement – This rule is anticipated to provide equivalent compliance with a minimal decrease in cost. This rule is not expected to either have a substantial economic impact or increase local and state funds. A fiscal note has not been prepared.

NOTICE:

Appeals and Interpretations of the North Carolina State Building Codes are published online at the following link.

http://www.ncdoi.com/OSFM/Engineering_and_Codes/Default.aspx?field1=Code_Interpretations&user=Code_Enforcement_Resources

NOTICE:

Objections and Legislative Review requests may be made to the NC Office of Administrative Hearings in accordance with G.S.

150B-21.3(b2) after Rules are adopted by the Building Code Council.

<http://www.ncoah.com/rules/>

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days. Statutory reference: G.S. 150B-21.2.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Radiation Protection Commission intends to adopt the rule cited as 10A NCAC 15 .1701.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://www2.ncdhhs.gov/dhsr/ruleactions.html>

Proposed Effective Date: June 1, 2016

Public Hearing:

Date: April 8, 2016

Time: 10:00 a.m.

Location: Dorthea Dix Campus, Wright Building, Room 131, 1201 Umstead Drive, Raleigh, NC 27603

Reason for Proposed Action: North Carolina entered into an agreement with the US Atomic Energy Commission (currently the US Nuclear Regulatory Commission or NCR) on August 1, 1964. This agreement provided for the discontinuance of the US Atomic Energy Commission's regulatory authority and responsibility within the state of NC as long as the Commission determined NC's program for radiation protection was compatible with federal regulations and the program was adequate to protect public health and safety. NC became an Agreement State as a result of the agreement signed by the governor. The agreement requires NC to continue to maintain compatibility with federal NRC radiation protection rules and failure could result in NC losing its Agreement State status with the NRC. The federal regulations for security practices for entities that use radioactive materials for category 1 and category 2 sources of radiation were recently revised in 10 CFR 37. The proposed rule adoption that is compatible with these federal regulations on category 1 and category 2 radioactive materials sources usage security practices is necessary to ensure the safety of NC citizens and for NC to remain an Agreement State with the NRC.

Comments may be submitted to: Nadine Pfeiffer, 2701 Mail Service Center, Raleigh, NC 27699-2700, email DHSR.RulesCoordinator@dhhs.nc.gov

Comment period ends: April 15, 2016

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 (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 15 – RADIATION PROTECTION

SECTION .1700 – PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

10A NCAC 15 .1701 ADDITIONAL REQUIREMENTS FOR LICENSEES POSSESSING CATEGORY 1 AND CATEGORY 2 QUANTITIES OF RADIOACTIVE MATERIAL

(a) Licensees possessing an aggregate category 1 or category 2 quantity of radioactive material, as defined in 10 CFR 37.5, shall comply with the requirements for the physical protection program listed in 10 CFR Part 37, including any subsequent amendments and editions, except as follows:

- (1) 10 CFR 37.1;
- (2) 10 CFR 37.3;
- (3) 10 CFR 37.7;
- (4) 10 CFR 37.9;
- (5) 10 CFR 37.11(a) and (b);
- (6) 10 CFR 37.13;
- (7) 10 CFR 37.71;
- (8) 10 CFR 37.77(f);
- (9) 10 CFR 37.105;
- (10) 10 CFR 37.107; and
- (11) 10 CFR 37.109.

(b) In lieu of the address given in 10 CFR 37.27(c), licensees shall submit fingerprint cards or records to Director, Division of Facilities and Security, U.S. NRC, 11545 Rockville Pike, Rockville, Maryland 20852-2738, ATTN: Criminal History Program, Mail Stop T-03B46M.

(c) Licensee required reports of events or notifications in 10 CFR 37.41, 37.45, 37.57, 37.77(a) through (d), 37.81, shall use the Agency contact information in Rule .0111 of this Chapter.

(d) A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the U.S. Nuclear Regulatory Commission (NRC) or to an Agreement State of the NRC shall meet the license verification provisions listed in Rule .0343 of this Chapter.

(e) The Code of Federal Regulations parts 1-50 may be obtained from the U.S. Government Publishing Office, P.O. Box 979050 St. Louis, MO 63197-9000 for sixty-four dollars (\$64.00), and are available free of charge at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

Authority G.S. 104E-7.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 and G.S. 150B-21.3A(c)(2)g. that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02H .1018, .1019; .1021; .1031; .1040-.1045; .1050-.1062, readopt with substantive changes the rules cited as 15A NCAC 02H .0150-.0154; 02H .1001-.1003; .1005-.1017; .1020, and readopt without substantive changes the rule cited as 15A NCAC 02H .0126.

Pursuant to G.S. 150B-21.2(c)(1), the text of the rule(s) proposed for readoption without substantive changes are not required to be

published. The text of the rules are available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): <http://portal.ncdenr.org/web/guest/event-calendar>

Proposed Effective Date: *September 1, 2016*

Public Hearing:

Date: *March 7, 2016*

Time: *6:00 p.m.*

Location: *New Bern-Craven County Public Library, 400 Johnson St, New Bern, NC 28560*

Public Hearing:

Date: *March 21, 2016*

Time: *6:00 p.m.*

Location: *The Charles Mack Citizens Center, 215 N. Main St, Mooresville, NC 28115*

Public Hearing:

Date: *March 23, 2016*

Time: *6:00 p.m.*

Location: *Ground Flr. Hearing Room, Archdale Building, 512 N. Salisbury St, Raleigh, NC 27604*

Reason for Proposed Action: *This package of rules has been proposed by the Environmental Management Commission to meet the requirements of G.S. 150B-21.3A "Periodic Review and Expiration of Existing Rules" and Session Law 2013-82 "Fast-Track Permitting for Stormwater Management Systems." See attached summary table for information about individual rules.*

Proposed Stormwater Rules – 15A NCAC 2H 1/20/2016		
Rule Name	Proposed Action	Notes/Source of Rule Language
2H .0126 Stormwater Discharges	Readopt w/o Substantive Changes	<ul style="list-style-type: none"> Minimal changes
2H.0150 Definitions: NPDES MS4 Stormwater	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> Minimal changes
2H .0151 NPDES MS4 Stormwater: Designation and Petition Process	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> Minimal changes
2H .0152 Development in Urbanizing Areas	Readopt as a Repeal	<ul style="list-style-type: none"> Proposed for repeal because is duplicative of 2H .1016

PROPOSED RULES

2H .0153 NPDES MS4 Stormwater: Program Implementation	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> ▪ Minimal changes ▪ Adds .0153(f) to incorporate requirement from S.L. 2014-1 allowing DOT BMP Toolbox for linear transportation projects
2H.0154 Post-Construction Practices	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Proposed for repeal because is duplicative of 2H .1017
2H .1001 Post-Construction Stormwater Management: Purpose and Scope	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> ▪ Reorganized ▪ Adds items on stormwater program applicability and vested rights
2H .1002 Definitions	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> ▪ Streamlines definitions that duplicate statute ▪ Strikes unnecessary definitions ▪ Adds definitions, including new terms “Minimum Design Criteria” (or “MDC”) and “Stormwater Control Measure” (or “SCM”)
2H .1003 Requirements that Apply to All Subject Projects	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Codifies method for calculating project density ▪ Makes requirements for low and high density projects, vegetated setbacks, etc. consistent across programs
2H .1005 Stormwater Requirements: Coastal Counties	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req’ts of 2H .1005 updated and moved to 2H .1019
2H .1006 Stormwater Requirements: HQW	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req’ts of 2H .1006 updated and moved to 2H .1021
2H .1007 Stormwater Requirements: ORW	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req’ts of 2H .1007 updated and moved to 2H .1021
2H .1008 Design of Stormwater Management Measures	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req’ts of 2H .1008 updated and moved to following proposed rules: 2H .1001; .1003; .1031; 1040; .1042; .1050; .1051; .1053; .1059
2H .1009 Staff Review and Permit Preparation	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req’ts of 2H .1009 updated and moved to 2H .1042(3)
2H .1010 Final Action on Permit Applications	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req’ts of 2H .1010 updated and moved to 2H .1042(3) ▪ Also reference 2H .1040

PROPOSED RULES

2H .1011 Modification and Revocation of Permits	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req'ts of 2H .1011 updated and moved to 2H .1040(6)
2H .1012 Delegation of Authority	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req'ts of 2H .1012 updated and moved to 2H .1040(3)
2H .1013 General Permits	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Req'ts of 2H .1013 updated and moved to 2H .1041
2H .1014 Stormwater Management for Urbanizing Areas	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Proposed for repeal because is covered in 2H .0100s and 2H .1016 -.1018
2H .1015 Development in Urbanizing Areas	Readopt as a Repeal	<ul style="list-style-type: none"> ▪ Proposed for repeal because is duplicative of 2H .0150
2H .1016 Development in Urbanizing Areas: Applicability and Delineation	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> ▪ Strikes .1016(c) (designation of regulated entities) b/c is covered in 2H .0151 ▪ .1016(a)(4) moved to .1016(a)(1)(E) ▪ Moves .1016(d) (delegation), to its own new rule 2H .1018
2H .1017 NPDES and Urbanizing Areas: Post-Construction Stormwater Management	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> ▪ .1017(2) Allows newer rules (Jordan, Falls, Coastal, Goose Creek, USMP) to satisfy stormwater requirements ▪ 2H .1017(5) adds voluntary option to allow SCMs designed to achieve runoff volume match instead of runoff treatment criteria
2H .1018 Urbanizing Areas: Delegation of Stormwater Management Program	Adopt	<ul style="list-style-type: none"> ▪ New rule; language from 2H .1016(d)
2H .1019 Coastal Counties	Adopt	<ul style="list-style-type: none"> ▪ Includes req'ts previously located in 2H .1005 ▪ Based on MDC Team deliberations ▪ Improves organization of coastal programs ▪ Updates technical standards for avoiding discharges of stormwater in SA waters ▪ Reduces the size of the design storm in SA waters but increases the size of the design storm in regular coastal waters

PROPOSED RULES

2H .1020 Universal Stormwater Management Program	Readopt w/ Substantive Changes	<ul style="list-style-type: none"> ▪ .1020(f) adds voluntary option to allow SCMs designed to achieve runoff volume match as an alternative to runoff treatment
2H .1021 Non-Coastal County HQW and ORW	Adopt	<ul style="list-style-type: none"> ▪ Req'ts previously located in 2H .1006 and .1007 ▪ Combines Non-Coastal County HQW and ORW programs because the existing requirements were very similar ▪ .1021(7) adds a requirement for 30-foot vegetated setback for high density development ▪ .1021(5) adds option to allow for single-family residential projects to qualify as low density if meet average lot size criteria over the entire project rather than minimum lot size for each lot
2H .1031 New Stormwater Technologies Program	Adopt	<ul style="list-style-type: none"> ▪ Codifies and updates the requirement for the new stormwater technologies program (formerly the "PEP")
2H .1040 Permit Administration	Adopt	<ul style="list-style-type: none"> ▪ Req'ts previously located in 2H .1008; .1010-.1012 ▪ Updates and organizes the process for stormwater permit administration and signatures on permit applications
2H .1041 General Permits	Adopt	<ul style="list-style-type: none"> ▪ Req'ts previously located in 2H .1013 ▪ Minimal changes
2H .1042 Standard Permitting Process	Adopt	<ul style="list-style-type: none"> ▪ Req'ts previously located in 2H .1008-.1010 ▪ Updates and organizes standard permitting process
2H .1043 Fast Track Permitting Process: Authorization to Construct	Adopt	<ul style="list-style-type: none"> ▪ New permitting process ▪ Based on MDC Team deliberations ▪ Creates Step #1 of the fast-track permitting process
2H .1044 Fast Track Permitting Process: Final Permit	Adopt	<ul style="list-style-type: none"> ▪ New permitting process ▪ Based on MDC Team deliberations ▪ Creates Step #2 of the fast-track permitting process
2H .1045 Requirements for Permit Transfers and Renewals	Adopt	<ul style="list-style-type: none"> ▪ Req'ts previously located in 2H .1003, .1010 ▪ Codifies policies for permit transfers and renewals ▪ .1045(3)(f) allows a licensed professional to certify that the SCM has been inspected, and that it was found to be built and maintained in accordance with the approved plans

PROPOSED RULES

2H .1050 MDC for all Stormwater Control Measures	Adopt	<ul style="list-style-type: none"> ▪ Includes req'ts previously located in 2H .1008 ▪ Organizes MDCs that apply to all SCMs in one rule ▪ Based on MDC Team deliberations; a number of design elements that the MDC team agreed are necessary to ensure that SCMs meet the current 85% TSS removal requirements, such as having a bypass device for larger flow events and protecting inlet and outlet structures against erosion, are proposed to be codified in 2H .1050
2H .1051 MDC for Infiltration Systems	Adopt	<ul style="list-style-type: none"> ▪ Includes req'ts previously located in 2H .1008 ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1052 MDC for Bioretention Cells	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1053 MDC for Wet Ponds	Adopt	<ul style="list-style-type: none"> ▪ Req'ts previously located in 2H .1008 ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1054 MDC for Stormwater Wetlands	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1055 MDC for Permeable Pavement	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1056 MDC for Sand Filters	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1057 MDC for Rainwater Harvesting	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1058 MDC for Green Roofs	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1059 MDC for Level Spreader-Filter Strips	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM

PROPOSED RULES

2H .1060 MDC for Disconnected Impervious Surfaces	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1061 MDC for Treatment Swales	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM
2H .1062 MDC for Dry Ponds	Adopt	<ul style="list-style-type: none"> ▪ Based on MDC Team deliberations ▪ Updates and organizes current design standards for this type of SCM

Comments may be submitted to: *Annette Lucas, NCDENR-Land Quality Section-Stormwater Permitting Program, 1612 Mail Service Center, Raleigh, NC 27699-1612, phone (919) 807-6381, fax (919) 807-6494, email annette.lucas@ncdenr.gov*

Comment period ends: *April 15, 2016*

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 (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4
- No fiscal note required by G.S. 150B-21.3A(d)(2)

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0100 - POINT SOURCE DISCHARGES TO THE SURFACE WATERS

15A NCAC 02H .0126 STORMWATER DISCHARGES (READOPTION WITHOUT SUBSTANTIVE CHANGES)

15A NCAC 02H .0150 DEFINITIONS: NPDES MS4 STORMWATER

Federal definitions for NPDES discharges at 40 C.F.R. 122.2 and ~~122.26(b)~~, 122.26(b)(1 July 2003 Edition) are incorporated herein by reference including any subsequent editions. These federal regulations can be accessed at no cost at <http://www.gpo.gov/fdsys/>. State definitions for NPDES discharges are set out in G.S. 143-212 through G.S. 143-213 and 15A NCAC 02H .0103. As The definition of any word or phrase used in the NPDES municipal separate storm sewer system (MS4) stormwater program, the following additional definitions apply: program shall be the same as given in Rule .1002 of this Subchapter. Other words and phrases are defined as follows:

- (1) ~~The definitions set out in 15A NCAC 02H .1002 (Definitions).~~
- (2)(1) "Division" means the Division of Water Quality Energy, Mineral, and Land Resources in the Department.
- (2) "MS4" means municipal separate storm sewer system.
- (3) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by Article 19 of Chapter 160A of the General Statutes, or a county ~~may~~ exercises the powers authorized by Article 18 of Chapter 153A of the General Statutes.
- (4) "Public entity" means the United ~~States~~; States, the ~~State~~; State, a city, village, township, county, school district, public college or university, ~~or~~ single-purpose governmental ~~agency~~; agency, or any other governing body that is created by federal or State law.
- (5) "Regulated entity" means any public entity that must obtain a ~~Phase II~~ National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).
- (6) "Sensitive receiving waters" means any of the following:

- (a) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with ~~Paragraphs (d) and (e) of 15A NCAC 02B .0101~~ 15A NCAC 02B .0101, (Procedures for Assignment of Water Quality Standards—General Procedures), 15A NCAC 02B .0200, and 15A NCAC 02B .0301.
- (b) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. § 1531, et seq.), as amended.
- (c) Waters for which the ~~designated use,~~ "best usage," as described by the classification system set ~~out forth in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 .0101, (Procedures for Assignment of Water Quality Standards—General Procedures), 15A NCAC 02B .0200, and 15A NCAC 02B .0301~~ have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. §§ 1313. This federal code can be accessed at no cost at <http://www.gpo.gov/fdsys/>.
- (7) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4) or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may ~~reasonably~~ be expected to adversely affect ~~have an adverse impact on~~ the quality and ~~uses best usage~~ of the water body. Uses—"Best usage" of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 ~~(Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina) and 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).~~
- (8) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative ~~plan plan,~~ and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.

15A NCAC 02H .0151 NPDES MS4 STORMWATER: DESIGNATION AND PETITION PROCESS

(a) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through ~~a the~~ State designation process, or under a total maximum daily load (TMDL) implementation ~~plan plan,~~ as provided in this Paragraph.

- (1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to ~~40 Code of Federal Regulations—CFR § 122.32. These federal regulations are available at no cost at <http://www.gpo.gov/fdsys/>.~~
- (2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as provided in Subparagraphs (2)(A) through (F) below:
 - (A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:
 - (i) ~~Discharges discharges~~ discharges stormwater that has the potential to ~~adversely have an adverse impact on water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact; quality; or~~ adversely have an adverse impact on water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact; quality; or
 - (ii) ~~Serves serves~~ serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing ~~units—units,~~ units, and either a population density of 1,000 people per square mile or more or more than 400 housing units per square mile.

Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1).

- (C) Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. This list shall be published on the Division website at <http://portal.ncdenr.org/web/lr/stormwater>. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days from the date of publication.
- (D) Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:
- (i) ~~The~~ the public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years;
 - (ii) ~~The~~ the public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years;
 - (iii) ~~The~~ the population of the public entity ~~has an actual~~ is more than 15 percent greater than its population increase that exceeds 15 percent of its previous population for the previous two years; years prior to the publication of the list identifying the public entity as a candidate for designation.
 - (iv) ~~The~~ the municipal separate storm sewer system (MS4) discharges stormwater that ~~adversely~~ has adverse impacts on water quality; or
 - (v) ~~The~~ the municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the ~~uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101~~ (Procedures for Assignment of Water Quality Standards General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications) best usages.
- (E) Notice of designation. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management ~~must~~ shall be submitted to the Commission.
- (F) Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision ~~must~~ shall submit its application for a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management within 18 months of the date of notification.
- (3) Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. This federal code is available at no cost at

<http://www.gpo.gov/fdsys/>. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management ~~must~~ shall be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this Item ~~must~~ shall submit its application for a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management within 18 months of the date of notification.

(b) Petition Process. A petition may be submitted to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management as follows:

- (1) Connected discharge petition. An owner or operator of a permitted municipal separate storm sewer system (MS4) may submit a petition to the Commission to request that a person who discharges into the permitted municipal separate storm sewer system (MS4) be required to obtain a separate ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management. The Commission shall grant the petition and require the person to obtain a separate ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management if the petitioner shows that the person's discharge flows or will flow into the permitted municipal separate storm sewer system (MS4).

- (2) Adverse impact petition. Any person may submit a petition to the Commission to request that an owner or operator of a municipal separate storm sewer system (MS4) or a person who discharges stormwater be required to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management as follows:

(A) Petition review. The Commission shall grant the petition and require the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management if the petitioner shows any of the following:

- (i) The municipal separate storm sewer system (MS4) or the discharge ~~discharges~~ discharges stormwater or has the potential to discharge stormwater that may cause or contribute to a water quality standard violation;
- (ii) The municipal separate storm sewer system (MS4) or the discharge ~~provides a significant contribution of pollutants~~ is a significant contributor of pollutants to receiving waters; or
- (iii) The municipal separate storm sewer system (MS4) or the discharge is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313.

(B) Types of evidence for required showing. Petitioners may make the required showing by providing to the Commission the following information:

- (i) ~~Monitoring~~ monitoring data that ~~includes, at a minimum,~~ includes representative sampling of the municipal separate storm sewer system (MS4) or discharge and information describing how the sampling is representative. The petitioner ~~must~~ shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater of its intent to conduct monitoring activities prior to conducting those activities;
- (ii) ~~Scientific~~ scientific or technical literature that supports the sampling methods;
- (iii) ~~Study~~ studies and technical information on land uses in the drainage area and the characteristics of stormwater runoff from these land uses;

- (iv) A ~~a~~ map that delineates the drainage area of the petitioned entity; the location of sampling stations; the location of the stormwater outfalls in the adjacent area of the sampling locations; general features, ~~including, but not limited to, including~~ surface waters, major roads, and political boundaries; and areas of concern regarding water quality;
 - (v) ~~For~~ for stormwater discharges to impaired waters, documentation that the receiving waters are impaired or degraded and monitoring data that demonstrates that the municipal separate storm sewer system (MS4) or discharge contributes pollutants for which the waters are impaired or degraded; or
 - (vi) ~~For~~ for stormwater discharges to nonimpaired waters, monitoring data that demonstrates that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is a significant contributor of pollutants to the receiving waters.
- (C) Water quality protection program offset. If the petitioner makes the required showing, the Commission shall review the effectiveness of any existing water quality protection programs that may offset the need to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the ~~uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards - General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq.~~ uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards - General Procedures) and the specific classification of the waters set out in 15A NCAC 2B .0300, et seq.
- (3) Petition administration. The Commission shall process petitions in the following manner:
- ~~(A)~~ (A) The Commission shall ~~only accept petitions submitted on Department forms.~~ only accept petitions submitted on Department forms.
 - ~~(B)~~ (A) A separate petition ~~must~~ shall be filed for each municipal separate storm sewer system (MS4) or discharge.
 - ~~(C)~~ (B) The Commission shall evaluate only ~~complete petitions. those petitions that contain all information required by Part (2)(B) of this Paragraph.~~ complete petitions. those petitions that contain all information required by Part (2)(B) of this Paragraph. The Commission shall make a determination on the completeness of a petition within 90 days of receipt of the petition, or it shall be deemed complete. If the Commission requests additional information, the petitioner may submit additional ~~information;~~ information and the Commission ~~will~~ shall determine, within 90 days of receipt of the additional information, whether the information completes the petition.
 - ~~(D)~~ (C) The petitioner shall provide a copy of the petition and a copy of any subsequent additional information submitted to the Commission to the chief administrative officer of the municipal separate storm sewer system (MS4) or the person in control of the discharge within 48 hours of each submittal.
 - ~~(E)~~ (D) The Commission shall post all petitions on the Division ~~Web site~~ website and maintain copies available for inspection at the Division's office. The Commission shall accept and consider public comment for ~~at least~~ at least 30 days from the date of posting.
 - ~~(F)~~ (E) The Commission may hold a public hearing on a petition and shall hold a public hearing on a petition if it receives a written request for a public hearing within the public comment ~~period,~~ period and the Commission determines that there is a significant public interest in holding a public hearing. The Commission's determination to hold a public hearing

shall be made no less than 15 days after the close of the public comment period. The Commission shall schedule the hearing to be held within 45 days of the close of the initial public comment period and shall accept and consider additional public comment through the date of the hearing.

(G)(F) An additional petition for the same municipal separate storm sewer system (MS4) or discharge received during the public comment period shall be considered as comment on the original petition. An additional petition for the same municipal separate storm sewer system (MS4) or discharge received after the public comment period ends and before the final determination is made shall be considered incomplete and held pending a final determination on the original petition.

(i) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management, any other petitions for ~~that~~ the same municipal separate storm sewer system (MS4) or discharge that were held shall be considered in the development of the ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management.

(ii) If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is not required to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management, an additional petition for the municipal separate storm sewer system (MS4) or discharge ~~must~~ shall present

new information or demonstrate that conditions have changed in order to be considered. If new information is not provided, the petition shall be returned as ~~substantially~~ incomplete.

~~(H)(G)~~ The Commission shall evaluate a petition within 180 days of the date on which it is determined to be complete. If the Commission determines that the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater is required to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management, the Commission shall notify the owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater within 30 days of the requirement to obtain the permit. The owner or operator of the municipal separate storm sewer system (MS4) or the person who discharges stormwater ~~must~~ shall submit its application for a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management within 18 months of the date of notification.

(c) Exemption. A municipality with a population of less than 1,000, including a municipality designated as an urbanized area under the most recent federal decennial census, is not required to obtain a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES permit for stormwater management unless the municipality is shown to be contributing to an impairment of State waters, as determined under the requirements of 33 U.S.C. § 1313(d).

(d) Waiver. The Department may waive the requirement for a Phase II National Pollutant Discharge Elimination System (NPDES) NPDES permit for stormwater management requirement pursuant to 40 ~~Code of Federal Regulations~~ CFR §§ 122.32(d) or (e).

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

15A NCAC 02H .0152 DEVELOPMENT IN URBANIZING AREAS

~~(a) Development in Unincorporated Areas of Counties.~~

~~(1) Development that cumulatively disturbs one acre or more of land located in the unincorporated area of a county shall comply with the standards set forth in Rule .0154 of this~~

Section beginning 1 July 2007 if the development is located in:

- (A) An area that is designated as an urbanized area under the most recent federal decennial census.
- (B) The unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:
 - (i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
 - (ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and
 - (iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (C) An area delineated pursuant to Item (2) of this Paragraph.
- (D) A county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of: (i) the area that is designated as an urbanized area under the most recent federal decennial census; (ii) the area described in Subparagraph (1)(B) of this Paragraph; (iii) the area delineated pursuant to Item (2) of this Paragraph; (iv) the jurisdiction of a regulated entity designated pursuant to Rule .0151(a) of this Section; (v) the area that is regulated by a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management required pursuant to Rule .0151(b) of this Section; and (vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed 75 percent of the total geographic area of the county. For purposes of this Paragraph, the stormwater programs administered by the Division are:
 - (i) Water Supply Watershed I (WS I) 15A NCAC 02B .0212;

- (ii) Water Supply Watershed II (WS II) 15A NCAC 02B .0214;
- (iii) Water Supply Watershed III (WS III) 15A NCAC 02B .0215;
- (iv) Water Supply Watershed IV (WS IV) 15A NCAC 02B .0216;
- (v) High Quality Waters (HQW) 15A NCAC 02H .1006;
- (vi) Outstanding Resource Waters (ORW) 15A NCAC 02H .1007;
- (vii) The Coastal Stormwater Program 15A NCAC 02H .1005;
- (viii) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy 15A NCAC 02B .0235;
- (ix) The Tar Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy 15A NCAC 02B .0258;
- (x) The Randleman Lake Water Supply Watershed Nutrient Management Strategy 15A NCAC 02B .0251; and
- (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications 15A NCAC 02B .0223.

(E) Subject to Subparagraph (4) of this Paragraph, a county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004.

(2) Delineation Process. The Commission shall delineate regulated coverage areas as provided in Subparagraphs (2)(A) through (F) below:

- (A) Schedule. The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
- (B) Potential candidate coverage areas. A potential candidate coverage area is the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to Rule .0151(a) of this Section that:

- (i) Extends one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
 - (ii) Extends two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; and
 - (iii) Extends three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (C) Identification of candidate coverage areas. The Commission shall identify an area within a potential candidate coverage area described in Part (2)(B) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.
- (D) Notice and comment on candidacy. The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as candidates for delineation as regulated coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area as a regulated coverage area for a period of not less than 30 days.
- (E) Delineation of regulated coverage areas. After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:
- (i) Adversely impacts water quality; or
 - (ii) Results in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards - General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).
- (F) Notice of delineation. The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.
- (3) Except as provided in this Paragraph and 15A NCAC 02H .1016(d), the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).
- (4) A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004 is not a county under Part (1)(E) of this Paragraph and is not a county that is subject under this section to the requirements for development in the unincorporated areas of the county when that actual population growth rate occurred in an area within the county that consists of less than five percent of the total land area of the county.

~~(b) Development in Non Phase II Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in Subparagraphs (1)(D) and (E) of Paragraph (a), that are not designated as an urbanized area under the most recent federal decennial census, shall comply with the standards set forth in Rule .0151(a) of this Section of this act beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in 15A NCAC 02H .1016(d).~~

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2011-220.

**15A NCAC 02H .0153 NPDES MS4
STORMWATER PROGRAM IMPLEMENTATION**

(a) ~~Permit Standards. To obtain a Phase II National Pollutant Discharge Elimination System (NPDES) a NPDES permit for stormwater management, an applicant shall, to the extent authorized by law, shall develop, implement, and enforce a stormwater management plan approved by the Commission that satisfies the six minimum control measures—"minimum control measures" required by 40 Code of Federal Regulations CFR § 122.34(b). These federal regulations can be accessed at no cost at <http://www.gpo.gov/fdsys/>. The evaluation of the post-construction stormwater management measures required by 40 Code of Federal Regulations CFR § 122.34(b)(5) shall be conducted as provided in Rule .0154(a) of this Section. Rule .1017 of this Subchapter. Regulated entities may propose using any existing State or local program that relates to the minimum control measures to meet, either in whole or in part, the requirements of the minimum control measures.~~

(b) ~~Implementation Schedule. The requirements of this act shall be implemented as follows:~~

- (1) ~~A regulated entity must apply within 18 months of notification by the Department that the regulated entity is subject to regulation pursuant to Rules .0151(a) and (b), (b) and .0152 of this Section. Rule .1016 of this Subchapter;~~
- (2) ~~Public education and outreach minimum measures shall be implemented no later than within 12 months from date of permit issuance-issuance;~~
- (3) ~~A regulated entity must shall implement its post-construction program no later than 24 months from the date the permit is issued-issued; and~~
- (4) ~~The Department shall include permit conditions that establish schedules for implementation of each minimum measure of the regulated entity's stormwater management program based on the submitted application so that the regulated entity fully implements its permitted program within five years from permit issuance.~~

(c) ~~Federal and State Projects. The Commission shall have jurisdiction, to the exclusion of local governments, to issue a National Pollutant Discharge Elimination System (NPDES) a~~

NPDES permit for stormwater management to a federal or State agency that applies to all or part of the activities of the agency or that applies to the particular project. If a federal or State agency does not hold a Phase I or Phase II a MS4 National Pollutant Discharge Elimination System (NPDES) NPDES permit for stormwater management that applies to the particular project, then the project is shall be subject to the stormwater management requirements of this Rule as implemented by the Commission or by a local government. The provisions of G.S. 153A-347 and G.S. 160A-392 apply to the implementation of this Rule.

(d) General Permit. The Commission shall develop and issue a Phase II National Pollutant Discharge Elimination System (NPDES) NPDES general permit for stormwater management. The general permit requirements for post-construction stormwater management measures required by 40 Code of Federal Regulations CFR § 122.34(b)(5) shall require a permittee to meet the standards set out forth in Rule .0154(a) of this Section but shall not impose any requirement on the permittee that exceeds the standards set out in Rule .0154(a) of this Section. Rule .1017 of this Subchapter. After the Commission has issued a Phase II National Pollutant Discharge Elimination System (NPDES) general permit for stormwater management, a public entity that has applied for a permit may submit a notice of intent to be covered under the general permit to the Commission. The notice of intent shall be submitted to the Division accompanied by the application fee as set forth in G.S. 143-215.3D. The Commission shall treat an application for a permit as an application for an individual permit unless the applicant submits a notice of intent to be covered under a general permit under this Paragraph.

(e) The exclusions from the requirement to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) NPDES permit for stormwater management set out in 40 Code of Federal Regulations CFR § 122.3, including the exclusions for certain nonpoint source agricultural and silvicultural activities, apply to the provisions of this Rule.

(f) In order to fulfill the post-construction minimum measure requirement for linear transportation projects, including private transportation projects constructed to North Carolina Department of Transportation standards that will be conveyed to the State upon completion, a permittee, delegated program, or regulated entity may use the Stormwater Best Management Practices Toolbox developed by the North Carolina Department of Transportation and available at no cost at <https://connect.ncdot.gov/resources/hydro/Pages/Stormwater-Program.aspx>.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2014-1.

15A NCAC 02H .0154 POST-CONSTRUCTION PRACTICES

~~(a) Requirements for Post Construction Practices.~~

- (1) ~~Permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land~~

is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. The stormwater controls shall be appropriate to the project's level of density as follows:

(A) ~~Low Density Option. A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of 15A NCAC 02H .1005. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built-upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.~~

(B) ~~High Density Option. A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of 15A NCAC 2H .1005. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built-upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:~~

(i) ~~Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.~~

(ii) ~~Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm.~~

(iii) ~~Remove an 85 percent average annual amount of Total Suspended Solids.~~

(iv) ~~Meet the General Engineering Design Criteria set out in 15A NCAC 02H .1008(e).~~

(v) ~~Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.~~

(2) ~~Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (c) of this Rule.~~

(3) ~~Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.~~

(4) ~~Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.~~

- (5) ~~Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate long term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.~~
- (6) ~~For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:~~
- (A) ~~Use BMPs that result in the highest degree of fecal coliform die off and control to the maximum extent practicable sources of fecal coliform while still incorporating the stormwater controls required by the project's density level.~~
- (B) ~~Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.~~
- (C) ~~Meet the requirements of 15A NCAC 2H .1005(a)(2).~~
- (7) ~~For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:~~
- (A) ~~Use BMPs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level.~~
- (B) ~~Allow on site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.~~
- (8) ~~For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:~~
- (A) ~~Use BMPs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. In areas where the Department has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban Stormwater Management Program requirements are found in 15A NCAC 02B .0200.~~
- (B) ~~Implement a nutrient application management program for both inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State.~~
- (9) ~~For post construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:~~
- (A) ~~Water Supply Watershed I (WS I) — 15A NCAC 02B .0212;~~
- (B) ~~Water Supply Watershed II (WS II) — 15A NCAC 02B .0214;~~
- (C) ~~Water Supply Watershed III (WS III) — 15A NCAC 02B .0215;~~
- (D) ~~Water Supply Watershed IV (WS IV) — 15A NCAC 02B .0216;~~
- (E) ~~Freshwater High Quality Waters (HQW) 15A NCAC 02H .1006;~~
- (F) ~~Freshwater Outstanding Resource Waters (ORW) 15A NCAC 02H .1007;~~
- (G) ~~The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy 15A NCAC 02B .0235;~~
- (H) ~~The Tar Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy 15A NCAC 02B .0258; or~~
- (I) ~~The Randleman Lake Water Supply Watershed Nutrient Management Strategy 15A NCAC 02B .0251.~~
- (10) ~~In order to fulfill the post construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post-construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post-construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5).~~
- (11) ~~Nothing in this Paragraph shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.~~
- (b) ~~Exclusions from Post Construction Practices. The post-construction practices required by Paragraph (a) of this Rule shall not apply to any of the following:~~
- (1) ~~Development in an area where the requirements of Paragraph (a) of this act are applicable that is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the~~

post construction stormwater control requirements in the area and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:

(A) A building permit pursuant to G.S. 153A 357 or G.S. 160A 417;

(B) A site specific development plan as defined by G.S. 153A 344.1(b)(5) and G.S. 160A 385.1(b)(5);

(C) A phased development plan approved pursuant to G.S. 153A 344.1 for a project located in the unincorporated area of a county that is subject to the requirements of Paragraph (a), if the Commission is responsible for implementation of the requirements of Paragraph (a) that shows:

(i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A 330 through G.S. 153A 335.

(ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of Paragraph (a) to that phase of development would require a material change in that phase of the plan.

(D) A vested right to the development under G.S. 153A 344(b), 153A 344.1, 160A 385(b), or 160A 385.1 issued by a local government that implements Paragraph (a); or

(E) A vested right to the development pursuant to common law.

(2) Redevelopment as defined in Rule .0150 of this Section.

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

(1) An exception may be granted if the application meets all of the following criteria:

(A) Unnecessary hardships would result from strict application of the act;

(B) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property;

(C) The hardships did not result from actions taken by the petitioner; and

(D) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

(2) Notwithstanding Item (1) of this Paragraph, exceptions shall be granted in any of the following instances:

(A) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(B) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(C) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(3) Reasonable and appropriate conditions and safeguards may be imposed upon any exception granted.

- ~~(4) Local authorities must document the exception procedure and submit an annual report to the Department on all exception proceedings.~~
- ~~(5) Appeals of the Department's exception decisions must be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions must be made to the appropriate Board of Adjustment or other appropriate local governing body, under G.S. 160A-388 or G.S. 153A-345.~~

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

SECTION .1000 - STORMWATER MANAGEMENT

15A NCAC 02H .1001 POST-CONSTRUCTION STORMWATER MANAGEMENT: PURPOSE AND SCOPE

The Rules in this Section set forth the requirements for application and issuance of permits for stormwater management systems in accordance with G.S. 143-215.1(d) and 15A NCAC 2H .0200. These requirements to control pollutants associated with stormwater runoff apply to development of land for residential, commercial, industrial, or institutional use but do not apply to land management activities associated with agriculture or silviculture unless specifically addressed in special supplemental classifications and management strategies adopted by the Commission. The purpose of this Section is to protect surface waters and aquatic resources from the adverse impacts of stormwater runoff from development activities.

- (1) APPLICABILITY. This Section shall apply to development projects and major modifications of development projects for residential, commercial, industrial, or institutional use that are subject to one or more of the post-construction stormwater management programs listed in Item (2) of this Rule. This Section shall not apply to:
 - (a) land management activities associated with agriculture or silviculture;
 - (b) activities of the North Carolina Department of Transportation (NCDOT) that are regulated in accordance with the provisions of NPDES Permit Number NCS000250;
 - (c) linear transportation projects undertaken by an entity other than the NCDOT when:
 - (i) the project is constructed to NCDOT standards and is in accordance with the NCDOT Stormwater Best Management Practices Toolbox available at no cost at [- ources/hydro/Pages/Stormwater-Program.aspx;
 - \(ii\) Upon completion, the project will be conveyed either to the NCDOT or another public entity and will be regulated in accordance with that entity's NPDES MS4 stormwater permit; and
 - \(iii\) the project is not part of a common plan of development.](https://connect.ncdot.gov/res</u>

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- (d) development activities that have already received a State Stormwater Permit or Certification where no modification or a minor modification is requested. These activities shall follow their existing permit conditions.

- (2) STORMWATER PROGRAMS. The post-construction stormwater management programs consist of the following:

- (a) Coastal Counties – 15A NCAC 02H .1019;
- (b) Non-Coastal County High Quality Waters and Outstanding Resource Waters – 15A NCAC 02H .1021;
- (c) NPDES MS4 Stormwater – 15A NCAC 02H .1026;
- (d) Urbanizing Areas – 15A NCAC 02H .1016; and
- (e) Universal Stormwater Management Program- 15A NCAC 02H .1020.

- (3) PERMIT REQUIRED. A permit shall be required for development activities that are subject to any of the post-construction stormwater management programs listed in Item (2) of this Rule. The permit shall be issued by the implementing authority in accordance with this Section. If a project is subject to more than one post-construction stormwater management program, the requirements of both programs shall apply unless otherwise required or allowed by the applicable rule of this Section.

- (4) DISPUTES REGARDING WATER QUALITY CLASSIFICATION. For stormwater programs that apply based on water quality classification, any disputes regarding water quality classification shall be determined by the N.C. Division of Water Resources pursuant to 15A NCAC 02B .0101 and in accordance with G.S. 143-214.1.

- (5) VESTED RIGHTS. Development projects shall be exempted from this Section or allowed to follow an earlier version of the Rules of this Section if a vested right is demonstrated by one of the following:

- (a) a valid building permit pursuant to G.S. 153A-357 or G.S. 160A-417;
- (b) a valid site-specific development plan as defined by G.S. 153A-3441(b)(5) and G.S. 160A-385.1(b)(5); or
- (c) a phased development plan approved pursuant to G.S. 153A-344.1(b)(5) or G.S. 160A-385.1 that shows:
 - (i) for the initial or first phase of development, the type and intensity of uses for a specific parcel or parcels, including the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-33 through G.S. 153A-235 or G.S. 160A-371 through G.S. 160A-376, and
 - (ii) for any subsequent phase of development, upon a finding by the Commission that implementation of the requirements of this Section to that phase of development would require a material change in that phase of development as contemplated in the phased development plan.

(6) **ANTI-DEGRADATION POLICY.** In accordance with the Antidegradation Policy set forth in 15A NCAC 02B .0201, additional stormwater control measures may be required on a case-by-case basis to maintain and protect existing and anticipated uses of surface waters.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2014-1.

15A NCAC 02H .1002 DEFINITIONS

The definition of any word or phrase in this Section shall be the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. Definitions set forth in 15A NCAC 02H .0150 and 40 CFR 122.2 and 122.26(b) (1 July 2003 Edition), including any subsequent editions, are incorporated herein by reference. These federal regulations can be accessed at no cost at <http://www.gpo.gov/fdsys/>. Other words and phrases used in this Section are defined as follows:

- (1) "Adverse impact" means a detrimental effect upon water quality or best usages, including a violation of water quality standards, caused or contributed to by a discharge or loading of a pollutant or pollutants.
- (2) "Best usage" means those uses of waters specified for each classification as determined by the Commission in accordance with the provisions of G.S. 143-214.1 and as set forth in

- 15A NCAC 02B .0101, 15A NCAC 02B .0200, and 15A NCAC 02B .0300, et seq.
- ~~(1)(3)~~ "Built-upon area" or "BUA" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck or the water area of a swimming pool. ~~has the same meaning as in G.S. 143-214.7~~
- ~~(2)(4)~~ "CAMA Major Development Permits" means those permits or revised permits required by the Coastal Resources Commission as set forth in 15A NCAC 07J Sections .0100 and .0200.
- ~~(3)(5)~~ "Certificate of Stormwater Compliance" means the approval for activities that meet the requirements for coverage under a stormwater general permit for development activities that are regulated by this Section.
- ~~(4)(6)~~ "Coastal Counties" ~~are~~ means any of the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.
- ~~(7)~~ "Commission" means the North Carolina Environmental Management Commission.
- ~~(8)~~ "Common plan of development" means a site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.
- ~~(5)(9)~~ "Curb Outlet System" means curb and gutter installed in a development that meets the low density criteria set forth in Rule ~~1003(d)(1)~~ .1003(2) of this ~~Section~~ Section, with breaks in the curb or other outlets used to convey stormwater runoff to ~~grassed swales or vegetated or natural areas and designed in accordance with Rule 1008(g) of this Section.~~ conveyances.
- ~~(10)~~ "Design volume" means the amount of stormwater runoff that an SCM or series of SCMs is designed to treat in accordance with the applicable minimum design criteria.
- ~~(6)(11)~~ "Development" ~~means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.~~ has the same meaning as in G.S. 143-214.7.
- ~~(12)~~ "Diffuse flow" means uniform shallow flow that is conveyed to a vegetated filter strip as

- defined in Rule .1059 of this Section, another ground surface, or stormwater control measure. The purpose of "diffuse flow" is to remove pollutants via infiltration and settling, as well as to reduce erosion prior to stormwater reaching surface waters.
- (13) "Director" means the Director of the Division of Energy, Mineral, and Land Resources unless otherwise assigned by the Secretary of the Department of Environmental Quality.
- (14) "Discrete NRCS Curve Number Method" means a method for calculating the required treatment volume whereby the model described in Urban Hydrology for Small Watersheds (NRCS Technical Report 55), available at no cost at: http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044171.pdf, is run twice: first, to yield runoff volume from the built-upon areas; and second, to yield runoff volume from the remainder of the project. The total required treatment volume shall be the sum of the two results.
- (15) "Division" means the Division of Energy, Mineral, and Land Resources unless otherwise assigned by the Secretary of the Department of Environmental Quality.
- (7)(16) "Drainage Area or Watershed" means the entire area contributing surface runoff to a single point.
- (17) "Existing development" means those projects that are built or those projects that have established a vested right under North Carolina law as of the effective date of the state stormwater program or applicable local government ordinance to which the project is subject, based on at least one of the following criteria:
- (a) Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
- (b) Having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1; or
- (c) Having an approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.
- (8) "Forebay" means a device located at the head of a wet detention pond to capture incoming sediment before it reaches the main portion of the pond. The forebay is typically an excavated settling basin or a section separated by a low weir.
- (9)(18) "General Permit" means a permit issued under G.S. 143-215.1(b)(3) and G.S. 143-215.1(b)(4) authorizing a category of similar activities or discharges.
- (19) "Geotextile fabric" means a permeable geosynthetic comprised solely of non-biodegradable textiles.
- (40)(20) "Infiltration Systems" means stormwater control systems—measures designed to allow runoff to pass or move (infiltrate/exfiltrate) move into the soil—soil's pore space.
- (21) "Intermittent stream" has the same meaning as in 15A NCAC 02B .0233.
- (22) "Local government" has the same meaning as in 15A NCAC 02B .0202.
- (23) "Major modification" means a modification of a state stormwater permit that is not a "minor modification" as that term is defined in this Rule.
- (24) "Minimum Design Criteria" or "MDC" means the requirements set forth in this Section for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department to issue stormwater permits that comply with State water quality standards adopted pursuant to G.S. 143-214.1.
- (25) "Minor modification" means a modification of a state stormwater permit that does not increase the net built-upon area within the project or does not increase the overall size of the stormwater control measures that have been previously approved for the project.
- (26) "90th percentile storm" means the rainfall event with a precipitation depth greater than or equal to 90 percent of all 24-hour storms on an annual basis.
- (27) "95th percentile storm" means the rainfall event with a precipitation depth greater than or equal to 95 percent of all 24-hour storms on an annual basis.
- (28) "Non-erosive velocity" means the flow rate of water, usually measured in feet per second, that does not exceed the maximum permissible velocity for the condition and type of soil and groundcover over which the water is flowing. Erosion is likely to occur when the maximum permissible velocity is exceeded. Guidance on non-erosive velocity is available at no cost at http://www.bae.ncsu.edu/bae/workshops/dot/pdf/mod3_3atext.pdf.
- (44)(29) "Notice of Intent" means a written notification to the Division that an activity or discharge is intended to be covered by a general permit and takes the place of the application used with individual permits—permit in lieu of an application for an individual permit.
- (30) "NPDES" means National Pollutant Discharge Elimination System
- (42)(31) "Off-site Stormwater Systems" means stormwater management systems that are

- located outside the boundaries of the specific project in question, but designed to control stormwater drainage from that project and other potential development sites. ~~These systems shall designate responsible parties for operation and maintenance and may be owned and operated as a duly licensed utility or by a local government.~~
- (13)(32) "One-year, 24-hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours, the maximum amount of rainfall during a 24 consecutive hour period expected, on average, to occur once a year. One-year, 24-hour storm depths are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), available at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.
- (14)(33) "On-site Stormwater Systems" means the systems necessary to control stormwater within an individual development project and located within the project boundaries.
- (34) "Peak attenuation volume" means stormwater runoff in excess of the design volume that is conveyed to an SCM where it is not necessarily treated in accordance with the applicable MDC but rather is released by the SCM in a controlled manner to address potential downstream erosion and flooding impacts to meet federal, State, or local regulations beyond the requirements of this Section.
- (35) "Perennial waterbody" has the same meaning as in 15A NCAC 02B .0233.
- (36) "Perennial stream" has the same meaning as in 15A NCAC 02B .0233.
- (15)(37) "Permeable pavement" means paving material that absorbs water or allows water to infiltrate through the paving material. ~~Permeable pavement~~—"Permeable pavement" materials include porous concrete, permeable interlocking concrete pavers, concrete grid pavers, porous asphalt, and any other material with similar characteristics.
- (38) "Person" has the same meaning as in G.S. 143-212(4).
- (39) "Project" means the proposed development activity for which an applicant is seeking a stormwater permit from the state or other entity in accordance with this Section. The Project shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects are encouraged to develop a master plan that illustrates how each project fits into the design of the large development.
- (40) "Public linear transportation project" means a project consisting of a road, bridge, or railway that is on a public thoroughfare plan or provides improved access for existing development and that is owned and maintained by a public entity.
- (41) "Required storm depth" means the minimum amount of rainfall that shall be used to calculate the required treatment volume or to evaluate whether a project has achieved runoff volume match.
- (42) "Required treatment volume" means the minimum amount of stormwater runoff from a high density project that shall be treated in an SCM or a series of SCMs.
- (16)(43) "Redevelopment" means ~~any land disturbing activity that does not result in a net increase in built upon area and that provides greater or equal stormwater control than the previous development. Stormwater controls shall not be allowed where otherwise prohibited.~~ has the same meaning as in G.S. 143-214.7,
- (17)(44) "Residential development activities" "Residential development" has the same meaning as in 15A NCAC 02B .0202.
- (45) "Runoff volume match" means that the volume of runoff after development does not exceed the amount of runoff before development for the design storm.
- (18)(46) "Seasonal High Water Table" or "SHWT" means the highest level that groundwater, at atmospheric pressure, reaches of the saturated zone in the soil in most years during a year with normal rainfall. The seasonal high water table is usually detected by the mottling of the soil that results from mineral leaching.
- (19)(47) "Sedimentation and Erosion Control Plan" means any plan, amended plan, or revision to an approved plan submitted to the Division of Energy, Mineral, and Land Resources or a delegated authority in accordance with G.S. 113A-57.
- (48) "Simple Method" means a method for calculating the required treatment volume using the formula $V = 3630 * R_D * (0.05 + 0.9 * I_A) * A$. In this equation, V = the estimated runoff volume for the design storm, R_D = design storm rainfall depth in inches, I_A = impervious fraction (impervious portion of drainage area in acres/ drainage area in acres), and A = watershed area in acres.
- (20)(49) "Stormwater" ~~is defined~~ has the same meaning as in G.S.143-213(16a).
- (21)(50) "Stormwater Collection System" means any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized

with armoring, or alternative methods where natural topography or other physical constraints prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of Rule ~~1003(d)(4)~~ .1003 in this Section.

- (51) "Stormwater Control Measure" or "SCM" means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration or mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.
- ~~(22)~~(52) "10 Year Storm"—"Ten-year storm intensity" means the maximum rate of rainfall of a duration equivalent to the time of concentration surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 10 years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions. "years. Ten-year storm intensities are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), available at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.
- ~~(23)~~(53) "Vegetative Buffer"—"Vegetated setback" means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities. The width of the buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high water line of tidal waters, perpendicular to the shoreline.
- ~~(24)~~(54) "Vegetative conveyance"—"Vegetated conveyance" means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.
- (25) "Vegetative Filter" means an area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that runoff does not become channelized and that provides for control of stormwater runoff through infiltration of runoff and filtering of pollutants. The defined length of the filter shall be provided for in the direction of stormwater flow.

~~(26)~~(55) "Water Dependent Structures" means a structure for which the use requires access or access, proximity to, or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and boat storage areas are not shall not be considered water dependent structures. ~~uses.~~

~~(27)~~ "Wet Detention Pond" means a structure that provides for the storage and control of runoff and includes a designed and maintained permanent pool volume.

Authority G.S. 143-213; 143-214.1; 143-214.7; 143-215.3(a)(1).

15A NCAC 02H .1003 REQUIREMENTS THAT APPLY TO ALL SUBJECT PROJECTS

~~(a)~~ The intent of the Commission is to achieve the water quality protection which low density development near sensitive waters provides. To that end, the Director, by applying the standards in this Section shall cause development to comply with the antidegradation requirements specified in 15A NCAC 2B .0201 by protecting surface waters and highly productive aquatic resources from the adverse impacts of uncontrolled high density development or the potential failure of stormwater control measures.

~~(b)~~ To ensure the protection of surface waters of the State in accordance with G.S. 143-214.7, a permit is required in accordance with the provisions of this Section for any development activities which require a CAMA major development permit or a Sedimentation/Erosion Control Plan and which meet any of the following criteria:

- ~~(1)~~ development activities located in the 20 coastal counties as defined in Rule .1002(4) of this Section;
- ~~(2)~~ development activities draining to Outstanding Resource Waters (ORW) as defined in 15A NCAC 2B .0225; or
- ~~(3)~~ development activities within one mile of and draining to High Quality Waters (HQW) as defined in 15A NCAC 2B .0101(e)(5).

Projects under a common plan of development shall be considered as a single project and shall require stormwater management in accordance with this Section. Local governments with delegated Sedimentation/Erosion Control Programs often implement more stringent standards in the form of lower thresholds for land area disturbed. In these situations, the requirements of this Rule apply only to those projects that exceed the state's minimum area of disturbance as outlined in G.S. 113A-57. Specific permitting options, including general permits for some activities, are outlined in Paragraph (d) of this Rule.

~~(c)~~ Development activity with a CAMA major development permit or a Sedimentation/Erosion Control Plan approved prior to January 1, 1988 are not required to meet the provisions of these Rules unless changes are made to the project which require modifications to these approvals after January 1, 1988.

(d) Projects subject to the permitting requirements of this Section may be permitted under the following stormwater management options:

- (1) ~~Low Density Projects: Projects permitted as low density projects must be designed to meet and maintain the applicable low density requirements specified in Rules .1005 through .1007 of this Section. The Division shall review project plans and assure that density levels meet the applicable low density requirements. The permit shall require recorded deed restrictions and protective covenants to ensure development activities maintain the development consistent with the plans and specifications approved by the Division.~~
- (2) ~~High Density Projects: Projects permitted as high density projects must be designed to meet the applicable high density requirements specified in Rules .1005 through .1007 of this Section with stormwater control measures designed, operated and maintained in accordance with the provisions of this Section. The permit shall require recorded deed restrictions and protective covenants to ensure development activities maintain the development consistent with the plans and specifications approved by the Division. Stormwater control measures and operation and maintenance plans developed in accordance with Rule .1008 of this Section must be approved by the Division. In addition, NPDES permits for stormwater point sources may be required according to the provisions of 15A NCAC 2H.0126.~~
- (3) ~~Other Projects: Development may also be permitted on a case by case basis if the project:~~
 - (A) ~~controls runoff through an off site stormwater system meeting provisions of this Section;~~
 - (B) ~~is redevelopment which meets the requirements of this Section to the maximum extent practicable;~~
 - (C) ~~otherwise meets the provisions of this Section and has water dependent structures, public roads and public bridges which minimize built upon surfaces, divert stormwater away from surface waters as much as possible and employ other best management practices to minimize water quality impacts.~~
- (4) ~~Director's Certification: Projects may be approved on a case by case basis if the project is certified by the Director that the site is situated such that water quality standards and uses are not threatened and the developer demonstrates that:~~
 - (A) ~~the development plans and specifications indicate stormwater~~

~~control measures which shall be installed in lieu of the requirements of this Rule; or~~

- (B) ~~the development is located such a distance from surface waters that impacts from pollutants present in stormwater from the site shall be effectively mitigated.~~
- (5) ~~General Permits: Projects may apply for permit coverage under general permits for specific types of activities. The Division shall develop general permits for these activities in accordance with Rule .1013 of this Section. General Permit coverage shall be available to activities including, but not limited to:~~
 - (A) ~~construction of bulkheads and boat ramps;~~
 - (B) ~~installation of sewer lines with no proposed built upon areas;~~
 - (C) ~~construction of an individual single family residence; and~~
 - (D) ~~other activities that, in the opinion of the Director, meet the criteria in Rule .1013 of this Section.~~

~~Development designed to meet the requirements in Subparagraphs (d)(1) and (d)(3) of this Paragraph must demonstrate that no areas within the project site are of such high density that stormwater runoff threatens water quality.~~

~~(e) Applications: Any person with development activity meeting the criteria of Paragraph (b) of this Rule shall apply for permit coverage through the Division. Previously issued Stormwater Certifications (issued in accordance with stormwater management rules effective prior to September 1, 1995) revoked due to certification violations must apply for permit coverage. Stormwater management permit applications, project plans, supporting information and processing fees shall be submitted to the appropriate Division of Environmental Management regional office. A processing fee, as described in Paragraph (f) of this Rule, must be submitted with each application. Processing fees submitted in the form of a check or money order shall be made payable to N.C. Department of Environment, Health, and Natural Resources. Applications which are incomplete or not accompanied by the processing fee may be returned. Permit applications shall be signed as follows:~~

- (1) ~~in the case of corporations, by a principal executive officer of at least the level of vice president, or his authorized representative;~~
- (2) ~~in the case of a partnership, by a general partner and in the case of a limited partnership, by a general partner;~~
- (3) ~~in the case of a sole proprietorship, by the proprietor;~~
- (4) ~~in the case of a municipal, state or other public entity by either a principal executive officer, ranking official or other duly authorized employee.~~

~~The signature of the consulting engineer or other agent shall be accepted on the application only if accompanied by a letter of authorization.~~

(f) Permit Fees:

- (1) For every application for a new or revised permit under this Section, a nonrefundable application processing fee in the amount stated in Subparagraph (f)(2) of this Paragraph shall be submitted at the time of application.
 - (A) Each permit application is incomplete until the application processing fee is received;
 - (B) No processing fee shall be charged for modifications of permits when initiated by the Director;

- (C) A processing fee of forty dollars (\$40.00) shall be charged for name changes;
- (D) No processing fee shall be required for name changes associated with the initial transfer of property from the developer to property owner or responsible party. Any subsequent changes in ownership shall be subject to the name change processing fee in Part (C) of this Paragraph.

(2) Schedule of Fees

Permit Application Processing Fee

	New Applications/ Modifications/ Rate Renewal	Timely Renewals Without Modifications
Low Density	\$225	N/A
High Density	385	225
Other	225	N/A
Director's Certification	350	N/A
General Permits	50	N/A

(g) Supporting Documents and Information. This Paragraph outlines those supporting documents and information that must be submitted with stormwater applications. Additional information may also be applicable or required. The applicant shall attempt to submit all necessary information to describe the site, development and stormwater management practices proposed. The following documents and information shall be submitted with stormwater applications:

- (1) two sets of detailed plans and specifications for the project;
- (2) plans and specifications must be dated and sealed as outlined in Rule .1008(j) of this Section and show the revision number and date;
- (3) general location map showing orientation of the project with relation to at least two references (numbered roads, named streams/rivers, etc.) and showing the receiving water (a USGS map preferable);
- (4) topographic map(s) of the project area showing original and proposed contours and drainage patterns;
- (5) delineation of relevant boundaries including drainage areas, seasonal high water table, wetlands, property/project boundaries and drainage easements;
- (6) existing and proposed built-upon area including roads, parking areas, buildings, etc.;
- (7) technical information showing all final numbers, calculations, assumptions, drawing and procedures associated with the stormwater

management measures including but not limited to: built-upon area, runoff coefficients, runoff volume, runoff depth, flow routing, inlet and outlet configuration (where applicable), other applicable information as specified;

- (8) operation and maintenance plan signed by responsible party;
- (9) recorded deed restriction and protective covenants. As an alternative proposed deed restriction and protective covenants and a signed agreement to provide final recorded articles shall be accepted when final documents are not available at the time of submittal.

(h) Permit Issuance and Compliance: Stormwater management permits shall be issued in a manner consistent with the following:

- (1) Stormwater management permits issued for low density projects shall not require permit renewal.
- (2) Stormwater management permits issued for projects that require the construction of engineered stormwater control measures shall be issued for a period of time not to exceed 10 years. Applications for permit renewals shall be submitted 180 days prior to the expiration of a permit and must be accompanied by the processing fee described in Paragraph (f) of this Rule.
- (3) Stormwater management permits shall be issued to the developer or owner and shall cover the entire master plan of the project

~~("stormwater master plan permit"). The master plan permit shall include specifications for stormwater management measures associated with each individual lot or property within the project.~~

- ~~(4) Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of this Section is subject to enforcement procedures as set forth in G.S. 143, Article 21.~~

The following requirements shall apply to projects subject to any North Carolina stormwater program set forth in Rule .1001 of this Section.

(1) CALCULATION OF PROJECT DENSITY.

The following requirements shall apply to the calculation of project density:

- (a) Project density shall be calculated as the total built-upon area divided by the total project area;
- (b) A project with existing development may use the calculation method in Sub-Item (1)(a) or shall have the option of calculating project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area;
- (c) Total project area shall exclude the following:
 - (i) areas below the Normal High Water (NHW) line or Mean High Water (MHW) line; and
 - (ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, available at no cost at <http://reports.oah.state.nc.us/ncac.asp> as measured landward from the Normal High Water (NHW) line; and
- (d) On a case-by-case basis as determined by the Division during application review, projects may be considered to have both high and low density areas based on one or more of the following criteria:
 - (i) natural drainage area boundaries;
 - (ii) variations in land use throughout the project; and
 - (iii) construction phasing.

(2) DESIGN REQUIREMENTS FOR LOW DENSITY PROJECTS. Low density projects shall meet the following minimum design criteria:

- (a) DENSITY THRESHOLDS. Low density projects shall not exceed the low density development thresholds

set forth in the stormwater programs to which they are subject pursuant to this Section. For projects subject to the requirements for Non-Coastal High Quality Waters and Outstanding Resource Waters, dwelling unit per acre may be used instead of density to establish low density status for single-family detached residential development as set forth in Rule .1021 in this Section;

- (b) DIFFUSE FLOW. Projects shall be designed to maximize diffuse flow through vegetated areas and minimize channelization of flow;

(c) VEGETATED CONVEYANCES. Stormwater that cannot be released as diffuse flow shall be transported by vegetated conveyances. A minimal amount of non-vegetated conveyances for erosion protection or piping for driveways or culverts under a road shall be allowed when it cannot be avoided. Vegetated conveyances shall meet the following requirements:

- (i) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the Division that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation;
- (ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm as demonstrated by engineering calculations; and
- (iii) An operation and maintenance (O&M) plan shall be provided for the vegetated conveyances. The O&M plan shall indicate the maintenance procedures that shall be taken to return the vegetated conveyance to design specification if a failure occurs. O&M plans shall be signed by the owner and notarized. O&M plans shall be referenced on the project plat. An O&M plan shall not be required for vegetated conveyances that shall be within publicly-maintained rights-of-way.

- (d) CURB OUTLET SWALES. Low density projects may use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems are as follows:
- (i) The curb outlets shall be designed such that the swale or vegetated area can carry the peak flow from the 10-year storm at a non-erosive velocity;
 - (ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent, where practicable. Where not practical due to physical constraints, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
 - (iii) The swale's cross-section shall be trapezoidal with a minimum bottom width of two feet;
 - (iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
 - (v) The minimum length of the swale or vegetated area shall be 100 feet; and
 - (vi) Low density projects may use treatment swales designed pursuant to Rule .1061 of this Section in lieu of the requirements specified in Part (i) through (v).
- (3) DESIGN REQUIREMENTS FOR HIGH DENSITY PROJECTS. High density projects are projects that do not conform to Item (2) of this Rule. High density projects shall meet the following minimum design criteria:
- (a) TREATMENT REQUIREMENTS. The stormwater from the project shall be treated in one or more primary Stormwater Control Measures (SCMs). SCMs shall be designed, constructed, and maintained so that the project achieves either runoff treatment or runoff volume match.
 - (i) Runoff treatment shall be achieved when all of the stormwater runoff from all surfaces on the project at build-out is treated in a primary SCM. Primary SCMs shall include: wet ponds, stormwater wetlands, infiltration systems, sand filters, bioretention cells, permeable pavement, green roofs, rainwater harvesting, and approved new stormwater technologies.
 - (ii) Runoff volume match shall be achieved when stormwater from the project at the ultimate built-out potential is controlled such that post-development runoff volume does not exceed pre-development runoff volume.
 - (b) OFF-SITE STORMWATER. Stormwater runoff from off-site areas and existing development that pre-dates the effective dates of these rules is not required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in the sizing of on-site SCMs at its full built-out potential.
 - (c) OFF-SITE SCM. A project that controls runoff through an off-site SCM shall be allowed on a case-by-case basis as determined by the Division if the off-site SCM meets the provisions of this Section.
 - (d) REPLACING EXISTING DEVELOPMENT WITH NEW DEVELOPMENT. When existing built-upon area is proposed to be replaced, the requirements shall be as follows:
 - (i) Where the existing footprint is being replaced with an equivalent amount of built-upon area, greater or equal stormwater treatment shall be provided.
 - (ii) Where there is a net increase of built-upon area, stormwater runoff from the net increase shall be treated in an SCM.
 - (e) CALCULATION METHODS. The required stormwater treatment volume to be controlled shall be calculated using either the Simple Method or the difference between pre- and post-development runoff volume computed using the Discrete NRCS Curve Number Method. The required storm depth is specified as set forth in the

- stormwater program to which the project is subject.
- (f) MDC FOR SCMS. SCMs shall meet the relevant MDC set forth in Rules .1050 through .1062 of this Section.
- (g) FLEXIBILITY IN THE MDC FOR SCMs. Applicants may propose designs for SCMs that do not meet all of the MDC. The process for permitting SCMs that do not meet all of the MDC shall be as follows:
 - (i) When the Division is the permitting authority, these designs shall be submitted to the Division during the standard permitting process pursuant to Rule .1042 of this Section.
 - (ii) Proposed designs shall be considered by the Division or local government permitting authority on a project-by-project basis;
 - (iii) The applicant shall provide technical justification based on engineering calculations and the results of published research studies, showing that the proposed design is equally or more protective of water quality than the MDC and that it shall function in perpetuity; and
 - (iv) Proposed designs shall be approved if the Division or local government permitting authority determines that the information provided by the applicant satisfies the requirements of Sub-items (ii) and (iii) of this Item.
- (4) VEGETATED SETBACKS. Vegetated setbacks shall be required adjacent to waters as specified in the stormwater rules to which the project is subject pursuant to this Section, in addition to the following requirements applicable to all vegetated setbacks:
 - (a) The width of a vegetated setback shall be measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline;
 - (b) Vegetated setbacks may be cleared or graded, but shall be replanted and maintained in grass or other vegetation;

- (c) Built-upon area within a vegetated setback shall be allowed when it is not practical to locate the built-upon area elsewhere, the built-upon area within the vegetated setback is minimized, and channelizing runoff from the built-upon area is avoided. Built-upon area within the vegetated setback shall be limited to:
 - (i) Publicly-funded linear projects such as roads, greenways, and sidewalks;
 - (ii) Water Dependent Structures; and
 - (iii) Minimal footprint uses such as poles, signs, utility appurtenances, and security lights.
- (d) Stormwater that has not been treated in an SCM shall not be discharged through a vegetated setback; instead it shall be released at the edge of the vegetated setback and allowed to flow through the setback in a diffuse manner.
- (e) Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Item.
- (6) STORMWATER OUTLETS. Stormwater outlets shall be designed so that they do not cause erosion immediately downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.
- (7) DEED RESTRICTIONS AND PROTECTIVE COVENANTS. The permittee shall record deed restrictions and protective covenants to ensure development activities maintain the development consistent with the plans and specifications approved by the Division.
- (8) COMPLIANCE WITH OTHER REGULATORY PROGRAMS. Project designs shall comply with all other applicable requirements pursuant to G.S. 143-214.1, 143-214.5, 143-214.7, and 143-215.3(a)(1).

Authority G.S. 143-214.1; 143-214.7; 143-215.1(d); 143-215.3(a)(1).

15A NCAC 02H .1005 STORMWATER REQUIREMENTS: COASTAL COUNTIES

~~(a) Requirements for Certain Nonresidential and Residential Development in the Coastal Counties. All nonresidential development activities that occur within the Coastal Counties that will add more than 10,000 square feet of built-upon area or that require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 and all residential development activities within the Coastal Counties that require a Sedimentation and Erosion~~

Control Plan, pursuant to G.S. 113A-57 or a CAMA Major Development Permit, pursuant to G.S. 113A-118 shall manage stormwater runoff as provided in Items (1), (2), and (3) below. A development activity or project requires a Sedimentation and Erosion Control Plan if the activity or project disturbs one acre or more of land, including an activity or project that disturbs less than one acre of land that is part of a larger common plan of development. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006.

(1) ~~Development Near Outstanding Resource Waters (ORW). Development activities within the Coastal Counties and located within 575 feet of the mean high waterline of areas designated by the Commission as Outstanding Resource Waters (ORW) shall meet the requirements of Rule .1007 of the Section and shall be permitted as follows:~~

(A) ~~Low Density Option. Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:~~

- (i) ~~The development has a built upon area of 12 percent or less. A development project with an overall density at or below the low density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low density development and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.~~
- (ii) ~~Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.~~
- (iii) ~~The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.~~

(B) ~~High Density Option. Development shall be permitted pursuant to Rule .1003(d)(2) of this Section if the~~

~~development meets all of the following requirements:~~

- (i) ~~The development has a built upon area of greater than 12 percent.~~
- (ii) ~~The development has no direct outlet channels or pipes to Class SA waters unless permitted in accordance with 15A NCAC 02H .0126.~~
- (iii) ~~The development utilizes control systems that are any combination of infiltration systems, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative low impact development (LID) stormwater management systems designed in accordance with Rule .1008 of this Section to control and treat the greater of, runoff from all surfaces generated by one and one half inches of rainfall, or the difference in the stormwater runoff from all surfaces from the predevelopment and postdevelopment conditions for a one year, 24 hour storm. Wet detention ponds may be used as a stormwater control system to meet the requirements of this Subparagraph (1)(B)(iii), provided that the stormwater control system fully complies with the requirements of Subparagraph (1)(B). If a wet detention pond is used within one half mile of Class SA waters, installation of a stormwater best management practice in series with the wet detention pond shall be required to treat the discharge from the wet detention pond. Alternatives as described in Rule .1008(h) of this Section may also be approved if they meet the requirements of Subparagraph (1)(B).~~
- (iv) ~~Stormwater runoff from the development that is in excess of the design volume must~~

~~flow overland through a vegetative filter designed in accordance with Rule .1008 of this Section with a minimum length of 50 feet measured from mean high water of Class SA waters.~~

~~(v) The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.~~

~~(C) Stormwater Discharges Prohibited. All development activities, including both low and high density projects, shall prohibit new points of stormwater discharge to Class SA waters or an increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances of existing stormwater conveyance systems that drain to Class SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. The following shall not be considered a direct point of stormwater discharge:~~

~~(i) Infiltration of the stormwater runoff from the design storm as described in Subparagraph (1)(B)(iii).~~

~~(ii) Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area, that is capable of providing effective infiltration of the runoff from the design storm as described in Subparagraph (1)(B)(iii). Notwithstanding the other requirements of this Rule, the infiltration mandated in this Subparagraph (1)(C)(ii) does not require a minimum separation from the seasonal high water table.~~

~~(iii) The discharge from a wet detention pond that is treated by a secondary stormwater best management practice, provided that both the wet detention pond and the secondary stormwater best management practice meet the requirements of Subparagraph (1)(C).~~

~~(D) Limitation on the Density of Development. Development shall be limited to a built upon area of 25 percent or less.~~

~~(2) Development Near Class SA Waters. Development activities within one half mile of and draining to those waters classified by the Commission as Class SA waters or within one half mile of waters classified by the Commission as Class SA waters and draining to unnamed freshwater tributaries to Class SA waters shall meet the requirements of Subparagraphs (1)(A), (B), and (C). The extent of Class SA waters is limited to those waters that are determined to be at least an intermittent stream based on a site stream determination made in accordance with the procedures that are delineated in the Division's "Identification Methods for the Origin of Intermittent and Perennial Streams" prepared pursuant to Session Law 2001 404.~~

~~(3) Other Coastal Development. Development activities within the Coastal Counties except those areas described in Subparagraphs (1) and (2) of this Paragraph shall meet all of the following requirements:~~

~~(A) Low Density Option. Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development meets all of the following requirements:~~

~~(i) The development has a built upon area of 24 percent or less. A development project with an overall density at or below the low density threshold, but containing areas with a density greater than the overall project density, shall be considered low density as long as the project meets or exceeds the requirements for low density development and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.~~

~~(ii) Stormwater runoff from the development is transported primarily by vegetated conveyances. The conveyance system shall not include a stormwater collection system as defined in Rule .1002 of this Section.~~

~~(iii) The development contains a vegetative buffer in~~

accordance with Paragraph (e) of this Rule.

- (B) ~~High Density Option. Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if the development meets all of the following requirements:~~
 - (i) ~~The development has a built upon area of greater than 24 percent.~~
 - (ii) ~~The development uses control systems that are any combination of infiltration systems, wet detention ponds, bioretention systems, constructed stormwater wetlands, sand filters, rain barrels, cisterns, rain gardens or alternative stormwater management systems designed in accordance with Rule .1008 of this Section.~~
 - (iii) ~~Control systems must be designed to store, control, and treat the stormwater runoff from all surfaces generated by one and one half inch of rainfall.~~
 - (iv) ~~The development contains a vegetative buffer in accordance with Paragraph (e) of this Rule.~~

(b) ~~Requirements for Limited Residential Development in Coastal Counties. For residential development activities within the 20 Coastal Counties that are located within one half mile and draining to Class SA waters, that have a built upon area greater than 12 percent, that will add more than 10,000 square feet of built upon area, and that does not require a Sedimentation and Erosion Control Plan, pursuant to G.S. 113A 57 or a CAMA Major Development Permit, pursuant to G.S. 113A 118, a one time, nonrenewable stormwater management permit shall be obtained. The permit shall require recorded restrictions or protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that the plans and specifications approved in the permit are maintained. Under this permit, stormwater runoff shall be managed using any one or combination of the following practices:~~

- (1) ~~Install rain cisterns or rain barrels designed to collect all rooftop runoff from the first one and one half inches of rain. Rain barrels and cisterns shall be installed in such a manner as to facilitate the reuse of the collected rain water on site and shall be installed in such a manner that any overflow from these devices is directed to a vegetated area in a diffuse flow. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out~~

~~of permeable pavement or other pervious materials.~~

- (2) ~~Direct rooftop runoff from the first one and one half inches of rain to an appropriately sized and designed rain garden. Construct all uncovered driveways, uncovered parking areas, uncovered walkways, and uncovered patios out of permeable pavement or other pervious materials.~~
- (3) ~~Install any other stormwater best management practice that meets the requirements of Rule .1008 of this Section to control and treat the stormwater runoff from all built upon areas of the site from the first one and one half inches of rain.~~

(c) ~~Requirements for Structural Stormwater Controls. Structural stormwater controls required under this Rule shall meet all of the following requirements:~~

- (1) ~~Remove an 85 percent average annual amount of Total Suspended Solids.~~
- (2) ~~For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.~~
- (3) ~~Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one year, 24 hour storm.~~
- (4) ~~Meet the General Engineering Design Criteria set forth in Rule .1008(e) of this Section.~~
- (5) ~~For structural stormwater controls that require separation from the seasonal high water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal high water table is not practicable, the Division may grant relief from the separation requirement pursuant to the Alternative Design Criteria set out in Rule .1008(h) of this Section. No minimum separation from the seasonal high water table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.~~

(d) ~~Wetlands. Developments regulated by this Rule that have wetlands inside of, or adjacent to, the development must meet the following requirements:~~

- (1) ~~Areas defined as Coastal Wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.~~
- (2) ~~Stormwater runoff from built upon areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non erosive velocity.~~

~~(e) Vegetative Buffer. Developments permitted under Paragraph (a) shall contain a 50 foot wide vegetative buffer, as defined in Rule .1002(22) of this Section, for new development activities and a 30 foot wide vegetative buffer for redevelopment activities. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The vegetative buffer may be cleared or graded, but must be planted with and maintained in grass or any other vegetative or plant material. Furthermore, stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds, may be located within this vegetative buffer. The Division may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by State water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.~~

~~(f) Exemptions From Vegetative Buffer Requirements. The following activities are exempt from the vegetative buffer requirements of Paragraph (e) of this Rule:~~

- ~~(1) Development in urban waterfronts that meets the requirements of 15A NCAC 07H .0209(g);~~
- ~~(2) Development in a new urban waterfront area that meets the requirements of S.L. 2004 117;~~
- ~~(3) Those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC 07H .0209(d)(10)(H);~~
- ~~(4) Development of upland marinas that have received or are required to secure a CAMA Major Development Permit.~~

~~(g) Compliance with Other Rules. In addition to the requirements specified in this section, activities regulated under this section must also comply with any requirements of any other applicable law or rule.~~

~~(h) Exclusions. The requirements of this Rule shall not apply to any of the following:~~

- ~~(1) Activities of the North Carolina Department of Transportation that are regulated in accordance with the provisions of the Department's National Pollutant Discharge Elimination System (NPDES) Stormwater Permit.~~
- ~~(2) Development activities that are conducted pursuant to and consistent with one of the following authorizations, or any timely renewal thereof, shall be regulated by those provisions and requirements of this Rule that were effective at the time of the original issuance of the following authorizations:~~
 - ~~(A) State Stormwater Permit issued under the provisions of this Rule.~~
 - ~~(B) Stormwater Certification issued pursuant to Rule .1000 of this Section prior to 1 December 1995.~~
 - ~~(C) A CAMA Major Development Permit.~~

~~(D) 401 Certification that contains an approved Stormwater Management Plan.~~

~~(E) A building permit pursuant to G.S. 153A 357 or G.S. 160A 417.~~

~~(F) A site specific development plan as defined by G.S. 153A 344.1(b)(5) and G.S. 160A 385.1(b)(5).~~

~~(G) A phased development plan approved pursuant to G.S. 153A 344.1 or G.S. 160A 385.1 that shows:~~

~~(i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A 330 through G.S. 153A 335 or G.S. 160A 371 through G.S. 160A 376.~~

~~(ii) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.~~

~~(H) A vested right to the development pursuant to common law.~~

~~(3) Redevelopment activities that result in no net increase in built upon area and provide stormwater control equal to the previous development.~~

~~(4) Development activities for which a complete Stormwater Permit Application has been accepted by the Division prior to October 1, 2008, shall be regulated by the provisions and requirements of this Rule that were effective at the time that this application was accepted as complete by the Division. For purposes of this Rule, a Stormwater Permit Application is deemed accepted as complete by the Division when the application is assigned a permit number in the Division's Basinwide Information Management System.~~

~~(5) Development activities for which only a minor modification of a State Stormwater Permit is required shall be regulated by the provisions and requirements of this Rule that were effective at the time of the original issuance of the State Stormwater Permit. For purposes of this Rule, a minor modification of a State Stormwater Permit is defined as a modification that does not increase the net area of built upon area within the project site or does not increase the overall size of the stormwater controls that~~

have been previously approved for that development activity.

- (6) ~~Municipalities designated as a National Pollutant Discharge Elimination System (NPDES) Phase 2 municipality located within the 20 Coastal Counties until such time as the NPDES Phase 2 Stormwater Permit expires and is subject to renewal. Upon renewal of the NPDES Phase 2 Stormwater Permits for municipalities located within the 20 Coastal Counties, the Department shall review the permits to determine whether the permits should be amended to include the provisions of this Rule.~~

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1006 STORMWATER REQUIREMENTS: HIGH QUALITY WATERS

All development activities which require a stormwater management permit under Rule .1003 of this Section and are within one mile of and draining to waters classified as High Quality Waters (HQW) shall manage stormwater runoff in accordance with the provisions outlined in this Rule. More stringent stormwater management measures may be required on a case by case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters.

- (1) ~~All waters classified as WS I or WS II (15A NCAC 2B .0212 and .0214) and all waters located in the coastal counties (Rule .1005 of this Section) are excluded from the requirements of this Rule since they already have requirements for stormwater management.~~
- (2) ~~Low Density Option: Development shall be permitted pursuant to Rule .1003(e)(1) of this Section if the development has:~~
 - (a) ~~built upon area of 12 percent or less or proposes single family residential development on lots of one acre or greater;~~
 - (b) ~~stormwater runoff transported primarily by vegetated conveyances; conveyance system shall not include a discrete stormwater collection system as defined in Rule .1002 of this Section;~~
 - (c) ~~a 30 foot wide vegetative buffer.~~
- (3) ~~High Density Option: Higher density developments shall be permitted pursuant to Rule .1003(e)(2) of this Section if stormwater control systems meet the following criteria:~~
 - (a) ~~control systems must be wet detention ponds or alternative stormwater management systems designed in accordance with Rule .1008 of this Section;~~

- (b) ~~control systems must be designed to control runoff from all surfaces generated by one inch of rainfall.~~

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1007 STORMWATER REQUIREMENTS: OUTSTANDING RESOURCE WATERS

All development activities which require a stormwater management permit under Rule .1003 of this Section and which drain to waters classified as Outstanding Resource Waters (ORW) shall manage stormwater runoff in accordance with the provisions of this Rule. Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified as Outstanding Resource Waters (ORW). Stormwater management strategies to protect resource values of waters classified as ORW shall be developed on a site specific basis during the proceedings to classify these waters as ORW. The requirements of this Rule serve as the minimum conditions that must be met by development activities. More stringent stormwater management measures may be required on a case by case basis where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters.

- (1) ~~Freshwater ORWs: Development activities which require a stormwater management permit under Rule .1003 of this Section and which drain to freshwaters classified as ORW shall manage stormwater runoff as follows:~~
 - (a) ~~Low Density Option: Development shall be permitted pursuant to Rule .1003(d)(1) of this Section if the development has:~~
 - (i) ~~built upon area of 12 percent or less or proposes single family residential development on lots of one acre or greater;~~
 - (ii) ~~stormwater runoff transported primarily by vegetated conveyances; conveyance system shall not include a discrete stormwater collection system as defined in Rule .1002 of this Section; and~~
 - (iii) ~~a 30 foot wide vegetative buffer.~~
 - (b) ~~High Density Option: Higher density developments shall be permitted pursuant to Rule .1003(d)(2) of this Section if stormwater control systems meet the following criteria:~~
 - (i) ~~control systems must be wet detention ponds or alternative stormwater management systems designed in accordance with~~

- Rule .1008 of this Section;
and
- (ii) ~~control systems must be designed to control runoff from all surfaces generated by one inch of rainfall.~~
- (2) ~~Saltwater ORWs: Development activities which require a stormwater management permit under Rule .1003 of this Section and which drain to saltwaters classified as ORW shall manage stormwater runoff as follows:~~
- (a) ~~Within 575 feet of the mean high water line of designated ORW areas, development activities shall comply with the low density option as specified in Rule .1005(2)(a) of this Section.~~
 - (b) ~~Projects draining to saltwaters classified as ORW that impact the Areas of Environmental Concern (AEC), determined pursuant to G.S. 113A-113, shall delineate the ORW AEC on the project plans and conform to low density requirements as specified in Rule .1005(2)(a) of this Section within the ORW AEC.~~
 - (c) ~~After the Commission has received a request to classify Class SA waters as ORW and given permission to the Director to schedule a public hearing to consider reclassification and until such time as specific stormwater design criteria become effective, only development which meets the requirements of Rule .1003(d)(3)(A), (B) and (C) and Rule .1005(2)(a) of this Section shall be approved within 575 feet of the mean high water line of these waters.~~

- (1) ~~There is a reasonable expectation that the control measures will be successful;~~
 - (2) ~~The projects are not located near High Quality Waters (HQW);~~
 - (3) ~~Monitoring requirements are included to verify the performance of the control measures; and~~
 - (4) ~~Alternatives are available if the control measures fail and shall be required when the Director determines that the system has failed.~~
- (c) ~~General Engineering Design Criteria For All Projects.~~
- (1) ~~The size of the system must take into account the runoff at the ultimate built out potential from all surfaces draining to the system, including any off-site drainage. The storage volume of the system shall be calculated to provide for the most conservative protection using runoff calculation methods described on pages A.1 and A.2 in "Controlling Urban Runoff: A Practical Manual For Planning And Designing Urban BMPs" which is hereby incorporated by reference not including amendments. This document is available through the Metropolitan Washington (D.C.) Council of Governments at a cost of forty dollars (\$40.00). This method is also described in the Division's document "An Overview of Wet Detention Basin Design." Other engineering methods may be approved if these methods are shown to provide for equivalent protection;~~
 - (2) ~~All side slopes being stabilized with vegetative cover shall be no steeper than 3:1 (horizontal to vertical);~~
 - (3) ~~All stormwater management structures shall be located in recorded drainage easements for the purposes of operation and maintenance and shall have recorded access easements to the nearest public right of way. These easements shall be granted in favor of the party responsible for operating and maintaining the stormwater management structures;~~
 - (4) ~~Vegetative filters designed in accordance with Paragraph (f) of this Rule are required from the overflow of all infiltration systems and discharge of all stormwater wet detention ponds. These filters shall be at least 30 feet in length, except where a minimum length of 50 feet is required in accordance with Rule .1005(2)(b)(iii) of this Section;~~
 - (5) ~~Stormwater controls shall be designed in accordance with the provisions of this Section. Other designs may be acceptable if these designs are shown by the applicant, to the satisfaction of the Director, to provide equivalent protection;~~
 - (6) ~~In accordance with the Antidegradation Policy as defined in 15A NCAC 2B .0201, additional control measures may be required on a case by case basis to maintain and protect, for~~

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1008 DESIGN OF STORMWATER MANAGEMENT MEASURES

(a) ~~Structural Stormwater Control Options. Stormwater control measures which may be approved pursuant to this Rule and which shall not be considered innovative include:~~

- (1) ~~Stormwater infiltration systems including infiltration basins/ponds, swales, and vegetative filters;~~
- (2) ~~Wet detention ponds; and~~
- (3) ~~Devices approved in accordance with Paragraph (h) of this Rule.~~

All stormwater management structures are subject to the requirements of Paragraph (c) of this Rule.

(b) ~~Innovative Systems. Innovative measures for controlling stormwater which are not well established through actual experience may be approved on a demonstration basis under the following conditions:~~

existing and anticipated uses, waters with quality higher than the standards; and

- (7) Stormwater control measures used for sedimentation and erosion control during the construction phase must be cleaned out and returned to their designed state.

(d) Infiltration System Requirements. Infiltration systems may be designed to provide infiltration of the entire design rainfall volume required for a site or a series of successive systems may be utilized. Infiltration may also be used to pretreat runoff prior to disposal in a wet detention ponds. The following are general requirements:

- (1) Infiltration systems shall be a minimum of 30 feet from surface waters and 50 feet from Class SA waters;
- (2) Infiltration systems shall be a minimum distance of 100 feet from water supply wells;
- (3) The bottom of infiltration systems shall be a minimum of two feet above the seasonal high water table;
- (4) Infiltration systems must be designed such that runoff in excess of the design volume by passes the system and does not flush pollutants through the system;
- (5) Infiltration systems must be designed to completely draw down the design storage volume to the seasonal high water table under seasonal high water conditions within five days and a hydrogeologic evaluation may be required to determine whether the system can draw down in five days;
- (6) Soils must have a minimum hydraulic conductivity of 0.52 inches per hour to be suitable for infiltration;
- (7) Infiltration systems must not be sited on or in fill material, unless approved on a case by case basis under Paragraph (h) of this Rule;
- (8) Infiltration systems may be required on a case by case basis to have an observation well to provide ready inspection of the system;
- (9) If runoff is directed to infiltration systems during construction of the project, the system must be restored to design specifications after the project is complete and the entire drainage area is stabilized.

(e) Wet Detention Pond Requirements. These practices may be used as a primary treatment device or as a secondary device following an infiltration system. Wet detention ponds shall be designed for a specific pollutant removal. Specific requirements for these systems are as follows:

- (1) The design storage volume shall be above the permanent pool;
- (2) The discharge rate from these systems following the one inch rainfall design storm shall be such that the draw down to the permanent pool level occurs within five days, but not in less than two days;
- (3) The design permanent pool level mean depth shall be a minimum of three feet and shall be

designed with a surface area sufficient to remove 85 percent of total suspended solids. The design for 85 percent total suspended solids removal shall be based on "Methodology for Analysis of Detention Basins for Control of Urban Runoff Quality" which is hereby incorporated by reference not including subsequent amendments. This document is available from the U.S. Environmental Protection Agency (Document number EPA440/5-87-001) at no cost;

- (4) The inlet structure must be designed to minimize turbulence using baffles or other appropriate design features and shall be located in a manner that avoids short circuiting in the pond;
- (5) Pretreatment of the runoff by the use of vegetative filters may be used to minimize sedimentation and eutrophication of the detention pond;
- (6) Wet detention ponds shall be designed with a forebay to enhance sedimentation at the inlet to the pond;
- (7) The basin side slopes for the storage volume above the permanent pool shall be stabilized with vegetation down to the permanent pool level and shall be designed in accordance with Subparagraph (c)(2) of this Rule;
- (8) The pond shall be designed with side slopes no steeper than 3:1 (horizontal to vertical);
- (9) The pond shall be designed to provide for a vegetative shelf around the perimeter of the basin. This shelf shall be gently sloped (6:1 or flatter) and shall consist of native vegetation;
- (10) The pond shall be designed to account for sufficient sediment storage to allow for the proper operation of the facility between scheduled cleanout periods.

(f) Vegetative Filter Requirements. Vegetative filters shall be used as a non structural method for providing additional infiltration, filtering of pollutants and minimizing stormwater impacts. Requirements for these filters are as follows:

- (1) A distribution device such as a swale shall be used to provide even distribution of runoff across the width of the vegetative filter;
- (2) The slope and length of the vegetative filter shall be designed, constructed and maintained so as to provide a non erosive velocity of flow through the filter for the 10 year storm and shall have a slope of five percent or less, where practicable; and
- (3) Vegetation in the filter may be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.

(g) Curb Outlet Systems. Projects that meet the low density provisions of Rules .1005 through .1007 of this Section may use curb and gutter with outlets to convey the stormwater to grassed swales or vegetated areas prior to the runoff discharging to

vegetative filters or wetlands. Requirements for these curb outlet systems are as follows:

- (1) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10 year storm and the velocity of the flow shall be non erosive;
- (2) The longitudinal slope of the swale or vegetated area shall not exceed five percent, where practicable;
- (3) The side slopes of the swale or vegetated area shall be no steeper than 5:1 (horizontal to vertical). Where this is not practical due to physical constraints, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
- (4) The minimum length of the swale or vegetated area shall be 100 feet; and
- (5) In sensitive areas, practices such as check dams, rock or wooden, may be required to increase detention time within the swale or vegetated area.

(h) **Alternative Design Criteria.** In addition to the control measures outlined in Paragraphs (b), (d), (e), (f) and (g) of this Rule, stormwater management systems consisting of other control options or series of control options may be approved by the Director on a case by case basis. This approval shall only be given in cases where the applicant can demonstrate that the Alternative Design Criteria shall provide equal or better stormwater control, equal or better protection of waters of the state, and result in no increased potential for nuisance conditions. The criteria for approval shall be that the stormwater management system shall provide for 85 percent average annual removal of Total Suspended Solids and that the discharge rate from the system meets one of the following:

- (1) the discharge rate following the one-inch design storm shall be such that the runoff volume draws down to the pre storm design stage within five days, but not less than two days; or
- (2) the post development discharge rate shall be no larger than predevelopment discharge rate for the one year 24 hour storm.

(i) **Operation and maintenance plans.** Prior to approval of the development by the Division an operation and maintenance plan or manual shall be provided by the developer for stormwater systems, indicating the operation and maintenance actions that shall be taken, specific quantitative criteria used for determining when those actions shall be taken, and who is responsible for those actions. The plan must clearly indicate the steps that shall be taken and who shall be responsible for restoring a stormwater system to design specifications if a failure occurs and must include an acknowledgment by the responsible party. Development must be maintained consistent with the requirements in these plans and the original plans and any modifications to these plans must be approved by the Division.

(j) **System Design.** Stormwater systems must be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed. Upon completion of construction, the designer for the type of stormwater system installed must certify that the system was inspected during

construction, was constructed in substantial conformity with plans and specifications approved by the Division and complies with the requirements of this Section prior to issuance of the certificate of occupancy.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1009 STAFF REVIEW AND PERMIT PREPARATION

(a) The staff of the permitting agency shall conduct a review of plans, specifications and other project data accompanying the application and shall determine if the application and required information are complete. The staff shall acknowledge receipt of a complete application.

(b) If the application is not complete with all required information, the application may be returned to the applicant. The staff shall advise the applicant by mail:

- (1) how the application or accompanying supporting information may be modified to make them acceptable or complete; and
- (2) that the 90 day processing period required in G.S. 143-215.1 begins upon receipt of corrected or complete application with required supporting information.

(c) If an application is accepted and later found to be incomplete, the applicant shall be advised how the application or accompanying supporting information may be modified to make them acceptable or complete, and that if all required information is not submitted within 30 days that the project shall be returned as incomplete.

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

15A NCAC 02H .1010 FINAL ACTION ON PERMIT APPLICATIONS TO THE DIVISION

(a) The Director shall take final action on all applications not later than 90 days following receipt of a complete application and with required information. All permits or renewals of permits and decisions denying permits or renewals shall be in writing.

(b) The Director is authorized to:

- (1) issue a permit containing such conditions as are necessary to effectuate the purposes of G.S. 143, Article 21;
- (2) issue permit containing time schedules for achieving compliance with applicable water quality standards and other legally applicable requirements;
- (3) deny a permit application where necessary to effectuate:
 - (A) the purposes of G.S. 143, Article 21;
 - (B) the purposes of G.S. 143-215.67(a);
 - (C) rules on coastal waste treatment, disposal, found in Section .0400 of this Subchapter;
 - (D) rules on "subsurface disposal systems," found in 15A NCAC 18A .1900. Copies of these Rules are available from the Division of Environmental Health, P.O. Box

29535, Raleigh, North Carolina 27626-0535; and

(E) ~~rules on groundwater quality standards found in Subchapter 2L of this Chapter.~~

(4) ~~hold public meetings when necessary to obtain additional information needed to complete the review of the application. The application will be considered as incomplete until the close of the meeting record.~~

(c) ~~If a permit is denied, the letter of denial shall state the reason(s) for denial and any reasonable measures which the applicant may take to make the application approvable.~~

(d) ~~Permits shall be issued or renewed for a period of time deemed reasonable by the Director.~~

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

15A NCAC 02H .1011 MODIFICATION AND REVOCATION OF PERMITS

Any permit issued by the Division pursuant to these Rules is subject to revocation, or modification upon 60 days notice by the Director in whole or part for good cause including but not limited to:

- (1) ~~violation of any terms or conditions of the permit;~~
- (2) ~~obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;~~
- (3) ~~refusal of the permittee to allow authorized employees of the Department of Environment, Health, and Natural Resources upon presentation of credentials:~~
 - (a) ~~to enter upon permittee's premises on which a system is located in which any records are required to be kept under terms and conditions of the permit;~~
 - (b) ~~to have access to any copy and records required to be kept under terms and conditions of the permit;~~
 - (c) ~~to inspect any monitoring equipment or method required in the permit; or~~
 - (d) ~~to sample any discharge of pollutants;~~
- (4) ~~failure to pay the annual fee for administering and compliance monitoring.~~

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

15A NCAC 02H .1012 DELEGATION OF AUTHORITY

For permits issued by the Division, the Director is authorized to delegate any or all of the functions contained in these Rules except the following:

- (1) ~~denial of a permit application;~~
- (2) ~~revocation of a permit not requested by the permittee; or~~
- (3) ~~modification of a permit not requested by the permittee.~~

Authority G.S. 143-215.3(a).

15A NCAC 02H .1013 GENERAL PERMITS

(a) ~~In accordance with the provisions of G.S. 143-215.1(b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities covered in this Section. All activities in the State that received a "Certificate of Coverage" for that category from the Division shall be deemed covered under that general permit. Each of the general permits shall be issued individually under G.S. 143-215.1, using all procedural requirements specified for state permits including application and public notice. Activities covered under general permits, developed in accordance with this Rule, shall be subject to the same standards and limits, management practices, enforcement authorities, and rights and privileges as specified in the general permit. Procedural requirements for application and permit approval, unless specifically designated as applicable to individuals proposed to be covered under the general permits, apply only to the issuance of the general permits. After issuance of the general permit by the Director, activities in the applicable categories may request coverage under the general permit, and the Director or his designee shall grant appropriate certification. General permits may be written to regulate categories of other activities that all: involve the same or substantially similar operations; have similar characteristics; require the same limitations or operating conditions; require the same or similar monitoring; and in the opinion of the Director are more appropriately controlled by a general permit.~~

(b) ~~No provision in any general permit issued under this Rule shall be interpreted to allow the permittee to violate state water quality standards or other applicable environmental standards.~~

(c) ~~For a general permit to apply to an activity, a Notice of Intent to be covered by the general permit must be submitted to the Division using forms provided by the Division and, as appropriate, following the application procedures specified in this Section. If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, a long form application and full application review procedure shall be required.~~

(d) ~~General permits may be modified and reissued by the Division as necessary. Activities covered by general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.~~

(e) ~~All previous state water quality permits issued to a facility which can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit and issuance of the Certification of Coverage.~~

(f) ~~Anyone engaged in activities covered by the general permit rules but not permitted in accordance with this Section shall be considered in violation in G.S. 143-215.1.~~

(g) ~~Any individual covered or considering coverage under a general permit may choose to pursue an individual permit for any activity covered by this Section.~~

(h) ~~The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual permit by notifying that person that an application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and~~

application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit may be:

- (1) the activity is a significant contributor of pollutants;
- (2) conditions at the permitted site change, altering the constituents or characteristics of the site such that the activity no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with Commission Rules;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the activity; or
- (6) a determination that the water of the stream receiving stormwater runoff from the site is not meeting applicable water quality standards.

(i) Any interested person may petition the Director to take an action under Paragraph (h) of this Rule to require an individual permit.

(j) General permits may be modified, terminated, or revoked and reissued in accordance with the authority and requirements of Rules .1010 and .1011 of this Section.

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

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

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

(b) Other stormwater control requirements are addressed in this Section but may also be addressed in sections dedicated to particular water classifications or circumstances. Projects located in urbanizing areas, which are not subject to NPDES permitting, must obtain permits in accordance with Rules .1014 through .1017 of this Section. For post construction requirements, a program will be deemed compliant for the areas that satisfy Rule .1017(a)(9) of this Section.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

15A NCAC 02H .1015 URBANIZING AREA DEFINITIONS

The definition of any word or phrase for Urbanizing Areas shall be as follows:

- (1) The definitions set out in 40 Code of Federal Regulations § 122.2 and § 122.26(b) (1 July 2003 Edition).
- (2) The definitions set out in G.S. 143-212 and G.S. 143-213.
- (3) The definitions set out in 15A NCAC 02H .0103.

(4) The definitions set out in Rule .1002 of this Section, except for the definitions of "Development" and "Redevelopment", which are defined below.

(5) "One year, 24 hour storm" means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

(6) "BMP" means Best Management Practice.

(7) "Development" means any land disturbing activity that increases the amount of built upon area or that otherwise decreases the infiltration of precipitation into the soil.

(8) "Division" means the Division of Water Quality in the Department.

(9) "Planning jurisdiction" means the territorial jurisdiction within which a municipality exercises the powers authorized by G.S. 160A-19, or a county may exercise the powers authorized by G.S. 153A-18.

(10) "Public entity" means the United States; the State; a city, village, township, county, school district, public college or university, or single-purpose governmental agency; or any other governing body that is created by federal or State law.

(11) "Redevelopment" means any land disturbing activity that does not result in a net increase in built upon area and that provides greater or equal stormwater control than the previous development.

(12) "Regulated entity" means any public entity that must obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system (MS4).

(13) "Sensitive receiving waters" means any of the following:

(14) Waters that are classified as high quality, outstanding resource, shellfish, trout, or nutrient sensitive waters in accordance with subsections (d) and (e) of 15A NCAC 02B .0101.

(15) Waters that are occupied by or designated as critical habitat for aquatic animal species that are listed as threatened or endangered by the United States Fish and Wildlife Service or the National Marine Fisheries Service under the provisions of the Endangered Species Act of 1973 (Pub. L. No. 93-205; 87 Stat. 884; 16 U.S.C. §§ 1531, et seq.), as amended.

(16) Waters for which the designated use, as described by the classification system set out in subsections (c), (d), and (e) of 15A NCAC 02B .0101, have been determined to be impaired in accordance with the requirements of subsection (d) of 33 U.S.C. § 1313.

(17) "Significant contributor of pollutants" means a municipal separate storm sewer system (MS4)

~~or a discharge that contributes to the pollutant loading of a water body or that destabilizes the physical structure of a water body such that the contribution to pollutant loading or the destabilization may reasonably be expected to adversely affect the quality and uses of the water body. Uses of a water body shall be determined pursuant to 15A NCAC 02B .0211 through 15A NCAC 02B .0222 and 15A NCAC 02B .0300, et seq.~~

~~(18) "Total maximum daily load (TMDL) implementation plan" means a written, quantitative plan and analysis for attaining and maintaining water quality standards in all seasons for a specific water body and pollutant.~~

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

15A NCAC 02H .1016 DEVELOPMENT IN URBANIZING AREAS: APPLICABILITY AND DELINEATION

(a) Development in Unincorporated Areas of Counties.

(1) Development that cumulatively disturbs one acre or more of ~~land~~ land, including development that disturbs less than one acre of land that is part of a larger common plan of development or sale, that is located in the unincorporated area of a county shall comply with the standards set forth in Rule ~~1018~~ .1017 of this Section beginning 1 July 2007 if the development is located ~~in~~ in any of the following:

(A) ~~An~~ an area that is designated as an urbanized area under the most recent federal decennial census.

(B) ~~The~~ the unincorporated area of a county outside of a municipality designated as an urbanized area under the most recent federal decennial census that extends:

(i) One mile beyond the corporate limits of a municipality with a population of less than 10,000 ~~individuals~~ individuals;

(ii) Two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 ~~individuals~~ individuals; or

(iii) Three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.

(C) ~~An~~ an area delineated pursuant to ~~Item~~ Subparagraph (2) of this Paragraph.

(D) ~~A~~ a county that contains an area that is designated as an urbanized area under the most recent federal decennial census in which the unduplicated sum of:

(i) the area that is designated as an urbanized area under the most recent federal decennial census;

(ii) the area described in Subparagraph (1)(B) of this Paragraph;

(iii) the area delineated pursuant to Item (2) of this Paragraph; the jurisdiction of a regulated entity designated pursuant to ~~Paragraph (e) of this Rule; Paragraph (a) of Rule .0151 of this Subchapter;~~

(v) the area that is regulated by a ~~Phase II National Pollutant Discharge Elimination System (NPDES)~~ NPDES MS4 permit for stormwater management required pursuant to 15A NCAC 02H .0151(b); and

(vi) areas in the county that are subject to any of the stormwater management programs administered by the Division equal or exceed 75 percent of the total geographic area of the county.

(E) ~~Subject to Subparagraph (4) of this Paragraph,~~ a county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through ~~2004~~ 2004, unless that actual population growth rate occurred in an area within the county that consists of less than five percent of the total land area of the county.

(2) For purposes of this ~~subdivision~~ Paragraph, the stormwater programs administered by the Division ~~are~~ shall be as follows:

(i) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;

(ii) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;

- (iii) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
 - (iv) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
 - (v) High Quality Waters (HQW) – 15A NCAC 02H ~~.1006;~~ .1021;
 - (vi) Outstanding Resource Waters (ORW) – 15A NCAC 02H ~~.1007;~~ .1021;
 - (vii) ~~The~~ Coastal Counties Stormwater Program – 15A NCAC 02H ~~.1005;~~ .1019;
 - (viii) ~~The~~ Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (ix) ~~The~~ Tar-Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy – 15A NCAC 02B .0258;
 - (x) ~~The~~ Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251; and
 - (xi) Other Environmental Management Commission Nutrient Sensitive Waters (NSW) Classifications – 15A NCAC 02B .0223.
- (2)(3) Delineation Process. The Commission shall delineate regulated coverage areas as follows:
- (A) Schedule: The Commission shall implement the delineation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143-215.8B(c).
 - (B) Potential candidate coverage areas. A potential candidate coverage area ~~is~~ shall be the unincorporated area of a county that is outside a municipality designated as a regulated entity pursuant to ~~Items (2) and (3) of Paragraph (c) Rule .0151(a)(2) and (3) of this Subchapter that:~~
 - (i) ~~Extends—extends~~ one mile beyond the corporate limits of a municipality with a population of less than 10,000 individuals;
 - (ii) ~~Extends—extends~~ two miles beyond the corporate limits of a municipality with a population of 10,000 or more individuals but less than 25,000 individuals; ~~and/or~~
- (iii) ~~Extends—extends~~ three miles beyond the corporate limits of a municipality with a population of 25,000 or more individuals.
- (C) Identification of candidate coverage areas. The Commission shall identify an area within a potential candidate coverage area described in ~~Subparagraph (2)(B)~~ Part (3)(B) of this Paragraph as a candidate coverage area if the discharge of stormwater within or from the unincorporated area has the potential to ~~adversely have an~~ adverse impact on water quality. ~~An adverse impact on water quality includes any activity that violates water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.~~
- (D) Notice and comment on candidacy. The Commission shall notify each public entity that is located in whole or in part in a candidate coverage area. After notification of each public entity, the Commission shall publish a map of the unincorporated areas within the river basin that have been identified as ~~candidates for delineation as regulated candidate~~ regulated candidate coverage areas. The Commission shall accept public comment on the proposed delineation of a candidate coverage area ~~as a regulated coverage area~~ for a period of not less than 30 days.
- (E) Delineation of regulated coverage areas. After review of public comment, the Commission shall delineate regulated coverage areas. The Commission shall delineate a candidate coverage area as a regulated coverage area only if the Commission determines that the discharge of stormwater within or from the candidate coverage area either:
- (i) ~~Adversely impacts—has an~~ adverse impact on water quality; ~~or~~
 - (ii) ~~Results—results~~ in a significant contribution of pollutants to sensitive receiving waters, taking into account the effectiveness of other applicable water quality protection programs.

To determine the effectiveness of other applicable water quality protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications) best usages.

(F) Notice of delineation. The Commission shall provide written notice to each public entity that is located in whole or in part in a candidate coverage area of its delineation determination. The notice shall state the basis for the determination.

~~(3)~~(4) Except as provided in this ~~Item (3) of this Paragraph Subparagraph and Paragraph (d) of this Rule, Rule .1018 of this Section,~~ the Commission shall administer and enforce the standards for development in the regulated coverage areas. To the extent authorized by law, where the development is located in a municipal planning jurisdiction, the municipality shall administer and enforce the standards. A public entity may request that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in ~~Paragraph (d) of this Rule, Rule .1018 of this Section.~~

~~(4)~~ A county that contains an area that is designated as an urbanized area under the 1990 or 2000 federal decennial census and that has an actual population growth rate that exceeded the State population growth rate for the period 1995 through 2004 is not a county under Part (1)(E) of this Paragraph and is not a county that is subject under this section to the requirements for development in the unincorporated areas of the county when that actual population growth rate occurred in an area within the county that consists of less than five percent of the total land area of the county.

(b) Development in Non Phase II-Incorporated Areas in Certain Counties. Development that cumulatively disturbs one acre or more of land located in the incorporated areas of a county described in ~~Subparagraphs (2)(D) and (E) of Paragraph (a), Parts~~

~~(a)(1)(D) and (E) of this Rule~~ that are not designated as an urbanized area under the most recent federal decennial census, ~~census shall comply with the standards set forth in Rule .1018 .1017 of this Section beginning 1 July 2007. The Commission shall administer and enforce the standards for development unless the public entity requests that the Commission delegate administration and enforcement of the stormwater management program to the public entity as provided in Paragraph (d) of this Rule. Rule .1018 of this Section.~~

~~(c) Designation of Regulated Entities. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity through federal designation, through a State designation process, or under a total maximum daily load (TMDL) implementation plan as provided in this section.~~

~~(1) Federal designation. A public entity that owns or operates a municipal separate storm sewer system (MS4) may be designated as a regulated entity pursuant to 40 Code of Federal Regulations § 122.32 (1 July 2003 Edition).~~

~~(2) State designation process. The Commission shall designate a public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated entity as follows:~~

~~(A) Designation schedule. The Commission shall implement the designation process in accordance with the schedule for review and revision of basinwide water quality management plans as provided in G.S. 143 215.8B(e).~~

~~(B) Identification of candidate regulated entities. The Commission shall identify a public entity as a candidate for designation as a regulated entity if the municipal separate storm sewer system (MS4) either:~~

~~(i) Discharges stormwater that has the potential to adversely impact water quality. An adverse impact on water quality includes any activity that causes or contributes to a violation of water quality standards, including, but not limited to, any activity that impairs designated uses or that has a significant biological or habitat impact.~~

~~(ii) Serves a public entity that has not been designated pursuant to Item (1) of this Paragraph and that has either a population of more than 10,000 or more than 4,000 housing units and either a population density of 1,000 people per square mile or more or more than 400~~

housing units per square mile.

(C) ~~Notice and comment on candidacy. The Commission shall notify each public entity identified as a candidate for designation as a regulated entity. After notification of each public entity, the Commission shall publish a list of all public entities within a river basin that have been identified as candidates for designation. The Commission shall accept public comment on the proposed designation of a public entity as a regulated entity for a period of not less than 30 days.~~

(D) ~~Designation of regulated entities. After review of the public comment, the Commission shall make a determination on designation for each of the candidate public entities. The Commission shall designate a candidate public entity that owns or operates a municipal separate storm sewer system (MS4) as a regulated public entity only if the Commission determines either that:~~

(i) ~~The public entity has an actual population growth rate that exceeds 1.3 times the State population growth rate for the previous 10 years.~~

(ii) ~~The public entity has a projected population growth rate that exceeds 1.3 times the projected State population growth rate for the next 10 years.~~

(iii) ~~The public entity has an actual population increase that exceeds 15 percent of its previous population for the previous two years.~~

(iv) ~~The municipal separate storm sewer system (MS4) discharges stormwater that adversely impacts water quality.~~

(v) ~~The municipal separate storm sewer system (MS4) discharges stormwater that results in a significant contribution of pollutants to receiving waters, taking into account the effectiveness of other applicable water quality protection programs. To determine the effectiveness of other applicable water quality~~

~~protection programs, the Commission shall consider the water quality of the receiving waters and whether the waters support the uses set out in Paragraphs (c), (d), and (e) of 15A NCAC 02B .0101 (Procedures for Assignment of Water Quality Standards — General Procedures) and the specific classification of the waters set out in 15A NCAC 02B .0300, et seq. (Assignment of Stream Classifications).~~

(E) ~~Notice of designation. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission.~~

(F) ~~Application schedule. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management within 18 months of the date of notification.~~

(3) ~~Designation under a total maximum daily load (TMDL) implementation plan. The Commission shall designate an owner or operator of a small municipal separate storm sewer system (MS4) as a regulated entity if the municipal separate storm sewer system (MS4) is specifically listed by name as a source of pollutants for urban stormwater in a total maximum daily load (TMDL) implementation plan developed in accordance with subsections (d) and (e) of 33 U.S.C. § 1313. The Commission shall provide written notice to each public entity of its designation determination. For a public entity designated as a regulated entity, the notice shall state the basis for the designation and the date on which an application for a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management must be submitted to the Commission. A public entity that has been designated as a regulated entity pursuant to this subdivision must submit its application for a Phase II National Pollutant Discharge Elimination System (NPDES)~~

permit for stormwater management within 18 months of the date of notification.

~~(d) Delegation. A public entity that does not administer a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area under Paragraphs (a) and (b) of this Rule may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(e). An ordinance or regulation adopted by a public entity shall at least meet and may exceed the minimum requirements of Rule .1018 of this Section. Two or more public entities are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program must be duly recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution must be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of Rule .1018 of this Section. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to resume administration and enforcement of the program.~~

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2011-220.

15A NCAC 02H .1017 NPDES MS4 AND URBANIZING AREAS: POST-CONSTRUCTION REQUIREMENTS

The purpose of this Rule is to minimize the impact of stormwater runoff from new development on the water quality of surface waters and to protect their best usages.

~~(a) Requirements for Post Construction Practices.~~

~~(1) IMPLEMENTING AUTHORITY. The requirements of this Rule shall be implemented by Permittees, permittees, delegated programs, and regulated entities must require stormwater controls for a project that disturbs one acre or more of land, including a project that disturbs less than one acre of land that is part of a larger common plan of development or sale. Whether an activity or project that disturbs less than one acre of land is part of a larger common plan of development shall be determined in a manner consistent with the memorandum referenced as "Guidance Interpreting Phase 2 Stormwater~~

~~Requirements" from the Director of the DWQ of the DENR to Interested Parties dated 24 July 2006. in accordance with Rule .0151 of this Subchapter and Rule .1016 of this Section. The stormwater controls shall be appropriate to the project's level of density as follows:~~

~~(A) Low Density Option. A project that is located within any of the coastal counties is a low density project if it meets the low density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a low density project if it contains no more than 24 percent built upon area or no more than two dwelling units per acre. Low density projects must use vegetated conveyances to the maximum extent practicable to transport stormwater runoff from the project. On site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the requirements of this Subparagraph (1)(A) and locates the higher density development in upland areas and away from surface waters and drainageways to the maximum extent practicable.~~

~~(B) High Density Option. A project that is located within any of the coastal counties is a high density project if it meets the high density requirements of Rule .1005 of this Section. A project that is not located within any of the coastal counties is a high density project if it contains more than 24 percent built upon area or more than two dwelling units per acre. High density projects must use structural stormwater management systems that will control and treat runoff from the first one inch of rain. The structural stormwater management system must also meet the following design standards:~~

- ~~(i) Draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.~~
- ~~(ii) Discharge the storage volume at a rate equal to or~~

- ~~less than the predevelopment discharge rate for the one-year, 24-hour storm.~~
- ~~(iii) Remove an 85 percent average annual amount of Total Suspended Solids.~~
 - ~~(iv) Meet the General Engineering Design Criteria set out in Rule .1008(e) of this Section.~~
 - ~~(v) Wet detention ponds designed in accordance with the requirements of Item (6) of this Paragraph may be used for projects draining to Class SA waters.~~
- (2) ~~Permittees, delegated programs, and regulated entities must require built-upon areas to be located at least 30 feet landward of all perennial and intermittent surface waters. For purposes of Paragraph (a), a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Paragraph (e) of this Rule.~~
- (3) ~~Permittees, delegated programs, and regulated entities must implement or require a fecal coliform reduction program that controls, to the maximum extent practicable, the sources of fecal coliform. At a minimum, the program shall include the development and implementation of an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. For municipalities, this program may be coordinated with local county health departments.~~
- (4) ~~Permittees, delegated programs, and regulated entities must impose or require recorded restrictions and protective covenants to be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that development activities will maintain the project consistent with approved plans.~~
- (5) ~~Permittees, delegated programs, and regulated entities must implement or require an operation and maintenance plan that ensures the adequate~~
- ~~long-term operation of the structural best management practices (BMP) required by the program. The operation and maintenance plan must require the owner of each structural BMP to submit a maintenance inspection report on each structural BMP annually to the local program.~~
- (2) APPLICABILITY. This Rule shall apply to all development that is subject to Rule .1016 of this Section or that disturbs one acre or more of land, including a development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and is subject to a local NPDES post-construction stormwater program pursuant to Rule .0153 of this Subchapter. Where this Rule is administered by the State, it shall not apply to projects that are subject to any of the following rules:
- (a) Water Supply Watershed I (WS-I) – 15A NCAC 02B .0212;
 - (b) Water Supply Watershed II (WS-II) – 15A NCAC 02B .0214;
 - (c) Water Supply Watershed III (WS-III) – 15A NCAC 02B .0215;
 - (d) Water Supply Watershed IV (WS-IV) – 15A NCAC 02B .0216;
 - (e) Freshwater High Quality Waters (HQW) – 15A NCAC 02H .1021;
 - (f) Freshwater Outstanding Resource Waters (ORW) – 15A NCAC 02H .1021;
 - (g) Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0235;
 - (h) Tar-Pamlico River Basin Nutrient Sensitive Waters (NSW) Management Strategy – 15A NCAC 02B .0258;
 - (i) Randleman Lake Water Supply Watershed Nutrient Management Strategy – 15A NCAC 02B .0251;
 - (j) Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development – 15A NCAC 02B .0265;
 - (k) Falls Reservoir Water Supply Nutrient Strategy: Stormwater Management for New Development – 15A NCAC 02B .0277;
 - (l) Coastal Counties: Stormwater Management Requirements – 15A NCAC 02H .1019;
 - (m) Goose Creek Watershed: Stormwater Control Requirements – 15A NCAC 02B .0602; or
 - (n) Universal Stormwater Management Program – 15A NCAC 02H .1020.
- (3) GENERAL REQUIREMENTS FOR DEVELOPMENT. In addition to the

- requirements of this Rule, development shall also comply with the requirements for all projects subject to stormwater rules set forth in Rule .1003 of this Section.
- (4) PROJECT DENSITY. A project shall be considered a low density project if it meets the low density criteria set forth in Item (2) of Rule .1003 of this Section and contains no more than 24 percent built-upon area or no more than two dwelling units per acre; otherwise, a project shall be considered high density. Low density projects shall comply with the MDC for low density projects set forth in Item (2) of Rule .1003 of this Section. High density projects shall comply with the MDC for high density projects set forth in Item (3) of Rule .1003 of this Section and shall use SCMs designed to achieve either runoff treatment or runoff volume match in accordance Item (5) of this Rule.
- (5) REQUIRED STORM DEPTH. For high density projects that use an SCM or SCMs designed to achieve runoff treatment, the required storm depth shall be one inch. For high density projects that use an SCM or SCMs designed to achieve runoff volume match, the post-development runoff volume shall not exceed the pre-development runoff volume for the 90th percentile storm.
- (6) OPERATION AND MAINTENANCE PLANS. Permittees and regulated entities shall implement and delegated programs shall require an operation and maintenance plan for SCMs in accordance with Rule .1050 of this Section. In addition, the operation and maintenance plan shall require the owner of each SCM to annually submit a maintenance inspection report on each SCM to the local program or regulated entity.
- (7) FECAL COLIFORM REDUCTION. Permittees and regulated entities shall implement and delegated programs shall require a fecal coliform reduction program that controls, to the maximum extent practicable, sources of fecal coliform. At a minimum, the program shall include a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment system component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.
- (8) RESTRICTIONS AND COVENANTS. Restrictions and protective covenants shall be recorded on the property in the Office of the Register of Deeds in the county where the property is located prior to the issuance of a certificate of occupancy in order to ensure that

- development activities will maintain the project consistent with approved plans.
- (9) PROJECTS IN AREAS DRAINING TO SENSITIVE RECEIVING WATERS. Additional requirements shall apply to projects located in areas draining to certain sensitive receiving waters as follows:
- (6) ~~For areas draining to Class SA waters, permittees, delegated programs, and regulated entities must:~~
- (A)(a) ~~Use BMPs—Projects located in areas draining to Class SA waters shall meet the requirements of Rule .1019 of this Section and shall use SCMs that result in the highest degree of fecal coliform die-off and control to the maximum extent practicable—sources of fecal coliform to the maximum extent practicable; while still incorporating the stormwater controls required by the project's density level.~~
- (B) ~~Implement a program to control the sources of fecal coliform to the maximum extent practicable, including a pet waste management component, which may be achieved by revising an existing litter ordinance, and an on-site domestic wastewater treatment systems component to ensure proper operation and maintenance of such systems, which may be coordinated with local county health departments.~~
- (C) ~~Meet the requirements of Rule .1005(a)(2) of this Section.~~
- (7) ~~For areas draining to Trout Waters, permittees, delegated programs, and regulated entities must:~~
- (A)(b) ~~Use BMPs—Projects located in areas draining to Trout waters shall use SCMs that avoid a sustained increase in the receiving water temperature, while still incorporating the stormwater controls required for the project's density level. temperature; and~~
- (B) ~~Allow on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders as added controls.~~
- (8) ~~For areas draining to Nutrient Sensitive Waters, permittees, delegated programs, and regulated entities must:~~
- (A)(c) ~~Use BMPs—Projects located in areas draining to Nutrient Sensitive Waters shall use SCMs that reduce nutrient loading, while still incorporating the stormwater controls required for the project's density level. Permittees and~~

regulated entities shall implement and delegated programs shall require a nutrient application management program for inorganic fertilizer and organic nutrients to reduce nutrients entering waters of the State. In areas where the Department has approved subject to a Nutrient Sensitive Water Urban—Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Nutrient Sensitive Water Urban—Stormwater Management Program requirements are found set forth in 15A NCAC 02B .0200.

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

(10) VEGETATED SETBACKS. Vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be required in accordance with Rule .1003 of this Section and shall be at least 30 feet in width. Vegetated setbacks from such waters shall be required if the water is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture available at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/> or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS) available at no cost at <http://www.usgs.gov/pubprod/>. Relief from this requirement may be allowed when surface waters are not present in accordance with 15A NCAC 02B .0233(3)(a). In addition, an exception to this requirement may be pursued in accordance with Item (12) of this Rule.

~~(9) For post construction requirements, a program will be deemed compliant for the areas where it is implementing any of the following programs:~~

- ~~(A) Water Supply Watershed I (WS I)—15A NCAC 02B .0212;~~
- ~~(B) Water Supply Watershed II (WS II)—15A NCAC 02B .0214;~~
- ~~(C) Water Supply Watershed III (WS III)—15A NCAC 02B .0215;~~
- ~~(D) Water Supply Watershed IV (WS IV)—15A NCAC 02B .0216;~~
- ~~(E) Freshwater High Quality Waters (HQW) Rule .1006 of this Section;~~

~~(F) Freshwater Outstanding Resource Waters (ORW) Rule .1007 of this Section;~~

~~(G) The Neuse River Basin Nutrient Sensitive Waters (NSW) Management Strategy 15A NCAC 02B .0235;~~

~~(H) The Tar Pamlico River Basin Nutrient Sensitive (NSW) Management Strategy 15A NCAC 02B .0258; or~~

~~(I) The Randleman Lake Water Supply Watershed Nutrient Management Strategy 15A NCAC 02B .0251.~~

~~(10) In order to fulfill the post construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post construction practices based on the Department's guidance on scientific and engineering standards for BMPs, incorporate the post construction model practices described in this act, or develop its own comprehensive watershed plan that is determined by the Department to meet the post construction stormwater management measure required by 40 Code of Federal Regulations § 122.34(b)(5) (1 July 2003 Edition).~~

~~(11) Nothing in this Paragraph (a) shall limit, expand, or alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.~~

~~(b) Exclusions from Post Construction Practices. The post construction practices required by Paragraph (a) of this act shall not apply to any of the following:~~

- ~~(1)(11) EXCLUSIONS. Development in an area where the requirements of Paragraph (a) of this act are applicable that shall not be subject to this Rule if it is conducted pursuant to one of the following authorizations, provided that the authorization was obtained prior to the effective date of the post-construction stormwater control requirements in the area in which the development is located, and the authorization is valid, unexpired, unrevoked, and not otherwise terminated:~~
 - ~~(A)(a) A a building permit pursuant to G.S. 153A-357 or G.S. 160A-417;~~
 - ~~(B)(b) A a site-specific development plan as defined by G.S. 153A-344.1(b)(5) and G.S. 160A-385.1(b)(5);~~
 - ~~(C)(c) A a phased development plan approved pursuant to G.S. 153A-344.1 for a project located in the unincorporated area of a county that is subject to the requirements of~~

~~Paragraph (a), this Rule, if the Commission is responsible for implementation of the requirements of Paragraph (a), this Rule, that shows:~~

- (i) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including ~~at a minimum,~~ the boundaries of the project and a subdivision plan that has been approved pursuant to G.S. 153A-330 through G.S. ~~153A-335, 153A-335; and~~
- (ii) For any subsequent phase of development, ~~sufficient detail so upon a finding by the Commission that~~ implementation of the requirements of ~~Paragraph (a) this Rule to that phase of development would require a material change in that phase of the plan, development as contemplated in the phased development plan.~~

~~(D)(d)~~ A vested right to the development under pursuant to G.S. 153A-344(b), 153A-344.1, 160A-385(b), or 160A-385.1 issued by a local government that implements Paragraph (a); this Rule; or

~~(E)(e)~~ A vested right to the development pursuant to common law.

~~(2) Redevelopment as defined in Rule .1015 of this Section.~~

~~(e)(12) Exceptions. EXCEPTIONS.~~ The Department or an appropriate local authority, pursuant to Article 18 of G.S. 153A or Article 19 of G.S. 160A, may grant exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirement as follows:

~~(H)(a)~~ An exception ~~may shall~~ be granted if the application meets all of the following criteria:

~~(A)(i)~~ Unnecessary hardships would result from strict application of the ~~act; requirement, and these hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property, and not as a result from actions taken by the petitioner; and~~

~~(B)~~ The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property;

~~(C) The hardships did not result from actions taken by the petitioner; and~~

~~(D)(ii)~~ The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for an exception.

~~(2)(b)~~ Notwithstanding ~~Item (1) Sub-Item(a) of this Paragraph, Sub-Item (12),~~ exceptions shall be granted in any of the following instances:

~~(A)(i)~~ When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize ~~disturbance, disturbance;~~ provide maximum nutrient ~~removal, removal;~~ protect against erosion and ~~sedimentation, sedimentation;~~ have the least adverse effects on aquatic life and ~~habitat, habitat;~~ and protect water quality to the maximum extent practicable through the use of ~~BMPs, SCMs; or~~

~~(B)(ii)~~ When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, ~~including, but not limited to, including~~ water, sewer, or gas construction and maintenance ~~corridor, corridor;~~ as long as it is located 15 feet landward of all perennial ~~waterbodies, perennial streams, and~~ intermittent ~~surface waters, streams~~ and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of ~~BMPs, SCMs.~~

~~(C)(iii)~~ A lack of practical alternatives may be shown by demonstrating that, considering the potential for an alternative configuration, or a reduction in size, configuration, size or density of the proposed activity and all alternative designs, activity, the basic project purpose cannot be practically accomplished in a manner

- ~~which~~ that would avoid or result in less adverse impact to surface waters.
- (3)(c) ~~Reasonable and appropriate conditions~~ Conditions and safeguards may be imposed upon any exception ~~granted.~~ granted in accordance with G.S. 143-215.1(b).
 - (4)(d) ~~Local authorities~~ Delegated programs and regulated entities shall ~~must~~ document the exception procedure and submit an annual report to the Department on all exception proceedings.
 - (5)(e) Appeals of the Department's exception decisions ~~must~~ shall be filed with the Office of Administrative Hearings, under G.S. 150B-23. Appeals of a local authority's exception decisions ~~must~~ shall be made to the appropriate Board of Adjustment or other appropriate local governing body, ~~under~~ pursuant to G.S. 160A-388 or G.S. 153A-345.
 - (13) In order to fulfill the post-construction minimum measure program requirement, a permittee, delegated program, or regulated entity may use the Department's model ordinance, design its own post-construction practices based on the Department's guidance on scientific and engineering standards for SCMs, incorporate the post-construction model practices described in this Section, or develop its own comprehensive watershed plan that meets the post-construction stormwater management measure required by 40 CFR 122.34(b)(5) (1 July 2003 Edition and subsequent amendments and editions).
 - (14) Nothing in this Rule shall alter the requirement that a discharge fully comply with all applicable State or federal water quality standards.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1).

15A NCAC 02H .1018 URBANIZING AREAS: DELEGATION

A public entity that does not administer the requirements of a NPDES MS4 permit for stormwater management throughout the entirety of its planning jurisdiction and whose planning jurisdiction includes a regulated coverage area pursuant to Paragraphs (a) and (b) of Rule .1016 of this Section may submit a stormwater management program for its regulated coverage area or a portion of its regulated coverage area to the Commission for approval pursuant to G.S. 143-214.7(c) and (d). One paper copy of the stormwater management program shall be submitted to the Division. The stormwater management program shall include an ordinance or regulation adopted by a public entity that meets or exceeds the minimum requirements of Rules .1003 and .1017 of this Section. Two or more public entities are authorized to establish a joint program and to enter into agreements that are necessary for the proper administration and enforcement of the program. The resolution, memorandum of agreement, or other document that establishes any joint program shall be duly

recorded in the minutes of the governing body of each public entity participating in the program, and a certified copy of each resolution shall be filed with the Commission. The Commission shall review each proposed program submitted to it to determine whether the submission is complete. A complete submission is one that has one copy each of the required ordinance or regulation and, if applicable, certified resolutions with an effective date and other supporting documentation that demonstrates a public entity's stormwater management program meets the minimum requirements of Rules .1003 and .1017 of this Section. Within 90 days after the receipt of a complete submission, the Commission shall notify the public entity submitting the program that it has been approved, approved with modifications, or disapproved. The Commission shall approve a program only upon determining that its requirements equal or exceed those of Rules .1003 and .1017 of this Section. If the Commission determines that any public entity is failing to administer or enforce an approved stormwater management program, it shall notify the public entity in writing and shall specify the deficiencies of administration and enforcement. If the public entity has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the public entity indicates its willingness and ability to correct the deficiencies identified by the Commission and resume administration and enforcement of the program.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a)(1); S.L. 2011-220.

15A NCAC 02H .1019 COASTAL COUNTIES

The purpose of this Rule is to protect the surfaces water from the impact of stormwater runoff from new development on the quality of various classifications of surface waters in the 20 Coastal Counties.

- (1) IMPLEMENTING AUTHORITY. This Rule shall be implemented by:
 - (a) local governments and other entities within the 20 Coastal Counties that are required to implement a Post-Construction program as a condition of their NPDES permits;
 - (b) local governments and state agencies that are delegated to implement a stormwater program pursuant to G.S. 143-214.7(c) and (d); and
 - (b) the Division in all other areas where this Rule applies.
- (2) APPLICABILITY OF THIS RULE. This Rule shall apply to the following types of developments within the Coastal Counties:
 - (a) all developments that require a Sediment and Erosion Control Plan pursuant to G.S. 113A-57;
 - (b) all developments that require a Coastal Area Management Act (CAMA) Major Development Permit pursuant to G.S. 113A-118; and

- (c) developments that do not require either a Sediment and Erosion Control Plan or a CAMA Major Development Permit but meet one of the following criteria:
 - (i) nonresidential developments that propose to cumulatively add 10,000 square feet or more of built-upon area after the effective date of this Rule; or
 - (ii) residential developments that are within ½ mile of and draining to SA waters and propose to cover 12 percent or more of the undeveloped portion of the property with built-upon area.
 - (3) EFFECTIVE DATES. The effective dates are as follows.
 - (a) for prior Rule .1000 of this Section, January 1, 1988;
 - (b) for prior Rule .1005 of this Section, September 1, 1995; and
 - (c) for S.L. 2008-211, October 1, 2008.
 - (4) MDC FOR ALL PROJECTS. In addition to the requirements of this Rule, development projects shall also comply with the MDC as set forth in Rule .1003 of this Section.
 - (5) DETERMINATION OF WHICH COASTAL STORMWATER PROGRAM APPLIES.
 - (a) SA WATERS. The SA Waters requirements shall apply to development activities located within one-half mile of and draining to waters classified as SA per 15A NCAC 02B .0301.
 - (i) The SA boundary shall be measured from either the landward limit of the top of bank or the normal high water level. In cases where a water is listed on the Schedule of Classifications, but the applicant provides documentation from the Division of Water Resources or the U.S. Army Corps of Engineers that the water is not present on the ground, the applicant shall not be subject to the SA requirements of this Rule.
 - (ii) SA waters that have a supplemental classification of ORW shall be subject to additional special stormwater provisions per Items (6), (7) and (8) of this Rule.
 - (iii) Projects that are partly located within an SA waters boundary shall follow the SA waters requirements in Item (6) of this Rule for that portion of the project that is inside the SA waters boundary and shall follow the Other Coastal Waters requirements of Item (6) of this Rule for the portion of the project that is outside the boundary.
 - (iv) An SCM with any portion of its drainage area located within the SA waters boundary shall be designed to meet SA waters requirements.
 - (b) FRESHWATER ORW. Freshwater ORW requirements shall apply to development activities that drain to waters classified as B-ORW and C-ORW per 15A NCAC 02B .0301.
 - (i) Projects that are partly located within a freshwater ORW boundary shall follow the freshwater ORW requirements in Item (6) of this Rule for that portion of the project that is inside the freshwater ORW boundary and shall follow the Other Coastal Waters requirements of Item (6) of this Rule for the portion of the project that is outside the boundary.
 - (ii) An SCM with any portion of its drainage area located within the freshwater ORW boundary shall be designed to meet freshwater ORW requirements.
 - (c) OTHER COASTAL WATERS. If a receiving stream does not meet the applicability requirements for Sub-Items (5)(a) or (b) of this Rule, then it shall governed by other coastal water requirements set forth in this Rule.
- (6) STORMWATER REQUIREMENTS. Depending on the applicable program pursuant to Item (5) of this Rule, the following stormwater requirements shall apply:
 - (a) SUMMARY OF COASTAL PROGRAM REQUIREMENTS. The requirements associated with the Coastal Stormwater Program shall be in accordance with the following table.

<u>Program that Applies</u>	<u>Maximum BUA for Low Density</u>	<u>Required Storm Depth for High Density Projects</u>	<u>Additional Special Provisions</u>
<u>SA-HQW</u>	<u>12%</u>	<u>95th percentile storm event</u>	<u>SCMs for High Density SA Projects per Item (7) of this Rule</u>
<u>SA-ORW</u>	<u>12%</u>	<u>95th percentile storm event</u>	<u>SCMs for High Density SA Projects per Item (7) of this Rule; and Density Requirements for SA-ORW Projects per Item (8) of this Rule</u>
<u>B-ORW or C-ORW</u>	<u>12%</u>	<u>90th percentile storm event</u>	<u>None</u>
<u>Other coastal water</u>	<u>24%</u>	<u>90th percentile storm event</u>	<u>None</u>

subject to SA waters requirements shall use one of the following approaches for treating and discharging stormwater:

- (a) RUNOFF VOLUME MATCH. The project shall meet runoff volume match requirements for the 95th percentile storm event as set forth in Rule .1003(3)(a)(ii) of this Section. Runoff volume in excess of the 95th percentile storm event shall be released at a non-erosive velocity at the edge of the vegetated setback.
- (b) RUNOFF TREATMENT WITH NON-DISCHARGING SCMs. SCM(s) shall treat the stormwater from the entire project without discharging during the 95th percentile storm event as set forth in Rule .1003(3)(a)(i) of this Section. The runoff volume in excess of the 95th percentile storm event shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (c) RUNOFF TREATMENT WITH DISCHARGING SCMs. SCM(s) shall treat the stormwater from the entire project during the 95th percentile storm event as set forth in Rule .1003(3)(a)(i) of this Section and meet the following requirements:
 - (i) a licensed professional shall provide documentation that it is not feasible to meet the MDC for infiltrations systems as set forth in Rule .1051 of this Section;
 - (ii) the stormwater shall be filtered through a minimum of 18 inches of sand prior to discharge;
 - (iii) the discharge from the SCM during the 95th percentile storm event shall be directed to either a level spreader-filter strip designed as set forth in Rule .1059 of this Section, a swale that fans out at natural grade, or a natural wetland that does not contain a conveyance to SA waters; and
 - (iv) the runoff volume in excess of the 95th percentile storm event shall be released at a non-erosive velocity at the edge of the vegetated setback

(b) BUILT-UPON AREA THRESHOLDS. A project shall be considered a low density project if it contains no more than the specified percentage of built-upon area and meets the low density criteria set forth in Rule .1003(2) of this Section; otherwise, a project shall be considered high density and shall meet the criteria set forth in Rule .1003(3) of this Section.

(c) REQUIRED STORM DEPTH. For high density projects subject to SA waters requirements, the required storm depth shall be the 95th percentile storm event. For high density projects subject to Freshwater ORW and other Coastal Waters requirements, the required storm depth shall be the 90th percentile storm event.

(d) VEGETATED SETBACKS. For all projects within the Coastal Counties, vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 50 feet in width for new development and at least 30 feet in width for redevelopment and shall comply with Rule .1003(4) of this Section.

(7) SCMS FOR SA HIGH DENSITY PROJECTS REQUIREMENTS. High density projects

- or to an existing stormwater drainage system.
- (8) DENSITY REQUIREMENTS FOR SA-ORW PROJECTS. The following shall apply:
- (a) For the entire project, the percentage built-upon area shall not exceed 25 percent.
- (b) For the portion of a project that is within 575 feet of SA-ORW waters, the percentage built-upon area shall not exceed 25 percent for high density projects and shall not exceed 12 percent for low density projects.

- (7) High Quality Waters (HQW) for Freshwaters (15A NCAC 02H .1006); (15A NCAC 02H .1021);
- (8) High Quality Waters (HQW) for Saltwaters (15A NCAC 02H .1006);
- (9)(8) Outstanding Resource Waters (ORW) for Freshwaters (15A NCAC 02H .1007); (15A NCAC 02H .1021);
- (10)(9) Outstanding Resource Waters (ORW) for Saltwaters (15A NCAC 02H .1007); (15A NCAC 02H .1019);
- (11)(10) Shellfishing (SA) (15A NCAC 02H .1005(2)); (15A NCAC 02H .1019);
- (12)(11) Post-Construction Stormwater Requirements of the Phase 2 NPDES MS4 Program (S.L. 2006-246); (15A NCAC 02H .1017);
- (13)(12) Coastal Counties Stormwater Requirements in 15A NCAC 02H .1005(3); .1019;
- (14)(13) Stormwater Controls Management Plans for 401 Water Quality Certifications under 15A NCAC 02H .0500;
- (15)(14) Catawba Buffer Rules (15A NCAC 02B .0243 and 02B .0244); (15A NCAC 02B .0243); and
- (16)(15) Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed Rules (15A NCAC 02B .0251).

Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1).

15A NCAC 02H .1020 UNIVERSAL STORMWATER MANAGEMENT PROGRAM

(a) Adoption of the Universal Stormwater Management Program (USMP) shall be made at the option of a local government by adopting an ordinance that complies with the requirements of this Rule and the requirements of 15A NCAC 02B .0104(f). The ~~Environmental Management Commission~~ shall approve local ordinances if it determines that the requirements of the local ordinance ~~equal meet~~ or exceed the provisions of this ~~Rule. Rule~~ and the requirements of 15A NCAC 02B .0104(f). A model ordinance for the ~~Universal Stormwater Management Program USMP~~ shall be available from the ~~Division of Water Quality (DWQ). Division~~. Administration and implementation of the USMP shall be the responsibility of the adopting local government within its jurisdiction. Local governments located within one of the 20 Coastal Counties may elect to have the ~~Division of Water Quality~~ administer and implement the ~~Universal Stormwater Management Program USMP~~, either in whole or in part, within their jurisdiction following their adoption of the program. Adoption of the USMP may not satisfy water quality requirements associated with the protection of threatened or endangered species or those requirements associated with a Total Maximum Daily Load (TMDL). The requirements of the USMP shall ~~supersede~~ supersede and replace all other existing post-construction stormwater requirements within that jurisdiction, as specified in Paragraph (b) of this Rule.

(b) With the exceptions noted in Paragraph (c) of this Rule, the requirements specified in this Rule shall replace the following ~~DWQ~~ post-construction stormwater control requirements:

- (1) Water Supply (WS) Watershed II (WS II) (15A NCAC 02B .0214(3)(b)(i));
- (2) WS Watershed II Critical Area (WS II CA) (15A NCAC 02B .0214(3)(b)(ii));
- (3) WS Watershed III (WS III) (15A NCAC 02B .0215(3)(b)(i));
- (4) WS Watershed III Critical Area (WS III CA) (15A NCAC 02B .0215(3)(b)(ii));
- (5) WS Watershed IV (WS IV) (15A NCAC 02B .0216(3)(b)(i));
- (6) WS Watershed IV Critical Area (WS IV CA) (15A NCAC 02B .0216(3)(b)(ii));

(c) As mandated in 15A NCAC 02H .0506(b)(5) and (c)(5), the ~~Division~~ Director may review and require amendments to proposed stormwater control plans submitted under the provisions of the 401 Certification process in order to ensure that the proposed activity will not violate water quality standards. ~~Adoption of the Universal Stormwater Management Program does not affect the requirements specified in 15A NCAC 02B .0214(3)(b)(i)(I), 02B .0214(3)(b)(ii)(C) and (D), 15A NCAC 02B .0215(3)(b)(i)(I), 02B .0215(3)(b)(ii)(C) and (D), and 15A NCAC 02B .0216(3)(b)(ii)(C) and (D). The Catawba Buffer Rules shall be superseded in those areas where the buffers are contained within the jurisdiction of another stormwater program listed in Paragraph (b) of this Rule and the requirements of that program are replaced by the USMP. For the watershed that drains to Lake James, which is not contained within the jurisdiction of another stormwater program, the Catawba Buffer Rules shall be superseded if the USMP is implemented in the entire area within five miles of the normal pool elevation of Lake James. The implementation of the USMP shall supersede the Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed in 15A NCAC 02B .0251, but USMP implementation does not affect the Randleman Lake Water Supply Watershed; Protection and Maintenance of Riparian Areas requirements specified in 15A NCAC 02B .0250.~~

(d) Adoption of the USMP shall not affect the requirements specified in 15A NCAC 02B .0214(3)(b)(i)(I), 02B .0214(3)(b)(ii)(C) and (D) 15A NCAC 02B .0215(3)(b)(i)(I), 02B .0215(3)(b)(ii)(C) and (D), and 15A NCAC 02B .0216(3)(b)(ii)(C) and (D).

(e) The Catawba Buffer Rules shall be superseded in those areas where the buffers are contained within the jurisdiction of another stormwater program listed in Paragraph (b) of this Rule and the requirements of that program are replaced by the USMP. For the

watershed that drains to Lake James, which is not contained within the jurisdiction of another stormwater program, the Catawba Buffer Rules shall be superseded if the USMP is implemented in the entire area within five miles of the normal pool elevation of Lake James.

(f) The implementation of the USMP shall supersede the Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed in 15A NCAC 02B .0251, but USMP implementation does not affect the Randleman Lake Water Supply Watershed: Protection and Maintenance of Riparian Areas requirements specified in 15A NCAC 02B .0250.

(g) Coastal Counties Requirements. All development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land, including projects that disturb less than 10,000 square feet of land that are part of a larger common plan of development or sale, shall control the runoff from the first one and one half inch of rainfall to the level specified in Paragraph (i) of this Rule. In addition, all impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial waterbodies, perennial streams, and intermittent surface waters. In addition to the other requirements specified in this Paragraph, all development activities that are located within 575 feet of waters designated by the Environmental Management Commission as shellfishing waters shall be limited to a maximum impervious surface density of 36 percent. Redevelopment activities that meet the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(h) Non-Coastal Counties Requirements. All residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs one acre or more of land, including residential development that disturbs less than one acre of land that is part of a larger common plan of development or sale, and all non-residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs ½ acre or more of land, including non-residential development that disturbs less than ½ acre of land that is part of a larger common plan of development or sale, shall control the runoff from the first one inch of rainfall as specified in Paragraph (i) of this Rule. Except as allowed in this Paragraph, no new impervious or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. Management available at no cost at <http://www.ncfloodmaps.com/>. For perennial and intermittent streams that do not have a floodplain delineated by the Floodplain Mapping Program, all development activities subject to this Rule shall be located at least 30 feet landward of all perennial waterbodies, perennial streams, and intermittent surface waters. In addition to the other requirements specified in this Paragraph, all development activities that are located within the area designated by the Environmental Management Commission as a Critical Area of a Water Supply Watershed as defined in 15A NCAC 02B .0202 shall be limited to a maximum impervious surface density of 36 percent. Redevelopment of residential structures within the one percent Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is shall be allowed. Redevelopment of non-residential

structures within the one percent Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is shall be allowed provided that less than ½ acre is disturbed during the redevelopment activity. Redevelopment activities outside of the one percent Annual Chance Floodplain that meet the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(i) Structural stormwater controls required under Paragraphs (g) and (h) of this Rule shall meet the following criteria:

- (1) Remove an 85 percent average annual amount of Total Suspended Solids. Achieve either runoff treatment or runoff volume match in accordance with Paragraphs (g) and (h) of this Rule; and
- (2) For detention ponds draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1 year, 24 hour storm.
 - (A) For SCMs designed to achieve runoff treatment, the required storm depth shall be one and one half inch in the Coastal Counties and one inch in the Non-Coastal Counties.
 - (B) For SCMs designed to achieve runoff volume match, the post-development runoff volume shall not exceed the pre-development runoff volume for the 90th percentile storm.
- (4) Meet the General Engineering Design Criteria requirements for all projects subject to stormwater rules as set forth in 15A NCAC 02H .1008(e). Rule .1003 of this Section.

(j) For the purposes of this Rule, a surface water shall be deemed present if the feature is shown on either the most recent complete published version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture available at no cost at <http://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/survey/> or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). (USGS) available at no cost at <http://www.usgs.gov/pubprod/>. Relief from this requirement shall be allowed when surface waters are determined not to be present in accordance with the provisions of 15A NCAC 02B .0233 (3)(a).

(k) Local governments that implement the Universal Stormwater Management Program-USMP shall require recorded deed restrictions and protective covenants that ensure development activities will maintain that the project will be maintained consistent with approved plans.

(l) Local governments that implement the Universal Stormwater Management Program-USMP shall require an operation and maintenance plan that ensures the operation of the structural stormwater control measures required by the program-USMP. The operation and maintenance plan shall require the owner of each structural control to submit a maintenance

inspection report on each structural stormwater control measure annually to the local program.

~~(j)(m)~~ In addition to the other measures required in this Rule, all development activities located in one of the 20 Coastal Counties that disturb 10,000 square feet or more of land within ½ mile and draining to SA waters shall:

- (1) ~~Use~~ use stormwater control measures that result in fecal coliform ~~die-off~~ die-off and that control to the maximum extent practicable sources of fecal coliform while ~~incorporating the requirements specified in complying with Paragraph (f) of this Rule.~~ Rule; and
- (2) ~~Prohibit~~ prohibit new direct points of stormwater discharge to SA waters or expansion (increase in the volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin ~~must~~ shall not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the 1-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

~~(k)(n)~~ In addition to the other measures required in this Rule, development activities draining to trout (Tr) waters shall use stormwater control measures that ~~avoid~~ do not cause an increase in the receiving water ~~temperature,~~ temperature while still incorporating the requirements specified in Paragraph ~~(f)(i)~~ of this Rule.

~~(h)(o)~~ The Division, upon determination that a local government is failing to implement or enforce the approved local stormwater program, shall notify the local government in writing of the local ~~program inadequacies.~~ program's deficiencies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification from the Division, then the Division shall implement and enforce the provisions of this Rule.

~~(m)(p)~~ Development activities conducted within a jurisdiction where the USMP has been implemented may take credit for the nutrient reductions achieved by utilizing diffuse flow in the one percent Annual Chance Floodplain to comply with the nutrient loading limits specified within NSW Rules where the one percent Annual Chance Floodplain exceeds the 50-foot Riparian Buffers. Development activities occurring where the USMP has been implemented but there is no delineated one percent Annual Chance Floodplain may take credit for the nutrient reductions achieved by utilizing diffuse flow into a vegetated filter strip that exceeds the 50-foot Riparian Buffer by at least 30 feet and has a slope of five ~~degrees,~~ degrees or less.

~~(n)(q)~~ The following special provisions of the ~~Universal Stormwater Management Program-USMP~~ apply only to federal

facilities and Department of Defense (DoD) installations. Federal facilities and DoD installations may adopt the ~~Universal Stormwater Management Program-USMP~~ within their boundaries by submitting a letter to the Chairman of the ~~Environmental Management~~-Commission that states that the facility in question has adopted controls that comply with the requirements of this Rule and with the requirements of 15A NCAC 02B .0104(f). In lieu of the protective covenants and deed restrictions required in Paragraph ~~(f)(k)~~ of this Rule, federal facilities and DoD installations that choose to adopt the USMP within their boundaries shall incorporate specific restrictions and conditions into base master ~~plans,~~ plans or other appropriate ~~instruments,~~ instruments to ensure that development activities regulated under this Rule will be maintained in a manner consistent with the approved plans.

~~(o)(r)~~ Implementation of this ~~Universal Stormwater Management Program-USMP~~ does not affect any other rule or requirement not specifically cited in this Rule.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1021 NON-COASTAL COUNTY HIGH QUALITY WATERS (HQW) AND OUTSTANDING RESOURCE WATERS (ORW)

The purpose of this Rule is to minimize the impact of stormwater runoff from development on the water quality of surface waters and to protect their designated best usages in management zones of Non-Coastal County High Quality Waters (HQW) and Outstanding Resource Waters (ORW).

- (1) IMPLEMENTING AUTHORITY. This rule shall be implemented by the Division.
- (2) APPLICABILITY. This Rule shall apply to development activities outside of Coastal Counties that are required to obtain a Sedimentation and Erosion Control Plan and are either:
 - (a) within one mile of and draining to waters classified as HQW except that development located in WS-I or WS-II watersheds as set forth in 15A NCAC 02B .0212 and .0214 are excluded from the requirements of this Rule; or
 - (b) draining to waters classified as ORW.
- (3) EFFECTIVE DATE. The stormwater requirements contained in this Rule became effective on September 1, 1995.
- (4) GENERAL REQUIREMENTS FOR NEW DEVELOPMENT. In addition to the requirements of this Rule, development shall also comply with the requirements for all projects set forth in Rule .1003 of this Section.
- (5) PROJECT DENSITY. A project shall be considered a low density project if it contains no more than 12 percent built-upon area or no more than one dwelling unit per acre and meets the low density criteria set forth in Rule .1003(2) of this Section; otherwise, a project shall be considered high density.

- (6) REQUIRED STORM DEPTH. For high density projects, the required treatment volume shall be based on a storm depth of one inch. For high density projects that are designed to achieve runoff volume match, the post-development runoff volume shall not exceed the pre-development runoff volume for the 90th percentile storm.
- (7) VEGETATED SETBACKS. Vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 30 feet in width for both low and high density developments and shall comply with Rule .1003(4) of this Section.
- (8) ADDITIONAL PROTECTION. The requirements of this Rule serve as the minimum conditions that shall be met by development activities. More stringent stormwater requirements may be developed by the Division on a case-by-case basis during permit review and approval where the Division determines that additional measures are necessary to:
 - (i) protect water quality standards;
 - (ii) maintain present and anticipated best usages; or
 - (iii) protect outstanding resource values pursuant to 15A NCAC 02B .0225(b).

(4303T). US Environmental Protection Agency, EPA-821-B-02-001) available at no cost at <http://www2.epa.gov/eg/industrial-wastewater-studies-miscellaneous>.

- (2) NEST PROGRAM STEPS. The process for a NEST to be considered by the Division shall be as follows:
 - (a) The applicant shall submit a NEST Program Application to the Division that includes the items listed in Item (3) of this Rule.
 - (b) The Division shall accept the device into the NEST Program if it finds that the application is complete and that the NEST has the capability of meeting the performance standard in Item (1) of this Rule. The Division shall notify the applicant in writing that the device has been accepted into the NEST Program.
 - (c) The NEST shall be installed on the proposed research sites and an entity other than the applicant shall conduct monitoring in accordance with Item (4) of this Rule. Research that has already been conducted may be used to demonstrate that the NEST achieves the performance standard in Item (1) of this Rule provided that the research meets all of the requirements in Item (4) of this Rule.
 - (d) The applicant shall submit a NEST Final Report pursuant to Item (5) of this Rule to the Division for review.
 - (e) The Division shall review the NEST Final Report and determine whether the applicant has demonstrated that the NEST will meet the performance standards stated in Item (1) of this Rule.
 - (f) If the NEST Final Report is approved, then the Division shall list the device on its web site as an approved NEST. The web site shall include the MDC and pollutant removal credit associated with the NEST.
 - (g) If a device is accepted into the NEST Program but the applicant does not complete monitoring within 36 months after the date on which the applicant was notified of acceptance, then the Division shall be deemed to have been withdrawn.
 - (h) During the application, monitoring, reporting, and evaluation processes, NEST may not be used as an SCM to meet the requirements of this Section

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1031 REVIEW AND APPROVAL NEW STORMWATER TECHNOLOGIES (NEST) PROGRAM

This Rule sets forth the requirements for review and approval of stormwater control measures not otherwise described in these rules under the Division's New Stormwater Technologies (NEST) Program. The Division may consider and review new stormwater technologies as meeting the requirements of the State post-construction stormwater program in accordance with this rule. Applicants who complete the process set forth in this Rule may have proposed stormwater technologies approved for use throughout the state without site-specific monitoring requirements.

- (1) PERFORMANCE STANDARD FOR THE NEST PROGRAM. Stormwater technologies shall achieve at least one of the following:
 - (a) discharge at a median effluent concentration of no greater than 25 mg/L Total Suspended Solids (TSS) when the median influent concentration of TSS is between 50 and 150 mg/L; or
 - (b) reduce the annual cumulative load of TSS by 85% or greater. Cumulative load reduction shall be determined pursuant to *Urban Stormwater BMP Performance Monitoring*. GeoSyntec Consultants, Urban Drainage and Flood Control District, 2002, Washington DC, (Office of Water

- on any sites other than the research sites.
- (3) NEST PROGRAM APPLICATION. The following information shall be provided to the Division when an applicant applies to the NEST Program.
- (a) a NEST Program Application Form This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/storm> water and shall include the following information:
- (i) the name, address and contact information of the applicant;
 - (ii) the name, credentials, address and contact information of the entity conducting the research;
 - (iii) stormwater project number, if applicable;
 - (iv) the density of the entire project and of each drainage area;
 - (v) the name and certification information on the laboratory that will be used;
 - (vi) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Sedimentation and Erosion Control Plan, and Section 404/401 permits; and
 - (vii) a description of the NEST that will be used on the project.
- (b) a description of physical, chemical, and/or biological treatment mechanisms employed;
- (c) design drawings with dimensions for the test sites;
- (d) a description of construction materials, including a description of any components of the treatment system that may contain nutrients or metals that might contribute to increased pollutant concentrations in the effluent;
- (e) proposed MDC for the NEST that include all requirements for siting; site preparation, design, and construction; and maintenance activities and frequencies that are necessary to insure that the device meets the stated pollutant removal rates in perpetuity, including the following:

- (i) a description of any pretreatment requirements or recommendations;
 - (ii) a description of all sizing methodology and technical design specifications based on a design maintenance frequency no more frequent than once per year;
 - (iii) a description of bypass provisions incorporated in the equipment or installation; and
 - (iv) maintenance procedures.
- (f) expected treatment capabilities, including existing monitoring studies that have been performed on the NEST;
- (g) a description of the research site that will be used to demonstrate the NEST's effectiveness as a stormwater treatment device, including the Hydrologic Soil Group on the site;
- (h) a Quality Assurance Project Plan conforming to the requirements in Item (4) of this Rule, describing the monitoring procedures and protocols that will be used; and
- (i) a timeframe for completion of the monitoring and for submittal of the report to the Division for review.
- (4) NEST MONITORING REQUIREMENTS. The following monitoring requirements shall be met:
- (a) A minimum of two sites shall be monitored to demonstrate the performance of the NEST. A minimum of one site shall be located within the state of North Carolina. The second site shall be in an area with similar soils, climate, and weather patterns as found in North Carolina. If one or more of the research sites is in Hydrologic Soil Group A soils, then the technology may be approved for use in Hydrologic Soil Group A only;
- (b) The monitoring shall include sampling of the NEST's performance for a minimum of 15 storm events over the course of a one-year period, with a minimum of three storm events in each season. Storm events monitored must be a minimum of 0.25 inches of rainfall;
- (c) Full storm hydrograph flow-weighted composite sampling of both the influent and effluent shall be monitored. The median influent concentration of Total Suspended

- Solids (TSS) shall be between 50 and 150 mg/L;
- (d) Seventy percent or more of the hydrograph's volume shall be represented by the sample collection for each storm event;
 - (e) In addition to TSS, the following parameters shall be monitored: Total Kjeldahl Nitrogen (TKN), nitrate, Total Phosphorus (TP), and runoff volume into and out of the NEST. Other parameters may be monitored if the applicant is seeking approval for removal rates of those pollutants; and
 - (f) Sampling, laboratory analysis, and data interpretation shall be conducted by an independent third party. The laboratory that is used shall be certified in accordance with Section .0800 of this Subchapter.
- (5) NEST FINAL REPORT. The following items shall be included in the NEST Final Report that the applicant submits to the Division:
- (a) as-built plans and details showing the site and the NEST from all monitoring sites;
 - (b) a certification from the entity conducting the research that the Quality Assurance Project Plan approved by the Division was complied with during the conduct of the trial installations;
 - (c) raw water quality data, including reports from the laboratory;
 - (d) summary of water quality data and removal calculations;
 - (e) influent and effluent volume data from each discrete storm event;
 - (f) storm event information, including storm depth, date, duration, antecedent period, peak five-minute rainfall intensity;
 - (g) a summary and interpretation of the monitoring results;
 - (h) statistical analysis of the monitoring data;
 - (i) proposed runoff volume reduction rates for the NEST as well as proposed effluent concentration credits for Total Nitrogen (TN) and TP. In addition, proposed effluent concentrations for any other pollutants that have been monitored as part of the NEST Program; and
 - (j) a final list of MDC in the report, with notes on whether the MDC have changed since initial enrollment in the NEST Program.
- (6) AGENCY ACTION ON NEST FINAL REPORT. As a part of this evaluation, the Division shall consider whether the test period loading was representative of likely installation conditions, the reported maintenance activities during the test period, and whether additional pre-treatment measures are necessary in most potential installations. The Division shall take one of the following actions within 90 days of receiving the NEST Final Report:
- (a) If the NEST final report demonstrates that the NEST meets the performance standard in Item (1) of this Rule, then the Division shall allow the NEST to be used as an SCM to meet the requirements of this Section. NESTs that have demonstrated compliance with Item (1) of this Rule shall be published on the Division's website at <http://portal.ncdenr.org/web/lr/storm> water. The website shall include the NEST final report on the NEST.
 - (b) If the NEST final report is inconclusive about whether the NEST meets the performance standard in Item (1) of this Rule, then the Division shall require additional research studies before the NEST may be approved to be used as an SCM to meet the requirements set forth in this Section. The additional research studies shall comply with Item (4) of this Rule, and a second NEST final report that complies with Item (5) of this Rule shall be submitted to the Division for review and approval.
 - (c) If the NEST final report demonstrates that the NEST does not meet the performance standard in Item (1) of this Rule, then the Division shall take the following actions:
 - (i) The Division shall consider whether the NEST may be approved as a secondary SCM that could be used in conjunction with a primary SCM on a site;
 - (ii) The Division shall not allow the NEST to be used as a stand-alone SCM to meet the requirements set forth in this Section on future projects; and
 - (iii) The Division shall allow the continued use of the NEST on the research sites provided that the NEST Final Report establishes that the NEST discharges at a median

effluent concentration for TSS of 35 mg/L or less or reduces the annual cumulative load of TSS by 65 percent or greater. If the NEST does not meet this performance standard, then it shall be replaced at the research sites by an approved SCM that is designed, constructed, and maintained in accordance with the rules of this Section.

- (c) modifying a permit not requested by the permittee;
 - (d) issuing a Director's Certification; and
 - (e) calling for a public notice or meeting.
- (4) PERMIT ISSUANCE. The following shall apply to stormwater management permits issued by the Division:

- (a) Stormwater management permits issued for low density projects shall not require permit renewal;
- (b) Stormwater management permits issued for projects that require the construction of engineered stormwater control measures shall be issued for a period not to exceed 8 years; and
- (c) Stormwater management permits shall be issued to the property owner or to a lessee, purchaser, or developer with the written permission of the property owner, and shall cover the entire project.

- (5) PERMIT DENIAL. If the Director denies a permit, the letter of denial shall state the reason(s) for denial and the Director's estimate of the changes in the applicant's proposed activities or plans that would be required in order that the applicant may obtain a permit. Permit applications may be denied where the proposed project will result in noncompliance with:

- (a) the purposes of G.S. 143, Article 21;
- (b) the purposes of G.S. 143-215.67(a);
- (c) rules governing coastal waste treatment or disposal, found in Section .0400 of this Subchapter;
- (d) rules governing "subsurface disposal systems," found in 15A NCAC 18A .1900. Copies of these Rules are available from the North Carolina Division of Public Health, 1632 Mail Service Center, Raleigh, North Carolina 27699-1632; or
- (e) rules governing groundwater quality standards found in Subchapter 02L of this Chapter.

- (6) PERMIT REVOCATION OR MODIFICATION. Permits issued pursuant to these Rules are subject to revocation, or modification by the Director upon 60 days' written notice by the Director in whole or in part for good cause including the following:

- (a) violation of any terms or conditions of the permit;

Authority G.S. 143-214.1; 143-214.7; 143-215.3(a)(1).

15A NCAC 02H .1040 PERMIT ADMINISTRATION

This Rule applies to the permitting processes set forth in Rules .1041 through .1045 of this Section.

- (1) SIGNATURES ON PERMIT APPLICATION FORMS. Application forms shall have an original signature by one of following entities unless the application is accompanied by a letter of authorization signed by the appropriate authority as designated in Sub-Items (a) through (d) of this Item authorizing the signature of another entity:

- (a) in the case of a corporation, by a principal executive officer of the level of vice-president or his authorized representative. In the case of a limited liability corporation (LLC), by a manager or company official as those terms are defined in G.S. 57D "North Carolina Limited Liability Company Act;"
- (b) in the case of a partnership, by a general partner or a managing partner. In the case of a limited partnership, by a general partner;
- (c) in the case of a proprietorship, by the proprietor(s); or
- (d) in the case of a municipal, state, or other public entity, by either a principal executive officer, ranking official, or other duly authorized employee.

- (2) PERMIT PROCESSING TIMES. The Division shall process permit applications and additional or amended information pursuant to G.S. 143-215.1.

- (3) DELEGATION. For permits issued by the Division, the Director is authorized to delegate to Division staff any or all of the functions contained in these Rules except the following:

- (a) denying a permit application;
- (b) revoking a permit if such revocation is not requested by the permittee;

- (b) obtaining a permit by misrepresentation or failure to disclose all relevant facts; or
 - (c) refusal of the permittee to allow authorized employees of the Department of Environmental Quality, upon presentation of credentials:
 - (i) to enter upon permittee's premises in which any records are required to be kept under terms and conditions of the permit;
 - (ii) to have access to any and all records required to be kept under terms and conditions of the permit;
 - (iii) to inspect any monitoring equipment or method required in the permit; or
 - (iv) to sample any discharge of pollutants.
- (7) DIRECTOR'S CERTIFICATION. With the exception of the fast track permitting process, projects that do not comply with the requirements of this Section may be approved on a case-by-case basis if the project is certified by the Director that water quality standards and best usages will not be threatened. Approval of alternative designs for SCMs that do not meet all the MDC shall be in accordance with Rule .1003(g) of this Section. Approval of new stormwater technologies shall be in accordance with Rule .1031 of this Section. The applicant shall provide information that demonstrates to the Director that:
- (a) there are practical difficulties or hardships due to the physical nature of the project such as its size, shape or topography that prevent strict compliance with this Section; and
 - (b) water quality standards and best usages will be protected, including development plans and specifications for SCMs that will be installed in lieu of the requirements of this Section or information that demonstrates that the project is located such that impacts to surface waters from pollutants present in stormwater from the site will be mitigated.
- (8) PUBLIC NOTICE. The Director is authorized to call for a public notice or meeting to solicit and receive comments from other regulatory agencies and the public to obtain additional information needed to complete the review of either the stormwater permit application or the stormwater conditions. If comments are solicited, notice shall be posted on the

Division's website and shall provide the public a period of at least 30 calendar days to submit comments to the Director. The permit application shall be included in the notice published on the Division's website.

- (9) CONTESTED CASE HEARING. An applicant whose application is denied or who is issued a permit subject to conditions that are not acceptable to the applicant may seek a contested case hearing pursuant to G.S. 150B-23.
- (10) COMPLIANCE. Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of this Section is subject to enforcement procedures as set forth in G.S. 143, Article 21.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a); 143-215.3D; 143-215.6A; 143-215.6B; 143-215.6C.

15A NCAC 02H .1041 GENERAL PERMITS

(a) In accordance with the provisions of G.S. 143-215.1(b)(3) and (4), general permits may be developed by the Division and issued by the Director for categories of activities covered in this Section. Each of the general permits shall be issued separately pursuant to G.S. 143-215.1, using all procedural requirements specified for State permits including application and public notice.

(b) General permits may be written to regulate categories of activities that:

- (1) involve the same or substantially similar operations;
- (2) have similar characteristics;
- (3) require the same limitations or operating conditions;
- (4) require the same or similar monitoring; and
- (5) are adequately controlled by a general permit as determined by the Director.

(c) General permit coverage shall be available to activities, including:

- (1) construction of bulkheads and boat ramps;
- (2) installation of sewer lines with no proposed built-upon areas;
- (3) construction of an individual single family residence; and
- (4) other activities that, as determined by the Director, meet the criteria of this Rule.

(d) General permits may be modified, terminated, revoked, and reissued in accordance with the authority and requirements of Rule .1040 of this Section.

(e) Procedural requirements for application and permit approval, unless specifically designated as applicable to persons proposed to be covered under the general permits, apply only to the issuance of the general permits.

(f) After issuance of the general permit by the Director, persons engaged in activities in the applicable categories may request coverage under the general permit, and if an activity falls within a category of activities governed by the general permit the Director or his designee shall grant appropriate coverage. All

activities that receive a "Certificate of Coverage" for that category of activity shall be deemed governed by that general permit.

(g) Activities covered under general permits, developed in accordance with this Rule, shall be subject to the standards and limits, management practices, enforcement authorities, and rights and privileges specified in the general permit.

(h) No provision in any general permit issued under this Rule shall be interpreted to allow the permittee to violate state water quality standards or other applicable environmental standards.

(i) For a general permit to apply to an activity, a Notice of Intent to be covered by the general permit shall be submitted to the Division using forms provided by the Division on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater>. The Notice of Intent shall comply with the application procedures specified in Rules .1040 and .1042 of this Section, as appropriate. In addition, the Notice of Intent shall include the following:

- (1) project name and physical location;
- (2) receiving stream name and classification;
- (3) total project area above mean high water;
- (4) total amount of proposed built-upon area;
- (5) description of best management practices employed at the project site;
- (6) two sets of site and grading plans; if applicable, plans shall show wetland delineation and the "AEC" line as established by the North Carolina Coastal Resources Commission pursuant to 15A NCAC 07H; and
- (7) location of the project indicated on a U.S. Geological Survey (USGS) map.

If all requirements are met, coverage under the general permit may be granted. If all requirements are not met, or the Director determines the activity is not governed by the general permit, then the applicant shall be notified in writing and may apply for an individual permit pursuant to this Section.

(j) General permits may be modified and reissued by the Division as necessary. Activities covered under general permits need not submit new Notices of Intent or renewal requests unless so directed by the Division. If the Division chooses not to renew a general permit, all facilities covered under that general permit shall be notified to submit applications for individual permits.

(k) All previous state water quality permits issued to a facility that can be covered by a general permit, whether for construction or operation, are revoked upon request of the permittee, termination of the individual permit, and issuance of the Certification of Coverage.

(l) Anyone engaged in activities governed by the general permit rules but not permitted in accordance with this Section shall be considered in violation in G.S. 143-215.1.

(m) Any person covered or considering coverage under a general permit may choose to pursue an individual permit for any activity covered by this Section.

(n) The Director may require any person, otherwise eligible for coverage under a general permit, to apply for an individual permit by notifying that person that an individual permit application is required. Notification shall consist of a written description of the reason(s) for the decision, appropriate permit application forms and application instructions, a statement establishing the required date for submission of the application, and a statement informing the person that coverage by the general permit shall automatically

terminate upon issuance of the individual permit. Reasons for requiring application for an individual permit include:

- (1) the activity is a significant contributor of pollutants;
- (2) a change in the conditions at the permitted site, altering the constituents or characteristics of the site such that the activity no longer qualifies for coverage under a general permit;
- (3) noncompliance with the general permit;
- (4) noncompliance with other provisions of 15A NCAC 02;
- (5) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the activity; or
- (6) a determination that the water of the stream receiving stormwater runoff from the site is not meeting applicable water quality standards.

(o) Any interested person may petition the Director to take an action under Paragraph (n) of this Rule to require an individual permit.

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

15A NCAC 02H .1042 STANDARD PERMITTING PROCESS

This Rule contains the requirements for the application, review, issuance, and denial of state stormwater management permits under the standard permitting process.

- (1) **APPLICABILITY.** This Rule applies to:
 - (a) any person seeking to permit a development activity subject to a stormwater program implemented by the Division under the standard permitting process; and
 - (b) any person proposing a major modification to an existing state stormwater permit under the standard permitting process.
- (2) **APPLICATION SUBMITTAL REQUIREMENTS.** The applicant shall submit a nonrefundable permit application fee in accordance with G.S. 143-215.3D and two hard copies and one electronic copy of each of the following:
 - (a) a completed and signed Standard Process Application Form. This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
 - (i) current project name and previous project name, if applicable;
 - (ii) information about the physical location of project;
 - (iii) stormwater project number, if assigned;

- (iv) density of the entire project and each drainage area;
- (v) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Sedimentation and Erosion Control Plan, and Section 404/401 permits;
- (vi) description of SCMs that will be used on the project;
- (vii) information about vested rights, if applicable;
- (viii) applicant name, address and contact information; and
- (ix) owner name, address and contact information.
- (b) when the applicant is a corporation or limited liability corporation (LLC):
 - (i) documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
 - (ii) documentation from the NC Secretary of State or other official documentation showing the titles and positions held by the person who signed the application pursuant to Rule .1040(1) of this Section;
- (c) when the applicant is not the property owner, a copy of a lease agreement, affidavit, or other document showing that the applicant has obtained legal rights to submit a stormwater permit application within the proposed project area;
- (d) a U.S. Geological Survey (USGS) map identifying the project location and the GPS coordinates for the project. Any areas within the project that are subject to SA, ORW, or HQW stormwater requirements set forth in Rules .1019 and .1021 of this Section shall be shown on the map;
- (e) a location map with street names and SR numbers to the nearest intersection, with 1, 2, or 3 digit road numbers, legend, and north arrow. This map is not required to be to scale;
- (f) signed, sealed, and dated calculations and documentation of project density and allocation of built-upon area for future lots, pursuant to Rule .1003 of this Section;
- (g) signed, sealed, and dated plans of the entire site that are a minimum of 22 inches by 34 inches in size and are at a legible scale. All plan packages shall include:
 - (i) project name, designer, and dates;
 - (ii) dimensioned project or project phase boundary with bearings and distances;
 - (iii) the boundaries of all surface waters, wetlands, regulatory flood zones, protected vegetated setbacks, and protected riparian buffers, or a note on the plans that none exist;
 - (iv) proposed contours and drainage patterns;
 - (v) all existing and proposed built-upon areas, except for built-upon areas associated with single family residential lots and outparcels on commercial developments that are undetermined at the time of project submittal;
 - (vi) subdivision lot lines, maintenance access routes and easements, utility and drainage easements, public rights of way, and SCMs; and
 - (vii) the location of the stormwater collection system, including the locations of the inlets, outlets, pipes, and swales, as well as the inverts and diameters of pipes, excluding driveway culverts.
 - (viii) the Division may accept conceptual stormwater plans in lieu of this Sub-Item when the applicant can demonstrate that SCMs will be properly sized and sited. The detailed plans shall be provided to the Division for review before construction begins;
- (h) signed, sealed, and dated plan details of each SCM in plan view at a scale of one inch equal to 30 feet or larger and a cross-section view. Other scales may be accepted if the scale is such that all details are legible on a copy. The plan details shall include:

- (i) dimensions, side slopes, and elevations with a benchmark for clean-out if appropriate;
 - (ii) all conveyance devices, including inlet device, bypass structure, pretreatment area, flow distribution device, underdrains, outlet device, energy dissipater, and level spreader; and
 - (iii) specification sheets for materials used in the SCM, such as planting media, filter media, and aggregate;
 - (i) signed, sealed, and dated planting plans for each SCM that requires a planting plan per the Minimum Design Criteria. The planting plan shall include:
 - (i) plant layout with species names and locations;
 - (ii) total number and sizes of all plant species; and
 - (iii) for stormwater wetlands, a delineation of planting zones;
 - (j) a signed and notarized operation and maintenance agreement;
 - (k) for major modifications, a copy of the recorded deed restrictions and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the BUA thresholds. For new projects, proposed deed restrictions and protective covenants. A signed agreement to provide final recorded articles shall be accepted when final documents are not available at the time of submittal; and
 - (l) for major modifications, a copy of the recorded drainage easements. For new projects, proposed drainage easements shown on the plans, and a signed agreement to provide final recorded drainage easements if recorded documents are not available at the time of submittal.
- (3) DIVISION REVIEW OF APPLICATIONS.
- (a) The Division shall take one of the following actions:
 - (i) Notify the applicant that additional information is necessary for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information that is required. The applicant shall have no more than 30 calendar days from the date the letter was sent to submit the additional information to the Division;
 - (ii) Return the application if the required information listed in Item (2) of this Rule is not provided or if information the Division has requested per Sub-Item (i) of this Sub-Item is not provided within 30 days. In this case, the application shall be deemed denied, and the applicant shall be required to resubmit a complete application with a new application fee;
 - (iii) Issue a permit pursuant to Rule .1040 of this Section; or
 - (iv) Deny a permit pursuant to Rule .1040 of this Section.
 - (b) The Division may require an applicant to submit plans, specifications, and other information it considers necessary to evaluate the application when the information provided is inadequate or incorrect. The applicant shall allow the Division safe access to the records, lands, and facilities of the applicant.
 - (c) If the Division fails to act within the required response times set forth in G.S. 143-215.1, then the application shall be considered approved unless:
 - (i) the applicant agrees, in writing, to a longer period;
 - (ii) a final decision is to be made pursuant to a public hearing;
 - (iii) the applicant fails to furnish information necessary for the Division's decision in accordance with Item (2) or Sub-Item (3)(a) of this Rule; or
 - (iv) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.
- (4) FINAL SUBMITTAL REQUIREMENTS IF COMPLETED PROJECT COMPLIES WITH PERMITTED PLANS. If the actual built-upon area is equal to or less than that shown on the permitted plans and the constructed SCM is in compliance with the approved plans, then within 30 calendar days of completion of the project the applicant shall submit to the

Division one hard copy and one electronic copy of the following:

- (a) a completed and signed Designer's Certification Form that states that the project was built as approved;
- (b) unless already provided with the permit application, a copy of the recorded deed restrictions and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the built-upon area thresholds; and
- (c) a copy of the recorded drainage easements.

(5) IF PROJECT DOES NOT COMPLY WITH PERMITTED PLANS. If the actual built-upon area exceeds that shown on the permitted plans or if the constructed SCM is not in compliance with the approved plans, then within 30 calendar days of completion of the project the applicant shall submit an application for a modified stormwater permit in accordance with the requirements of this Rule. On a case-by-case basis, based on the project's size and complexity, the Division may grant the applicant more time to submit the modification application.

Authority G.S. 143-214.7; 143-215.1; 143-215.3(a);143-215.3D.

15A NCAC 02H .1043 FAST TRACK PERMITTING PROCESS: AUTHORIZATION TO CONSTRUCT

The purpose of this Rule is to set forth the first of two phases of the Fast-Track Stormwater Permit application process: applying for and receiving an authorization to construct permit. There will be a completeness review during the first phase of this process; however, at project completion, the Division will review the as-built submittal package to determine compliance with the MDCs.

- (1) APPLICABILITY. The fast-track permitting process shall be an option for new projects and major modifications of existing projects provided that all of the MDC shall be met upon project completion. Projects that do not qualify for the fast-track permitting process include:
 - (a) projects claiming an exemption from the MDC based on vested rights, a waiver, or Director's certification pursuant to Rule .1040(7) of this Section;
 - (b) modifications to existing projects where the proposed changes to the SCMs will not result in compliance with MDC; and
 - (c) projects that are not in compliance with a current stormwater permit.
- (2) PROFESSIONAL ENGINEER. Fast-track projects shall retain a Professional Engineer of record for the entire duration of the project from initial design and application submittal to

Division approval of the as-built plans per Rule .1044 of this Section.

(3) APPLICATION SUBMITTAL REQUIREMENTS. The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two hard copies and one electronic copy of each of the following:

- (a) a completed and signed Fast-Track Process Application Form. This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
 - (i) current project name and previous project name, if applicable;
 - (ii) information about the physical location of project;
 - (iii) stormwater project number, if assigned;
 - (iv) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Sedimentation and Erosion Control Plan, and Section 404/401 permits;
 - (v) applicant name, address and contact information; and
 - (vi) owner name, address and contact information.
- (b) when the applicant is a corporation or a limited liability corporation (LLC):
 - (i) documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
 - (ii) documentation from the NC Secretary of State or other official documentation showing the titles and positions held by the persons signed the application pursuant to Rule .1040(1) of this Section;
- (c) when the applicant is not the property owner, a copy of lease agreements, affidavits, or other documents showing that the applicant has obtained legal rights to submit a stormwater permit application within the proposed project area;
- (d) a completed and signed Financial Responsibility Ownership Form;

- (e) a signed agreement that there will be a transferable operation and maintenance agreement initiated prior to completion of construction;
 - (f) a guaranty signed and notarized by the applicant and sealed by the Professional Engineer attesting to the following:
 - (i) The design has been completed in accordance with the MDC;
 - (ii) The completed design will meet the MDC and that the percentage built-upon area that is the basis for the design will not be exceeded;
 - (iii) The applicant will maintain a Professional Engineer of record for the duration of the project who will prepare and certify the as-built package. If the applicant retains another Professional Engineer before the project is complete, then the applicant shall provide an updated guaranty with the current Professional Engineer's seal; and
 - (iv) A Professional Engineer shall inform the Division that he is no longer associated with this project;
 - (g) a USGS map identifying the project location and the GPS coordinates for the project. Areas within the project that are subject to SA, Outstanding Resource Waters (ORW) or High Quality Waters (HQW) stormwater requirements set forth in Rules .1019 and .1021 of this Section shall be shown on the map;
 - (h) a site plan depicting the boundary of the project or project phase currently being permitted, including the locations of stormwater control measures, streams, wetlands, and buffers; and
 - (i) a construction sequence that discusses how any future development on the project may be phased.
- (4) DIVISION REVIEW OF APPLICATIONS. The Division shall take one of the following actions within 30 days of the receipt of the application:
- (a) Notify the applicant that the project does not qualify for the fast track permitting process pursuant to Item (1) of this Rule. The applicant shall

then follow the standard permitting process in accordance with Rule .1042 of this Section;

- (b) Notify the applicant that additional information is necessary for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information required. The applicant shall have 30 calendar days to submit the additional information to the Division;
 - (c) Return the application if the required information listed in Item (3) of this Rule is not provided or if information the Division has requested per Sub-item (4)(b) of this Rule is not provided within 30 days. In this case, the applicant shall be required to resubmit a complete application with a new application fee; or
 - (d) Issue an authorization to construct permit; or
 - (e) Deny the application in accordance with Rule .1040 of this Section.
- (5) EXPIRATION OF THE AUTHORIZATION TO CONSTRUCT PERMIT. The authorization to construct permit shall expire five years after the date of issuance.

Authority G.S. 143.214.7; 143-214.7B; 143-215.1; S.L. 2013-82.

15A NCAC 02H .1044 FAST TRACK PERMITTING PROCESS: FINAL PERMIT

The purpose of this Rule is to set forth the Fast-Track Stormwater permitting process from the approval of the Authorization to Construct Permit to the approval of the Final Fast-Track Permit.

- (1) CONSTRUCTION REQUIREMENTS. Engineering design documents shall be available upon request by the Division.
- (2) PROJECT COMPLETION. Approval of the as-built stormwater plans shall be required before the Sedimentation and Erosion Control Plan for the project may be closed out.
- (3) AS-BUILT PACKAGE SUBMITTAL. The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and an as-built package within 30 calendar days of completion of the project. The as-built package shall include the following:
 - (a) an As-Built Certification Form signed and sealed by the professional engineer of record and signed by the applicant. This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:

- (i) current project name and previous project name, if applicable;
- (ii) information about the physical location of project;
- (iii) stormwater project number, if assigned;
- (iv) density of the entire project and each drainage area;
- (v) information about applicability of other State and federal environmental permits to the project including CAMA Major Development Permits, NPDES, Sedimentation and Erosion Control Plan, and Section 404/401 permits;
- (vi) description of SCMs that were used on the project;
- (vii) applicant name, address and contact information; and
- (viii) owner name, address and contact information.
- (b) signed, sealed, and dated as-built calculations for the SCMs and calculations of the project density;
- (c) when an SCM that has an MDC requiring evaluation of the SHWT or the soil infiltration rate, the applicant shall include the signed, sealed, and dated soils report based on field evaluation indicating the depth of SHWT within the footprint of the SCM, and a map of the boring locations, and boring logs. When the MDC require determination of the infiltration rate, the report shall include the soil type, infiltration rate, and method for determining the infiltration rate. Soils infiltration shall be signed and sealed by a licensed professional;
- (d) a location map with street names and SR numbers to the nearest intersection with 1, 2, or 3 digit road numbers, legend, and north arrow. This is not required to be to scale;
- (e) signed, sealed, and dated plans of the entire site that are a minimum 22 by 34 inch in size and are at a legible scale. All plan packages shall include:
 - (i) project name, designer, and dates;
 - (ii) dimensioned project or project phase boundary with bearings and distances;
 - (iii) the boundaries of all surface waters, wetlands, regulatory flood zones, protected vegetated setbacks, and protected riparian buffers or a note on the plans that none exist; and
- (iv) site layout showing all built-upon areas, maintenance access routes and easements, utility easements, drainage easements, public rights of way, stormwater collection systems, and SCMs at ultimate build-out. The information on stormwater collection systems shall include the locations of the inlets, outlets, pipes, and swales, as well as the inverts and diameters of pipes, excluding driveway culverts;
- (f) signed, sealed, and dated as-built plan details of each SCM in both plan view at a scale of one inch equal to 30 feet or larger and cross-section. Other scales may be accepted if the scale is such that all details are legible on a copy. The as-built plan details shall include:
 - (i) dimensions, side slopes, and elevations with a benchmark for clean-out if appropriate;
 - (ii) all conveyance devices, including inlet devices, bypass structures, pretreatment areas, flow distribution devices, underdrain discharge points (if accessible), outlet devices, energy dissipater, and level spreader; and
 - (iii) specification sheets for materials used in the SCM, such as planting media, filter media, and aggregate.
- (g) signed, sealed, and dated as-built planting plans for each stormwater wetland and bioretention cell (or typical) at a scale of one inch equals 20 feet or larger. The planting plan shall include:
 - (i) plant layout with species names and locations;
 - (ii) total number and sizes of all plant species; and
 - (iii) for stormwater wetlands, a delineation of planting zones;
- (h) a copy of the signed, notarized, and recorded operation and maintenance

- agreement including an estimation of the maintenance cost;
- (i) a copy of the recorded documents, deed restrictions, and protective covenants limiting the built-upon area so that it does not exceed the capacity of the SCM(s) or the built-upon area thresholds;
 - (j) a copy of the recorded drainage easements; and
 - (k) if there is an increase in built-upon area or a change in SCM design from the permitted plans, then the applicant shall explain the increase or change. The permit applicant has the burden of providing sufficient evidence to ensure that the proposed system complies with all applicable water quality standards and requirements.
- (4) SITE INSPECTION. The Division may perform a site inspection of the project to ensure that the as-built drawings are an accurate depiction of the stormwater management plan. The Division may inspect the site either:
- (a) before the final stormwater permit is issued by scheduling an inspection with the applicant. If the applicant does not agree to the inspection date selected by the Division, then the Division shall work with the applicant to schedule another inspection date; however, in this case, the Division's deadline for action shall be modified pursuant to Item (5) of this Rule; or
 - (b) after issuance of the final stormwater permit as part of the sediment and erosion control plan close-out.
- (5) DIVISION REVIEW OF THE AS-BUILT PACKAGE. Within 15 calendar days after receipt of the as-built package or of additional or amended information, the Division shall notify the applicant if additional information is necessary to determine compliance with this Section. The applicant shall have 30 calendar days from the date of such notice to submit the required information to the Division. If the as-built package is complete, then within 40 days after receipt of the as-built package or 30 days after completion of a site inspection that has been rescheduled at the request of the applicant, whichever date is later, the Division shall take any of the following actions:
- (a) Issue the final permit pursuant to Rule .1040 of this Section;
 - (b) Draft a permit with special conditions in accordance with Item (6) of this Rule;
 - (c) Initiate compliance and enforcement action in accordance with G.S. 143, Article 21; or
 - (d) Deny the permit pursuant to Rule .1040 of this Section.
- (6) PERMIT WITH SPECIAL CONDITIONS. If the Division determines that the stormwater plan has only minor deviations from the MDC, then it shall draft a permit with special conditions to bring the project into compliance with the MDC. The Division shall provide the applicant with a draft of the proposed permit and the applicant shall have 10 days to submit comments or concerns back to the Division. After the draft permit is reviewed by the applicant, the Division shall issue a final permit with special conditions that includes the following:
- (a) a list of corrections to be made to the stormwater plan to bring the project into compliance with the MDC; and
 - (b) a proposed schedule of compliance for meeting the MDC.
- (7) COMPLIANCE. Applicants who fail to comply with the requirements of this Rule may be subject to enforcement action as set forth in G.S. 143-215.3.
- (8) EXCEPTIONS TO ABOVE TIMEFRAMES. If the Division fails to act within the timelines specified in Item (5) of this Rule, the project shall be considered to be approved unless:
- (a) the applicant does not agree to the inspection date proposed by the Division pursuant to Sub-item (4)(a) of this Rule.
 - (b) the applicant agrees, in writing, to a longer period;
 - (c) the final decision is to be made pursuant to a public notice or hearing;
 - (d) the applicant fails to furnish information necessary for the Division's decision; or
 - (e) the applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.

Authority 143.214.7; 143-214.7B; 143-215.1; 143-215.6A; 143-215.6B; 143-215.6C; S.L 2013-82.

15A NCAC 02H .1045 REQUIREMENTS FOR PERMIT TRANSFERS AND PERMIT RENEWALS

This Rule contains the requirements for the transfer and renewal of State stormwater management permits that have been issued by the Division, including those issued under the standard and fast-track permitting processes.

- (1) CONDITIONS UNDER WHICH A PERMIT MAY BE TRANSFERRED. Permit transfer

applications shall be accepted by the Division under the following scenarios:

- (a) upon the request of the current and proposed permittees;
- (b) upon the request of a permitted declarant of a condominium or planned community to the unit owners association, owners association, or other management entity identified in the condominium or planned community's declaration in accordance with G.S. 143-214.7(c2); or
- (c) upon the request for a transfer without the consent of the permit holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in G.S. 143-214.7(c5).

(2) PERMIT TRANSFER APPLICATION SUBMITTAL REQUIREMENTS. The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two hard copies and one electronic copy of each of the following:

- (a) A completed and signed Permit Transfer Application Form. This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
 - (i) current stormwater permit number;
 - (ii) current project name;
 - (iii) current permittee name and contact information; and
 - (iv) proposed permittee name and contact information.
- (b) When the applicant is a corporation or limited liability corporation (LLC):
 - (i) Documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
 - (ii) Documentation from the NC Secretary of State or other official documentation, showing the titles and positions held by the person who signed the application pursuant to Rule .1040 of this Section;
- (c) Legal documentation of the property transfer to a new owner;
- (d) A copy of a signed and notarized operation and maintenance agreement;

(e) A copy of the recorded deed restrictions and protective covenants where required. If the project has been built, documentation that the maximum allowed per lot built-upon area or the maximum allowed total built-upon area has not been exceeded;

(f) If the project has been built, signed, sealed, and dated letter from a licensed professional stating that the stormwater management system has been inspected and that it has been built and maintained in accordance with the approved plans; and

(g) A copy of the recorded deed restrictions and protective covenants, where required by the permit. If the project has not been built, the new owner shall provide a signed agreement to submit final recorded deed restrictions and protective covenants.

(3) PERMIT RENEWAL APPLICATION SUBMITTAL REQUIREMENTS. Permittees shall submit a permit renewal application to the Division a minimum of 180 days prior to the permit's expiration date. The applicant shall submit a permit application fee in accordance with G.S. 143-215.3D and two hard copies and one digital copy of each of the following:

- (a) A completed and signed Permit Renewal Application Form. This form can be obtained on the Division's website at <http://portal.ncdenr.org/web/lr/stormwater> and shall include the following information:
 - (i) project name and stormwater permit number;
 - (ii) permittee name and contact information;
 - (iii) owner name, title, and contact information;
 - (iv) information about the physical location of project;
 - (v) description of SCMs used on the project; and
 - (vi) if applicable, description of any changes made to the project as permitted.
- (b) When the applicant is a corporation or limited liability corporation (LLC):
 - (i) Documentation showing the corporation or LLC is an active corporation in good standing with the NC Secretary of State; and
 - (ii) Documentation from the NC Secretary of State or other

official documentation showing the titles and positions held by the person who signed the application pursuant to Rule .1040 of this Section.

- (c) Documentation that the maximum allowed per lot built-upon area or the maximum allowed total built-upon area has not been exceeded;
 - (d) A signed, sealed, and dated letter from a licensed professional stating that the stormwater management system has been inspected and that it has been built and maintained in accordance with the approved plans;
 - (e) A copy of the current signed and notarized operation and maintenance agreement where required by the permit;
 - (f) A copy of the recorded deed restrictions and protective covenants, where required by permit; and
 - (g) If the project is out of compliance with permit conditions, a written schedule of actions to bring the project into compliance.
- (4) DIVISION REVIEW OF APPLICATIONS. The Division shall follow these procedures in reviewing and approving applications for permit transfers and renewals.
- (a) The Division shall take one of the following actions upon receipt of the application:
 - (i) Notify the applicant that additional information is necessary for the Division to determine whether the project complies with this Section. The Division shall provide a list of the additional information required. The applicant shall have 30 calendar days from the date the letter was sent to submit the additional information to the Division;
 - (ii) Return the application if the required information listed in Items (2) or (3) of this Rule is not provided or if information the Division has requested per Sub-item (i) of Sub-item (4)(a) is not provided. In this case, the application shall be deemed denied, and the applicant shall be required to resubmit

a complete application with a new application fee; or

- (iii) Issue an updated permit in accordance with this Section if the application is complete and the project is in compliance with its permit conditions and approved plans.
- (b) The Division may conduct investigations about the project when the information provided appears to be inadequate or incorrect. The applicant shall allow the Division safe access to the records, lands, and facilities of the applicant. The Division may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Division considers necessary to evaluate the application.
- (c) If the Division fails to act within the response times set forth by G.S. 143-215.1, then the application shall be considered approved unless:
 - (i) The applicant agrees, in writing, to a longer period;
 - (ii) The project being transferred or renewed is out of compliance with the stormwater permit;
 - (iii) A public notice or public hearing is required by the Director;
 - (iv) The applicant fails to furnish information necessary for the Division's decision in accordance with this Rule; or
 - (v) The applicant refuses the staff access to its records or premises for the purpose of gathering information necessary for the Division's decision.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

15A NCAC 02H .1050 MDC FOR ALL STORMWATER CONTROL MEASURES

The purpose of this Rule is to set forth the design requirements for all Stormwater Control Measures (SCMs) that are constructed to meet the requirements of this Section. These Minimum Design Criteria (MDC) are required for every SCM. SCMs are also required to adhere to the MDC associated with the specific type of SCM being implemented.

- (1) SIZING. The design volume of SCMs shall take into account the runoff at build out from all

- surfaces draining to the system. Drainage from off-site areas may be bypassed. The combined design volume of all SCMs on the project shall be sufficient to handle the required treatment volume.
- (2) SEASONAL HIGH WATER TABLE (SHWT). SCMs shall not include an outlet structure that is more than 6" below the SHWT elevation unless it can be demonstrated that the device will not dewater waters of the State and that the treatment volume of the SCM will not be compromised by groundwater inflow.
 - (3) CONTAMINATED SOILS. SCMs that allow stormwater to infiltrate shall not be located on or in areas with contaminated soils.
 - (4) SIDE SLOPES. Side slopes of SCMs stabilized with vegetated cover shall be no steeper than 3:1 (horizontal to vertical). Retaining walls, gabion walls, and other engineered surfaces may be steeper than 3:1. Steeper vegetated slopes may be considered on a case-by-case basis if the applicant demonstrates that the soils and vegetation shall remain stable.
 - (5) EROSION PROTECTION. The inlets and outlets of SCMs shall be protected from erosion resulting from stormwater discharges.
 - (6) EXCESS FLOWS. SCMs shall include an overflow or bypass device for inflow volumes in excess of the treatment volume, or, if applicable, the peak attenuation volume.
 - (7) DEWATERING. SCMs shall have a method to draw down any standing water to facilitate maintenance and inspection.
 - (8) CLEAN OUT AFTER CONSTRUCTION. Every SCM impacted by sedimentation and erosion control during the construction phase shall be cleaned out and converted to its approved design state.
 - (9) MAINTENANCE ACCESS. Every SCM installed pursuant to this Section shall be made accessible for maintenance and repair. Maintenance accesses shall:
 - (a) have a minimum width of ten feet;
 - (b) not include lateral or incline slopes that exceed 3:1 (horizontal to vertical); and
 - (c) extend to the nearest public right-of-way.
 - (10) EASEMENTS. All SCMs and associated maintenance accesses on privately owned land except for those located on single family residential lots shall be located in recorded easements. The SCM shall be shown and labeled within the easement. These easements shall be granted in favor of the party responsible for enforcing the stormwater program under which the SCMs were approved.
 - (11) SINGLE FAMILY RESIDENTIAL LOTS. Plats for residential lots that contain an SCM shall include:
 - (a) the specific location of the SCM on the lot;
 - (b) a typical detail for SCM to be used; and
 - (c) a note that the SCM on the property has been required to meet stormwater regulations and that the property owner may be subject to enforcement actions if the SCM is removed, relocated, or altered without prior approval.
 - (12) OPERATION AND MAINTENANCE AGREEMENT. The owner of the SCMs shall enter into a binding Operation and Maintenance (O&M) Agreement with the party responsible for implementing the stormwater program under which the SCMs were approved. The O&M Agreement shall require the owner to maintain, repair, or reconstruct the SCMs in accordance with the approved design plans and the O&M Plan. The O&M Agreement shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the O&M Agreement shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers.
 - (13) OPERATION AND MAINTENANCE PLAN. There shall be an O&M Plan for every project subject to this Section. The O&M Plan shall specify all operation and maintenance work necessary for the function of all SCM components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point. The O&M plan shall specify methods to be used to maintain or restore the SCMs to design specifications in the event of failure. O&M plans shall be signed and notarized. The owner shall keep maintenance records and these shall be available upon request by the party responsible for enforcing the stormwater program under which the SCMs were approved.
 - (14) SCM SPECIFIC MINIMUM DESIGN CRITERIA (MDC). Every SCM shall follow the applicable device specific MDC pursuant to Rules .1051 through .1062 of this Section.
 - (15) LICENSED PROFESSIONAL. SCMs shall be designed by an individual who meets the North Carolina licensing requirements for the type of system proposed.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1051 MDC FOR INFILTRATION SYSTEMS

The purpose of this Rule is to set forth the design requirements for infiltration systems that are constructed to meet the requirements of this Section.

- (1) SOIL INVESTIGATION. A site-specific soil investigation shall be performed by a licensed professional to establish the hydraulic properties and characteristics of the soil within the proposed footprint and at the proposed elevation of the infiltration system.
- (2) SEPARATION FROM THE SHWT. The lowest point of the infiltration system shall be a minimum of two feet above the SHWT. However, the separation may be reduced to no less than one foot if the applicant provides a hydrogeologic evaluation prepared by a licensed professional that demonstrates that the water table will subside to its pre-storm elevation within five days or less.
- (3) SOIL SUBGRADE SURFACE. The surface of the soil subgrade shall have a slope of less than or equal to two percent. Terraces and baffles may be installed to achieve a level subgrade.
- (4) PRETREATMENT. Pretreatment devices shall be provided to prevent clogging. Pretreatment devices may include measures such as sumps in catch basins, gravel verges, screens on roof and patio drains, filters, filter strips, grassed swales, and forebays. Rooftop runoff that is discharged to the surface of an infiltration system shall not require pretreatment.
- (5) DRAW DOWN TIME. Infiltration systems shall be designed to dewater the design volume to the bottom of the infiltration device within 72 hours or less. In-situ soils may be removed and replaced with infiltration media or infiltration media may be placed on top of in-situ soils if the applicant provides a soils report prepared by a licensed professional that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours or less.
- (6) OBSERVATION PORT. For infiltration devices located under the ground surface, a minimum of one inspection port shall be provided.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1052 MDC FOR BIORETENTION CELLS

The purpose of this Rule is to set forth the design requirements for bioretention cells that are constructed to meet the requirements of this Section.

- (1) SEPARATION FROM THE SHWT. The lowest point of the bioretention cell shall be a minimum of two feet above the SHWT. However, the separation may be reduced to no less than one foot if the applicant provides a

hydrogeologic evaluation prepared by a licensed professional.

- (2) MAXIMUM PONDING DEPTH FOR DESIGN VOLUME. The maximum ponding depth for the design volume shall be 12 inches above the planting surface.
- (3) PEAK ATTENUATION VOLUME. Bioretention cells may store peak attenuation volume at a depth of up to 24 inches above the planting surface. The peak attenuation outlet shall be a maximum of 18 inches above the planting surface.
- (4) UNDERDRAIN. An underdrain with internal water storage shall be installed unless a licensed professional demonstrates that the in-situ soil infiltration rate is two inches per hour or greater immediately prior to the initial placement of the media. The top of the internal water storage zone shall be set at a minimum of 18 inches below the planting surface.
- (5) MEDIA DEPTH. The minimum depth of the media depends on the design of the cell as follows:
 - (a) all cells with trees and shrubs: 36 inches;
 - (b) cells without trees and shrubs:
 - (i) with no internal water storage: 24 inches; or
 - (iii) with internal water storage: 30 inches.
- (6) MEDIA MIX. The media shall be a homogeneous soil mix with approximate volumes of: 75 to 85 percent medium to coarse washed sand (ASTM C33 or the equivalent,) 10 percent fines (silt and clay), and 5 to 10 percent organic matter (such as pine bark fines).
- (7) MEDIA P-INDEX. The phosphorus index (P-index) for the media shall not exceed 30 in NSW waters as defined in 15A NCAC 02B .0202 and shall not exceed 50 elsewhere.
- (8) NO MECHANICAL COMPACTION. The media shall not be mechanically compacted. It is recommended to either water it or walk on it as it is placed.
- (9) MAINTENANCE OF MEDIA. The bioretention cell shall be maintained in a manner that results in a drawdown of at least one inch per hour at the planting surface.
- (10) PLANTING PLAN. For bioretention cells with vegetation other than sod, the planting plan shall be designed to achieve a minimum of 75 percent plant coverage at five years after planting. The maximum coverage with tree or shrub canopy shall be 50 percent at five years after planting. If sod is used, then it shall be a non-clumping, deep-rooted species.
- (11) MULCH. For bioretention cells with vegetation other than sod, triple shredded hardwood mulch shall be used for the portion of

the cell that will be inundated. Mulch shall be uniformly placed two to four inches deep.

- (12) CLEAN-OUT PIPES. A minimum of one clean-out pipe shall be provided on each underdrain line. Clean out pipes shall be capped.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1053 MDC FOR WET PONDS

The purpose of this Rule is to set forth the design requirements for wet ponds that are constructed to meet the requirements of this Section.

- (1) MAIN POOL SURFACE AREA AND VOLUME. The main pool of the wet pond shall be sized using either:
 - (a) the Hydraulic Retention Time (HRT) Method; or
 - (b) the SA/DA and Average Depth Method.
- (2) MAIN POOL DEPTH. The average depth of the main pool shall be three to eight feet below the permanent pool elevation. Any portion of the vegetated shelf that is submerged may be excluded from the calculation of average depth.
- (3) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (4) FOREBAY. A forebay that meets the following specifications shall be included:
 - (a) Forebay volume shall be 15 to 20 percent of the volume in the main pool;
 - (b) The forebay shall be 40 to 60 inches in depth with respect to the permanent pool;
 - (c) The forebay entrance shall be deeper than the forebay exit;
 - (d) The water flowing over or through the structure that separates the forebay from the main pool shall flow at a nonerosive velocity; and
 - (e) If sediment accumulates in the forebay in a manner that reduces its depth to 30 inches, then the forebay shall be cleaned out and returned to its design state.
- (5) VEGETATED SHELF. The main pool shall be equipped with a vegetative shelf around its perimeter. The minimum width of the vegetated shelf shall be six feet and the slope shall be no steeper than 6:1 (horizontal to vertical).
- (6) DRAWDOWN TIME. The treatment volume shall draw down to the permanent pool level between two and five days.
- (7) PROTECTION OF THE RECEIVING STREAM. The wet pond shall discharge the runoff from the one-year, 24-hour storm in a

manner that minimizes hydrologic impacts to the receiving channel.

- (8) FOUNTAINS. If fountains are proposed, then a licensed professional shall provide documentation that they will not cause a resuspension of sediment within the pond, or cause erosion on the side slopes of the pond.
- (9) TRASH RACK. A trash rack or other device shall be provided to prevent large debris from entering the outlet system.
- (10) VEGETATION. The following criteria apply to vegetation in and around the wet pond:
 - (a) The dam structure and fill material around the perimeter of the pond shall be vegetated with non-clumping turf grass; trees and woody shrubs shall not be allowed; and
 - (b) The vegetated shelf shall be vegetated with a minimum of three diverse species of herbaceous, native vegetation, and a minimum of 50 plants per 200 square feet of shelf area shall be planted.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1054 MDC FOR STORMWATER WETLANDS

The purpose of this Rule is to set forth the design requirements for stormwater wetlands that are constructed to meet the requirements of this Section.

- (1) TEMPORARY PONDING DEPTH. The ponding depth for the design volume shall be a maximum of 15 inches above the permanent pool.
- (2) PEAK ATTENUATION DEPTH. The wetland may be designed to temporarily pond peak attenuation volume at a depth exceeding 15 inches.
- (3) SURFACE AREA. The surface area shall be sufficient to limit the ponding depth to 15 inches or less. The surface area specifications in Items (6) through (9) of this Rule are based on the wetland at its temporary ponding depth.
- (4) SOIL AMENDMENTS. The pH, compaction, and other attributes of the first 12-inch depth of the soil shall be adjusted if necessary to promote plant establishment and growth.
- (5) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (6) FOREBAY. A forebay shall be provided at the inlet to the stormwater wetland. The forebay shall comprise 10 to 15 percent of the wetland surface area. The forebay depth shall be 24 to 40 inches below the permanent pool elevation. The forebay entrance shall be deeper than the forebay exit. If sediment accumulates in the forebay in a manner that reduces its depth to 15

- inches, then the forebay shall be cleaned out and returned to its design state.
- (7) NON-FOREBAY DEEP POOLS. Deep pools shall be provided throughout the wetland and adjacent to the outlet structure to prevent clogging. The non-forebay deep pools shall comprise 5 to 15 percent of the wetland surface area and shall be designed to retain water between storm events. The deep pools at their deepest points shall be at least 18 inches below the permanent pool elevation.
- (8) SHALLOW WATER ZONE. The shallow water zone shall comprise 35 to 45 percent of the wetland surface area. The shallow water zone shall be zero to nine inches below the permanent pool elevation.
- (9) TEMPORARY INUNDATION ZONE. The temporary inundation zone shall comprise 30 to 45 percent of the wetland surface area. The temporary inundation zone shall be between 0 and 15 inches above the permanent pool elevation.
- (10) DRAWDOWN TIME. The treatment volume shall draw down to the permanent pool level between two and five days.
- (11) PROTECTION OF THE RECEIVING STREAM. The wetland shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (12) LANDSCAPING PLAN. A landscape plan prepared by a licensed professional shall be provided and shall include the following: total number and sizes of all plant species.
- (13) SHALLOW WATER PLANTINGS. The shallow water zone shall be planted at a minimum density of 50 herbaceous plants per 200 square feet (equivalent to 2 foot on center spacing).
- (14) TEMPORARY INUNDATION ZONE PLANTINGS. The temporary inundation zone shall be planted according to one of the following options:
- (a) 50 herbaceous plants per 200 square feet (equivalent to 2 foot on center spacing);
- (b) eight shrubs per 200 square feet (equivalent to 5 foot on center spacing); or
- (c) one tree and 40 grass-like herbaceous plants per 100 square feet.
- (15) DAM STRUCTURE AND PERIMETER FILL SLOPES. On the dam structure and perimeter fill slopes, non-clumping turf grass shall be provided, and trees and woody shrubs shall not be allowed.
- (16) NO CATTAILS. Cattails shall not be planted in the wetland.

- (17) TRASH RACK. A trash rack or other device to trap debris shall be provided on piped outlet structures.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1055 MDC FOR PERMEABLE PAVEMENT

The purpose of this Rule is to set forth the design requirements for permeable pavement systems that are constructed to meet the requirements of this Section.

- (1) SOIL INVESTIGATION. For infiltrating pavement systems, site-specific soil investigation shall be performed by a licensed professional to establish the hydraulic properties and characteristics within the proposed footprint and at the proposed elevation of the permeable pavement system.
- (2) SHWT REQUIREMENTS. The minimum separation between the lowest point of the subgrade surface and the SHWT shall be:
- (a) two feet for infiltrating pavement systems; however, the separation can be reduced to a minimum of one foot if the applicant provides a soils report prepared by a licensed professional that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours; and
- (b) one foot for detention pavement systems.
- (3) SITING. Permeable pavement shall not be installed in areas where toxic pollutants are stored or handled.
- (4) SOIL SUBGRADE SLOPE. The soil subgrade surface shall have a slope of less than or equal to two percent.
- (5) STONE BASE. Washed aggregate base materials shall be used.
- (6) PAVEMENT SURFACE. The proposed pavement surface shall have a demonstrated infiltration rate of at least 50 inches per hour using a head less than or equal to 4 inches.
- (7) RUNOFF FROM ADJACENT AREAS. Runoff to the permeable pavement from adjacent areas shall meet these requirements:
- (a) The maximum ratio of additional built-upon area that may drain to permeable pavement is 1:1. Screened rooftop runoff shall not be subject to the 1:1 loading limitation.
- (b) Runoff from adjacent pervious areas shall be prevented from reaching the permeable pavement except for incidental, unavoidable runoff from stable vegetated areas.
- (8) DRAW DOWN TIME. Infiltrating permeable pavement systems shall be designed to dewater

the design volume to the bottom of the subgrade surface within 72 hours. In-situ soils may be removed and replaced with infiltration media or infiltration media may be placed on top of in-situ soils if the applicant provides a soils report prepared by a licensed professional that demonstrates that the modified soil profile allows for infiltration of the design volume within 72 hours.

- (9) OBSERVATION WELL. Permeable pavement shall be equipped with a minimum of one observation well placed at the low point in the system. If the subgrade is terraced, then there shall be one observation well for each terrace. Observation wells shall be capped.
- (10) DETENTION SYSTEMS. Pavement systems may be designed to detain stormwater in the aggregate for a period of two to five days.
- (11) EDGE RESTRAINTS. Edge restraints shall be provided around the perimeter of permeable interlocking concrete pavers (PICP) and grid pavers.
- (12) GRADE WHEN DRY. The soil subgrade for infiltrating permeable pavement shall be graded when there is no precipitation.
- (13) INSPECTIONS AND CERTIFICATION. After installation, permeable pavement shall be protected from sediment deposition until the site is completed and stabilized. An in-situ infiltration permeability test shall be conducted and certified by a licensed professional on the pavement after site stabilization.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a);

15A NCAC 02H .1056 MDC FOR SAND FILTERS

The purpose of this Rule is to set forth the design requirements sand filters that are constructed to meet the requirements of a State post-construction stormwater program.

- (1) SHWT SEPARATION. The minimum separation between the lowest point of the sand filter system and the SHWT shall be:
 - (a) two feet for open-bottom designs; and
 - (b) one foot for closed bottom designs.
 - Exceptions to the one foot SHWT separation may be made if a licensed professional provides documentation that the design will neither float nor drain the water table.
- (2) TWO CHAMBER SYSTEM. The sand filter shall include a sediment chamber and a sand chamber. It is recommended to provide equivalent storage volume in each chamber.
- (3) SEDIMENT/SAND CHAMBER SIZING. The volume of water that can be stored in the sediment chamber and the sand chamber above the sand surface combined shall be 0.75 times the treatment volume. The elevation of bypass devices shall be set above the ponding depth

associated with this volume. The bypass device may be designed to attenuate peak flows.

- (4) MAXIMUM PONDING DEPTH. The maximum ponding depth from the top of the sand to the bypass device shall be six feet.
- (5) FLOW DISTRIBUTION. Incoming stormwater shall be evenly distributed over the surface of the sand chamber.
- (6) SAND MEDIA SPECIFICATION. Sand media shall meet ASTM C33 or the equivalent.
- (7) MEDIA DEPTH. The filter bed shall have a minimum depth of 18 inches. The minimum depth of sand above the underdrain pipe shall be 12 inches.
- (8) MAINTENANCE OF MEDIA. The sand filter shall be maintained in a manner that results in a drawdown of at least two inches per hour at the sand surface.
- (9) CLEAN-OUT PIPES. At least one clean-out pipe shall be provided at the low point of each underdrain line. Clean out pipes shall be capped.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1057 MDC FOR RAINWATER HARVESTING

The purpose of this Rule is to set forth the design requirements for rainwater harvesting systems that are constructed to meet the requirements of this Section.

- (1) MAJOR COMPONENTS OF A RAINWATER HARVESTING SYSTEM. Rainwater harvesting systems shall include the following components:
 - (a) a collection system;
 - (b) a pre-treatment device to minimize gross and coarse solids collection in the tank;
 - (c) a cistern or other storage device;
 - (d) an overflow; and
 - (e) a distribution system.
- (2) FATE OF CAPTURED WATER. Captured stormwater shall be used or discharged as follows:
 - (a) use to meet a water demand. The usage, type, volume, frequency, and seasonality of water demand shall be established and justified;
 - (b) discharge via a passive drawdown device to a vegetated infiltration area or another SCM; or
 - (c) a combination of use and passive discharge.
- (3) SIZING. A rainwater harvesting system shall be considered as a primary SCM if the system is sized and water demand, passive discharge or a combination of the two is provided for 86 percent of the total annual runoff volume as

demonstrated through water balance calculations.

- (4) WATER BALANCE CALCULATIONS. The water balance shall be calculated using the NCSU Rainwater Harvester model or another continuous-simulation hydrologic model that calculates the water balance on a daily or more frequent time-step using a minimum of five representative years of actual rainfall records. The model shall account for withdrawals from the cistern for use, active or passive drawdown, and additions to the cistern by rainfall, runoff and a make-up water source if applicable.
- (5) DISTRIBUTION SYSTEM. The distribution system shall be tested for functionality prior to the completion of the rainwater harvesting system. The design shall include a protocol for testing the functionality of the distribution system upon completion of the initial system and upon additions to the existing system.
- (6) SIGNAGE REQUIREMENTS. All harvested rainwater outlets such as spigots and hose bibs, and appurtenances shall be labeled as "Non-Potable Water" to warn the public and others that the water is not intended for drinking. Passive drawdown devices, when employed, shall be marked with identifying signage or labels that are visible to owners and maintenance personnel.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1058 MDC FOR GREEN ROOFS

The purpose of this Rule is to set forth the design requirements for green roofs that are constructed to meet the requirements of this Section.

- (1) MEDIA SPECIFICATION. The maximum organic fraction of the media shall be ten percent by volume.
- (2) DESIGN VOLUME. The design volume for a green roof shall equal the media depth times the plant available water (PAW). The maximum rainfall depth that may be treated by a green roof is 1.5 inches.
- (3) MINIMUM MEDIA DEPTH. The minimum media depth shall be four inches if the roof will not be irrigated or three inches if the roof will be irrigated. For roofs with three-inch media depths, an irrigation plan shall be included in the Operation and Maintenance Plan.
- (4) VEGETATION SPECIFICATION. The planting plan shall be designed to achieve a 75 percent vegetative cover within two years.
- (5) SLOPE. The green roof shall have a slope (or pitch) of no greater than eight percent, unless a container system designed for a greater slope is used.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1059 MDC FOR LEVEL SPREADER-FILTER STRIPS

The purpose of this Rule is to set forth the design requirements for level spreader-filter strips that are constructed to meet the requirements of this Section.

- (1) LEVEL SPREADER LENGTH. The level spreader shall be a minimum of 10 feet in length per one cubic foot per second of stormwater flow that is directed to it.
- (2) REQUIRED STORM INTENSITY AND BYPASS. The required storm intensity and bypass system shall be based on the source of the stormwater:
 - (a) A level spreader that receives flow directly from the drainage area shall be sized based on the flow rate during the 0.75 inch per hour storm, with a flow bypass system for larger storm events; or
 - (b) A level spreader that receives flow from an SCM shall be sized based on the draw down rate of the design volume, with a flow bypass for larger storm events.
- (3) EXCEPTION FROM FLOW BYPASS REQUIREMENT. A flow bypass system is not needed if the level spreader is sized to handle the flow during 10-year storm event.
- (4) BLIND SWALE. Immediately upslope of the level spreader, there shall be a blind swale or other method of ponding water. The blind swale shall be designed to provide for uniform overtopping of the level spreader.
- (5) LEVEL SPREADER SPECIFICATIONS. The lip of the level spreader shall be at a uniform elevation with a construction tolerance of plus or minus 0.25 inch at any point along its length. The level spreader shall be constructed of concrete or other stable material.
- (6) LEVEL SPREADER SHAPE. The level spreader shall be straight or convex in plan view.
- (7) TRANSITION ZONE. Immediately downslope of the level spreader, there shall be a one to three inch drop followed by a transition zone that is protected from erosion via aggregate or high performance turf reinforcement matting. The transition zone shall be a minimum of 12 inches wide.
- (8) MINIMUM WIDTH OF THE FILTER STRIP. The minimum width of the filter strip shall be 30 feet, measured perpendicular to the level spreader lip.
- (9) NO DRAWS OR CHANNELS IN THE FILTER STRIP. The filter strip shall not contain draws or channels.

- (10) FILTER STRIP SPECIFICATIONS. The following specifications shall apply to the filter strip:
 - (a) Filter strips shall be graded with a uniform transverse slope of eight percent or less;
 - (b) The pH, compaction, and other attributes of the first 12 inches of the soil shall be adjusted if necessary to promote plant establishment and growth;
 - (c) The filter strip and side slopes shall be planted with non-clumping, deep-rooted grass sod; and
 - (d) Soils shall be stabilized with temporary means such as straw or matting until the permanent vegetative cover has taken root or the runoff shall be directed elsewhere until vegetation has established.

- (b) The vegetated receiving area shall be a minimum of 10 feet in length in the direction of flow; and
- (c) The vegetated receiving area shall not contain any built-upon area except for incidental areas such as utility boxes, signs and lamp posts.
- (3) VEGETATED RECEIVING AREA SPECIFICATIONS. The following specifications shall apply to the vegetated receiving areas for both disconnected roofs and disconnected pavement:
 - (a) Vegetated receiving areas shall have a uniform transverse slope of 8 percent or less, except in Hydrologic Soil Group A soils where slope shall be 15 percent or less;
 - (b) The pH, compaction, and other attributes of the first eight inches of the soil shall be adjusted if necessary to promote plant establishment and growth;
 - (c) The vegetated receiving area shall be planted with a non-clumping, deep-rooted grass species; and
 - (d) Soils shall be stabilized with temporary means such as straw or matting until the permanent vegetative cover has taken root or the runoff shall be directed elsewhere until vegetation has established.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1060 MDC FOR DISCONNECTED IMPERVIOUS SURFACES

The purpose of this Rule is to set forth the design requirements for disconnected impervious surfaces that are constructed to meet the requirements of this Section.

- (1) VEGETATED RECEIVING AREA FOR DISCONNECTED ROOFS. The following requirements shall apply to vegetated receiving areas for disconnected roofs:
 - (a) A maximum of 500 square feet of roof shall drain to each disconnected downspout;
 - (b) The receiving vegetated area shall be a rectangular shape. The length of the rectangle in the direction of flow shall be a minimum of 0.04 times the area of the roof that drains to it. The width of the rectangle shall be one-half the length of the rectangle.
 - (c) The downspout shall discharge in the center of upslope end of the vegetated receiving area;
 - (d) The downspout shall be equipped with a splash pad; and
 - (e) The vegetated receiving area shall not include any built-upon area.
- (2) VEGETATED RECEIVING AREA FOR DISCONNECTED PAVEMENT. The following requirements shall apply to the vegetated receiving area for disconnected pavement:
 - (a) The pavement draining to the vegetated receiving area shall be a maximum of 100 feet in length in the direction of flow;

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1061 MDC FOR TREATMENT SWALES

The purpose of this Rule is to set forth the design requirements for treatment swales that are constructed to meet the requirements of this Section.

- (1) SHWT. Swales shall not be excavated below the SHWT.
- (2) SHAPE. Swales shall be trapezoidal in cross-section with a maximum bottom width of six feet. Side slopes stabilized with vegetative cover shall be no steeper than 3:1 (horizontal to vertical). Steeper vegetated slopes may be considered on a case-by-case basis provided that it is demonstrated that the soils and vegetation will remain stable in perpetuity.
- (3) SWALE SLOPE AND LENGTH. The longitudinal swale slope shall not exceed seven percent. The swale slope and length shall be designed to achieve a flow depth of six inches or less during the 0.75 inch per hour storm and a minimum hydraulic retention time of four minutes.
- (4) GRASS SPECIFICATION. The grass species in the swale shall be:
 - (a) non-clumping and deep-rooted;

- (b) able to withstand a velocity of four feet per second;
- (c) managed at an average of six inches; and
- (d) not be cut lower than four inches.
- (5) CONVEYANCE OF LARGER STORMS. Swales shall be designed to non-erosively pass the ten-year storm.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

15A NCAC 02H .1062 MDC FOR DRY PONDS

The purpose of this Rule is to set forth the design requirements for dry ponds that are constructed to meet the requirements of this Section.

- (1) SEPARATION FROM THE SHWT. The lowest point of the dry pond shall be a minimum of six inches above the SHWT.
- (2) TEMPORARY POOL DEPTH. The maximum depth of the temporary pool shall be 10 feet.
- (3) UNIFORM GRADING AND POSITIVE DRAINAGE. The bottom of the dry pond shall be graded uniformly to flow toward the outlet structure without low or high spots other than an optional low flow channel.
- (4) LOCATION OF INLET(S) AND OUTLET. The inlet(s) and outlet shall be located in a manner that avoids short circuiting.
- (5) PRETREATMENT. Pretreatment devices shall be provided to settle sediment and prevent erosion. Pretreatment devices may include measures such as gravel verges, filter strips, grassed swales, and forebays.
- (6) DRAWDOWN TIME. The design volume shall draw down between two and five days.
- (7) PROTECTION OF THE RECEIVING STREAM. The dry pond shall discharge the runoff from the one-year, 24-hour storm in a manner that minimizes hydrologic impacts to the receiving channel.
- (8) OUTLET. The dry pond shall include a small permanent pool near the outlet orifice to reduce clogging and keep floating debris away from the orifice. A screen or other device shall be provided to prevent large debris from entering the outlet system.
- (9) VEGETATION. The dam structure and fill material around the perimeter of the pond shall be planted with non-clumping turf grass, and trees and woody shrubs shall not be allowed.

Authority G.S. 143-214.7B; 143-215.1; 143-215.3(a).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend rules cited as 15A NCAC 18A .1801-.1814 and repeal the rules cited as 15A NCAC 18A .1818, .2201-.2221, .3001-.3016.

Link to agency website pursuant to G.S. 150B-19.1(c):
<http://cph.publichealth.nc.gov/>

Proposed Effective Date: July 1, 2016

Public Hearing:

Date: March 29, 2016

Time: 10:00 a.m.

Location: Cardinal Room, located at: 5605 Six Forks Road, Raleigh, NC

Reason for Proposed Action: These Rules govern overall sanitation requirements for lodging establishments in North Carolina. Currently, these rules are contained in three separate sections within the environmental health rules.

15A NCAC 18A .1800 - SANITATION OF LODGING PLACES (Amend and Repeal)

15A NCAC 18A .2000 - SANITATION OF BED AND BREAKFAST HOMES (Repeal)

15A NCAC 18A .3000 - BED AND BREAKFAST INNS (Repeal)
These separate rules share many requirements that are repeated separately within each section. The proposed rule-making action consolidates the separate sections into one set of rules.

Comments may be submitted to: Chris Hoke, JD, 1931 Mail Service Center, Raleigh, NC 27699-1931, phone (919) 707-5006, email chris.hoke@dhhs.nc.gov

Comment period ends: April 15, 2016

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 (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1800 - SANITATION OF LODGING PLACES

15A NCAC 18A .1801 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Approved" means acceptable to the regulatory authority based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
- (2) "Bed and Breakfast Home" means Bed and Breakfast home as defined in G.S. 130A-247(5a).
- (3) "Bed and Breakfast Inn" means Bed and Breakfast Inn as defined in G.S. 130A-247(6).
- ~~(4)~~(4) "Department" means the North Carolina Department of Health and Human Services.
- (5) "Limited Food Services Establishment" means an establishment as defined in G.S. 130A-247(7) located within a Lodging Establishment.
- (6) "Linen" means fabric items such as bedding, towels, cloth hampers, cloth napkins, table cloths, wiping cloths, and work garments including cloth gloves.
- ~~(2)~~(7) "Lobby" means that room or area in which guests ordinarily register.
- ~~(3)~~(8) "Lodging establishment" means all hotels, motels, inns, tourist homes, and other places providing lodging accommodations for pay. Facilities described in G.S. 130A-250 (1) through (5) shall not be regulated as lodging establishments. For the purposes of this Section, the term Lodging establishment also includes Bed and Breakfast Homes and Bed and Breakfast Inns, unless otherwise described.
- (9) "Permit Holder" means:
 - (a) The person in charge who resides in and owns or rents the Bed and Breakfast Home or Bed and Breakfast Inn.
 - (b) The legal entity responsible for the operation of the Lodging Establishment such as the owner, the owner's agent, or other person.
- ~~(4)~~(10) "Person" means person as defined in G.S. 130A-2-G.S. 130A-2(7).
- (11) Physical facilities" means the structure and interior surfaces of a lodging establishment including accessories such as soap and towel dispensers and attachments such as light fixtures and heating or air conditioning system vents.
- (12) "Potentially Hazardous Food" means potentially hazardous food (time/temperature control for safety food) as defined in 15A NCAC 18A .2651.
- (13) "Regulatory Authority" means the Department or authorized agent of the Department.

- ~~(5)~~ "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (14) "Sanitization" means the application of cumulative heat or chemicals on cleaned food-contact surfaces that, when evaluated for efficacy, is sufficient to yield a reduction of 5 logs, which is equal to a 99.999 percent reduction, of representative disease microorganisms of public health importance.
- ~~(6)~~ "Single service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one time, one person use and then discarded.
- (15) "Single-use articles" means tableware, carry-out utensils, and other items such as bags, containers, placemats, stirrers, straws, toothpicks, and wrappers that are designed and constructed for one time, one person use after which they are intended for discard. It also includes utensils and bulk food containers designed and constructed to be used once and discarded, such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles and number 10 cans.
- (16) "Transitional Permit" means a permit issued by the regulatory authority upon the transfer of ownership or lease of an existing lodging establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to public health.
- (17) "Utensil" means a food-contact implement or container used in the storage, preparation, transportation, dispensing, sale, or service of food, such as kitchenware or tableware that is multiuse, single-service, or single-use; gloves used in contact with food; temperature sensing probes of food temperature measuring devices; and probe-type price or identification tags used in contact with food.

Authority G.S. 130A-248.

15A NCAC 18A .1802 PERMITS

- (a) No person shall operate a lodging establishment within the State of North Carolina who does not possess a valid permit from the Department.
- (b) No permit to operate shall be issued until an evaluation by a representative of the Department shows that the establishment complies with these Rules.
- (c) Upon transfer of ownership of an existing lodging establishment or upon transfer of the lease of the establishment from one person to another, the ~~Department~~ Regulatory Authority shall evaluate the facility to determine compliance with the rules.

If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. However, a transitional permit may be issued if the Department Regulatory Authority determines that the noncompliant items are construction or equipment problems that do not represent an immediate threat to the public health. ~~health, a transitional permit may be issued.~~ The transitional permit shall expire ~~90~~ 180 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of a transitional permit, ~~the owner or operator or lessee permit holder~~ shall have corrected the noncompliant items and obtained a permit, or the lodging place shall not continue to operate.

(d) The ~~Department Regulatory Authority~~ may impose conditions on the issuance of a permit or a transitional permit. Conditions may be specified for one or more of the following areas:

- (1) The number of bedrooms or persons housed.
- (2) The amount of laundry or kitchen and tableware washing equipment on the premises.
- (3) Time schedules in completing minor construction items.
- (4) Modification or maintenance of water supplies, water use fixtures and sanitary sewage systems.
- (5) Use of facilities for more than one purpose.
- (6) Continuation of contractual arrangements upon which basis the permit was issued.
- (7) Submission and approval of plans for renovation.
- (8) Any other conditions necessary for a lodging place to remain in compliance with this Section.

(e) If a permit or transitional permit has been suspended, the suspension shall be lifted if the regulatory authority has evaluated the lodging establishment and found that the violations causing the suspension have been corrected. If a permit or transitional permit has been revoked, a new permit shall be issued only after the regulatory authority has evaluated the lodging establishment and found it to comply with all applicable rules. The evaluations shall be conducted within 15 days after the request is made by the permit holder. Permits or transitional permits are issued by and evaluations made by the Department.

~~(f) A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with 130A-23. A new permit to operate shall be issued only after the establishment has been reevaluated by the Department and found to comply with this Section. This reevaluation will be conducted within a reasonable length of time, not to exceed 30 days, after the request is made by the operator.~~

Authority G.S. 130A-248.

15A NCAC 18A .1803 PUBLIC DISPLAY OF GRADE CARD

(a) Upon initial inspection of a lodging establishment or if a renovation or other change in the establishment makes the grade card inconspicuous, the Regulatory Authority shall designate the location for posting the grade card. The grade card shall be located in a conspicuous place where it may be readily observed by the

public upon entering the lodging establishment. If the person in charge of the lodging establishment objects to the location designated by the regulatory authority then the person in charge may suggest an alternative location which meets the criteria of this Rule.

(b) Whenever an inspection of a lodging establishment is made, the Regulatory Authority shall remove the existing grade card, issue a new grade card, and post the new grade card in a conspicuous place where it may be readily observed by the public upon entering the facility in the same location where the grade card was previously posted as long as that location remains conspicuous.

~~(c) The owner, operator or lessee permit holder shall be responsible for keeping the grade card posted at the designated location and readily visible at the location designated by the Department at all times.~~

Authority G.S. 130A-248.

15A NCAC 18A .1804 INSPECTIONS AND REINSPECTIONS

(a) Upon entry into a lodging establishment, the regulatory authority shall provide identification and the purpose in visiting that establishment. The regulatory authority shall inquire as to the identity of the person in charge and invite the person in charge to accompany the regulatory authority during the inspection. If no employee is identified as the person in charge, the regulatory authority shall invite an employee to accompany them on the inspection. Following the inspection, the regulatory authority shall offer to review the results of the inspection with the person in charge or employee, as applicable. request of the management, an inspection shall be made.

~~(b) In the case of establishments that have been closed for failure to comply with these Rules, an evaluation to consider the issuance or reissuance of a permit shall be made at the earliest convenience of the Department.~~

(b) The grading of lodging establishments shall be conducted using an inspection form furnished by the regulatory authority. The form shall provide for the following information:

- (1) The name and mailing address of the lodging establishment;
- (2) The name of the permit holder;
- (3) The permit status and score given;
- (4) Standards of construction and operation as listed in Rules .1801 through .1818 of this Section.
- (5) An explanation for all points deducted;
- (6) The signature of the regulatory authority; and
- (7) The date.

(c) The grading of lodging establishments shall be based on the standards of operation and construction as set forth in Rules .1801 through .1818 of this Section.

(d) The Lodging Establishment Inspection form shall be used to document points assessed for violation of the rules of this Section as follows:

- (1) Violation of Rule .1807 of this Section related to person in charge present, certification by accredited program or performs duties shall equal no more than 3 points.

- (2) Violation of Rule .1807 of this Section related to management awareness, policy present, and allergy awareness shall equal no more than 4 points.
 - (3) Violation of Rule .1807 of this Section related to proper eating, tasting, drinking, or tobacco use shall equal no more than 4 points.
 - (4) Violation of Rule .1807 of this Section related to personal cleanliness and hair restraints shall equal no more than 3 points.
 - (5) Violation of Rule .1807 of this Section related to hands clean and properly washed shall equal no more than 4 points.
 - (6) Violation of Rule .1811 of this Section related to handwashing sinks supplied and accessible shall equal no more than 3 points.
 - (7) Violation of Rule .1809 of this Section related to food obtained from approved source, good condition, safe, and unadulterated shall equal no more than 4 points.
 - (8) Violation of Rule .1810 of this Section related to food separated, protected shall equal no more than 4 points.
 - (9) Violation of Rule .1810 of this Section related to cook, reheat, cool, cold/hot hold time and temperatures shall equal no more than 4 points.
 - (10) Violation of Rule .1810 of this Section related to date marking shall equal no more than 4 points.
 - (11) Violation of Rule .1808 and .1810 of this Section related to ice protected and dispensed shall equal no more than 3 points.
 - (12) Violation of Rules .1808, .1809, and .1810 of this Section related to equipment, food and non-food contact surfaces approved, cleanable, properly designed, constructed and used shall equal no more than 3 points.
 - (13) Violation of Rules .1808, .1809 and .1810 of this Section related to utensils, equipment properly stored, dried and handled shall equal no more than 3 points.
 - (14) Violation of Rules .1808, .1809 and .1810 of this Section related to warewashing facilities installed, maintained and used shall equal no more than 3 points.
 - (15) Violation of Rules .1808, .1809 and .1810 of this Section related to food contact surfaces cleaned and sanitized where required shall equal no more than 3 points.
 - (16) Violation of Rules .1808, .1809 and .1810 of this Section related to non-food contact surfaces clean shall equal no more than 2 points.
 - (17) Violation of Rule .1808 of this Section related to single-use articles properly stored and used shall equal no more than 3 points.
 - (18) Violation of Rule .1811 of this Section related to water from approved source shall equal no more than 4 points.
 - (19) Violation of Rule .1811 of this Section related to hot water in guest rooms shall equal no more than 3 points.
 - (20) Violation of Rule .1811 of this Section related to thermometers provided shall equal no more than 3 points.
 - (21) Violation of Rule .1811 of this Section related to service sink or other approved method and mop storage shall equal no more than 2 points.
 - (22) Violation of Rule .1811 of this Section related to sewage and waste water properly disposed shall equal no more than 4 points.
 - (23) Violation of Rules .1808 and .1812 of this Section related to ventilation and lighting requirements shall equal no more than 2 points.
 - (24) Violation of Rules .1808 and .1812 of this Section related to window coverings clean and good repair shall equal no more than 2 points.
 - (25) Violation of Rules .1808 and .1812 of this Section related to physical facilities installed, maintained and clean shall equal no more than 2 points.
 - (26) Violation of Rule .1808 and .1812 related to insects and rodents not present shall equal no more than 3 points.
 - (27) Violation of Rule .1813 of this Section related to linen clean, good repair, changed and clean shall equal no more than 4 points.
 - (28) Violation of Rule .1813 of this Section related to linen properly stored shall equal no more than 3 points.
 - (29) Violation of Rule .1813 of this Section related to housekeeping carts shall equal no more than 3 points.
 - (30) Violation of Rule .1814 of this Section related to garbage and refuse properly disposed and facilities maintained shall equal no more than 3 points.
 - (31) Violation of Section .1814 of this Section as related to chemicals, cleaning supplies, medications properly identified, stored and used shall equal no more than 4 points.
- (e)(e) Upon request of the permit holder or his or her representative a reinspection shall be made. In the case of establishments which request an inspection for the purpose of raising the alphabetical grade, and which hold unrevoked permits, the ~~Department~~ Regulatory Authority shall make an unannounced inspection within 15 days from the date of the request.

Authority G.S. 130A-248.

15A NCAC 18A .1805 APPLICATION AND PLAN REVIEW

~~The grading of lodging establishments shall be done on an inspection form furnished by the Department to local health departments. The form shall include at least the following information:~~

- (1) ~~name and address of lodging establishment,~~
- (2) ~~name of owner, or permittee,~~

- (3) ~~score,~~
- (4) ~~Rules of construction and operation as listed in Rules .1808 to .1814 of this Section,~~
- (5) ~~signature of authorized representative,~~
- (6) ~~the permit status code,~~
- (7) ~~establishment identification number.~~

- (8) A statement signed by the applicant that attests to the accuracy of the information provided in the application;
- (9) Other information required by the Regulatory Authority.

(a) Plans, drawn to scale, and specifications, for new lodging establishments shall be submitted for review and approval to the local health department prior to initiating construction. Plans, drawn to scale, and specifications shall also be submitted prior to construction of additions or renovations, excluding cosmetic or nonstructural to existing lodging establishments. Plans, drawn to scale, and specifications for franchised or chain facilities shall also be submitted for review and approval to the Environmental Health Section, Division of Public Health. Plans shall be reviewed for conformance to the rules of this Section.

(b) Construction shall comply with approved plans and specifications. Construction that deviates from the plan shall have prior approval from the Regulatory Authority and be reviewed for conformance to the rules prior to permit issuance.

(c) An applicant shall submit an application for a permit or transitional permit at least 30 days before the date planned for opening the lodging establishment. The applicant shall submit to the Regulatory Authority a written application for a permit on a form provided by the Regulatory Authority.

(d) The application shall include:

- (1) The name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the lodging establishment;
- (2) Information specifying whether the lodging establishment is owned by an association, corporation, individual, partnership, or other legal entity;
- (3) The name, title, address, and telephone number of the person directly responsible for the lodging establishment;
- (4) The names, titles, and addresses of:
 - (A) The person comprising the legal ownership as specified in (2) of this paragraph including the owners and officers, and
 - (B) The local resident agent if one is required based on the type of lodging establishment;
- (5) A statement specifying the number of guest rooms or units and whether the lodging establishment is an operation that includes one or more of the following:
 - (A) Prepares, or serves potentially hazardous food for guests;
 - (B) Prepares only food that is not potentially hazardous for guests;
 - (C) Does not prepare, but serves only prepackaged food that is not potentially hazardous for guests;
- (6) Number, type of meals served and menu;
- (7) Information regarding water supply and wastewater disposal;

Authority G.S. 130A-248.

15A NCAC 18A .1806 GRADING

(a) The grading of lodging establishments shall be based on a system of scoring based upon the rules of construction and operation set out in Rules .1808 to .1814 of this Section. A lodging establishment that earns a score of at:

- (1) 90 percent shall receive a grade A;
- (2) 80 percent and less than 90 percent shall receive a grade B;
- (3) 70 percent and less than 80 percent shall receive a grade C.

Permits shall be immediately revoked in accordance with G.S. 130A-23(d) for lodging establishments receiving a score of less than 70 percent.

(b) The posted grade card shall be black on a white background. All graphics, letters, and numbers for the grade card shall be approved by the State. The alphabetical and numerical rating shall be 1.5 inches in height.

Authority G.S. 130A-248.

15A NCAC 18A .1807 MANAGEMENT AND PERSONNEL

(a) At least one employee who has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an American National Standards Institute (ANSI)-accredited Program. This requirement shall be effective two years after the effective date of these rules. Lodging establishments that only prepare potentially hazardous food (time/temperature control for safety food) that has been pre-portioned and pre-cooked shall not be required to have a certified food protection manager.

(b) The person in charge shall ensure that:

- (1) Persons unnecessary to the operation are not allowed in the food preparation, food storage, or warewashing areas;
- (2) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;
- (3) Food employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food.

(c) Food employees and employees handling utensils or other food contact implements or containers shall keep their hands and exposed portions of their arms clean;

(d) Food employees and employees handling utensils or other food contact implements or containers shall clean their hands and exposed portions of their arms with soap and warm running water

and dry with an individual, disposable towel or other approved method:

- (1) Immediately before engaging in food preparation including working with exposed food, clean equipment and utensils, and unwrapped single-service and single-use articles;
- (2) After using or cleaning the toilet room;
- (3) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking;
- (4) After handling soiled equipment and utensils;
- (5) As often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks;
- (6) After engaging in other activities that contaminate the hands.

(e) Employees shall clean their hands in a handwashing sink and may not clean their hands in a sink used for food preparation or warewashing, or in a service sink or other cleaning facility used for the disposal of mop water and similar liquid waste.

(f) Employees shall keep their fingernails trimmed, filed, and maintained so the edges and surfaces are cleanable and not rough.

(g) Unless wearing intact gloves in good repair, a food employee may not wear fingernail polish or artificial fingernails when working with exposed food.

(h) Employees shall wear clean outer clothing to prevent contamination of food, equipment, utensils, linens, and single-service and single-use articles.

(i) Food employees shall wear hair restraints such as hats, hair coverings or nets, beard restraints, and clothing that covers body hair, that are designed and worn to effectively keep their hair from contacting exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles.

(j) Employees may not care for or handle animals that may be present such as patrol dogs or pets that are allowed, except that employees with service animals may handle or care for their service animals if they wash their hands as specified under "Rules Governing the Food Protection and Sanitation of Food Establishments:" 15A NCAC 18A .2600 Sections 2-301 and 2-301.14(C)

(k) Employees shall eat, drink, or use any form of tobacco only in designated areas where the contamination of exposed food, clean equipment, utensils, and linens; unwrapped single-service and single-use articles; or other items needing protection cannot result, except that an employee may drink from a closed beverage container if the container is handled to prevent contamination of the employees' hands, the container, and exposed food, clean equipment, utensils, and linens; unwrapped single-service and single-use articles.

The sanitation grading of all lodging establishments shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all establishments receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all establishments receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C; and no establishment receiving a score of less than 70 percent, or Grade C, shall operate.

Authority G.S. 130A-248.

15A NCAC 18A .1808 FOOD PROTECTION AREAS

(a) ~~Ice and vending machine locations shall have ventilation and at least 10 foot-candles of light at 30 inches above the floor. Except as required by G.S. 130A-247 through 130A-250, food services at lodging establishments shall not be required to obtain food service establishments permits.~~

(b) ~~Floors, walls, ceilings, windows and ventilation shall be kept clean and in good repair. Food contact surfaces shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Section .2654 of the "Rules Governing the Food Protection and Sanitation of Food Establishments." This shall not prohibit the use domestic equipment.~~

(c) ~~Furniture, fixtures, draperies, and other accessories shall be clean and in good repair. All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, shall be cleaned after each use and stored in a manner to prevent contamination. Cooking surfaces of equipment shall be cleaned at least once each day. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them clean.~~

(d) ~~Food prepared in a lodging establishment shall comply with Chapter 3 of the Food Code as amended by Section .2653 of the "Rules Governing the Food Protection and Sanitation of Food Establishments."~~

(e) ~~Ice and vending machine locations shall have ventilation and at least 10 food-candles of light at 30 inches above the floor.~~

(f) ~~Ice used for room service shall be manufactured from an approved water supply and shall be stored and handled in a sanitary manner. All ice machines for use by guests shall dispense ice without exposing stored ice to guests.~~

(g) ~~Single use glasses, cups, ice buckets, ice bucket lids, or food grade ice bucket liners may be used, if discarded after each use. Single use items, including clean disposable towels, shall be stored and handled in a manner to prevent contamination.~~

(h) ~~Coffee and tea makers shall be kept clean.~~

Authority G.S. 130A-248.

15A NCAC 18A .1809 SPECIFIC REQUIREMENTS FOR LIMITED FOOD, EQUIPMENT AND UTENSILS

Limited Lodging Food Establishments shall comply with all the requirements in "Rules Governing the Sanitation of Lodging Establishments: 15A NCAC 18A .1800 with the following exceptions:

(1) The permit for a limited lodging food establishment shall be posted in a conspicuous place where it can be readily seen by the public at all times. A new permit from the regulatory authority shall be obtained before the limited lodging food establishment shall be allowed to operate each year. Transitional permits shall not be issued.

(2) Potentially hazardous food (time/temperature control for safety food) provided in a Limited lodging food establishment shall be purchased in a pre-portioned and pre-cooked form.

- (3) Food prepared in a private home may not be used or offered for human consumption in a limited lodging food establishment.
- (4) Limited lodging food establishments shall not prepare any potentially hazardous food (time/temperature control for safety food) prior to the day of sale.
- (5) Limited lodging food establishments shall only serve reheated food that has already been pre-cooked.
- (6) Potentially hazardous food (time/temperature control for safety food) that remains at the end of the day shall not be served or placed in refrigeration to be used another day.
- (7) For outdoor cooking in a limited lodging food establishment, overhead protection shall be provided such that all food, utensils, and equipment are protected.

(a) ~~Baths, lavatories, and toilets shall be provided for each room or unit in establishments constructed on or after December 1, 1988. Such fixtures shall be kept clean and in good repair.~~

(b) ~~All lavatory and bathing facilities shall include hot and cold running water under pressure with a mixing faucet, a clean towel in good repair and provided daily for each guest, and soap. The lavatory, its handles, faucet, and vanity shall be washed using an all-purpose cleaner and rinsed daily if the room has been occupied. A sanitizer shall be applied to the lavatory and vanity using a method such as a wipe on chemically treated disposable sanitizing towel or equivalent. The sanitizer shall be left to air dry. Sanitizing solutions shall consist of iodophors, quaternary ammonium or other chemicals or methods that are equivalent to the action of 50 parts per million chlorine solution. A method or equipment for testing the sanitizer shall be available and used to insure minimum prescribed sanitizer strength.~~

(c) ~~Floors, walls, and ceilings shall be cleanable, durable, and shall be kept clean and in good repair.~~

(d) ~~All waste water shall be disposed of in accordance with 15A NCAC 18A .1900 or 15A NCAC 02H .0200.~~

Authority G.S. 130A-248.

15A NCAC 18A .1810 SPECIFIC REQUIREMENTS FOR BED AND BREAKFAST FOOD, EQUIPMENT AND UTENSILS

(a) ~~Water supplies shall meet the requirements in 15A NCAC 18A .1700. Equipment and utensils in a Bed and Breakfast Home or Bed and Breakfast Inn shall be kept clean and maintained in good repair.~~

(b) ~~Food contact surfaces shall comply with Parts 4-1 and 4-2 of the Food Code as amended by Section .2654 of the "Rules Governing the Food Protection and Sanitation of Food Establishments."~~

(c) ~~Food prepared in a Bed and Breakfast Home or Bed and Breakfast Inn shall comply with Chapter 3 of the Food Code as amended by Section .2653 of the "Rules Governing the Food Protection and Sanitation of Food Establishments."~~

(b) ~~The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Public Health's rules governing water supplies. Copies of 15A~~

~~NCAC 18A .1700 and 15A NCAC 18C may be obtained from the Division of Environmental Health, Department of Environment and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611 7687. At least once a year, a sample of water shall be collected by the Department and submitted to the Division of Laboratory Services or other laboratory certified by the Department to perform bacteriological examinations. However, a water sample is not required for a lodging establishment using a community water supply regulated under 15A NCAC 18C.~~

(c) ~~Cross connections with sewage lines or unapproved water supplies or other potential sources of contamination are prohibited.~~

(d) ~~Hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided at all times in guest rooms, for food preparation areas, and other areas in which water is required for cleaning.~~

(e) ~~Hot water in guest rooms shall be provided at a temperature of no less than 116°F (46.7°C) and no more than 128°F (53.3°C).~~

Authority G.S. 130A-248.

15A NCAC 18A .1811 WATER, PLUMBING AND WASTE

Water, plumbing and waste in a Lodging Establishment, Bed and Breakfast Home or Bed and Breakfast Inn shall comply with Chapter 5 of the Food Code as amended by Rules .2655 of the "Rules Governing the Food Protection and Sanitation of Food Establishments," except that the following provisions apply in lieu of Sections 5-202.12, 5-203.11, 5-203.13, 5-204.11, and 5-205.11 of the Food Code as amended by Rule .2655 of the "Rules Governing the Food Protection and Sanitation of Food Establishments:

(1) The requirements of sections 5-202.12, 5-203.11, 5-204.11, and 5-205.11 of the Food Code as amended by Rule .2655 of the "Rules Governing the Food Protection and Sanitation of Food Establishments" shall be effective one year after the effective date of these rules.

(2) In a Bed and Breakfast Home or Bed and Breakfast Inn, wastewater for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste shall be disposed in a service sink or another approved manner.

(3) In a Lodging Establishment, a handwashing sink, located to allow convenient use by employees handling clean and soiled linen, shall be provided.

(4) Hot water in guest rooms of a lodging facility shall be provided at a temperature of no less than 100°F (38°C) and no more than 128°F (53.3°C).

(5) Temperature measuring devices, accurate according to manufacturer's specifications, shall be provided to monitor the temperature of water in guest rooms of a lodging facility.

(a) ~~Facilities for the dispensing of drinking water shall be of sanitary design. If drinking fountains are provided, they shall be of angle-jet type.~~

~~(b) Multi use utensils such as glasses, cups, ice buckets, or ice bucket lids when used, shall be washed, rinsed and subjected to an approved sanitizing treatment, and stored and handled in a manner to prevent contamination. For the washing, sanitizing treatment, and storage of multi use utensils, equipment and methods meeting the requirements of the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 shall be provided; except, when properly fitting disposable food grade liners are provided, ice buckets shall be treated as non food contact surfaces and shall be washed, using an all purpose cleaner suitable for food contact surfaces, and rinsed. The lid used with the lined ice bucket shall be washed, rinsed and subjected to an approved sanitizing treatment in place. The lavatory shall be cleaned and treated with an approved sanitizer prior to using the water from the lavatory to clean. Submersion of ice buckets and lids during in place cleaning procedures is not required. Clean glasses shall be individually wrapped or fitted with a single service cap that covers the edge of the glass.~~

~~(c) Ice used for room service shall be manufactured from an approved water supply and shall be stored and handled in a sanitary manner. Ice storage bins shall not be used for any other purpose and shall be kept clean and in good repair. Where ice is made on the premises, the machines shall be located in a protected place. Scoops shall be provided so guests or employees can dispense ice in a sanitary manner. Machines, equipment, utensils, and the room or area in which the machines are located shall be kept clean and in good repair. All ice machines for use by guests installed after January 1, 1996, shall dispense ice without exposing stored ice to guests.~~

~~(d) Employees cleaning ice buckets, ice bucket lids, coffee or tea makers, shall wash their hands immediately prior to cleaning these items.~~

~~(e) Single service glasses, cups, ice buckets, ice bucket lids, or food grade ice bucket liners may be used, if discarded after each use. Single service items, including clean disposable towels, shall be stored and handled in a manner to prevent contamination.~~

Authority G.S. 130A-248.

15A NCAC 18A .1812 PHYSICAL FACILITIES

~~(a) Laboratories Handwashing sinks in a lodging establishment shall have lighting with a minimum of 30 20 foot-candles of light at 30 inches above the floor. Where natural ventilation only is provided, outside openings shall be screened. Windows and glass doors shall be kept clean and in good repair. In the absence of windows, air conditioning and artificial lighting constitutes satisfactory compliance.~~

~~(b) Where natural ventilation only is provided in a lodging establishment, outside openings shall be screened and in good repair. Windows and doors shall be kept clean and in good repair.~~

~~(b)(c) Window coverings in a lodging establishment shall be kept clean and in good repair.~~

~~(c)(d) Physical facilities in a lodging establishment shall be kept clean and in good repair. Two sheets shall be provided for each bed. The lower sheet shall be folded under both ends of the mattress. The upper sheet shall be folded under the mattress at the lower end and folded over the cover for at least six inches at~~

~~the top end. Bed linens, including sheets, pillow cases, blankets and bedspreads, shall be kept clean and in good repair.~~

~~(d)(e) The floors, walls, and ceilings of bedrooms, closets, and storage areas shall be kept clean and in good repair. Furniture, fixtures, carpets and other accessories shall be kept clean and in good repair. Perimeter walls and roofs shall effectively protect the lodging establishment from the weather and the entry of insects, rodents, and other pests.~~

~~(e)(f) All lodging establishments shall be kept free of insects, rodents, and other pests. roaches, flies and other pests. Guestrooms having outside openings shall have screens in good repair unless the guestroom is air conditioned.~~

~~(f) Coffee and tea makers shall be kept clean. Coffee or tea pots and other multi-use items exposed to heat during use may be washed and rinsed in place.~~

Authority G.S. 130A-248.

15A NCAC 18A .1813 LAUNDRY AND LINENS

~~(a) Storage rooms or cabinets shall be provided for all supplies, linens, and equipment. Clean linen in good repair shall be provided for each guest who is provided accommodations in a lodging establishment and shall be changed between successive guests and as often as necessary.~~

~~(b) Two sheets shall be provided for each bed. The lower sheet shall be folded under both ends of the mattress. The upper sheet shall be folded under the mattress at the lower end and folded over the cover for a least six inches at the top end.~~

~~(b)(c) Clean linen and supplies shall be stored in cabinets, or on shelves in linen and supply storage rooms. Cabinets, shelves, and storage rooms shall be constructed to facilitate cleaning and kept clean.~~

~~(d) Items on housekeeping carts shall be arranged in a manner to prevent cross-contamination between soiled and cleaned items. Housekeeping carts shall be kept clean and stored in a clean area.~~

~~(e) Soiled linen shall be so handled and stored as not to come in contact with clean linen.~~

~~(d) A separate storage area shall be provided for building and ground maintenance equipment and supplies.~~

~~(e) Items on housekeeping carts shall be arranged in a manner to prevent cross-contamination between soiled and cleaned items. Housekeeping carts shall be kept clean and stored in a clean area.~~

Authority G.S. 130A-248.

15A NCAC 18A .1814 PREMISES, STORAGE, POISONOUS OR TOXIC MATERIALS

~~(a) All garbage and trash refuse shall be collected and stored in covered receptacle containers in such a manner as not to create a nuisance. Garbage and trash storage containers Refuse receptacles shall be kept clean and in good repair.~~

~~(b) Where dumpsters are used, a contract for off-site cleaning shall constitute compliance with the provision for cleaning.~~

~~(b)(c) There shall be no fly or mosquito-breeding places, rodent harborages, or undrained areas on the premises. The premises shall be kept neat and clean. Rubbish, litter and other items not used in the operation of the establishment shall not be permitted to accumulate on the premises.~~

~~(d) Storage rooms or spaces shall be kept clean.~~

- (e) ~~Facilities shall be provided for the washing and storage of garbage and trash containers, mops, mop buckets, mop wringers, and any other equipment used in the cleaning of the lodging establishment. Cleaning facilities shall include combination faucet, hot and cold water, hose bibb with a backflow prevention device and curbed impervious pad sloped to drain or other equivalent facilities or methods. Where dumpsters are used, a contract for off-site cleaning shall constitute compliance with the provision for cleaning facilities for such units. A current copy of the dumpster cleaning contract shall be made available at the time of inspection. Only pesticides that have been registered with the EPA and with the N.C. Department of Agriculture and consumer Services shall be used in lodging establishments and only for the specific use for which they have been approved. Such pesticides shall be used as directed on the label and shall be handled and stored to avoid health hazards and not be accessible to guests.~~
- (f) ~~Household cleaning agents such as bleaches, detergents, and polishers shall be used and stored according to manufacturer's recommendations in a lodging establishment.~~
- (g) ~~Sanitizing solutions shall not be stored in or dispensed from containers previously containing other poisonous or toxic materials.~~
- (h) ~~Medications in a lodging establishment shall be securely stored.~~
- (i) ~~A separate storage area shall be provided for building and ground maintenance equipment and supplies in a lodging establishment.~~

Authority G.S. 130A-248.

15A NCAC 18A .1818 PLAN REVIEW

- (a) ~~Plans, drawn to scale, and specifications, for new lodging establishments shall be submitted for review and approval to the local health department prior to initiating construction. Plans, drawn to scale, and specifications shall also be submitted prior to construction of additions or renovations to existing lodging establishments. Plans, drawn to scale, and specifications for prototype "franchised" or "chain" facilities shall also be submitted for review and approval to the Environmental Health Services Section, Division of Environmental Health. Plans shall be reviewed for conformance to the rules of this Section.~~
- (b) ~~Construction shall comply with approved plans and specifications. Construction that deviates from the plan shall be reviewed for conformance to the rules prior to permit issuance.~~

Authority G.S. 130A-248.

SECTION .2200 - SANITATION OF BED AND BREAKFAST HOMES

15A NCAC 18A .2201 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) ~~"Bed and Breakfast Home" means a private home offering bed and breakfast accommodations to eight or fewer persons per night for a period of less than a week.~~
- (2) ~~"Division" means the North Carolina Division of Environmental Health. The term also means the authorized representative of the Division.~~

- (3) ~~"Director" means the Director of the Division of Environmental Health of the Department of Environment and Natural Resources.~~
- (4) ~~"Permittee" means the person in charge who resides in and owns or rents the home.~~
- (5) ~~"Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.~~
- (6) ~~"Sanitarian" means a person authorized to represent the Division in making inspections and evaluations pursuant to this Section.~~

Authority G.S. 130A-250.

15A NCAC 18A .2202 PERMITS

- (a) ~~No person shall operate a bed and breakfast home within the State of North Carolina who does not possess a valid permit from the Division.~~
- (b) ~~No permit to operate shall be issued to a person until an inspection by the Division shows that the home complies with the rules of this Section.~~
- (c) ~~Upon transfer of ownership of an existing bed and breakfast home, the Division shall evaluate the facility to determine compliance with the rules. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. However, if the Department determines that the noncompliant items are construction or equipment problems that do not represent an immediate threat to the public health, a transitional permit may be issued. The transitional permit shall expire 90 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of a transitional permit, the owner or operator shall have corrected the noncompliant items and obtained a permit, or the bed and breakfast home shall not continue to operate.~~
- (d) ~~The Division may impose conditions on the issuance of a permit or a transitional permit. Conditions may be specified for one or more of the following areas:~~
- (1) ~~The number of bedrooms or persons served.~~
 - (2) ~~The amount of laundry or kitchen and tableware washing equipment on the premises.~~
 - (3) ~~Time schedules in completing minor construction items.~~
 - (4) ~~Modification or maintenance of water supplies, water use fixtures and sanitary sewage systems.~~
 - (5) ~~Use of facilities for more than one purpose.~~
 - (6) ~~Continuation of contractual arrangements upon which basis the permit was issued.~~
 - (7) ~~Submission and approval of plans for renovation.~~

(8) ~~Any other conditions necessary for a bed and breakfast home to remain in compliance with this Section.~~

~~(e) A permit is issued by and inspections are made by local and state sanitarians who are authorized representatives of the Division.~~

~~(f) A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23. A new permit to operate shall be issued only after the establishment has been reinspected by the Division and found to comply with this Section. This reinspection will be conducted within a reasonable length of time, not to exceed 30 days, after the request is made by the operator.~~

Authority G.S. 130A-250.

15A NCAC 18A .2203 INSPECTIONS: VISITS: POSTING OF GRADE CARD

~~(a) The sanitarian shall inspect or visit a bed and breakfast home when necessary to insure compliance. Inspections shall be made at least once every 12 months.~~

~~(b) An inspection for the purpose of establishing a sanitation grade shall be made within 30 days from the date the permit is issued.~~

~~(c) Whenever an inspection of a bed and breakfast home is made, the sanitarian shall remove the existing grade card, issue a grade card, and post the new grade card in a conspicuous place where it may be readily observed by the public upon entering the facility. The permittee shall be responsible for keeping the grade card posted at the location designated by the sanitarian at all times.~~

~~(d) Inspections for the purpose of raising the alphabetical grade shall be conducted after a reasonable period of time, not to exceed 30 days, from the date of the request.~~

Authority G.S. 130A-250.

15A NCAC 18A .2204 INSPECTION FORMS

~~The grading of bed and breakfast homes shall be done on an inspection form prepared and furnished by the Division.~~

Authority G.S. 130A-250.

15A NCAC 18A .2205 GRADING

~~(a) The grading of bed and breakfast homes shall be based upon the standards of construction and operation set out in Rules .2206 to .2219 of this Section.~~

~~(b) The sanitation grading of all homes shall be based on a system of scoring wherein all establishments receiving a score of at least 90 percent shall be awarded Grade A; all homes receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all homes receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C. Permits for homes receiving a score of less than 70 percent shall be revoked.~~

Authority G.S. 130A-250.

15A NCAC 18A .2206 FLOORS

~~Floors in the home shall be easily cleanable and shall be kept clean and in good repair.~~

Authority G.S. 130A-250.

15A NCAC 18A .2207 WALLS AND CEILINGS

~~The walls and ceilings of rooms and areas shall be kept clean and in good repair.~~

Authority G.S. 130A-250.

15A NCAC 18A .2208 LIGHTING AND VENTILATION

~~(a) Rooms and areas used in conjunction with bed and breakfast homes shall be lighted and ventilated and shall be effective under actual use conditions. Lighting fixtures and ventilating equipment shall be kept clean and in good repair.~~

~~(b) In kitchens, effective ventilation shall be provided. Effective residential-type ventilation systems, if provided, which exhaust to the outdoors shall be considered acceptable.~~

Authority G.S. 130A-250.

15A NCAC 18A .2209 TOILET: HANDWASHING: LAUNDRY: AND BATHING FACILITIES

~~(a) Bed and breakfast homes shall be provided with approved sanitary toilet, handwashing, and bathing facilities. These facilities, and laundry facilities used in conjunction with bed and breakfast homes, shall be kept clean and in good repair.~~

~~(b) All lavatories and baths shall be supplied with hot and cold running water. Each person who is provided accommodations shall be provided individual soap and clean individual bath cloths and towels.~~

~~(c) Clean towels and bath cloths shall be stored and handled in a sanitary manner.~~

Authority G.S. 130A-250.

15A NCAC 18A .2210 WATER SUPPLY

~~(a) An adequate water supply shall be provided from an approved source which is of a safe and sanitary quality.~~

~~(b) The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Public Health's rules governing water supplies. Copies of 15A NCAC 18A .1700 and 15A NCAC 18C may be obtained from the Division of Environmental Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687. A sample of water from a private or public non-community water supply serving a bed and breakfast home shall be collected by the sanitarian and submitted at least once a year to the laboratory section of the Department of Environment, Health, and Natural Resources or other approved laboratory for bacteriological examination.~~

~~(c) Cross-connections with unapproved water supplies are prohibited. All plumbing fixtures for potable water shall be provided and installed as required by the North Carolina State Building Code as amended through July 1, 1986. Copies of the North Carolina State Building Code may be obtained from the~~

North Carolina Department of Insurance, P.O. Box 26387, Raleigh, North Carolina 27611.

~~(d) Adequate hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and any other areas in which water is required for cleaning.~~

Authority G.S. 130A-250.

15A NCAC 18A .2211 DRINKING WATER FACILITIES: ICE HANDLING

~~Common drinking cups shall not be provided or used. If ice is provided for persons provided accommodations, it shall be handled, transported, stored, and dispensed in such a manner as to be protected against contamination.~~

Authority G.S. 130A-250.

15A NCAC 18A .2212 DISPOSAL OF WASTES

~~(a) All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by a sewage disposal system permitted, constructed, and operated in accordance with appropriate laws, rules, and ordinances.~~

~~(b) All solid wastes containing food scraps shall, prior to disposal, be kept in durable, rust resistant, nonabsorbent, watertight, rodent proof standard garbage containers which shall be kept covered when filled or stored or not in continuous use. All solid wastes shall be disposed of with sufficient frequency and in such a manner as to prevent insect breeding and public health nuisances.~~

Authority G.S. 130A-250.

15A NCAC 18A .2213 VERMIN CONTROL: PREMISES

~~(a) Effective measures shall be taken to keep insects, rodents, and other vermin out of bed and breakfast homes and to prevent vermin breeding, harborage, or presence on the premises. The premises shall be kept neat, clean, drained, and free of litter and vermin harborage. Openings to the outer air shall be effectively protected against the entrance of flying insects by screens, closed doors, closed windows, or other effective means.~~

~~(b) Only those pesticides shall be used which have been approved for a specific use and properly registered with the Environmental Protection Agency and with the North Carolina Department of Agriculture in accordance with the "Federal Environmental Pesticide Control Act" and the "North Carolina Pesticide Law." Such pesticides shall be used as directed on the label and shall be so handled and stored as to avoid health hazards.~~

Authority G.S. 130A-250.

15A NCAC 18A .2214 STORAGE: MISCELLANEOUS

~~(a) Rooms or spaces which are provided and used for the storage of clothing, personal effects, luggage, necessary equipment and supplies, and items not in routine use shall be kept clean.~~

~~(b) Pesticides, herbicides, and other substances which may be hazardous if ingested, inhaled, or handled shall be stored in a closet, cabinet, or box not accessible to young children.~~

~~(c) Household cleaning agents such as bleaches, detergents, and polishes shall be stored out of the reach of young children.~~

~~(d) Medications shall be stored in a separate cabinet, closet, or box not accessible to young children.~~

Authority G.S. 130A-250.

15A NCAC 18A .2215 BEDS: LINEN: FURNITURE

~~(a) Furniture, mattresses, curtains, draperies, etc. shall be kept clean and in good repair.~~

~~(b) Clean bed linen in good repair shall be provided for each guest who is provided accommodations and shall be changed between guests and as often as necessary.~~

~~(c) Clean linen shall be stored and handled in a sanitary manner and separate from soiled linen.~~

Authority G.S. 130A-250.

15A NCAC 18A .2216 FOOD SERVICE UTENSILS AND EQUIPMENT

~~(a) Equipment and utensils shall be so constructed as to be easily cleaned and shall be kept in good repair. Surfaces with which food or drink comes in contact shall, in addition, be easily accessible for cleaning, and shall be nontoxic, corrosion resistant, nonabsorbent, and free of open crevices. Disposable articles shall be made from nontoxic materials.~~

~~(b) Multi use eating and drinking utensils shall be thoroughly cleaned after each usage, and the facilities needed for the operations of washing and rinsing shall be provided.~~

~~(c) Pots, pans, and other utensils used in the preparation or serving of food or drink, and all food storage utensils shall be thoroughly cleaned after each use. Cooking surfaces of equipment, if any, shall be cleaned at least once each day. Non food contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.~~

~~(d) No polish or other substance containing cyanide or other poisonous material shall be used for the cleaning or polishing of eating or cooking utensils.~~

~~(e) Cloths used in the kitchen shall be clean. Each disposable item shall be used only once.~~

~~(f) Containers and clean utensils shall be stored in a clean place. Containers and clean utensils shall be covered, inverted, stored in tight, clean cabinets, or otherwise stored in such a manner as to prevent contamination. After cleaning and until use, food contact surfaces of equipment shall be protected from contamination. Utensils shall be handled in such a manner as to prevent contamination.~~

~~(g) Disposable utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a sanitary manner.~~

~~(h) Acceptable facilities for washing multi use eating and drinking utensils, and pots, pans and other cooking utensils, include two section residential sinks.~~

~~(i) Acceptable storage facilities include residential kitchen cabinets, which should be kept clean and free of vermin.~~

Authority G.S. 130A-250.

15A NCAC 18A .2217 FOOD SUPPLIES

~~Food, including milk and milk products, shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. Only Grade "A" milk may be used.~~

Authority G.S. 130A-250.

15A NCAC 18A .2218 FOOD PROTECTION

~~(a) Foods shall be protected from contamination while being stored, prepared, served, and during transportation. Perishable foods shall be stored at such temperatures as will protect against spoilage. Potentially hazardous food shall be maintained at safe temperatures (45° F. or below, or 140° F. or above) except during necessary periods of preparation and serving. Frozen food shall be kept at such temperatures as to remain frozen, except when being thawed for preparation or use. Potentially hazardous frozen food shall be thawed at refrigerator temperatures of 45° F. or below; or quick thawed as part of the cooking process; or by a method approved by the sanitarian. An indicating thermometer shall be located in each refrigerator. Raw fruits and vegetables shall be washed thoroughly before use. Ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C). Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to 165° F (74° C) or higher throughout before being served or before being placed in a hot food storage facility, except that food in intact packages from regulated food manufacturing plants may initially be reheated to 140° F (60° C). Stuffings, poultry, stuffed meats and poultry, and pork and pork products shall be thoroughly cooked before being served. Salads made of meat, poultry, potatoes, fish, shellfish, or eggs, and other potentially hazardous prepared food, shall be prepared, preferably from chilled products, with a minimum of manual contact. Portions of food once served to an individual shall not be served again.~~

~~(b) Live pets shall not be allowed in any room or area in which food is prepared or stored. Live pets, unless caged and restricted from the immediate eating area, shall not be allowed in any room or area in which food is served.~~

~~(c) Refrigeration facilities, hot food storage facilities, and effective insulated facilities shall be provided as needed to assure the maintenance of all food at required temperatures during storage, preparation, and serving.~~

~~(d) Containers of food shall be stored above the floor, on clean racks, shelves, or other clean surfaces, in such a manner as to be protected from splash and other contamination.~~

Authority G.S. 130A-250.

15A NCAC 18A .2219 FOOD SERVICE PERSONS

~~(a) Persons, while preparing or serving food or washing equipment or utensils, shall wear clean outer garments, maintain a high degree of personal cleanliness, and conform to hygienic practices. They shall wash their hands thoroughly before starting work and as often as necessary to remove soil and contamination. After visiting a toilet room, persons shall wash their hands thoroughly in a lavatory and in no case in the kitchen sink. They shall not use tobacco in any form while preparing or serving food.~~

~~(b) No person while infected with a disease in a communicable form, or while a carrier of such a disease, or while afflicted with boils, infected wounds, sores, or an acute respiratory infection, shall work in any capacity in which there is a likelihood of that person contaminating food or food contact surfaces with pathogenic organisms. If the permittee has reason to suspect that any person has contracted any disease in a communicable form or has become a carrier of such disease, he shall notify the local health department immediately.~~

Authority G.S. 130A-250.

15A NCAC 18A .2220 SEVERABILITY

~~If any provision of this Section, or the application thereof to any person or circumstance, is held invalid, the remainder of these Rules, or the application of such provision to other persons or circumstances, shall not be affected thereby.~~

Authority G.S. 130A-250.

15A NCAC 18A .2221 APPEALS PROCEDURE

~~Appeals concerning the interpretation and enforcement of the rules in this Section shall be made in accordance with G.S. 150B and 10 NCAC 1B.~~

Authority G.S. 130A-250.

SECTION .3000 - BED AND BREAKFAST INNS

15A NCAC 18A .3001 DEFINITIONS

The following definitions shall apply in the interpretation and enforcement of this Section:

- ~~(1) "Approved" means determined by the Department to be in compliance with this Section. Food which complies with the requirements of the North Carolina Department of Agriculture or the United States Department of Agriculture and the requirements of this Section shall be considered as approved.~~
- ~~(2) "Bathroom" means a room with at least one shower or tub, water closet and lavatory. However, lavatories may be located within the bedrooms.~~
- ~~(3) "Department of Environment and Natural Resources" or "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.~~
- ~~(4) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, or company.~~
- ~~(5) "Potentially hazardous food" means any food or ingredient, natural or synthetic in a form capable of supporting the growth of infectious or toxigenic microorganisms. This includes raw or heat treated foods of animal origin, raw seed sprouts, and treated food of plant origin. The term does not include foods which have a~~

pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

Authority G.S. 130A-248.

15A NCAC 18A .3002 PERMITS

(a) No person shall operate a bed and breakfast inn within the State of North Carolina who does not possess a valid permit from the Department.

(b) No permit to operate shall be issued to a person until an inspection by the Department shows that the bed and breakfast inn complies with the rules of this Section.

(c) A permit issued to one person is not transferable to another person.

(d) Upon transfer of ownership of an existing bed and breakfast inn, the Department shall complete an inspection. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. However, if the Department determines that the noncompliant items are construction or equipment problems that do not represent an immediate threat to the public health, a transitional permit may be issued. The transitional permit shall expire 90 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of the transitional permit, the owner or operator shall have corrected the noncompliant items and obtained a permit, or the bed and breakfast inn shall not continue to operate.

(e) The Department may impose conditions on the issuance of a permit or transitional permit. Conditions may be specified for one or more of the following areas:

- (1) The number of rooms or persons.
- (2) The categories of food served.
- (3) Time schedules in completing minor construction items.
- (4) Modification or maintenance of water supplies.
- (5) Use of facilities for more than one purpose.
- (6) Continuation of contractual arrangements upon which basis the permit was issued.
- (7) Submission and approval of plans for renovation.
- (8) Any other conditions necessary for a bed and breakfast inn to remain in compliance with this Section.

(f) A permit is issued by and inspections are made by authorized representatives of the Department.

(g) A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-248(b) for failure of the facility to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23. A new permit to operate shall be issued only after the establishment has been reinspected by the Department and found to comply with this Section. This reinspection will be conducted within a reasonable length of time, not to exceed 15 days, after the request is made by the permittee.

Authority G.S. 130A-248.

15A NCAC 18A .3003 INSPECTIONS: VISITS: POSTING OF GRADE CARDS

(a) The Department shall inspect each bed and breakfast inn at least once every six months.

(b) An inspection for the purpose of establishing a sanitation grade shall be made within 30 days from the date the permit is issued.

(c) Whenever an inspection of a bed and breakfast inn is made, the Department shall remove the existing grade card, issue a grade card, and post the new grade card in a conspicuous place where it may be readily observed by the public upon entering the facility. The permittee shall be responsible for keeping the grade card posted at the location designated by the Department at all times.

(d) Upon request of the management, a reinspection shall be made for the purpose of re-evaluating the sanitation grade. The reinspection shall be conducted after a reasonable period of time, not to exceed 15 days, from the date of the request.

Authority G.S. 130A-248.

15A NCAC 18A .3004 INSPECTION FORMS

The grading of bed and breakfast inns shall be done on an inspection form prepared and furnished by the Department.

Authority G.S. 130A-248.

15A NCAC 18A .3005 GRADING

(a) The grading of bed and breakfast inns shall be based on the standards of construction and operation set out in Rules .3006 to .3016 of this Section.

(b) The sanitation grading of all bed and breakfast inns shall be based on a system of scoring wherein establishments receiving a score of at least 90 percent shall be awarded Grade A; all those receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all those receiving a score of at least 70 percent and less than 80 percent shall be awarded a Grade C. Permits for bed and breakfast inns receiving a score of less than 70 percent shall be immediately revoked.

Authority G.S. 130A-248.

15A NCAC 18A .3006 FOOD SOURCES AND PROTECTION

(a) All food shall be from approved sources, clean, wholesome, free from adulteration and spoilage, safe for human consumption and shall be stored, handled, served, or transported in such a manner as to prevent contamination, adulteration or spoilage. Only Grade "A" milk shall be used. All food storage shall be at least 15 inches (38.1 cm) above the floor or otherwise arranged to permit the thorough cleaning.

(b) Foods that are spoiled or otherwise unfit for human consumption shall be immediately disposed of as garbage.

(c) Potentially hazardous foods shall be kept at or below 45° F (7° C), except when being prepared or served. An air temperature thermometer accurate to 3° F (1 1/2° C) shall be provided in all refrigerators.

(d) Thawing of potentially hazardous food shall be done in refrigerated units at a temperature not to exceed 45° F (7° C) or

under cold running water no warmer than 70° F (21° C), or as a part of the cooking process.

~~(e) Employees preparing food shall have used anti-bacterial soap, dips, or hand sanitizers immediately prior to food preparation or shall use clean, plastic disposable gloves or sanitized utensils during food preparation. This requirement is in addition to all handwashing requirements in Rule .3007 of this Section.~~

~~(f) Preparation surfaces which come in contact with potentially hazardous food shall be cleaned and sanitized as provided in Rule .3008 of this Section.~~

~~(g) Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140° F (60° C) with no interruptions of the cooking process, except as follows:~~

- ~~(1) poultry shall be cooked to heat all parts to at least 165° F (74° C), and~~
- ~~(2) pork shall be cooked to heat all parts of the food to at least 150° F (66° C), and~~
- ~~(3) potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to 165° F (74° C) or higher throughout before being served or placed in hot food storage except that, food in intact packages from regulated food manufacturing plants may initially be reheated to 140° F (60° C), and~~
- ~~(4) Ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155° F (68° C).~~

~~(h) Raw eggs or foods containing uncooked eggs shall not be served. Pasteurized egg products may be substituted for raw eggs.~~

~~(i) A metal stem type thermometer accurate to ±2° F (±1° C) shall be available to check food temperatures.~~

~~(j) Food once served to a customer shall not be served again and not left for the next customer. Packaged food, other than potentially hazardous food, that is still packaged and is still wholesome may be re-served.~~

~~(k) Pets shall not be allowed at any time in any room or area in which food is prepared or stored. Pets, unless caged and restricted from the immediate eating area, shall not be allowed in any room or area in which food is served.~~

Authority G.S. 130A-248.

15A NCAC 18A .3007 FOOD SERVICE PERSONS

~~(a) All food service personnel shall wear clean outer clothing and shall be clean as to their person and methods of foodhandling. No employee shall use tobacco in any form while engaged in the washing of eating and cooking utensils or in the preparation, handling, or serving of food.~~

~~(b) Employees shall wash their hands thoroughly in an approved handwashing lavatory, before starting work, after each visit to the toilet, and as often as may be necessary to remove soil and contamination. The kitchen sink shall not be used for handwashing.~~

~~(c) Employees engaged in the preparation of food shall wear hairnets, caps, or other hair restraints to prevent the contamination of food or food contact surfaces. Wigs and hair spray do not constitute compliance with this Rule.~~

~~(d) No person who has a communicable or infectious disease that can be transmitted by foods, or who is a carrier of organisms that~~

~~cause such a disease, or who has a boil, infected wound, or disease with sudden onset and severe symptoms including cough or nasal discharge, shall work in a food service area in any capacity in which there is a likelihood of such person contaminating food or food contact surfaces with disease-causing organisms or transmitting the illness to other persons. If the operator has reason to suspect that any person has contracted any disease transmissible through food, or has become a carrier of such disease, the operator shall notify the local health department immediately.~~

Authority G.S. 130A-248.

15A NCAC 18A .3008 FOOD SERVICE UTENSILS AND EQUIPMENT AND THEIR CLEANING

~~(a) Domestic kitchen equipment may be used.~~

~~(b) Multi-use eating and drinking utensils shall be washed, rinsed, sanitized and air dried after each usage. One of the following methods shall be used:~~

- ~~(1) Utensils shall be washed, rinsed, and sanitized in a dishmachine which is constructed, operated and maintained in accordance with National Sanitation Foundation Standards or equal;~~
- ~~(2) Utensils shall be washed, rinsed and sanitized by immersion in a three compartment sink; or~~
- ~~(3) Utensils shall be washed and rinsed in a domestic dishwasher and sanitized by immersion in a sink other than the handwash lavatory.~~

~~(c) If sanitization is accomplished by immersion, it shall be by one of the following methods:~~

- ~~(1) immersion for at least one minute in clean hot water at least 170° F (77° C). A thermometer accurate to 3° F (1.5° C) shall be available and convenient to the compartment. Where hot water is used for bactericidal treatment, a booster heater that maintains a water temperature of at least 170° F (77° C) in the third compartment at all times when utensils are being washed shall be provided. The heating device may be integral with the immersion compartment.~~
- ~~(2) at least two minutes in a clean, tested solution containing:

 - ~~(A) at least 50 parts per million of available chlorine of at least 75° F (24° C); or~~
 - ~~(B) at least 12.5 parts per million of available iodine and having a pH not higher than 5.0 and a temperature of at least 75° F (24° C); or~~
 - ~~(C) at least 200 parts per million of quaternary ammonium products and having a temperature of at least 75° F (24° C) provided that the product is labeled to show that it is effective in water having a hardness value of at least equal to that of the water being used.~~~~

~~(d) All eating, drinking, and food preparation utensils shall be air dried and handled and stored in a manner to prevent contamination.~~

~~(e) All multi use utensils except baking sheets and similar cooking utensils, not used for table service, that are used in the storage, preparation, or serving of food shall be cleaned and sanitized after each use. Baking sheets and similar cooking utensils, not used for table service, which are continually subjected to high temperatures do not require sanitizing after each use, but shall be kept clean and maintained in good repair.~~

~~(f) For utensils and equipment which are either too large or impractical to sanitize in the sink or dishwashing machine, a spray on or wipe on sanitizer may be used. When spray on or wipe on sanitizers are used, the chemical strength shall be that required for sanitizing multi use eating and drinking utensils.~~

~~(g) Food service equipment shall be easily cleanable and kept in good repair. All surfaces with which food or drink comes in contact shall consist of smooth, not readily corrodible, non-toxic material such as stainless steel, phenolic resin, marble slabs, or tight wood in which there are no open cracks or joints that will collect food particles and slime, and be readily accessible for cleaning. A separate lavatory, including hot and cold running water, and a combination supply faucet or tempered water shall be provided in the kitchen or an adjacent area. Soap and sanitary towels shall be provided. By January 1, 1995, potentially hazardous foods shall be kept in refrigeration units that meet National Sanitation Foundation standards or equal.~~

~~(h) All equipment and fixtures shall be kept clean. Cooking surfaces of equipment shall be cleaned at least once each day. Non food contact surfaces of equipment shall be cleaned at such intervals as to keep them in a sanitary condition.~~

~~(i) No polish or substance containing cyanide or other poisonous materials shall be used for the cleaning or polishing of eating or cooking utensils.~~

~~(j) Disposable utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used and shall be handled in a sanitary manner. Disposable articles shall be made from non-toxic materials and shall be used only once.~~

~~(k) Storage facilities, including residential kitchen cabinets, shall be kept clean and free of pests.~~

Authority G.S. 130A-248.

15A NCAC 18A .3009 LAVATORIES AND BATHROOMS

~~(a) At least one bathroom shall be provided for every two bedrooms.~~

~~(b) All lavatory and bathing facilities shall include hot and cold running water under pressure, individual towels and soap. Fixtures shall be kept clean and in good repair. Floors and walls shall be constructed of non-absorbent and easily cleanable materials.~~

~~(c) Floors, walls, and ceilings shall be kept clean and in good repair.~~

~~(d) All sewage and other liquid wastes shall be disposed of in a public sewer system or, in the absence of a public sewer system, by an approved, properly operating, sanitary sewage system.~~

Authority G.S. 130A-248.

15A NCAC 18A .3010 WATER SUPPLY

~~(a) Water supplies shall meet the requirements in 15A NCAC 18A .1700.~~

~~(b) The water supply used shall be located, constructed, maintained, and operated in accordance with the Commission for Public Health's rules governing water supplies. Copies of 15A NCAC 18A .1700 and 15A NCAC 18C may be obtained from the Division of Environmental Health, Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611 7687. At least once per year, a sample of water shall be collected by the Department and submitted to the Division of Laboratory Services or other laboratory certified by the Department to perform bacteriological examinations.~~

~~(c) Cross connections with unapproved water supplies are prohibited. Hot and cold running water under pressure shall be provided to food preparation, utensil and handwashing areas, bathrooms and any other areas in which water is required for cleaning in sufficient quantity to carry out all water using operations.~~

~~(d) Facilities for the heating of water shall be provided. The capacity of the hot water heating facilities shall be based on the number of bathrooms, the capacity of the dishwashing machines and other food service and cleaning needs.~~

Authority G.S. 130A-248.

15A NCAC 18A .3011 DRINKING WATER FACILITIES

~~(a) Facilities for the dispensing of drinking water shall be of approved sanitary design. If water cooling equipment is installed, it shall be of the type in which ice does not come in contact with water. If drinking fountains are provided, they shall be of the approved angle jet type. Common dippers or common drinking glasses or cups shall not be used.~~

~~(b) For room service, glasses, pitchers, or multi use tubs, or single service cups and single service tubs, may be used, provided all multi use utensils are washed thoroughly, subjected to approved bactericidal treatment, and stored and handled in a manner to prevent contamination. For the washing, bactericidal treatment, and storage of multi-use utensils, facilities meeting the requirements of Rule .3008 of this Section shall be provided. Single service cups, tubs, or similar items shall be stored and handled in a manner to prevent contamination.~~

~~(c) Ice shall be manufactured from an approved water supply and shall be stored and handled in such a manner as to prevent contamination. Where ice is made on the premises, the machines shall be located in a protected place; handled scoops shall be provided; and machines, equipment, utensils and the room or area in which the machines are located, shall be kept clean.~~

~~(d) Ice storage bins shall not be used for any other purpose.~~

Authority G.S. 130A-248.

15A NCAC 18A .3012 BEDS: LINEN

~~(a) Mattresses shall be kept clean and in good repair.~~

~~(b) Clean bed linen, in good repair, shall be provided for each bed and shall be changed between successive guests. Clean linen shall~~

be stored in cabinets or on shelves in linen storage areas. Soiled linen shall be handled and stored separately from clean linen.

Authority G.S. 130A-248.

15A NCAC 18A .3013 VERMIN CONTROL: PREMISES

(a) ~~All bed and breakfast inns shall be kept free of roaches, flies, and other pests. The premises shall be kept neat, clean, drained and free of litter and rodent harborages. Unless air conditioning is provided, all windows opening to the outside shall be screened to prevent the entrance of flies and other pests, and doors opening to the outside shall be self-closing.~~

(b) ~~Only pesticides that have been registered shall be used and only for the specific use for which they have been approved by the Environmental Protection Agency. Such pesticides shall be used as directed on the label and shall be handled and stored to avoid health hazards and not be accessible to young children.~~

Authority G.S. 130A-248.

15A NCAC 18A .3014 STORAGE: MISCELLANEOUS

- (a) ~~Storage rooms or spaces shall be kept clean.~~
- (b) ~~Cleaning agents such as bleaches, detergents, and polishes shall be stored out of the reach of children.~~
- (c) ~~Medications under the control of the inn-keeping staff shall be stored in a separate cabinet, closet, or box not accessible to children.~~

Authority G.S. 130A-248.

15A NCAC 18A .3015 FLOORS: WALLS: CEILINGS: LIGHTING: VENTILATION

(a) ~~Floors, walls, ceilings, and windows shall be kept clean and in good repair. Floors and walls in rooms in which food is stored, prepared, handled, or served, or in which utensils are washed, and in toilet rooms, shall be non-absorbent and easily cleanable.~~

(b) ~~Furniture, fixtures, draperies, lighting fixtures, ventilation equipment and other accessories shall be kept clean and in good repair.~~

Authority G.S. 130A-248.

15A NCAC 18A .3016 DISPOSAL OF GARBAGE AND TRASH

(a) ~~All putrescible waste shall be placed in garbage cans which are provided with approved liners such as plastic garbage bags. Rubbish, litter and other items not used in the operation of the establishment shall not be permitted to accumulate on the premises.~~

(b) ~~Garbage shall be collected and stored in standard water-tight garbage cans or other approved containers or methods and provided with tight-fitting lids. Lids shall be kept in place, except for cans inside the kitchen which are being used frequently during normal operations. The contents of these cans shall be removed frequently, disposed of in accordance with applicable solid-waste laws and rules, and the cans shall be washed.~~

Authority G.S. 130A-248.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 16 – BOARD OF DENTAL EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Dental Examiners intends to amend the rules cited as 21 NCAC 16G .0101, .0103; 16R .0201; 16V .0101 and .0102.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdentalboard.org

Proposed Effective Date: June 1, 2016

Public Hearing:

Date: March 17, 2016

Time: 6:30 p.m.

Location: 2000 Perimeter Drive, Suite 160, Morrisville, NC 27560

Reason for Proposed Action: 21 NCAC 16G .0101 and .0103 are proposed for amendment to clarify delegable functions of dental hygienists; 21 NCAC 16R .0201 is proposed for amendment to clarify continuing education requirements for dentists; 21 NCAC 16V .0101 is proposed for amendment to clarify what constitutes unprofessional conduct by a dentist; 21 NCAC 16V .0102 is proposed for amendment to clarify what constitutes unprofessional conduct by a dental hygienist.

Comments may be submitted to: Bobby D. White, 2000 Perimeter Park Drive, Suite 160, Morrisville, NC 27560, email info@ncdentalboard.org

Comment period ends: April 15, 2016

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 (check all that apply).

- State funds affected
- Environmental permitting of DOT affected
- Analysis submitted to Board of Transportation
- Local funds affected

- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

- (25) Initially forming and sizing orthodontic arch wires and placing arch wires after final adjustment and approval by the dentist.

SUBCHAPTER 16G – DENTAL HYGIENISTS

Authority G.S. 90-221; 90-223(b); 90-233.

SECTION .0100 – DENTAL HYGIENISTS

21 NCAC 16G .0103 PROCEDURES PROHIBITED

Those procedures ~~that~~ which require the professional education and skill of a dentist and may not be delegated to a dental hygienist shall include, but shall not be limited to:

21 NCAC 16G .0101 FUNCTIONS THAT MAY BE DELEGATED

A dental hygienist may be delegated ~~appropriate~~ functions to be performed under the direct control and supervision of a dentist who shall be personally and professionally responsible and liable for any and all consequences or results arising from performance of such acts and functions. In addition to the functions set out in G.S. 90-221(a) and 21 NCAC 16H .0203, functions that may be delegated to a dental hygienist provided that a dentist has examined the patient and prescribed the procedure include:

- (1) Taking impressions for study models and opposing casts that ~~may~~ will not be used for the construction of temporary or permanent dental appliances, but may be used for the fabrication of adjustable orthodontic appliances, nightguards and the repair of dentures or partials;
- (2) Applying sealants to teeth that do not require mechanical alteration prior to the application of such sealants;
- (3) Inserting matrix bands and wedges;
- (4) Placing cavity bases and liners;
- (5) Placing and removing rubber dams;
- (6) Cementing temporary restorations using temporary cement;
- (7) Applying acid etch materials and rinses;
- (8) Applying bonding agents;
- (9) Removing periodontal dressings;
- (10) Removing sutures;
- (11) Placing and removing gingival retraction cord;
- (12) Removing excess cement;
- (13) Flushing, drying and temporarily closing root canals;
- (14) Placing and removing temporary restorations;
- (15) Placing and tying in or untying and removing orthodontic arch wires;
- (16) Inserting interdental spacers;
- (17) Fitting (sizing) orthodontic bands or brackets;
- (18) Applying dentin desensitizing solutions;
- (19) Performing periodontal screening;
- (20) Performing periodontal probing;
- (21) Performing subgingival exploration for or removal of hard or soft deposits;
- (22) Performing sulcular irrigation;
- (23) Applying resorbable sulcular antimicrobial or antibiotic agents;
- (24) Performing extra-oral adjustments that affect function, fit, or occlusion of any temporary restoration or appliance; and

- (1) Comprehensive examination, ~~diagnosis~~ diagnosis, and treatment planning;
- (2) Surgical or cutting procedures on hard or soft tissues, including laser, ~~air abrasion~~ air abrasion, or micro-abrasion procedures;
- (3) Placement or removal of therapeutic sulcular nonresorbable agents;
- (4) The issuance of prescription drugs, ~~medications~~ medications, or work authorizations;
- ~~(5) Taking of impressions for final fixed or removable restorations or protheses, except as provided for in Rule .0101(1) of this Subchapter;~~
- ~~(6)~~(5) Final placement or intraoral adjustment of a fixed or removable appliance;
- ~~(7)~~(6) Intraoral occlusal adjustments which affect function, fit, or occlusion of any temporary or permanent restoration or appliance;
- ~~(8)~~(7) Extra-oral occlusal adjustments which affect function, fit, or occlusion of any permanent restoration or appliance;
- ~~(9)~~(8) Performance of direct pulp capping or pulpotomy;
- ~~(10)~~(9) Placement of sutures;
- ~~(11)~~(10) Final placement or cementation of orthodontic bands or brackets;
- ~~(12)~~(11) Placement or cementation of final restorations;
- ~~(13)~~(12) Administration of any anesthetic by any route except the administration of topically-applied agents intended to anesthetize only cutaneous tissue; and
- ~~(14)~~(13) Intraoral use of a ~~high speed~~ high-speed handpiece.

Authority G.S. 90-221(a); 90-223(b).

SUBCHAPTER 16R - CONTINUING EDUCATION REQUIREMENTS: DENTISTS

SECTION .0200 - QUALIFICATIONS

21 NCAC 16R .0201 CONTINUING EDUCATION REQUIRED

- (a) Except as permitted in Rule .0204 of this Section as a condition of license renewal, every dentist shall complete ~~at least~~ a minimum of 15 clock hours of continuing education each calendar year.
- (b) One hour of the total required continuing education hours must consist of a course designed to address prescribing practices.

including instruction on controlled substance prescribing practices and controlled substance prescribing for chronic pain management.

(c) Any or all of the hours may be acquired through self-study courses, provided that the self-study courses shall be related to clinical patient care and offered by a Board approved sponsor listed in Rule .0202 of this Section. The dentist shall pass a test following every self-study course and obtain a certificate of completion.

(d) Courses taken to maintain current CPR certification shall not count toward the mandatory continuing education hours.

Authority G.S. 90-31.1.

SUBCHAPTER 16V - UNPROFESSIONAL CONDUCT

SECTION .0100 - UNPROFESSIONAL CONDUCT

**21 NCAC 16V .0101 DEFINITION:
UNPROFESSIONAL CONDUCT BY A DENTIST**

Unprofessional conduct by a dentist shall include the following:

- (1) Having professional discipline imposed, including the denial of licensure, by the dental licensing authority of another state, territory, or ~~country~~ country; ~~(For For purposes of this Section, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined; disciplined);~~
- (2) ~~Intentionally presenting~~ Presenting false or misleading testimony, statements, or records to the Board or the Board's investigator or employees during the scope of any investigation, or at any hearing of the Board;
- (3) Committing any act ~~which that~~ would constitute sexual assault or battery as defined by Chapter 14 of the North Carolina General Statutes in connection with the provision of dental services;
- (4) Violating any order of the Board previously entered in a disciplinary hearing, or failing to comply with a subpoena of the Board;
- (5) Conspiring with any person to commit an act, or committing an act ~~which that~~ would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Board during any investigation under the Dental Practice or Dental Hygiene Acts;
- (6) Failing to identify to a patient, patient's guardian, or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request;
- (7) Prescribing, procuring, dispensing, or administering any controlled substance for personal ~~use~~ use, which does not include except

- (8) those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;
- (8) Pre-signing blank prescription forms or using pre-printed or rubber stamped prescription forms containing the dentist's signature or the name of any controlled substance;
- (9) Forgiving the co-payment provisions of any insurance policy, insurance contract, health prepayment contract, health care plan, or nonprofit health service plan contract by accepting the payment received from a third party as full payment, unless the dentist discloses to the third party that the patient's payment portion will not be collected;
- (10) Failing to provide radiation safeguards required ~~by~~ the State Department of Health and Human Services, the federal Occupational and Safety Health Administration, the Food and Drug ~~Administration~~ Administration, and the Environmental Protection Agency;
- (11) Having professional connection with or lending one's name to the unlawful practice of dentistry;
- (12) Using the name of any deceased or retired and licensed dentist on any office door, directory, stationery, bill heading, or any other means of communication any time after one year following the death or retirement from practice of said dentist;
- (13) Failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (14) Failing to file a truthful response to a notice of complaint within the time allowed in the ~~notice~~ notice;
- (15) Failing to notify the Board of a change in current physical address within 10 business ~~days~~ days;
- (16) Permitting more than two dental hygienists for each licensed dentist in the office to perform clinical hygiene tasks;
- (17) Failing to produce diagnostic radiographs or other treatment records on request of the Board or its investigator;
- (18) Soliciting employment of potential patients by live telephone solicitation or permitting or directing another to do so;
- (19) Giving or paying anything of value in exchange for a promise to refer or referral of potential patients;
- (20) Failing to offer 30 days of emergency care upon dismissing a patient from a dental practice;
- (21) Withholding or refusing treatment to an existing patient conditioned upon payment of an outstanding balance;
- (22) Using protected patient health information, as defined by 45 CFR 160.103, to solicit potential patients;
- (23) Making misleading or untruthful statements for the purpose of procuring potential patients, or

- directing or allowing an employee or agent to do so;
- (24) Making material false statements or omissions in any communication with the Board or its agents regarding the subject of any disciplinary matter under investigations by the Board;
- (25) Refusing to permit a Board agent or employee to conduct a sterilization inspection;
- (26) Acquiring any controlled substance from any source by fraud, deceit or ~~misrepresentation~~ misrepresentation; and
- (27) Practicing outside the scope of dentistry, as set forth in G.S. 90-29.

- (8) Acquiring any controlled substance from any pharmacy or other source by misrepresentation, fraud or deception;
- (9) Having professional connection with or lending one's name to the illegal practice of dental hygiene;
- (10) Failing to comply with any provision of any contract or agreement with the Caring Dental Professionals Program;
- (11) Failing to file a truthful response to a notice of complaint, within the time allowed in the notice;
- (12) Failing to notify the Board of a change in current physical address within 10 business days;
- (13) Working in a clinical hygiene position if the ratio of hygienists to licensed dentists present in the office is greater than 2:1;
- (14) Soliciting employment of potential patients in person or by telephone or assisting another person to do so;
- (15) Giving or paying anything of value in exchange for a promise to refer or referral of potential patients;
- (16) Using protected patient health information, as defined by 45 CFR 160.103, to solicit potential patients;
- (17) Making misleading or untruthful statements for the purpose of procuring potential patients or assisting another to do so;
- (18) Making material false statements or omissions in any communication with the Board or its agents regarding the subject of any disciplinary matter under investigation by the ~~Board~~ Board; and
- (19) Practicing outside the scope of dental hygiene, as defined in 90-221(a).

Authority G.S. 90-28; 90-29; 90-41; 90-48.

**21 NCAC 16V .0102 DEFINITION:
UNPROFESSIONAL CONDUCT BY A DENTAL
HYGIENIST**

Unprofessional conduct by a dental hygienist shall include the following:

- (1) Having professional discipline imposed, including the denial of licensure, by the dental hygiene licensing authority of another state, territory, or ~~country~~ country; ~~(For For purposes of this Section, the surrender of a license under threat of disciplinary action shall be considered the same as if the licensee had been disciplined; disciplined);~~
- (2) Presenting false or misleading testimony, statements, or records to the Board or a Board employee during the scope of any investigation or at any hearing of the Board;
- (3) Committing any act ~~which that~~ that would constitute sexual assault or battery as defined by Chapter 14 of the North Carolina General Statutes in connection with the provision of dental hygiene services;
- (4) Violating an order of the Board previously entered in a disciplinary hearing or failing to comply with a subpoena of the Board;
- (5) Conspiring with any person to commit an act, or committing an act ~~which that~~ that would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any person who testifies or cooperates with the Board during any investigation of any licensee;
- (6) Failing to identify to a patient, patient's guardian, an employer, or the Board the name of any person or agent who renders dental treatment or services upon request;
- (7) Procuring, dispensing, or administering any controlled substance for personal use except those prescribed, dispensed, or administered by a practitioner authorized to prescribe them;

Authority G.S. 90-29; 90-221; 90-223; 90-229.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Rules Review Commission intends to adopt the rules cited as 26 NCAC 05 .0301-.0303 and amend the rules cited as 26 NCAC 05 .0103 and .0104.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncoah.com

Proposed Effective Date: *May 1, 2016*

Public Hearing:

Date: *March 17, 2016*

Time: *10:00 a.m. or at the end of the RRC meeting, whichever is later.*

Location: *NC Office of Administrative Hearings, Commission Room, 1711 New Hope Church Road, Raleigh, NC 27609*

Reason for Proposed Action: *The RRC proposes to amend Rules 26 NCAC 05 .0103 and .0104 to change the deadlines and procedure for submission of public comments regarding permanent and temporary rules that will be reviewed by the Commission. The submission period for permanent rules will be two business days before the meeting, and for temporary rules, the business day before the meeting. In addition, all comments will be sent to the RRC staff, and members of the public will no longer be required to submit comments to each Commissioner individually.*

The RRC proposes to adopt Rules 26 NCAC 05 .0301-.0303 to establish the procedure for agencies to submit temporary rules to the RRC for review, including formatting requirements, the requirements for the Findings of Need form, and signatory authority for the form. The intent is to assist agencies in preparing the submission of temporary rules to the RRC.

Comments may be submitted to: *Amanda J. Reeder, 6714 Mail Service Center, Raleigh, NC 27699-6700, phone (919) 431-3079, email Amanda.Reeder@oah.nc.gov*

Comment period ends: *April 15, 2016*

Fiscal impact (check all that apply).

- State funds affected
- Environmental permitting of DOT affected Analysis submitted to Board of Transportation
- Local funds affected
- Substantial economic impact (≥\$1,000,000)
- Approved by OSBM
- No fiscal note required by G.S. 150B-21.4

CHAPTER 05 – RULES REVIEW COMMISSION

SECTION .0100 - GENERAL

26 NCAC 05 .0103 SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT RULES TO THE RRC

- (a) ~~Written comments submitted by any Any person desiring to submit written comments concerning a permanent rule shall submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) to shall be received by the RRC staff by 5:00 p.m. of the Tuesday of the week second business day prior to the next RRC meeting-meeting at which the permanent rule is to be reviewed. Written comments may be submitted electronically to the individual commissioners who accept delivery in an electronic format. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.~~
- (b) ~~Written submissions-comments shall specify state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.9.~~
- (c) ~~Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.~~

(d) A person or agency may submit rebuttal comments to ~~comments~~ concerning permanent rules. ~~The comments~~ Comments from a person shall be submitted in the same manner as set out in Paragraph (a) of this Rule prior up to 5:00 p.m. of the business day before the RRC meeting at which the rule is to be reviewed. ~~A person or An~~ agency may submit rebuttal comments at the RRC meeting.

(e) Any person submitting written comments ~~at an RRC meeting~~ or submitting rebuttal comments at an RRC meeting shall submit ~~at the meeting~~ sufficient copies for all each of the members attending, Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, ~~a maximum of 14~~ a total of 16 copies.

(f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

(g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

~~(h) The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

Authority G.S. 143B-30.1.

26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY RULES TO THE RRC

(a) ~~Written comments submitted by any Any person desiring to submit written comments concerning a temporary rule shall submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) to shall be received by the RRC staff by 5:00 p.m. the business day prior to or at the RRC meeting or RRC designee meeting at which the temporary rule shall is to be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.~~

(b) ~~Written submissions-comments shall specify state~~ how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.

(c) ~~Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the agency agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.~~

(d) A person or agency may submit rebuttal comments to ~~comments~~ concerning temporary rules.

~~(e) Any comments and rebuttal comments An agency may submit rebuttal comments at the RRC meeting.~~

~~(f)(e)~~ Any person submitting written comments or rebuttal comments at an RRC meeting shall submit ~~at the meeting~~ sufficient copies for all each of the members attending, Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, ~~a maximum of 14~~ a total of 16 copies.

~~(g)(f)~~ The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.

~~(h)(g)~~ Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.

~~(i) The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

Authority G.S. 143B-30.1.

SECTION .0300 - TEMPORARY RULES FOR RRC REVIEW

26 NCAC 05 .0301 **FORMATTING REQUIREMENTS**

An agency submitting temporary rules to be reviewed by the Commission shall comply with the requirements in 26 NCAC 02C .0100, .0200, and .0400, which are hereby incorporated by reference, including subsequent amendments and editions.

Authority G.S. 150B-21.1.

26 NCAC 05 .0302 **TEMPORARY RULEMAKING FINDINGS OF NEED FORM**

(a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form for each rule when filing a temporary rule for Commission review. The form may be accessed at no cost at www.ncoah.com/rules.

(b) The form sets forth the requirements of G.S. 150B-21.1 to allow the Commission to determine whether the temporary rule meets the statutory requirements.

(c) The agency head shall sign the original form. If the agency head has delegated this authority to another person pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation.

(d) Pursuant to G.S. 143B-10(a), only the following agency heads may delegate signing of the form:

- (1) the Secretary of the Department of Natural and Cultural Resources;
- (2) the Secretary of the Department of Health and Human Services;
- (3) the Secretary of the Department of Revenue;
- (4) the Secretary of the Department of Public Safety;
- (5) the Secretary of the Department of Environmental Quality;

(6) the Secretary of the Department of Transportation;

(7) the Secretary of the Department of Administration; and

(8) the Secretary of the Department of Commerce.

(e) For all other agencies, the head of an agency shall not delegate signature authority for signing the form pursuant to G.S. 150B-21.1(a)(4).

Authority G.S. 143B-2; 143B-10(a); 150B-21.1(a4).

26 NCAC 05 .0303 **FILING A TEMPORARY RULE**

For each temporary rule, the agency shall file the following:

(1) an original and two copies of the Temporary Rulemaking Findings of Need form. The original form shall be signed by the agency head or designee, as set forth in Rule .0302 of this Section;

(2) if designation authority is invoked under G.S. 143B-10, a letter delegating the authority for the signature on the form, as set forth in Rule .0302 of this Section;

(3) a copy of the relevant portion of the authority cited that authorizes the promulgation of the temporary rule;

(4) an original and two copies of the temporary rule prepared in accordance with 26 NCAC 02C .0108, containing:

(a) an introductory statement that states the rule was adopted under temporary rulemaking procedures;

(b) the text of the rule, showing any changes made after publication as set forth in 26 NCAC 02C .0405; and

(c) the history note, as set forth in 26 NCAC 02C .0406; and

(5) an electronic version of the Rule, as set forth in 26 NCAC 02C .0105.

Authority G.S. 150B-21.1; 150B-21.19.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission January 21, 2016 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 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2nd business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate
Jeff Hyde (1st Vice Chair)
Robert A. Bryan, Jr.
Margaret Currin
Jay Hemphill
Jeffrey A. Poley

Appointed by House
Garth Dunklin (Chair)
Stephanie Simpson (2nd Vice Chair)
Anna Baird Choi
Jeanette Doran
Danny Earl Britt, Jr.

COMMISSION COUNSEL

Abigail Hammond (919)431-3076
Amber Cronk May (919)431-3074
Amanda Reeder (919)431-3079
Jason Thomas (919)431-3081

RULES REVIEW COMMISSION MEETING DATES

February 18, 2016 March 17, 2016
April 21, 2016 May 19, 2016

**RULES REVIEW COMMISSION MEETING
MINUTES
January 21, 2016**

The Rules Review Commission met on Thursday, January 21, 2016, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Danny Earl Britt, Jr., Bobby Bryan, Margaret Currin, Jeanette Doran, Garth Dunklin, Jay Hemphill, Jeff Hyde, Jeff Poley, and Stephanie Simpson.

Staff members present were Commission Counsels Abigail Hammond, Amber Cronk May, Amanda Reeder, and Jason Thomas; and Julie Brincefield, Alex Burgos, and Dana Vojtko.

The meeting was called to order at 10:01 a.m. with Chairman Dunklin presiding.

Chairman Dunklin read the notice required by G.S. 138A-15(e) and reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts of interest.

Chairman Dunklin introduced OAH extern Felicia Hyde.

APPROVAL OF MINUTES

Chairman Dunklin asked for any discussion, comments, or corrections concerning the minutes of the December 17, 2015 meeting. There were none and the minutes were approved as distributed.

FOLLOW UP MATTERS

911 Board

09 NCAC 06C .0101, .0102, .0103, .0104, .0105, .0106, .0107, .0108, .0109, .0110, .0111, .0112, .0113, .0114, .0201, .0202, .0203, .0204, .0205, .0206, .0207, .0208, .0209, .0210, .0211, .0212, .0213, .0214, .0215, .0216, .0301, .0302, .0303, .0304, .0305, .0306, .0401, .0402, .0403, .0404, and .0405 – All rules were unanimously approved with the following exceptions:

The Commission objected to Rules .0111, .0112, .0113, .0114, .0205, and .0216, finding the agency failed to comply with the Administrative Procedure Act because the rules were not published in the NC Register for the public comment period required by G.S. 150B-21.2. The Commission was aware that the Board has submitted these Rules for publication in the February 1, 2016 Register.

The Commission also objected to Rule .0112 because, as the rule was originally submitted, the Board proposed to respond to requests for declaratory ruling outside of the timeline set forth in G.S. 150B-4. Therefore, the Commission found that the Board did not have the statutory authority to change the timeline set forth in statute.

The Commission objected to Rules .0107, .0302, .0303, and .0304, with Commissioner Poley voting against the objection, finding the Board lacked statutory authority to require CMRS providers to submit a plan for preapproval of all reimbursable costs. Further, the Commission found the Board does not have the authority to require submission of records to prove that costs were incurred, and these requirements exceed the requirements of G.S. 62A-45.

The Commission objected to Rules .0105 and .0106 for ambiguity. Specifically, Paragraph (c) of both rules state that the Board “may, in its discretion, file a complaint with any other regulatory body exercising jurisdiction.” There is no guidance in the rules as to when this may occur and therefore, the Commission found the rules ambiguous.

The Commission also objected to Rule .0106 for lack of statutory authority, as Paragraph (d) states that the Board may suspend disbursements of a PSAP that is not compliant with the statutes, rules, or requirements of an FCC order. However, G.S. 62A-48 states that the Board is required to suspend disbursements under these circumstances. Therefore, the Commission found that the Board does not have authority for the Rule as submitted.

Richard Bradford, with the Attorney General’s Office representing the agency, addressed the Commission.

Child Care Commission

10A NCAC 09 .2001, .2002, .2003, .2004, and .2005 – All rules were unanimously approved.

Environmental Management Commission

15A NCAC 02L .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0515 - There has been no response by the agency on these Rules pursuant to G.S. 150B-21.13, therefore no action was required by the Commission.

Property Tax Commission

17 NCAC 11 .0216, and .0217 - The agency is addressing the objections from the October meeting by publishing a Notice of Text in the North Carolina Register. No action was required by the Commission.

LOG OF FILINGS (PERMANENT RULES)

DHHS – Division of Health Service Regulation

All rules were unanimously approved.

Criminal Justice Education and Training Standards Commission

All rules were unanimously approved.

Upon review of 12 NCAC 09C .0401, the Commission approved the rewritten rule contingent upon receiving 12 NCAC 09C .0401 with the additional language following the word accreditation, “pursuant to the Commission’s authority to certify criminal justice training schools in G.S. 17C-6.”. The rule with the pertinent language was received subsequent to the adjournment of the meeting.

Sheriffs Education and Training Standards Commission

12 NCAC 10B .2005 was unanimously approved.

Private Protective Services Board

All rules were unanimously approved.

Marine Fisheries Commission

All rules were unanimously approved.

Coastal Resources Commission

All rules in 15A NCAC 07B were unanimously approved.

The Commission voted to extend the period of review for 15A NCAC 07L .0102, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0512, .0513, .0514, .0601, .0602, .0603, .0701, .0702, .0703, .0704, and .0705 in accordance with G.S. 150B-21.10. They did so in response to a request from the Coastal Resources Commission to allow additional time for review of technical change requests.

Board of Certified Public Accountant Examiners

All rules were unanimously approved.

Bob Brooks with the agency addressed the Commission.

Board of Chiropractic Examiners

The Commission objected to 21 NCAC 10 .0214, finding that the language in Paragraph (b) that referred to the "Secretary's professional judgment" is ambiguous.

The Commission voted to extend the period of review for 21 NCAC 10 .0106 and .0208 in accordance with G.S. 150B-21.10. They did so in response to a request from the Board to extend the period in order to allow the agency time to determine whether to move forward with rulemaking for these Rules.

Vance Kinlaw, attorney for the agency, addressed the Commission.

Dr. Ricky R. Sides with the agency addressed the Commission.

Board of Dental Examiners

21 NCAC 16W .0101 was withdrawn at the request of the agency.

Commissioner Hemphill was not present during the discussion.

Board of Examiners of Electrical Contractors

21 NCAC 18B .0101 was unanimously approved.

Commissioner Hemphill was not present during the vote.

Interpreter and Transliterater Licensing Board

21 NCAC 25 .0103 was unanimously approved.

Commissioner Hemphill was not present during the vote.

Board of Examiners of Fee-Based Practicing Pastoral Counselors

21 NCAC 45 .0101 was unanimously approved.

Commissioner Hemphill was not present during the vote.

State Human Resources Commission

All rules were unanimously approved.

Prior to the review of the rules from the State Human Resources Commission, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she is a state employee. Commissioner Hemphill was not present during the vote.

EXISTING RULES REVIEW

Department of Administration

01 NCAC 01 - The Commission unanimously approved the report as submitted by the agency.
01 NCAC 03 - The Commission unanimously approved the report as submitted by the agency.
01 NCAC 04 - The Commission unanimously approved the report as submitted by the agency.
01 NCAC 25 - The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote.

Department of Military and Veterans Affairs [formerly Veterans' Affairs Commission – transferred pursuant to S.L. 2015-241, Sec. 24.1(a)]

01 NCAC 26 - The Commission unanimously approved the report as submitted by the agency.

Commissioner Poley was not present during the vote.

Medical Care Commission & Department of Health and Human Services/Secretary

10A NCAC 13P - The Commission unanimously approved the report as submitted by the agency.

Prior to the review of the report from the N.C. Medical Care Commission & Department of Health and Human Services/Secretary, Commissioner Poley recused himself and did not participate in any discussion or vote concerning these rules because of a conflict with his law firm.

DHHS - Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services

10A NCAC 26E - The Commission unanimously approved the report as submitted by the agency.

10A NCAC 26F - The Commission unanimously approved the report as submitted by the agency.

Sedimentation Control Commission

15A NCAC 04 - The Commission unanimously approved the report as submitted by the agency.

Board of Examiners of Electrical Contractors

21 NCAC 18 - The Commission unanimously approved the report as submitted by the agency.

Locksmith Licensing Board

21 NCAC 29 - The Commission unanimously approved the report as submitted by the agency.

Department of Commerce

The agency requested a waiver of 26 NCAC 05 .0211 pursuant to 26 NCAC 05 .0204 for the report for 04 NCAC 01.

The waiver request was approved, with Commissioner Dunklin voting against.

The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211.

The Commission will review the agency's report at its July 2016 meeting.

Prior to the review of the report from the Department of Commerce, Commissioner Doran recused herself and did not participate in any discussion or vote concerning the report because she is a state employee with the Department of Commerce.

DHHS - Division of Services for the Deaf and Hard of Hearing

The agency requested a waiver of 26 NCAC 05 .0211 pursuant to 26 NCAC 05 .0204 for the report for 10A NCAC 17.

The waiver request was approved, with Commissioners Doran, Dunklin, and Hyde voting against.

The Commission rescheduled the date of review for the report, and amended 26 NCAC 05 .0211.

The Commission will review the agency's report at its March 2017 meeting.

2016 STATE MEDICAL FACILITIES PLAN

The Commission found that the Department of Health and Human Services and the State Health Coordinating Council complied with G.S. 131E-176(25) in the adoption of the 2016 Plan.

Prior to the review of the 2016 State Medical Facilities Plan from the Department of Health and Human Services and the State Health Coordinating Council, Commissioner Poley recused himself and did not participate in any discussion or vote concerning the 2016 Plan because of a conflict with his law firm.

COMMISSION BUSINESS

Commissioners and Commission Counsel discussed RRC proposed rules 26 NCAC 05 .0103, .0104, .0301, .0302, and .0303. The Commission voted to publish the rules in the North Carolina Register and they are attached.

The Commission's Bylaws require that elections be held at the January meeting. The following members were elected as officers:

Garth Dunklin was re-elected Chairman.

Jeff Hyde was re-elected 1st Vice-Chairman.

Stephanie Simpson re-elected 2nd Vice-Chairman.

The meeting adjourned at 12:15 p.m.

The next regularly scheduled meeting of the Commission is Thursday, February 18th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings /Rules Division.

Respectfully Submitted,

Alexander Burgos, Paralegal

Minutes approved by the Rules Review Commission:

Garth Dunklin, Chair

January 2016

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Dr. Bruce Phillips	NCBOE
VANCE KINLAW	NCBD, OF CHIRO. EXAMINERS
CATHERINE BLUM	NCDEQ, NCDMF
Philip R. Protz	NC DHHS NCDVRS
Teresa Barik	911 Board
Jamie weiss	Ellis & Winters
Trevor Allan	DOJ - CJ Standards
Lauren Eamhardt	DOJ
Fatimah Wilson	DHSR-CON
Dr. Ricky B. Sides	NC BOE
Richard Bradford	911 Board
Jan Withers	DSDHH
Monica McGee (interpreter)	DSDHH
Lisa Pittman	DHSR-CON
Martha Frisone	DHSR-CON
Laura Sylora	911 Board
Jennifer Eversoll	DEQ
RICHARD TAYLOR	NC 911 BOARD
Ashley Rodgers	DEQ, DEMUR
Nadine Pfeiffer	DHHS DHSR
Holly Ainsworth	DHSR / DEMS

January 2016

Rules Review Commission
Meeting
Please **Print** Legibly

Name	Agency
Sheley Carraway	DHHS/DHSR/HPCON
Kelicia Hyde	extending w/ Judge Morrison (OAH)
Bob Brooks	CPA BOARD
DAVID NANCE	CPA BOARD
Margaret Duce	OSTHR
Jackie Hobbs	NC BCE
Deda Alan	DCDEE
Maggie Craven	OSTHR
Bethany Burgeon	DOJ
Jeff Gray	PPSRS
Rita Dorry	NCGA
Kassin Elliott	OSTHR.
W. Denise Booker	DHHS - DMH/po/sas
John Haaman;	Dept. of Commerce

26 NCAC 05 .0103 SUBMISSION OF WRITTEN COMMENTS CONCERNING PERMANENT RULES TO THE RRC

- (a) ~~Written comments submitted by any~~ Any person ~~desiring to submit written comments~~ concerning a permanent rule shall submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) ~~to~~ shall be received by the RRC staff by 5:00 p.m. of the ~~Tuesday of the week second business day~~ prior to the ~~next RRC meeting, meeting at which the permanent rule is to be reviewed.~~ ~~Written comments may be submitted electronically to the individual commissioners who accept delivery in an electronic format. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.~~
- (b) Written ~~submissions~~ comments shall ~~specify~~ state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.9.
- (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the ~~agency~~ ~~agency's~~ rulemaking coordinator. ~~Rulemaking coordinator contact information is located at www.ncoah.com/rules.~~
- (d) A person or agency may submit rebuttal comments ~~to comments~~ concerning permanent rules. ~~The comments~~ Comments from a person shall be submitted in the same manner as set out in Paragraph (a) of this Rule prior ~~up~~ to 5:00 p.m. of the business day before the RRC meeting at which the rule is to be reviewed. ~~A person or An~~ agency may submit rebuttal comments at the RRC meeting.
- (e) Any person submitting written comments ~~at an RRC meeting~~ or submitting rebuttal comments at an RRC meeting shall submit ~~at the meeting~~ sufficient copies for ~~all each of the members attending, Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a maximum of 14 a total of 16~~ copies.
- (f) The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.
- (g) Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.
- (h) ~~The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

History Note: Authority G.S. 143B-30.1;
Eff. August 1, 2008;

**26 NCAC 05 .0104 SUBMISSION OF WRITTEN COMMENTS CONCERNING TEMPORARY
RULES TO THE RRC**

- (a) ~~Written comments submitted by any Any person desiring to submit written comments concerning a temporary rule shall submit the comments to the individual commissioners and two copies (unless submitted by email in which case one copy is sufficient) to shall be received by the RRC staff by 5:00 p.m. the business day prior to or at the RRC meeting or RRC designee meeting at which the temporary rule shall is to be reviewed. If comments are submitted electronically, the comments shall be sent to rrc.comments@oah.nc.gov.~~
- (b) Written ~~submissions~~ comments shall ~~specify~~ state how a rule either complies with or fails to comply with the statutory grounds for the RRC's review set out in G.S. 150B-21.1 and G.S. 150B-21.9.
- (c) Persons submitting comments shall also submit a copy of the comments at the same time and in the same manner to the ~~agency~~ agency's rulemaking coordinator. Rulemaking coordinator contact information is located at www.ncoah.com/rules.
- (d) A person or agency may submit rebuttal comments ~~to comments~~ concerning temporary rules.
- (e) ~~Any comments and rebuttal comments~~ An agency may submit rebuttal comments at the RRC meeting.
- (f) ~~(e)~~ Any person submitting written comments or rebuttal comments at an RRC meeting shall submit ~~at the meeting~~ sufficient copies for ~~all each of the members attending; Commissioners, commission counsel, agency rulemaking coordinator, and the permanent record, a maximum of 14 total of 16~~ copies.
- (g) ~~(f)~~ The Chair may waive the requirements of this Rule based on the factors in Rule .0112 of this Chapter.
- (h) ~~(g)~~ Written comments not submitted in accordance with this Rule are subject to being excluded from the record by the Commission.
- (i) ~~The RRC staff shall maintain a list of commissioners and rulemaking coordinators with their contact information.~~

History Note: *Authority G.S. 143B-30.1;*
 Eff. August 1, 2008.

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SECTION .0300 - TEMPORARY RULES FOR RRC REVIEW

26 NCAC 05 .0301 FORMATTEING REQUIREMENTS

An agency submitting temporary rules to be reviewed by the Commission shall comply with the requirements in 26 NCAC 02C .0100, .0200, and .0400, which are hereby incorporated by reference, including subsequent amendments and editions.

History Note: Authority G.S. 150B-21.1;

26 NCAC 05 .0302 TEMPORARY RULEMAKING FINDINGS OF NEED FORM

(a) An agency shall submit a completed typed original Temporary Rulemaking Findings of Need form for each rule when filing a temporary rule for Commission review. The form may be accessed at no cost at www.ncpah.com/rules.

(b) The form sets forth the requirements of G.S. 150B-21.1 to allow the Commission to determine whether the temporary rule meets the statutory requirements.

(c) The agency head shall sign the original form. If the agency head has delegated this authority to another person pursuant to G.S. 143B-10(a), then the agency shall submit a copy of the delegation.

(d) Pursuant to G.S. 143B-10(a), only the following agency heads may delegate signing of the form:

- _____ (1) the Secretary of the Department of Natural and Cultural Resources;
- _____ (2) the Secretary of the Department of Health and Human Services;
- _____ (3) the Secretary of the Department of Revenue;
- _____ (4) the Secretary of the Department of Public Safety;
- _____ (5) the Secretary of the Department of Environmental Quality;
- _____ (6) the Secretary of the Department of Transportation;
- _____ (7) the Secretary of the Department of Administration; and
- _____ (8) the Secretary of the Department of Commerce.

(e) For all other agencies, the head of an agency shall not delegate signature authority for signing the form pursuant to G.S. 150B-21.1(a)(4).

History Note: Authority G.S. 143B-2; 143B-10(a); 150B-21.1(a4);

26 NCAC 05 .0303 FILING A TEMPORARY RULE

For each temporary rule, the agency shall file the following:

- (1) an original and two copies of the Temporary Rulemaking Findings of Need form. The original form shall be signed by the agency head or designee, as set forth in Rule .0302 of this Section;
- (2) if designation authority is invoked under G.S. 143B-10, a letter delegating the authority for the signature on the form, as set forth in Rule .0302 of this Section;
- (3) a copy of the relevant portion of the authority cited that authorizes the promulgation of the temporary rule;

- 1 (4) an original and two copies of the temporary rule prepared in accordance with 26 NCAC 02C .0108,
2 containing:
3 (a) an introductory statement that states the rule was adopted under temporary rulemaking
4 procedures;
5 (b) the text of the rule, showing any changes made after publication as set forth in 26 NCAC
6 02C .0405; and
7 (c) the history note, as set forth in 26 NCAC 02C .0406; and
8 (5) an electronic version of the Rule, as set forth in 26 NCAC 02C .0105.

9
10 *History Note:* *Authority G.S. 150B-21.1; 150B-21.19;*
11
12

**LIST OF APPROVED PERMANENT RULES
January 21, 2016 Meeting**

911 BOARD

<u>Forms</u>	09 NCAC 06C .0101
<u>Physical Address of 911 Board</u>	09 NCAC 06C .0102
<u>Definitions</u>	09 NCAC 06C .0103
<u>Failure to Comply with Rules</u>	09 NCAC 06C .0104
<u>Waiver of Rules</u>	09 NCAC 06C .0108
<u>Hearings</u>	09 NCAC 06C .0109
<u>Declaratory Rulings</u>	09 NCAC 06C .0110
<u>PSAP Eligibility</u>	09 NCAC 06C .0201
<u>PSAP Eligible Expenses</u>	09 NCAC 06C .0202
<u>Effect of 911 Fund Distributions and Suspensions</u>	09 NCAC 06C .0203
<u>PSAP Reporting</u>	09 NCAC 06C .0204
<u>Back-up PSAPS</u>	09 NCAC 06C .0206
<u>PSAP Operations and Management</u>	09 NCAC 06C .0207
<u>Telecommunicator Qualifications, Training and Staffing</u>	09 NCAC 06C .0208
<u>PSAP Call Operating Procedures</u>	09 NCAC 06C .0209
<u>Public Safety Answering Point (PSAP) Facilities</u>	09 NCAC 06C .0210
<u>Telephones</u>	09 NCAC 06C .0211
<u>Dispatching Systems</u>	09 NCAC 06C .0212
<u>Computer Aided (CAD) Dispatching Systems</u>	09 NCAC 06C .0213
<u>Testing</u>	09 NCAC 06C .0214
<u>Records</u>	09 NCAC 06C .0215
<u>Registration of CMRS Service Providers</u>	09 NCAC 06C .0301
<u>Remittance of Service Charges</u>	09 NCAC 06C .0305
<u>Prepaid Wireless Service</u>	09 NCAC 06C .0306
<u>PSAP Grants</u>	09 NCAC 06C .0401
<u>Grants for Construction or Renovation</u>	09 NCAC 06C .0402
<u>Grant Agreements</u>	09 NCAC 06C .0403
<u>Grant Funds</u>	09 NCAC 06C .0404
<u>Grantee Reports</u>	09 NCAC 06C .0405

CHILD CARE COMMISSION

<u>Petitions for Rulemaking</u>	10A NCAC 09 .2001
<u>Rulemaking Procedures</u>	10A NCAC 09 .2002
<u>Declaratory Rulings</u>	10A NCAC 09 .2003
<u>Contested Cases: Definitions</u>	10A NCAC 09 .2004
<u>Contested Cases: Requests for Determination</u>	10A NCAC 09 .2005

HHS - HEALTH SERVICE REGULATION, DIVISION OF

<u>Information Required of Applicant</u>	10A NCAC 14C .1101
<u>Information Required of Applicant</u>	10A NCAC 14C .1202

<u>Support Services</u>	10A NCAC 14C .1204
<u>Staffing and Staff Training</u>	10A NCAC 14C .1205
<u>Information Required of Applicant</u>	10A NCAC 14C .1302
<u>Support Services</u>	10A NCAC 14C .1304
<u>Staffing and Staff Training</u>	10A NCAC 14C .1305
<u>Information Required of Applicant</u>	10A NCAC 14C .1402
<u>Support Services</u>	10A NCAC 14C .1404
<u>Staffing and Staff Training</u>	10A NCAC 14C .1405
<u>Information Required of Applicant</u>	10A NCAC 14C .1502
<u>Support Services</u>	10A NCAC 14C .1504
<u>Staffing and Staff Training</u>	10A NCAC 14C .1505
<u>Information Required of Applicant</u>	10A NCAC 14C .1602
<u>Support Services</u>	10A NCAC 14C .1604
<u>Staffing and Staff Training</u>	10A NCAC 14C .1605
<u>Information Required of Applicant</u>	10A NCAC 14C .1702
<u>Support Services</u>	10A NCAC 14C .1704
<u>Staffing and Staff Training</u>	10A NCAC 14C .1705
<u>Information Required of Applicant</u>	10A NCAC 14C .1803
<u>Support Services</u>	10A NCAC 14C .1805
<u>Staffing and Staff Services</u>	10A NCAC 14C .1806
<u>Information Required of Applicant</u>	10A NCAC 14C .1902
<u>Support Services</u>	10A NCAC 14C .1904
<u>Staffing and Staff Training</u>	10A NCAC 14C .1905
<u>Information Required of Applicant</u>	10A NCAC 14C .2002
<u>Staffing and Staff Training</u>	10A NCAC 14C .2005
<u>Information Required of Applicant</u>	10A NCAC 14C .2102
<u>Support Services</u>	10A NCAC 14C .2104
<u>Staffing and Staff Training</u>	10A NCAC 14C .2105
<u>Facility</u>	10A NCAC 14C .2106
<u>Information Required of Applicant</u>	10A NCAC 14C .2202
<u>Scope of Services</u>	10A NCAC 14C .2204
<u>Staffing and Staff Training</u>	10A NCAC 14C .2205
<u>Information Required of Applicant</u>	10A NCAC 14C .2302
<u>Support Services</u>	10A NCAC 14C .2304
<u>Staffing and Staff Training</u>	10A NCAC 14C .2305
<u>Information Required of Applicant</u>	10A NCAC 14C .2402
<u>Staffing and Staff Training</u>	10A NCAC 14C .2405
<u>Information Required of Applicant</u>	10A NCAC 14C .2502
<u>Staffing and Staff Training</u>	10A NCAC 14C .2505
<u>Information Required of Applicant</u>	10A NCAC 14C .2602
<u>Staffing and Staff Training</u>	10A NCAC 14C .2605
<u>Information Required of Applicant</u>	10A NCAC 14C .2702
<u>Support Services</u>	10A NCAC 14C .2704
<u>Staffing and Staff Training</u>	10A NCAC 14C .2705
<u>Information Required by Applicant</u>	10A NCAC 14C .2802
<u>Staffing and Staff Training</u>	10A NCAC 14C .2805
<u>Information Required of Applicant</u>	10A NCAC 14C .2902

<u>Support Services</u>	10A NCAC 14C .2904
<u>Staffing and Staff Training</u>	10A NCAC 14C .2905
<u>Definitions</u>	10A NCAC 14C .3001
<u>Information Required of Applicant</u>	10A NCAC 14C .3002
<u>Support Services</u>	10A NCAC 14C .3003
<u>Additional Requirements for Heart, Heart/Lung or Lung Tra...</u>	10A NCAC 14C .3004
<u>Additional Requirements for Liver Transplantation Services</u>	10A NCAC 14C .3005
<u>Additional Requirements for Pancreas Transplantation Serv...</u>	10A NCAC 14C .3006
<u>Additional Requirements for Kidney Transplantation Services</u>	10A NCAC 14C .3007
<u>Staffing and Staff Training</u>	10A NCAC 14C .3008
<u>Accessibility</u>	10A NCAC 14C .3009
<u>Information Required of Applicant</u>	10A NCAC 14C .3103
<u>Support Services</u>	10A NCAC 14C .3105
<u>Staffing and Staff Training</u>	10A NCAC 14C .3106
<u>Information Requirement of Applicant</u>	10A NCAC 14C .3202
<u>Support Services</u>	10A NCAC 14C .3204
<u>Staffing and Staff Training</u>	10A NCAC 14C .3205
<u>Information Required of Applicant</u>	10A NCAC 14C .3402
<u>Support Services</u>	10A NCAC 14C .3404
<u>Staffing and Staff Training</u>	10A NCAC 14C .3405
<u>Information Required of Applicant</u>	10A NCAC 14C .3602
<u>Support Services</u>	10A NCAC 14C .3604
<u>Staffing and Staff Training</u>	10A NCAC 14C .3605
<u>Information Required of Applicant</u>	10A NCAC 14C .3702
<u>Support Services</u>	10A NCAC 14C .3704
<u>Staffing and Staff Training</u>	10A NCAC 14C .3705
<u>Information Required of Applicant</u>	10A NCAC 14C .3802
<u>Support Services</u>	10A NCAC 14C .3804
<u>Staffing and Staff Training</u>	10A NCAC 14C .3805
<u>Information Required of Applicant</u>	10A NCAC 14C .3902
<u>Support Services</u>	10A NCAC 14C .3904
<u>Staffing and Staff Training</u>	10A NCAC 14C .3905
<u>Facility</u>	10A NCAC 14C .3906
<u>Information Required of Applicant</u>	10A NCAC 14C .4002
<u>Support Services</u>	10A NCAC 14C .4004
<u>Staffing and Staff Training</u>	10A NCAC 14C .4005
<u>Facility</u>	10A NCAC 14C .4006

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Definitions</u>	12 NCAC 09A .0103
<u>Summary Suspensions</u>	12 NCAC 09A .0206
<u>Documentation of Educational Requirements</u>	12 NCAC 09B .0106
<u>Admission of Trainees</u>	12 NCAC 09B .0203
<u>Specialized Subject Control Arrest Techniques Instructor ...</u>	12 NCAC 09B .0232
<u>Specialized Physical Fitness Instructor Training</u>	12 NCAC 09B .0233
<u>General Instructor Certification</u>	12 NCAC 09B .0302

<u>Certification of School Directors</u>	12 NCAC 09B .0501
<u>Terms and Conditions of School Director Certification</u>	12 NCAC 09B .0502
<u>Certification of Criminal Justice Schools</u>	12 NCAC 09C .0401
<u>In-Service Training Coordinator Requirements</u>	12 NCAC 09E .0109
<u>Education</u>	12 NCAC 09G .0204
<u>General Instructor Certification</u>	12 NCAC 09G .0308
<u>Certification of School Directors</u>	12 NCAC 09G .0405

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Minimum Training Requirements</u>	12 NCAC 10B .2005
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PRIVATE PROTECTIVE SERVICES BOARD

<u>Training Requirements for Armed Security Guards</u>	14B NCAC 16 .0807
<u>Authorized Firearms</u>	14B NCAC 16 .0809
<u>Requirements for Firearms Trainer Certificate</u>	14B NCAC 16 .0901
<u>Renewal of a Firearms Trainer Certificate</u>	14B NCAC 16 .0904

MARINE FISHERIES COMMISSION

<u>Gill Nets, Seines, Identification, Restrictions</u>	15A NCAC 03J .0103
<u>Mechanical Methods Prohibited to Take Oysters</u>	15A NCAC 03R .0108
<u>Attended Gill Net Areas</u>	15A NCAC 03R .0112

COASTAL RESOURCES COMMISSION

<u>Authority</u>	15A NCAC 07B .0601
<u>Planning Options</u>	15A NCAC 07B .0701
<u>Elements of Cama Core and Advanced Core Land Use Plans</u>	15A NCAC 07B .0702
<u>State Review and Comment on Draft Plan</u>	15A NCAC 07B .0801
<u>Public Hearing and Local Adoption Requirements</u>	15A NCAC 07B .0802
<u>Certification and Use of the Plan</u>	15A NCAC 07B .0803
<u>Required Periodic Implementation Status Reports</u>	15A NCAC 07B .0804

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

<u>Definitions</u>	21 NCAC 08A .0301
<u>Public Practice of Accountancy or Accounting</u>	21 NCAC 08A .0307
<u>Holding Out to the Public</u>	21 NCAC 08A .0308
<u>Concentration in Accounting</u>	21 NCAC 08A .0309
<u>Requests for Informal Opinions</u>	21 NCAC 08B .0508
<u>Filing of Examination Applications and Fees</u>	21 NCAC 08F .0103
<u>Conditioning Requirements</u>	21 NCAC 08F .0105
<u>Ineligibility Due to Violation of Accountancy Act</u>	21 NCAC 08F .0111
<u>Education and Work Experience Required Prior to CPA Exam</u>	21 NCAC 08F .0302
<u>Work Experience Required of Candidates for CPA Certification</u>	21 NCAC 08F .0401
<u>Education Required of Candidates for CPA Certification</u>	21 NCAC 08F .0410
<u>Application for CPA Certificate</u>	21 NCAC 08F .0502
<u>CPE Requirements for CPAS</u>	21 NCAC 08G .0401

<u>Qualification of CPE Sponsors</u>	21	NCAC 08G .0403
<u>Requirements for CPE Credit</u>	21	NCAC 08G .0404
<u>Compliance with CPE Requirements</u>	21	NCAC 08G .0406
<u>Professional Ethics and Conduct CPE</u>	21	NCAC 08G .0410
<u>Modification of Discipline</u>	21	NCAC 08I .0104
<u>Annual Renewal of Certificate, Forfeiture, and Reapplication</u>	21	NCAC 08J .0101
<u>Inactive Status; Change of Status</u>	21	NCAC 08J .0105
<u>Mailing Addresses of Certificate Holders and CPA Firms</u>	21	NCAC 08J .0107
<u>Compliance with CPA Firm Registration</u>	21	NCAC 08J .0111
<u>Peer Review Requirements</u>	21	NCAC 08M .0105
<u>Compliance</u>	21	NCAC 08M .0106
<u>Scope of These Rules</u>	21	NCAC 08N .0101
<u>Applicability and Organization of Rules</u>	21	NCAC 08N .0102
<u>Responsibility for Compliance by Others</u>	21	NCAC 08N .0103
<u>Integrity</u>	21	NCAC 08N .0201
<u>Deceptive Conduct Prohibited</u>	21	NCAC 08N .0202
<u>Discreditable Conduct Prohibited</u>	21	NCAC 08N .0203
<u>Discipline by Federal and State Authorities</u>	21	NCAC 08N .0204
<u>Confidentiality</u>	21	NCAC 08N .0205
<u>Cooperation with Board Inquiry</u>	21	NCAC 08N .0206
<u>Violation of Tax Laws</u>	21	NCAC 08N .0207
<u>Reporting Convictions, Judgements, and Disciplinary Actions</u>	21	NCAC 08N .0208
<u>Accounting Principles</u>	21	NCAC 08N .0209
<u>Responsibilities in Tax Practice</u>	21	NCAC 08N .0211
<u>Competence</u>	21	NCAC 08N .0212
<u>Other Rules</u>	21	NCAC 08N .0213
<u>Outsourcing to Third-Party Service Providers</u>	21	NCAC 08N .0214
<u>International Financial Accounting Standards</u>	21	NCAC 08N .0215
<u>Professional Judgement</u>	21	NCAC 08N .0301
<u>Forms of Practice</u>	21	NCAC 08N .0302
<u>Objectivity and Conflicts of Interest</u>	21	NCAC 08N .0303
<u>Consulting Services Standards</u>	21	NCAC 08N .0304
<u>Retention of Client Records</u>	21	NCAC 08N .0305
<u>Advertising or Other Forms of Solicitation</u>	21	NCAC 08N .0306
<u>CPA Firm Names</u>	21	NCAC 08N .0307
<u>Valuation Services Standards</u>	21	NCAC 08N .0308
<u>Personal Financial Planning Services</u>	21	NCAC 08N .0309
<u>Public Reliance</u>	21	NCAC 08N .0401
<u>Independence</u>	21	NCAC 08N .0402
<u>Auditing Standards</u>	21	NCAC 08N .0403
<u>Accounting and Review Services Standards</u>	21	NCAC 08N .0404
<u>Governmental Accounting Standards</u>	21	NCAC 08N .0405
<u>Attestation Standards</u>	21	NCAC 08N .0406
<u>Peer Review Standards</u>	21	NCAC 08N .0408
<u>Government Auditing Standards</u>	21	NCAC 08N .0409
<u>International Standards on Auditing</u>	21	NCAC 08N .0410

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

Principal Office: Mailing Address: Office Hours 21 NCAC 18B .0101

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

Contact Information 21 NCAC 25 .0103

EXAMINERS OF FEE-BASED PRACTICING PASTORAL COUNSELORS, BOARD OF

Address 21 NCAC 45 .0101

STATE HUMAN RESOURCES COMMISSION

Severance Salary Continuation Policy 25 NCAC 01D .2701

Severance Salary Continuation Eligibility 25 NCAC 01D .2702

Effects of Reemployment on Severance Pay 25 NCAC 01D .2703

Amount and Method of Payment for Severance 25 NCAC 01D .2704

Promotional Priority Consideration for Current Employees 25 NCAC 01H .0801

Relationship to Other Employment Priority Considerations 25 NCAC 01H .0802

Requirements for Reduction in Force Priority Consideration 25 NCAC 01H .0902

**RRC DETERMINATION
PERIODIC RULE REVIEW**

January 21, 2016

Necessary with Substantive Public Interest

Administration, Department of
01 NCAC 04A .0201

10A NCAC 13P .0905
10A NCAC 13P .1401
10A NCAC 13P .1402
10A NCAC 13P .1403
10A NCAC 13P .1507

15A NCAC 04B .0132
15A NCAC 04C .0103
15A NCAC 04C .0106
15A NCAC 04C .0107
15A NCAC 04C .0108
15A NCAC 04D .0102

Medical Care Commission

10A NCAC 13P .0101
10A NCAC 13P .0102
10A NCAC 13P .0201
10A NCAC 13P .0203
10A NCAC 13P .0204
10A NCAC 13P .0216
10A NCAC 13P .0219
10A NCAC 13P .0221
10A NCAC 13P .0301
10A NCAC 13P .0302
10A NCAC 13P .0403
10A NCAC 13P .0501
10A NCAC 13P .0502
10A NCAC 13P .0504
10A NCAC 13P .0507
10A NCAC 13P .0508
10A NCAC 13P .0510
10A NCAC 13P .0601
10A NCAC 13P .0602
10A NCAC 13P .0603
10A NCAC 13P .0901
10A NCAC 13P .0902
10A NCAC 13P .0903
10A NCAC 13P .0904

**Sedimentation Control
Commission**

15A NCAC 04A .0105
15A NCAC 04B .0105
15A NCAC 04B .0106
15A NCAC 04B .0107
15A NCAC 04B .0108
15A NCAC 04B .0109
15A NCAC 04B .0110
15A NCAC 04B .0111
15A NCAC 04B .0112
15A NCAC 04B .0113
15A NCAC 04B .0115
15A NCAC 04B .0118
15A NCAC 04B .0120
15A NCAC 04B .0124
15A NCAC 04B .0125
15A NCAC 04B .0126
15A NCAC 04B .0127
15A NCAC 04B .0129
15A NCAC 04B .0130
15A NCAC 04B .0131

Locksmith Licensing Board

21 NCAC 29 .0102
21 NCAC 29 .0204
21 NCAC 29 .0205
21 NCAC 29 .0206
21 NCAC 29 .0401
21 NCAC 29 .0402
21 NCAC 29 .0404
21 NCAC 29 .0502
21 NCAC 29 .0503
21 NCAC 29 .0504
21 NCAC 29 .0601
21 NCAC 29 .0702
21 NCAC 29 .0703
21 NCAC 29 .0802
21 NCAC 29 .0803
21 NCAC 29 .0804
21 NCAC 29 .0805
21 NCAC 29 .0806

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 21, 2016
Necessary without Substantive Public Interest**

Administration, Department of

01 NCAC 01A .0301	01 NCAC 25 .0502	10A NCAC 13P .0215
01 NCAC 01A .0302	01 NCAC 25 .0503	10A NCAC 13P .0217
01 NCAC 01A .0302	01 NCAC 25 .0504	10A NCAC 13P .0218
01 NCAC 01B .0107	01 NCAC 25 .0505	10A NCAC 13P .0220
01 NCAC 01B .0207	01 NCAC 25 .0506	10A NCAC 13P .0305
01 NCAC 01B .0208	01 NCAC 25 .0601	10A NCAC 13P .0401
01 NCAC 01B .0209	01 NCAC 25 .0602	10A NCAC 13P .0402
01 NCAC 01B .0210	01 NCAC 25 .0603	10A NCAC 13P .0404
01 NCAC 01B .0306	01 NCAC 25 .0604	10A NCAC 13P .0405
01 NCAC 01B .0308	01 NCAC 25 .0605	10A NCAC 13P .0406
01 NCAC 01B .0405	01 NCAC 25 .0606	10A NCAC 13P .0407
01 NCAC 01B .0406	01 NCAC 25 .0701	10A NCAC 13P .0408
01 NCAC 01B .0407	01 NCAC 25 .0702	10A NCAC 13P .0409
01 NCAC 01B .0408	01 NCAC 25 .0703	10A NCAC 13P .0503
01 NCAC 01B .0409	01 NCAC 25 .0704	10A NCAC 13P .0505
01 NCAC 01B .0505	01 NCAC 25 .0801	10A NCAC 13P .0506
01 NCAC 01B .0506	01 NCAC 25 .0802	10A NCAC 13P .0509
01 NCAC 01B .0601	01 NCAC 25 .0901	10A NCAC 13P .0511
01 NCAC 01B .0602	01 NCAC 26B .0104	10A NCAC 13P .1003
01 NCAC 01B .0603	01 NCAC 26B .0105	10A NCAC 13P .1101
01 NCAC 01B .0604	01 NCAC 26B .0106	10A NCAC 13P .1102
01 NCAC 01B .0605	01 NCAC 26B .0206	10A NCAC 13P .1103
01 NCAC 01C .0101	01 NCAC 26B .0207	10A NCAC 13P .1404
01 NCAC 01C .0102	01 NCAC 26B .0208	10A NCAC 13P .1405
01 NCAC 01C .0103	01 NCAC 26B .0209	10A NCAC 13P .1501
01 NCAC 01C .0104	01 NCAC 26B .0210	10A NCAC 13P .1502
01 NCAC 01C .0105	01 NCAC 26B .0211	10A NCAC 13P .1503
01 NCAC 01C .0106	01 NCAC 26B .0212	10A NCAC 13P .1504
01 NCAC 04A .0202	01 NCAC 26B .0213	10A NCAC 13P .1505
01 NCAC 04A .0701	01 NCAC 26B .0214	10A NCAC 13P .1506
01 NCAC 04A .0702	01 NCAC 26B .0215	10A NCAC 13P .1508
01 NCAC 04A .0703	01 NCAC 26B .0216	10A NCAC 13P .1509
01 NCAC 04A .0704	01 NCAC 26C .0101	
01 NCAC 04A .0802	01 NCAC 26C .0102	
01 NCAC 04A .0804	01 NCAC 26C .0103	
01 NCAC 04A .0806	01 NCAC 26C .0104	
01 NCAC 04A .0901	01 NCAC 26C .0105	
01 NCAC 25 .0107	01 NCAC 26C .0106	
01 NCAC 25 .0108	01 NCAC 26C .0107	
01 NCAC 25 .0209	01 NCAC 26C .0108	
01 NCAC 25 .0210		
01 NCAC 25 .0211		
01 NCAC 25 .0212		
01 NCAC 25 .0213		
01 NCAC 25 .0214		
01 NCAC 25 .0215		
01 NCAC 25 .0301		
01 NCAC 25 .0302		
01 NCAC 25 .0303		
01 NCAC 25 .0401		
01 NCAC 25 .0402		
01 NCAC 25 .0501		

Medical Care Commission

HHS - Mental Health, Division of

10A NCAC 26E .0101
10A NCAC 26E .0102
10A NCAC 26E .0103
10A NCAC 26E .0104
10A NCAC 26E .0105
10A NCAC 26E .0106
10A NCAC 26E .0107
10A NCAC 26E .0108
10A NCAC 26E .0109
10A NCAC 26E .0110
10A NCAC 26E .0111
10A NCAC 26E .0112
10A NCAC 26E .0113
10A NCAC 26E .0114
10A NCAC 26E .0115
10A NCAC 26E .0116
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10A NCAC 26E .0119
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10A NCAC 26E .0123
10A NCAC 26E .0124
10A NCAC 26E .0125
10A NCAC 26E .0126
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10A NCAC 26E .0129
10A NCAC 26E .0201
10A NCAC 26E .0202
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10A NCAC 26E .0501
10A NCAC 26E .0502
10A NCAC 26E .0503
10A NCAC 26E .0504
10A NCAC 26E .0505
10A NCAC 26E .0506
10A NCAC 26E .0601
10A NCAC 26E .0602
10A NCAC 26E .0603

Mental Health, Commission for

10A NCAC 26F .0101
10A NCAC 26F .0102
10A NCAC 26F .0103
10A NCAC 26F .0104
10A NCAC 26F .0105
10A NCAC 26F .0106
10A NCAC 26F .0107
10A NCAC 26F .0108
10A NCAC 26F .0109
10A NCAC 26F .0110
10A NCAC 26F .0111
10A NCAC 26F .0112
10A NCAC 26F .0113
10A NCAC 26F .0114
10A NCAC 26F .0115

10A NCAC 26F .0116
10A NCAC 26F .0117
10A NCAC 26F .0118
10A NCAC 26F .0119
10A NCAC 26F .0120
10A NCAC 26F .0121
10A NCAC 26F .0122

**Sedimentation Control
Commission**

15A NCAC 04A .0101
15A NCAC 04B .0122
15A NCAC 04C .0110
15A NCAC 04C .0111
15A NCAC 04E .0101
15A NCAC 04E .0102
15A NCAC 04E .0104
15A NCAC 04E .0201
15A NCAC 04E .0203
15A NCAC 04E .0403
15A NCAC 04E .0405
15A NCAC 04E .0406
15A NCAC 04E .0501
15A NCAC 04E .0502
15A NCAC 04E .0503
15A NCAC 04E .0504

**Electrical Contractors, Board of
Examiners of**

21 NCAC 18B .0101
21 NCAC 18B .0102
21 NCAC 18B .0103
21 NCAC 18B .0104
21 NCAC 18B .0105
21 NCAC 18B .0107
21 NCAC 18B .0108
21 NCAC 18B .0109
21 NCAC 18B .0201
21 NCAC 18B .0202
21 NCAC 18B .0203
21 NCAC 18B .0204
21 NCAC 18B .0209
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21 NCAC 18B .0211
21 NCAC 18B .0301
21 NCAC 18B .0302
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21 NCAC 18B .0304
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21 NCAC 18B .0306
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21 NCAC 18B .0401
21 NCAC 18B .0402
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21 NCAC 18B .0407
21 NCAC 18B .0501
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21 NCAC 18B .0504
21 NCAC 18B .0505
21 NCAC 18B .0701
21 NCAC 18B .0801
21 NCAC 18B .0802
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21 NCAC 18B .0806
21 NCAC 18B .0807
21 NCAC 18B .0808
21 NCAC 18B .0809
21 NCAC 18B .0810
21 NCAC 18B .0901
21 NCAC 18B .0902
21 NCAC 18B .0904
21 NCAC 18B .0906
21 NCAC 18B .0907
21 NCAC 18B .0908
21 NCAC 18B .0909
21 NCAC 18B .1101
21 NCAC 18B .1102
21 NCAC 18B .1103
21 NCAC 18B .1104
21 NCAC 18B .1105
21 NCAC 18B .1106
21 NCAC 18B .1107
21 NCAC 18B .1108

Locksmith Licensing Board

21 NCAC 29 .0101
21 NCAC 29 .0201
21 NCAC 29 .0202
21 NCAC 29 .0203
21 NCAC 29 .0403
21 NCAC 29 .0501
21 NCAC 29 .0602
21 NCAC 29 .0603
21 NCAC 29 .0604
21 NCAC 29 .0605
21 NCAC 29 .0606
21 NCAC 29 .0607
21 NCAC 29 .0608
21 NCAC 29 .0609
21 NCAC 29 .0610
21 NCAC 29 .0611
21 NCAC 29 .0613
21 NCAC 29 .0614
21 NCAC 29 .0615
21 NCAC 29 .0616
21 NCAC 29 .0701
21 NCAC 29 .0704
21 NCAC 29 .0801

**RRC DETERMINATION
PERIODIC RULE REVIEW
January 21, 2016
Unnecessary**

Administration, Department of

01 NCAC 01B .0507
01 NCAC 01B .0508
01 NCAC 01B .0701
01 NCAC 01B .0702
01 NCAC 03A .0101
01 NCAC 03A .0102

01 NCAC 03A .0103
01 NCAC 03B .0101
01 NCAC 03B .0102
01 NCAC 04A .0801
01 NCAC 04A .0803
01 NCAC 04A .0805
01 NCAC 04C .0512

**Sedimentation Control
Commission**

15A NCAC 04B .0116
15A NCAC 04B .0128
15A NCAC 04C .0109

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Melissa Owens Lassiter	A. B. Elkins II
Don Overby	Selina Brooks
J. Randall May	Phil Berger, Jr.
J. Randolph Ward	David Sutton

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
Chief's Inc. v. Alcoholic Beverage Control Commission	13 ABC 18939	02/19/15	
NC Alcoholic Beverage Control Commission v. Partnership T/A Poor Boys	14 ABC 07103	08/21/15	30:08 NCR 918
American Legion, T/A Linton J Sutton Post 223-1 v. Alcoholic Beverage Control Commission	14 ABC 03686	12/23/14	
Alcoholic Beverage Control Commission v. AMH Diana Market Corp., T/A Green's Market	14 ABC 05071	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07115	01/14/15	
Alcoholic Beverage Control Commission v. Nick and Nates Pizzeria Inc T/A Nick and Nates Pizzeria	14 ABC 07116	01/14/15	
The Geube Group, Michael K Grant Sr. v. Alcoholic Beverage Control Commission	14 ABC 08696	02/16/15	
Alcoholic Beverage Control Commission v. Bhavesh Corp T/A K and B Foodmart	14 ABC 09023	02/04/15	
Alcoholic Beverage Control Commission v. Greenleaf Food and Beverage Inc T/A Bunker Jacks	14 ABC 09037	03/07/15	
Alcoholic Beverage Control Commission v. S.D.C. Group Inc T/A Perkeo Wine Bistro	14 ABC 09039	02/09/15	
Alcoholic Beverage Control Commission v. Alquasem Mustafa Salameh T/A KP Mini Mart	14 ABC 09231	02/04/15	
Alcoholic Beverage Control Commission v. Ash and Z Inc T/A 5 th Ave Speedmart	15 ABC 00355	04/22/15	
Alcoholic Beverage Control Commission v. Monterrey Mexican Restaurant Inc T/A Monterrey Mexican Restaurant	15 ABC00393	04/07/15	
NC Alcoholic Beverage Control Commission v. Greenbox, LLC, T/A Big Shots Sports Bar and Grill	15 ABC 04354	10/29/15	
Alcoholic Beverage Control Commission v. Woodlawn Restaurant and Lounge, LLC T/A O'Hara's Restaurant and Lounge	15 ABC 04355	09/03/15	
Alcoholic Beverage Control Commission v. Ortez Corp. Inc, T/A Pollo Royal Restaurant	15 ABC 04362	09/03/15	
NC Alcoholic Beverage Control Commission v. Rodeo Restaurant Group Corp, T/A Brasilla Churrasco Steakhouse	15 ABC 05010	10/06/15	
NC Alcoholic Beverage Control Commission v. Double K Sports Bar Inc, T/A Double K Sports Bar	15 ABC 05753	12/07/15	
NC Alcoholic Beverage Control Commission v. S and J Tobacco and Food Mart T/A S and J Tobacco and Food Mart	15 ABC 06629	12/14/15	
NC Alcoholic Beverage Control Commission v. 2Ak Enterprises LLC, T/A Tilt on Trade	15 ABC 06634	12/02/15	
NC Alcoholic Beverage Control Commission v. CCS Charlotte Enterprise LLC, T/A Caldwell Corner Store	15 ABC 06636	12/02/15	
<u>BOARD OF ARCHITECTURE</u>			
Board of Architecture v. Anthony Hunt	14 BOA 04954	03/03/15	30:01 NCR 77

BOARD OF BARBER EXAMINERS

Arthur Donald Darby Jr v. Board of Barber Examiners - Staff 14 BBE 04565 12/05/14

BOARD OF FUNERAL SERVICES

Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth 14 BMS 05389 02/23/15
 Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth 14 BMS 07597 02/23/15
 Board of Funeral Services v. Mitchell's Funeral Home, Vivian Cummings, Corrine Culbreth 14 BMS 08028 02/23/15

BOARD OF SOCIAL WORK

NC Social Work Certification and Licensure Board v. Stephanie Helbeck Cornfield 15 BSW 04491 10/09/15 30:14 NCR 1573

BOARD FOR THE LICENSING OF GEOLOGISTS

Robert Payne, P.G. v. NC Board for the Licensing of Geologists 14 BOG 03255 06/11/15 30:07 NCR 780

DEPARTMENT OF COMMERCE

Hog Slat, Inc v. Department of Commerce 13 COM 20122 12/05/14

BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

Belinda Johnson v. Board of Certified Public Accountant Examiners 15 CPA 00798 03/09/15

DEPARTMENT OF PUBLIC SAFETY

Kimberly H. Oliver v. Victims Compensation Commission 13 CPS 14371 04/17/15 30:03 NCR 354

Jose Guadalupe Munoz Nunez v. Victims Compensation Commission 14 CPS 02633 02/16/15
 Anne Marie Brandt v. NC Department of Public Safety 14 CPS 05077 08/18/15 30:08 NCR 924
 Jack Norris v. Victims Compensation Commission 14 CPS 06019 03/30/15 30:01 NCR 89
 Yessika Murga Martinez v. Crime Victims Compensation Commission 14 CPS 07544 05/29/15
 Joanne Sanon v. Department of Public Safety 14 CPS 07995 01/16/15
 Edward Andrew Carder v. NC Division of Victim Compensation Services 14 CPS 08579 08/25/15 30:14 NCR 1561
 Bonnie Hall v. Crime Victims Compensation Commission 14 CPS 08618 01/23/15

Antwon B. Logan v. Victims Compensation Commission 15 CPS 00093 03/11/15
 Dalton James v. Victims Compensation Commission 15 CPS 00463 04/24/15
 Dwight Earl Evans Jr. v. Victims Compensation Commission 15 CPS 03563 08/20/15
 Shawn J. McKay v. NC Department of Public Safety 15 CPS 04164 10/28/15
 Timothy Ryan Revels v. Department of Public Safety, Office of Victim Services 15 CPS 05756 09/22/15
 Kish D. Anderson v. NC Victims Compensation Commission 15 CPS 06451 12/16/15
 Latasha Watkins v. Victim Compensation 15 CPS 06893 11/30/15

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Michelle Starnes v. Patricia Norris, DVM, Director of Animal Welfare Division, North Carolina Department of Agriculture and Consumer Services 15 DAG 03112 06/25/15

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Strategic Interventions Inc. v. Western Highlands Network A LME-MCO 13 DHR 05119 06/21/13
 Kenneth Terrell Ford v. DHHS, Division of Facility Services 13 DHR 10745 05/04/15 30:03 NCR 360
 Joyce Carol Hunter v. DHHS, Division of Health Service Regulation 13 DHR 17855 01/03/14
 Rex Hospital v. DHHS, Division of Medical Assistance 13 DHR 18151 05/29/15 30:03 NCR 372
 Paul M Stella v. DHHS, Division of Public Health 13 DHR 19269 02/06/14
 UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance 13 DHR 19653 05/29/15 30:03 NCR 387
 UNC Hospitals at Chapel Hill v. DHHS, Division of Medical Assistance 13 DHR 19654 05/29/15 30:03 NCR 387
 A+ Residential Care, Daniel Saft v. NCDHHS, Division of Health Service Regulation 13 DHR 19835 05/22/15
 Stepping Stone Counseling v. NCDHHS, Division of Medical Assistance 13 DHR 19837 05/12/15

Carolina Community Support Services, Inc. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01500 04/02/15 30:04 NCR 480
 Sunrise Clinical Associates PLLC. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01503 04/02/15 30:01 NCR 97
 Fidelity Community Support Group Inc. v. Alliance Behavioral Healthcare, NCDHHS 14 DHR 01594 04/02/15 30:01 NCR 133
 Genesis Project 1, Inc v. DHHS, Division of Medical Assistance, and Mecklink Behavioral Healthcare 14 DHR 02198 06/17/15 30:07 NCR 794
 Pamela and Andrew Frederick v. DHHS 14 DHR 04017 08/28/15
 Regina Joyner v. Division of Child Development and Early Education, DHHS 14 DHR 04463 12/10/14
 Cumberland County Hospital System, Inc d/b/a Cape Fear Valley Health System and Hoke Healthcare LLC v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section 14 DHR 04692 01/21/15

CONTESTED CASE DECISIONS

Bio-Medical Applications of NC, Inc d/b/a BMA Rocky Mount v. NCDHHS, Division of Health Service Regulation, Certificate of Need Section and Total Renal Care Inc d/b/a Nash County Dialysis	14 DHR 05495	03/26/15	30:02 NCR 196
Bernita Webster v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 05566	03/10/15	30:02 NCR 229
First Image Grace Court/RHCC and Shirley Williams v. DHHS, Division of Health Service Regulation	14 DHR 06332	02/12/15	
Carrie's Loving Hands, Felicia McGee v. NCDHHS, Division of Health Service Regulation, Certification	14 DHR 06565	02/13/15	
Erica Chante Johnson v. NCDHHS, Division of Health Service Regulation, Healthcare Personnel Registry	14 DHR 06571	03/10/15	30:02 NCR 236
A United Community LLC v. Alliance Behavioral Healthcare as legally authorized contractor of and agent for NC Department of Health and Human Services	14 DHR 06837	07/20/15	30:08 NCR 930
Brenda Buck v. NCDHHS, Division of Health Service Regulation	14 DHR 07027	01/02/15	
Humble Beginnings Child Care Inc v. Division of Child Development and Early Education	14 DHR 07029	05/22/15	
Peace Of Mind Adult Group Home Kimberly Goolsby v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07325	05/22/15	
Peace of Mind Adult Group Home and Kimberly Goolsby v. DHHS, Division of Health Service Regulation	14 DHR 07626	08/31/15	
Peace of Mind Adult Group Home Kimberly Goolsby, v. NCDHHS, Division of Health Service Regulation, Mental Health Licensure and Certification Section	14 DHR 07327	05/22/15	
Dennis Reid v. NCDHHS	14 DHR 07992	04/17/15	
Hanna Lawrence v. DHHS	14 DHR 08026	01/09/15	
CMS Agency Inc. v. NC DHHS and Eastpointe human Services LME/PHP	14 DHR 08147	10/30/15	30:12 NCR 1351
Sharda R Wilkes v. NCDHHS, Division of Health Service Regulation	14 DHR 08575	01/21/15	
Sandy's Playschool LLC, Michelle Bailey-Motley v. DHHS, Division of Child Development	14 DHR 08580	02/16/15	
Alicia Staton v. Department of Health and Human Services	14 DHR 08589	02/02/15	
Tiffany Leary v. NCDHHS, Division of Health Services, Health Care Personnel Registry	14 DHR 08785	01/06/15	
Patrician Shearin v. NCDHHS	14 DHR 09012	06/29/15	
Mr. Imad Sider, EMSS Inc d/b/a New Bern Minimart v. NC Department of Health and Human Services, Division of Public Health	14 DHR 09906	07/28/15	30:08 NCR 950
Tomika Jones Moore v. NCDHHS, Division of Health Service Regulation	14 DHR 10137	04/06/15	
Jones Country Mart, Inesar M Ahmad v. NCDHHS, WIC	14 DHR 10138	02/03/15	
Theresa L Greene v. DHHS, Division of Health Service Regulation	14 DHR 10160	02/10/15	
Jeanette Peele v. Health Care Personnel Registry, Nurse Aide I	14 DHR 10162	05/18/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10167	04/27/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	14 DHR 10171	04/27/15	
Shawn Williams v. Rutherford-Polk-McDowell District Health Department, Environmental Health Division	14 DHR 10277	08/21/15	
Sarah M Carr, Agape v. Division of Child Development and Early Learning in DHHS	14 DHR 10278	08/28/15	
Sophia B Pierce and Associates d/b/a Sunny Acres Group Home v. DHHS, Division of Facility Services, Mental Health Licensure and Certification Section	14 DHR 10281	04/02/15	
Freida M. Butler v. DHHS, Division of Health Service Regulation	15 DHR 00009	05/12/15	
Kandice T. Stigger v. DHHS, Division of Health Service Regulation	15 DHR 00271	05/15/15	
Mildred R. Walker v. DHHS, Division of Health Service Regulation	15 DHR 00390	05/21/15	
The Janice Mae Hawkins Foundation Inc, Sheryl A Lyons v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	15 DHR 00462	04/27/15	
Phyllis Bryant Duren v. NCDHHS	15 DHR 00578	04/01/15	
New Life Child Care Ctr, Ruby McKinzie v. DHHS, Division of Public Health	15 DHR 00667	03/20/15	
Brown Therapeutic Home Inc. v. DHHS, Division of Health Service Regulation	15 DHR 00707	03/25/15	
Christina Renee Jones v. DHHS, Division of Health Service Regulation	15 DHR 00845	04/30/15	
Samerian Lynn Davis v. Victorian Senior Care, DHHS, DHSR, Health Care Personnel Registry	15 DHR 00991	05/27/15	
Jean's Rest Home Inc., Lula J. McDonald v. DHHS, Division of Health Service Regulation, ACLS Jan Brickley	15 DHR 01123	06/26/15	
Crystal Watson Sanjak v. DHHS, Health Care Personnel Registry	15 DHR 01152	04/29/15	
H. Urquiza Corp., La Esmeralda 2, Hermilo Urquiza v. DHHS, Division of Public Health, WIC	15 DHR 01193	05/22/15	
Donna Lewis v. DHHS, Division of Health Service Regulation	15 DHR 01205	08/07/15	
Tiny Hands of Hope Daye, Felecia Fuller v. DHHS, Division of Child Development and Early Education	15 DHR 01354	05/29/15	
Bridgette Squires v. DHHS, Health Service Regulation	15 DHR 01471	04/08/15	

CONTESTED CASE DECISIONS

Strategic Interventions, Inc. v. Smoky Mountain Center Area Authority LME/MCO	15 DHR 01519	08/26/15	30:13 NCR 1435
Gentlehands of North Carolina Inc. John O. Okonji v. DHHS	15 DHR 01546	07/01/15	
Annie Beatrice Christian v. DHHS, Division of Health Service Regulation	15 DHR 01566	06/17/15	
Barbara Combs v. Julian F. Keith ADATC, Division of Mental Health Developmental	15 DHR 01570	05/12/15	
Sharon Renee Quick v. DHHS	15 DHR 01830	06/22/15	
Melissa Ann Peaden v. DHHS, Division of Health Service Regulation	15 DHR 01832	06/03/15	
Ray D. McGee v. DHHS	15 DHR 01906	05/22/15	
Kenneth Grimes v. NC Asbestos Hazard Management Program	15 DHR 01975	07/01/15	
Henry and Barbara Brown and Quality Professional Multiservices LLC v. DHHS, Division of Health Service Regulation	15 DHR 02306	07/01/15	
Daniel Tafesse v. DHHS, Division of Health Service Regulation	15 DHR 02582	06/25/15	
Dr. Najla Ahmed, Pediatric Associates of Cleveland County v. DHHS, Division of Medical Assistance	15 DHR 02635	06/09/15	
Michael Darnelle South v. DHHS	15 DHR 02770	06/19/15	
Gemika Steele, First Steps Child Development v. Division of Child Development and Early Education of Health and Human Services	15 DHR 02905	07/09/15	
Sandra Kay Laney Stewart v. Medicaid Estate Recovery, Glana M Surlis	15 DHR 03057	07/23/15	
Special K Enrichment and Melanie James v. Partners Behavioral Health Management	15 DHR 03194	08/19/15	
Fredricklyn E. Johnson v. Division of Child Development and Early Education	15 DHR 03217	07/17/15	
Stop-N-Drop Academic Charlotte McLean v. NCDCCDEE	15 DHR 03243	07/17/15	
Cynthia Jones v. Onslow County Department of Social Services, Elaine Lacy, Danielle Kurman	15 DHR 03345	07/31/15	
Christian Prep Academy Inc., Pamela Powell v. DHHS, Division of Public Health, Child and Adult Care Food Program	15 DHR 03347	06/19/15	
Hernando Felix Sanchez Claudia Perales, LA Superior Supermarket v. Department of Health and Human Services Division	15 DHR 03374	07/16/15	
Seon M. Oh, Express international Trading Inc. d/b/a Southside Fish and Grocery V. Nutrition Services, WIC Program, DHHS	15 DHR 03419	07/16/15	
Roshanda McClure v. DHHS, Division of Health Service Regulation	15 DHR 03477	07/17/15	
Tangy Nance v. DHHS	15 DHR 03479	07/01/15	
Emmanuel Baptist Ministries Inc., Debbie Hildreth and Sandy Tarlton v. DHHS, Division of Public Health, CACFP-Program	15 DHR 03562	07/01/15	
Pamela McNeil v. NC Center for Aide Regulation and Education	15 DHR 03570	07/20/15	
Desteni Akira Lucas v. DHHS, Division of Health Service Regulation	15 DHR 03605	07/30/15	
Zakkee Hill Sr. v. DHHS	15 DHR 03739	06/25/15	
Donil Marchil Warren v. DHHS, Division of Health Service Regulation	15 DHR 04251	09/16/15	
Jehnston Health Pamela L. Pflaum v. DHHS-Hearing Office	15 DHR 04253	08/13/15	
Elite Home Health Care Inc. c/o Tara Ellerbe v. NC DHHS	15 DHR 04328	10/30/15	
Patrice M. Harris-Powell NC Healthcare Personnel, NC Nurse Aide Registry	15 DHR 04353	08/18/15	
Marleen Monique Ore v. DHHS, Division of Child Development and Early Education	15 DHR 04421	08/31/15	
Marleen Monique Ore v. Beaufort County Department of Social Services	15 DHR 04423	08/10/15	
Hasson Omar Dawkins v. DHHS, Health Service Regulation	15 DHR 04459	09/28/15	
Jennifer R. Lewis, Executive Director of Youth Focus Inc. MHL #041-631 v. DHHS, Division of Health Service Regulation, Mental Health Licensure and Certification	15 DHR 04515	09/22/15	
Onass Place Inc, Onas Perry v. Smoky Mountain LME/MCO and NC DHHS, Division of Medical Assistance	15 DHR 04658	10/07/15	
Onass Place Inc, Onas Perry v. Smoky Mountain LME/MCO and NC DHHS, Division of Medical Assistance	15 DHR 04659	10/07/15	
Margaret Jumper v. Medicaid State Recovery	15 DHR 04780	09/01/15	
L.I.M.S. MHL #013-176, Sharon Edwards-Berryman v. DHHS, Mental Health Licensure and Certification Section	15 DHR 04842	09/09/15	
Kristin N. Kaul, MS LPS (Partner at Albemarle Counseling Group, PLLC)	15 DHR 04881	09/15/15	
Gemini Johnson v. East Carolina Behavioral Health (N.K.A Trillium Health Resources)	15 DHR 04882	09/15/15	
James E. Kronlage v. East Carolina Behavioral Health (N.K.A. Trillium Health Resources)	15 DHR 04883	09/15/15	
Dorothy H. Rosenke v. East Carolina Behavioral Health (N.K.A Trillium Health Resources)	15 DHR 04884	09/15/15	
Hilary K. Hunsberger, MSW LCSW (Partner at Albemarle Counseling Group, PLLC) v. East Carolina Behavioral Health	15 DHR 04885	09/15/15	
David G. Webb v. DHHS, Office of the Controller	15 DHR 04886	09/24/15	
Treasures of Joy, Patricia S. Stinson v. DHHS, Division of Child Development and Early Education	15 DHR 05112	09/24/15	
Carolina Community Ventures Inc., Gina Bell	15 DHR 05214	12/03/15	
Lawanda D. Bland v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	15 DHR 05218	10/26/15	
Landmark Assisted Living LLC, Licensee D/B/A Grayson Creek of Welcome	15 DHR 05293	10/22/15	
Candii Homes, Rosalina Teel v. Eastpointe	15 DHR 05598	10/08/15	

CONTESTED CASE DECISIONS

Carolyn Rhone v. NC DHHS, Division of Health Service Regulation	15 DHR 05601	10/30/15	
Johnny Dale Hooks, Sr. v. NC Department of Health and Human Services	15 DHR 05783	12/02/15	
Carolyn Pritchett v. DHHS	15 DHR 06086	12/30/15	
Nancy Peace v. NC DHHS, Division of Child Development and Early Education	15 DHR 06231	12/31/15	
Linda Maness Garner v. NC DHHS, Division of Child Development and Early Education	15 DHR 06621	12/16/15	
Delaine Manly v. NC DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	15 DHR 06679	10/29/15	
Brittany Easton v. Health Care Personnel Registry	15 DHR 06727	10/28/15	
Blessing E. Anyebe v. NC DHHS, Division of Health Care Regulation, Health Care Personnel Registry Section	15 DHR 06853	12/15/15	
Laura Yvette Hardison v. DHHS, Division of Health Service Regulation	15 DHR 07973	12/11/15	
<u>DEPARTMENT OF JUSTICE</u>			
Thomas Eliza Anderson v. Private Protective Services Board	11 DOJ 10367	06/24/14	
Daniel Joseph Steele v. NC Private Protective Services Board	13 DOJ 03346	06/29/15	30:07 NCR 838
Ronnie Earl Smith Jr. v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04114	04/09/15	30:02 NCR 243
Aisha Christina Burston v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 04118	01/13/15	
Susan Maney v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05067	04/14/15	30:02 NCR 252
Dewayne Rosean Ward v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05116	05/16/15	
Tobias La'Trell Clagon v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05117	07/01/15	
Arthur Randall Griffin v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05118	04/27/15	
Rachel Elisabeth Hoffman v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05502	03/11/15	30:04 NCR 513
Rayburn Darrell Rowe v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05503	04/20/15	30:06 NCR 692
Robert Boyce Sherrill Jr. v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 05504	03/04/15	
Billy Vance Waldroup v. NC Sheriff's Education and Training Standards Commission	14 DOJ 07718	08/24/15	30:08 NCR 958
Michelle Wiggins Morings v. NC Sheriff's Education and Training Standards Commission	14 DOJ 07719	03/17/15	
Timothy McCoy Rogers v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07923	10/07/15	
Billy Ray Bureson v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07924	07/28/15	30:09 NCR 1034
Darin Clay Whitaker v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 07925	06/12/15	
Sandy Hargrove Cowan v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 07927	08/19/15	
Ahmad Malik Lance v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 08050	01/27/15	
Christopher J. Weaver v. NC Criminal Justice Education and Training Standards Commission	14 DOJ 08146	09/01/15	
Bobby Andrew Boudreau v. NC Private Protective Services Board	14 DOJ 08155	12/19/14	
Catherine Denise Netter v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08257	07/09/15	
Carol Bernice Manning v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 08258	08/17/15	30:12 NCR 1365
Waseen Abdul-Haqq v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08259	07/21/15	30:06 NCR 699
Donald Earl Schwab v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08347	05/28/15	30:04 NCR 518
Brandon Tyler Josey v. NC Sheriff's Education and Training Standards Commission	14 DOJ 08348	08/08/15	30:09 NCR 1040
Kia Rena Graham v. NC Private Protective Services Board	14 DOJ 08582	01/28/15	
Steven Joseph O'Byrne v. NC Sheriffs' Education and Training Standards Commission	14 DOJ 09954	08/13/15	30:12 NCR 1370
Samuel Jason Bradley v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00051	03/25/15	
Martin Luther Locklear v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00052	06/05/15	30:05 NCR 580
Shenikwa Janay Barefield v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00053	10/15/15	30:13 NCR 1451
Michael Allen Strickland v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00054	05/07/15	
Ronald Corbett Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00055	05/04/15	30:05 NCR 587
Michael Glenn Davis v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00211	09/11/15	30:13 NCR 1457
Rodrigo Estanol v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00212	08/03/15	30:13 NCR 1466
George Allen Woodcock v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00213	04/28/15	
Defferson Luvontae Graham v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00214	07/17/15	30:10 NCR 1181
Edward Holley v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00215	07/16/15	30:10 NCR 1186
Christopher Paul Abner v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 00216	08/17/15	30:10 NCR 1194

CONTESTED CASE DECISIONS

Kenneth Sinatra Whittington Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 00388	06/30/15	
Billy-Dee Greenwood v. NC Private Protective Services Board	15 DOJ 00520	06/02/15	30:07 NCR 833
Kendrix Lavel Mace v. NC Private Protective Services Board	15 DOJ 00708	06/04/15	
Donald Lee Lucas v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01031	09/16/15	
Jose Antonio Perez III v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01032	11/23/15	30:15 NCR 1694
John Charles Lavergne Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01033	07/22/15	
Tod Leslie Bonello v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01107	08/03/15	
Harfel Clementa Davis v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01533	08/05/15	30:13 NCR 1478
Shavonne Tawanna Collins v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01535	07/07/15	
Inah Latonna York v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01537	05/26/15	
Clonzie Lee Nealy Jr. v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01539	07/22/15	
Sheila Lauvedia Banks v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01542	05/26/15	
Rion Neil Ferguson v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 01543	07/13/15	
James Alvin Hunt v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02028	08/19/15	
Joseph Thomas Burris v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02029	10/01/15	30:11 NCR 1241
Hugh George Luster v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02530	08/18/15	
Roger Lee Inge Jr. v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02534	10/22/15	
Matthew John Steeno v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 02691	08/07/15	
Andre Deshaud Pickens v. NC Private Protective Services Board	15 DOJ 02730	06/19/15	30:10 NCR 1202
William Micah Jernigan v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 02958	07/23/15	
Brianna Coneese Billups v. NC Criminal Justice Education and Training Standards Commission	15 DOJ 03111	10/26/15	
Donnelle Farrar v. NC Private Protective Services Board	15 DOJ 03448	08/27/15	30:10 NCR 1206
Ashley Bryant Helms v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 03885	11/13/15	30:15 NCR 1700
Rae Marie Bishop v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 03888	10/13/15	
John Paul Melki v. NC Private Protective Services Board	15 DOJ 03983	10/01/15	
Matthew Dixon Lawhorn v. NC Sheriffs' Education Training Standards Commission	15 DOJ 03987	11/24/15	
Brandon Lee Hargrave Sr. v. NC Alarm Systems Licensing Board	15 DOJ 04292	07/30/15	
Michael Ross Pitchford v. NC Private Protective Services Board	15 DOJ 04293	09/25/15	
Frank Shipley Heberer v. NC Alarm Systems	15 DOJ 04294	08/04/15	30:11 NCR 1249
Timothy T.J. Conterras v. NC Private Protective Services Board	15 DOJ 05300	09/30/15	30:11 NCR 1254
Travis Lee Richmond v. NC Sheriffs' Education and Training Standards Commission	15 DOJ 05790	11/02/15	
Richard Waverly Merritt v. NC Private Protective Services Board	15 DOJ 05829	12/01/15	
Tracey Renee Thorpe v. NC Private Protective Services Board	15 DOJ 05830	12/01/15	
Justin Charles Guffey v. NC Private Protective Services Board	15 DOJ 05832	12/08/15	

DEPARTMENT OF TRANSPORTATION

Barnhill Contracting Co. Inc v. Department of Transportation, Division of Highways 12 DOT 04647 02/03/15

DIVISION OF EMPLOYMENT SECURITY

Kendra Marie Halsey v. Elizabeth City State University 14 DSC 09486 03/17/15

Ruby Anne Beck v. NC Department of Public Safety 15 DSC 01652 06/02/15

DEPARTMENT OF STATE TREASURER

Stephanie T. Treio v. NC Department of State Treasurer 14 DST 06380 05/08/15 30:04 NCR 531

Candace Collins v. NC Retirement Agency 14 DST 06428 12/02/14

Lloyd McRae Herring v. NC Department of State Treasurer Retirement Systems Division 14 DST 06724 01/20/15

Trina Parker v. State of NC Department Treasurer Retirement Division Disability Section 14 DST 06732 02/16/15

James R. Trotter v. State Treasurer, State Retirement Systems Division 14 DST 10143 10/26/15

Revonda E. Nance v. NC Department of State Treasurer Retirement Systems 15 DST 01151 05/27/15

Selyna Deshazo v. NC Retirement System Disability Section 15 DST 03060 08/20/15

Holly Ann Bowers v. Disability Retirement Systems Division, Garry Austin 15 DST 05827 10/01/15

STATE BOARD OF EDUCATION

TPS Publishing Inc. v. NC State Board of Education 14 EDC 07610 10/22/15 30:12 NCR 1376

McGraw-Hill School Education LLC v. NC State Board of Education; Textbook Commission; and Department of Public Instruction 14 EDC 08481 11/23/15 30:15 NCR 1673

Danny Lorenzo Scott v. Public Schools of NC, Department of Public Instruction 14 EDC 09883 07/10/15 30:06 NCR 705

Sherry-Lynn Amaral v. DPI NC Financial Licensure and Business Services Licensure Section 14 EDC 10060 10/07/15 30:12 NCR 1395

Allison Rascoe v. NC State Board of Education 15 EDC 00272 08/28/15 30:14 NCR 1580

CONTESTED CASE DECISIONS

Partnership Achieving Community Education "PACE" Academy v. NC State Board of Education	15 EDC 03643	08/13/15	30:14 NCR 1586
Timothy M. Maghran v. Department of Public Instruction	15 EDC 05550	11/05/15	
<u>DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES</u>			
Alcoa Power Generating Inc. v. Division of Water Resources, DENR	13 EHR 18085	05/29/15	30:03 NCR 402
Bannor Michael Macgregor v. Durham County Department of Health, Environmental Health Division	14 EHR 02900	04/13/15	
Brian T Jackson, Rosemary Jackson v. NCDHHS, Environmental Health Section, Doug Mevey and/or Harry Lewis	14 EHR 02843	01/13/15	
David Frank Crisp v. NC Department of Environment and Natural Resources	14 EHR 03870	08/14/15	30:09 NCR 1046
Garrett Adam Couick v. Cabarrus County Health Alliance	14 EHR 07603	07/24/15	
John J. Woodard Jr. v. NC Department of Environment and Natural Resources, Division of Energy, Mineral, and Land Resources	15 EHR 03522	08/20/15	
Premier Builders and Development Co. Inc. Petitioner v. NC Department of Environment and Natural Resources	15 EHR 03567	08/17/15	
<u>DEPARTMENT OF INSURANCE</u>			
Thelma Grant POA Marilyn Howard v. State Health Plan for Teachers and State Employees	13 INS 20396	05/22/15	
Kristin Jean Wilkinson v. State Health Plan for Teachers and State Employees	14 INS 04418	09/01/15	
Angela Joyner-Perry v. NC State Health Plan for Teachers and State Employees Retirement System	15 INS 00208	05/13/15	
Stacy M. Warner v. NC State Health Plan	15 INS 00833	07/31/15	30:11 NCR 1258
Tiece M. Ruffin v. NC State Health Plan	15 INS 03371	07/20/15	
Kristen Jean Wilkinson v. NC State Health Plan, Blue Cross and Blue Shield of NC	15 INS 06986	12/30/15	
<u>BOARD OF LICENSED PROFESSIONAL COUNSELORS</u>			
Beth Ford v. NC LPC Board	14 LPC 05203	08/01/14	
Beth Ford v. NC Board of Licensed Professional Counselors	14 LPC 07355	05/20/15	
<u>MISCELLANEOUS</u>			
Thomas Charles Fogarty v. Town of Maggie Valley	13 MIS 19252	01/14/14	
Jeanne McIntosh v. NC Medical Board	14 MIS 05206	09/30/14	
Tornello Faontaine: Pierce the Tribe of El and/or Bey Living Soul and Citizen of the Most High Adonai in Care of Postal Department 49308, Greensboro, NC Non-Domestic	14 MIS 08305	02/19/15	
Dennis Goodson v. Office of Administrative Hearings	14 MIS 10144	02/19/15	
Larsen Pant v. Charlotte Mecklenburg Police Department	15 MIS 05219	10/30/15	
<u>OFFICE OF STATE HUMAN RESOURCES (formerly OFFICE OF STATE PERSONNEL)</u>			
Linda Huggins v. Department of Administration, NC Human Relations Commission	08 OSP 01153	01/23/15	
Lauren Wilson Burch v. NC Alcohol Law Enforcement	12 OSP 08548	04/14/15	30:06 NCR 0681
Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 11438	04/28/15	30:01 NCR 62
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14194	08/14/14	
Sue Michaud v. Kieran Shanahan; Mikael R Gross, Department of Public Safety	13 OSP 14195	08/14/14	
Willie Joyce Partin v. DOT, Division of Motor Vehicles, Traffic Records, Crash Report Unit	13 OSP 17728	12/04/13	
Deni Crawley v. NCDPS Foothills Correctional Institution	13 OSP 19135	04/28/15	30:01 NCR 62
Steven Dolinski v. NC Department of Public Safety	14 OSP 01047	02/16/15	
Freddie Wayne Huff II v. NC Department of Public Safety	14 OSP 03402	02/16/15	
Monica Bullard v. NC Department of Public Safety	14 OSP 04724	03/18/15	
Kenneth M. Lloyd Jr. v. State of NC Department of Transportation	14 OSP 05708	01/15/15	
Millie E. Hershner v. NC Department of Administration	14 OSP 06051	10/02/14	
Matthew Lennon v. NC Department of Justice and NC Department of Public Safety	14 OSP 06377	02/16/15	
Oshun G. Williams v. NCDOT Division #5	14 OSP 06561	01/22/15	
Estate of Todd McCracken v. Department of Revenue	14 OSP 07170	08/24/15	30:09 NCR 1076

CONTESTED CASE DECISIONS

Clara Rogers v. NC Department of Public Safety/Community Corrections Boyce Fortner, 4 th Judicial Division Administrator, Karey Treadway, Asst. Judicial Division Administrator, Kevin Miller, Judicial District Manager District 25	14 OSP 07799	01/14/15	
Raymond Gene Gonzales v. NCDHHS, Division of Vocational Rehabilitation Services	14 OSP 07804	02/27/15	30:04 NCR 534
Joseph Tenhagen v. NC Department of Public Safety, Employee Advisory Committee	14 OSP 07837	03/23/15	30:05 NCR 571
Dr. Tatiana A. Tagirova v. Elizabeth City State University	14 OSP 07929	03/05/15	
Machelle Hamilton v. Caswell Center, Department of Health and Human Services	14 OSP 08082	01/13/15	
Gail Ann Hagen v. Partners Behavioral Health Management	14 OSP 08303	01/21/15	
William Frank Strickland v. NC Department of Health and Human Services	14 OSP 09484	03/17/15	
Teresa Hayes v. University of North Carolina Chapel Hill School of Dentistry	14 OSP 09689	02/12/15	
Stephen Dale Brown v. NC State University	14 OSP 09759	06/25/15	30:07 NCR 812
Zoila Brock v. Nanette Outlaw, Director Duplin County Social Services	14 OSP 10048	04/17/15	30:06 NCR 711
Benham Aryafar V. North Carolina State Board of Community Colleges/South Piedmont Community College	14 OSP 10059	02/19/15	
Robert Jarmon v. North Carolina Central University	14 OSP 10276	06/09/15	
Zeenalyn P. Williams v. NCDHHS, Central Regional Hospital	15 OSP 00006	07/17/15	
Karimah Michelle Bennett v. North Carolina Central University	15 OSP 00470	04/29/15	
Chandra Edwards v. Chapel Hill-Carrboro City Schools	15 OSP 00579	04/01/15	
Denise Brooks v. Polk Correctional Institution	15 OSP 00949	05/18/15	
Joevelyn Heard-Leak v. NC State University Center for Urban Affairs	15 OSP 01091	08/31/15	30:15 NCR 1708
Ronnie Evans v. Angela Tarantini, Department of Correction	15 OSP 01232	07/30/15	
Waldo Fenner v. John Umstead Hospital/RJ Blackley Alcohol and Drug Abuse Treatment Center (ADATC)	15 OSP 01648	05/21/15	
Barbara Smith-Lide b. NC Department of Public Safety	15 OSP 01737	12/03/15	
Samuel Avery Furlow v. NC Department of Public Safety, Polk Correctional Institution	15 OSP 02299	09/09/15	30:15 NCR 1712
Savvas Georgiades v. University of North Carolina at Pembroke-Department of Human Resources	15 OSP 02473	09/22/15	
Kimberly A. Sutton v. NC Department of Public Safety, Division of Adult Correction and Juvenile Justice	15 OSP 02512	07/28/15	
Kesselly Jahneh Kasiyah Sr. v. Guilford County Schools, Shirley Morrission	15 OSP 02826	08/28/15	
Leah Scheuerell v. Harnett Correctional Facility and Raleigh Regional Office	15 OSP 03150	07/14/15	
Samantha Davis v. Caswell Center	15 OSP 03254	07/15/15	
Donald P. Morrison, II v. NC Department of Public Safety/Division of Adult Correction/Harnett Correction Institution	15 OSP 04351	09/08/15	
Michael Glenn Davis v. NC Department of Public Safety, Adult Correction and Juvenile Justice	15 OSP 04607	09/24/15	
Johnnie M Darden Sr. v. Department of Public Safety	15 OSP 05439	12/31/15	
Teresa Hayes v. The University of North Carolina Chapel Hill School of Dentistry	15 OSP 06124	11/24/15	
Jonathan S. Onyenekewe v. NC DHHS, RJ Blackley ADATC	15 OSP 06489	11/10/15	
James Hampton Sr. v. UNC Pembroke	15 OSP 06622	11/20/15	
Ron Hedrington v. Tarheel Challenge Academy (TCA Director Timmons Edward)	15 OSP 07237	12/03/15	
Angela Miles Stephens v. NC Department fo Public Safety	15 OSP 07244	12/02/15	
April Dawn Johnson v. Broughton Hospital	15 OSP 07723	12/30/15	
<u>DEPARTMENT OF REVENUE</u>			
Donald McPhaul Jr. v. NC Department of Revenue	14 REV 04564	12/05/14	
John David Kimrey Jr. v. NC Department of Revenue	14 REV 04924	07/10/15	
Trumilla L. Howard v. NC Department of Revenue	14 REV 06018	03/09/15	
Sean Condren v. NC Department of Revenue	14 REV 09184	08/07/15	30:14 NCR 1569
Norman Harvin v. NC Department of Revenue	14 REV 09948	06/19/15	
Cassidy Linker v. NC Department of Revenue	14 REV 09956	02/20/15	
Brenda Wells v. NC Department of Revenue	15 REV 00303	04/13/14	
Jasmine J. Davenport v. NC Department of Revenue	15 REV 00357	05/29/15	
Olethia Davis v. NC Department of Revenue (Lyons Gray, Jerry Coble, Charles H. Helms, Margaret "Beth" Collins, Roderick Anthony Edwards, Thomas "Tommy" Thomas, Joan Kincaid Lawrence)	15 REV 00664	05/12/15	
Forrest Small and Kimberly Mazanec v. Department of Revenue	15 REV 00666	06/23/15	30:11 NCR 1261
Jesse Lee and Kesha Nickerson, v. NC Department of Revenue	15 REV 01088	06/17/15	
Chester L McDowell Sr v. NC Department of Revenue	15 REV 01574	10/06/15	
Michael Park and Yopop South Park LLC. V. NC Department of Revenue	15 REV 02607	07/27/15	
Marva Gillis NC Department of Revenue	15 REV 05754	10/07/15	

CONTESTED CASE DECISIONS

SUBSTANCE ABUSE PROFESSIONAL PRACTICE BOARD

North Carolina Substance Abuse Professional Practice Board v. John Patrick Craven	14 SAP 05713	01/06/15	
NC Substance Abuse Professional Practice Board v. Keith Edward Green	15 SAP 00750	08/24/15	30:16 NCR 1853

OFFICE OF THE SECRETARY OF STATE

Carolyn Marie Aikens v. Secretary of State, Notary Public	13 SOS 15500	11/05/13	
Jamel Byrd-El v. Department of the Secretary of State	14 SOS 06624	01/26/15	
Marvin Ray Sparrow v. Secretary of State	14 SOS 07416	05/05/15	
Sharron Marie Glover v. Ozie Stallworth Director, Notary Certification Enforcement Section and filing Division Department of the NC Secretary of State	14 SOS 07998	01/28/15	
Deborah T. Godfrey v. Secretary of State Notary Division	14 SOS 09902	03/09/15	
John Bradford Pittman v. NC Department of the Secretary of State	15 SOS 02354	10/19/15	
Qadir El Bey, Mesu El Bey, Asas Ashu El Bey, Fatama El Bey v. State of North Carolina Department of Secretary of State	15 SOS 02377	07/21/15	
Rasul Khesu-Sadiq Bey	15 SOS 03219	08/21/15	
Chena Conroy v. NC Department of the Secretary of State	15 SOS 05173	10/28/15	
Jason Gold v. NC Department of the Secretary of State; Notary Section	15 SOS 07346	12/03/15	

UNIVERSITY OF NORTH CAROLINA HOSPITALS

Deloris Young v. University of North Carolina Hospitals	15 UNC 01408	07/06/15	
Barbara Snipes v. University of North Carolina Hospitals	15 UNC 01927	07/16/14	
Deborah H. Justice v. University of North Carolina Hospitals	15 UNC 02347	05/21/15	
John Walker v. UNC Hospitals	15 UNC 02639	07/16/15	
Bernardine Fox v. UNC Hospitals	15 UNC 02692	08/24/15	
Theresa Bell v. UNC Hospitals	15 UNC 02693	07/01/15	
Phillip Leigh v. University of North Carolina Hospitals	15 UNC 03564	09/04/15	

NORTH CAROLINA

OFFICE OF ADMINISTRATIVE HEARINGS

WAKE COUNTY

15 SAP 750

NORTH CAROLINA SUBSTANCE)
 ABUSE PROFESSIONAL PRACTICE)
 BOARD)
)
 Petitioner)
)
 v.)
)
 KEITH EDWARD GREEN)
)
 Respondent)
)

PROPOSAL FOR DECISION

Office of
 Administrative Hearings
 2015 AUG 24 AM 11:20
 Filed

THIS CAUSE coming on to be heard and being heard on June 22, 2015, in the Office of Administrative Hearings, and it appearing that Respondent was present and appeared *pro se*, and the Petitioner was represented by attorney Mr. Nelson G. Harris of the Raleigh, North Carolina law firm of Harris & Hilton, P.A.

Based upon the evidence presented, a review of the documents in the case file, and the arguments of the parties, the undersigned makes the following findings of fact:

1. Petitioner North Carolina Substance Abuse Professional Practice Board (“the Board”), was established by N.C.G.S. § 90-113.32, and is recognized as the registering, certifying, and licensing authority for substance abuse professionals described in the Practice Act.
2. Respondent is a citizen and resident of Orange County, North Carolina.
3. The Board was established to safeguard the public health, safety, and welfare, to protect the public from being harmed by unqualified persons, to assure the highest degree of professional care and conduct on the part of credentialed substance abuse professionals, to provide for the establishment of standards for the education of credentialed substance abuse professionals, and to ensure the availability of credentialed substance abuse professionals of high quality to persons in need of these services.
4. The Board, under authority granted by the Practice Act, regulates Board-credentialed persons offering substance abuse assessments, counseling and treatment services, substance abuse prevention services, and any other substance abuse services for which the Board is authorized to grant registration, certification or licensure.

5. N.C.G.S. § 90-113.40(c) provides that the Board shall issue a license credentialing an applicant as a "Licensed Clinical Additions Specialist" ("LCAS") if, in addition to meeting the requirements of subdivisions (a)(1) through (5a) of the section, the applicant meets one of the following four (4) criteria, referred to as Criteria A, Criteria B, Criteria C or Criteria D.

6. Respondent applied to the Board for a license as a LCAS pursuant to "Criteria A."

7. Criteria A includes a requirement that the applicant have "a minimum of a master's degree with a clinical application in a human services field from a regionally accredited college or university." N.C.G.S. § 90-113.40(c)(1)(a).

8. Respondent's master's degree from the University of Louisville is in Special Education, and he contends this degree qualified him for licensure as a LCAS.

9. However, Respondent's master's degree did not involve counseling in a clinical setting, or counseling supervised by a professor or other instructor.

10. Respondent did perform community support work, case management work, and referrals in connection with his course of study through internships and independent study, but these were not supervised by his professor(s), nor were they done in a clinical setting.

11. The Quality Assurance Committee of the Board, and the Executive Committee of the Board, after review of Respondent's application and other submittals, determined that Respondent's degree did not have a clinical application as required by N.C.G.S. § 90-113.40(c)(1)(a), and that a license should not be issued under Criteria A.

12. Prior to Respondent's application, the Board, in considering other applications for licensure under Criteria A, consistently applied its definition of "clinical application". (T. pp. 53-54).

13. In particular, with respect to each such application, the Board has maintained that an applicant only qualifies under Criteria A if there is direct observation by the professor or other instructor, or if the work is in a clinical setting. (T. p. 54).

14. Respondent timely requested a contested case hearing from the Board's determination that he did not qualify for licensure.

15. The phrase "clinical application" as used herein is unambiguous.

16. For purposes of qualifying for licensure under Criteria A, an applicant must show that the master's degree on which the applicant relies in his application involved counseling in a clinical setting, or counseling supervised by a professor or other instructor.

17. While Respondent's educational and work background are impressive, the master's degree issued to him by the University of Louisville does not qualify for licensure as an LCAS under Criteria A of N.C.G.S. § 90-113.40(c).

Based upon the foregoing findings of fact, the undersigned concludes as a matter of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein.
2. The Respondent has the burden of proof in this matter, and must prove his case by the preponderance of the evidence.
3. Both parties were properly noticed for hearing of this contested case.
4. Respondent has produced insufficient evidence to prove that the master's degree conferred upon him by the University of Louisville involved a clinical application.
5. The Petitioner's interpretation of the term "clinical application" is reasonable and based upon a permissible construction of the statute.
6. Petitioner has consistently applied its interpretation, and, in accordance with *Rainey v. N.C. Department of Public Instruction*, 361 N.C. 679, 680-681, 652 S.E.2d 251, 252, 253 (2007), its interpretation is entitled to some deference. See also, *Cashwell v. Department of State Treasurer*, 198 N.C. App. 80, 675 S.E.2d 73 (2009); *City of Durham v. North Carolina Department of Environmental and Natural Resources*, 131 N.C. App. 395, 507 S.E.2d 310 (1998); *Carpenter v. N.C. Department of Human Resources*, 107 N.C. App. 278, 419 S.E.2d 582 (1992).
7. The phrase "clinical application" in the context of Criteria A is clear and unambiguous, requiring either direct observation by a professor or other instructor, or work conducted in a clinical setting.
8. Respondent's master's degree from the University of Louisville did not include a clinical component that involved direct observation by a professor or other instructor, or work that was conducted in a clinical setting.
9. The Board's interpretation is reasonable in light of the purposes for which it was established, which are to safeguard the public health, safety and welfare of the public by preventing the licensure of unqualified substance abuse counselors.
10. More specifically, interpreting the "clinical application" requirement to mean that an applicant must have instructor supervised or clinical counseling experience is not only a

reasonable interpretation of the statute, it is an interpretation that will tend to prevent individuals without any counseling experience, who are presumably less qualified to provide counseling services to the public than individuals with supervised counseling experience, from being licensed to provide counseling services to the public. *See also*, N.C.G.S. § 90-113.33, which provides that: "The powers and duties enumerated in this section are granted for the purposes of enabling the Board to safeguard the public health, safety, and welfare against unqualified or incompetent practitioners and are to be liberally construed to accomplish this objective."

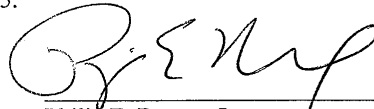
Based upon the foregoing findings of fact and conclusions of law, Respondent does not qualify for licensure as an LCAS under Criteria A of N.C.G.S. § 90-113.40(c), and his application should be denied.

NOTICE AND ORDER

The North Carolina Substance Abuse Professional Practice Board is the agency that will make the Final Decision in this contested case. As the final decision-maker, that agency is required to give each party an opportunity to file exceptions to this proposal for decision, to submit proposed findings of fact, and to present oral and written arguments to the agency pursuant to N.C. Gen. Stat. § 150B-40(e).

The final decision maker shall serve a copy of the Final Agency Decision upon each party personally, or by certified mail, addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to any attorney of record. N.C.G.S. § 150B-42(a). 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.

This the 24th day of August, 2015.



Philip E. Berger, Jr.
Administrative Law Judge