

NORTH CAROLINA REGISTER

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August 1, 2016

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Contact List for Rulemaking Questions or Concerns

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

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

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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
30:20	04/15/16	03/24/16	04/30/16	06/14/16	06/20/16	08/01/16	01/2017	01/10/17
30:21	05/02/16	04/11/16	05/17/16	07/01/16	07/20/16	09/01/16	01/2017	01/27/17
30:22	05/16/16	04/25/16	05/31/16	07/15/16	07/20/16	09/01/16	01/2017	02/10/17
30:23	06/01/16	05/10/16	06/16/16	08/01/16	08/22/16	10/01/16	01/2017	02/26/17
30:24	06/15/16	05/24/16	06/30/16	08/15/16	08/22/16	10/01/16	01/2017	03/12/17
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
31:03	08/01/16	07/11/16	08/16/16	09/30/16	10/20/16	12/01/16	01/2017	04/28/17
31:04	08/15/16	07/25/16	08/30/16	10/14/16	10/20/16	12/01/16	01/2017	05/12/17
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

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

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 07 – DEPARTMENT OF NATURAL AND CULTURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Historical Commission intends to adopt the rules cited as 07 NCAC 04R .0918-.0926 and amend the rules cited as 07 NCAC 04R .0909.

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

Proposed Effective Date: December 1, 2016

Public Hearing:

Date: August 22, 2016

Time: 10:00 a.m. to 12:00 p.m.

Location: Office of State Archives, 109 East Jones Street, 3rd Floor (Conference Room), Raleigh, NC 27699

Reason for Proposed Action:

Rules 07 NCAC 04R .0918-.0926 are proposed for the purpose of defining and explaining the procedures for obtaining a tax credit under the State's Historic Tax Credit Program.

Rule 09 NCAC 04R .0909 amends sections of the rule describing the scope and overview of the State's Historic Tax Credit Program.

Comments may be submitted to: Ramona Bartos, 4617 Mail Service Center, Raleigh, NC 27699, phone (919) 807-6583, email Ramona.Bartos@ncdcr.gov

Comment period ends: September 30, 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 04 – ARCHIVES AND HISTORY

SUBCHAPTER 04R - ARCHAEOLOGY AND HISTORIC PRESERVATION SECTION

SECTION .0900 - TAX ACT CERTIFICATION REVIEW

07 NCAC 04R .0909 SCOPE OF RULES AND OVERVIEW OF STATUTORY AUTHORITY

(a) Rules .0901 - .0908 of this Section relate to recommendations made by the State Historic Preservation Officer (SHPO) to the Secretary of the Interior in connection with federal tax incentives involving the rehabilitation of income-producing historic properties.

(b) The SHPO makes certifications of historic significance and certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of non-income-producing historic properties. The Rules .0909 - .0915 of this Section are applicable to these certifications under Articles 3D and 3H of G.S. 105.

(c) The procedures for obtaining certifications under Articles 3D and 3H of G.S. 105 are set forth in Rules .0909 - .0915 of this Section. Owners ~~wishing~~ seeking certifications shall provide sufficient documentation to the SHPO to make certification decisions. These procedures shall be applicable to future and pending certification requests except as otherwise provided herein.

(d) Requests for certifications and approvals of proposed rehabilitation work shall be sent by an owner to the SHPO for review. All certification decisions shall be made by the SHPO based upon review by HPO staff of the application and supporting documentation.

(e) Rule .0916 of this Section relates to fees charged for reviewing income-producing and nonincome-producing rehabilitation certification requests under Articles 3D and 3H of G.S. 105.requests.

(f) The SHPO makes certifications of rehabilitation in connection with State tax incentives involving the rehabilitation of income-producing historic properties. Rule .0917 of this Section is applicable to the coordination with the Federal Certified Historic Rehabilitation Program for these rehabilitation certification requests under Articles 3D and 3H of G.S. 105.requests.

Authority G.S. 105-129.35; 105-129.36A; 105-129.74; 105-130.42; 105-151.23.

07 NCAC 04R .0918 PURPOSE

(a) Article 3L of G.S. 105 authorizes a state historic rehabilitation tax credit program for rehabilitation of both income-producing and non-income-producing certified historic structures. The purpose of Rules .0918 - .0924 set forth the procedures for obtaining certifications for the state historic rehabilitation tax credits provided by Article 3L of G.S. 105. These procedures shall be applicable to future and pending Article 3L certification requests except as otherwise provided herein.

(b) Pursuant to G.S. 105-129.105(a), a taxpayer who is allowed a federal income tax credit under section 47 of the Internal Revenue Code for making qualified rehabilitation expenditures for an income-producing certified historic structure located in this State is allowed a state tax credit as set forth in Article 3L of G.S. .0105. Federal approval of said rehabilitation is required to receive the Article 3L state tax credit, and Code of Federal Regulations' definitions and procedures are hereby incorporated by reference for state certifications related to income-producing certified historic structures with substitutions for corresponding state officials and entities in lieu of federal counterparts.

Authority G.S. 105-129.105; 105-129.106; 105-129.107.

07 NCAC 04R .0919 DEFINITIONS

(a) For purposes of Rules .0918 through .0925 of this Section:

- (1) "Certified historic district" is defined in 36 C.F.R. 67.2 and 26 USCS § 47.
- (2) "Certified historic structure" is defined in 36 C.F.R. 67.2 and Section 47 of United States Code, and is synonymous with "certified historic structure" as defined in G.S. 105-129.105(c)(1).
- (3) "Certified rehabilitation" is defined in:
 - (A) 36 C.F.R. 67.2, and as further certified by the State Historic Preservation Officer to the North Carolina Department of Revenue for income-producing structures; and
 - (B) G.S. 105-129.106(c)(1) for non-income-producing structures.
- (4) "C.F.R." means the Code of Federal Regulations.
- (5) "Department of the Interior" means the United States Department of the Interior.
- (6) "Discrete property parcel" is defined in G.S. 105-129.106(c)(2).
- (7) "Historic district" is defined in 36 C.F.R. 67.2.
- (8) "Inspection" is defined in 36 C.F.R. 67.2.
"Representative of the Secretary" exclusively means, in the context of the state historic tax credit program, a representative of the State Historic Preservation Officer and/or HPO staff members.
- (9) "Integrity" means "historic integrity" as defined in NPS publication How to Apply the National Register Criteria for Evaluation: Bulletin 15.
- (10) "National Park Service" (NPS) means the division within the United States Department of

the Interior responsible for administering national parks and historic preservation programs.

- (11) "National Register Historic District" means any historic district listed in the National Register of Historic Places.
 - (12) "National Register Nomination" means the documentation for a resource that includes the National Register Nomination Form NPS 10-900 with accompanying continuation sheets, maps, and photographs, prepared in accord with requirements and guidance in the NPS publication How to Complete the National Register Registration Form: Bulletin 16A and in other NPS technical publications on the subject.
 - (13) "National Register of Historic Places" is defined in 36 C.F.R. 67.2.
 - (14) "Owner" means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the North Carolina Department of Revenue for purposes of the applicable tax benefits.
 - (15) "Period of significance" is defined in NPS publication How to Complete the National Register Registration Form: Bulletin 16A.
 - (16) "Property" is defined in 36 C.F.R. 67.2.
 - (17) "Rehabilitation" is defined in 36 C.F.R. 67.2.
 - (18) "Secretary of the Interior" means the Secretary of the United States Department of the Interior or the designee authorized to carry out his/her responsibilities.
 - (19) "Standards for Rehabilitation" means the Secretary of the Interior's "Standards for Rehabilitation" as cited in the Code of Federal Regulations, 36 C.F.R. 67.
 - (20) "State Historic Preservation Office (HPO)" means the section within the North Carolina Office of Archives, History, and Parks responsible for administering historic preservation programs.
 - (21) "State Historic Preservation Officer (SHPO)" is defined in G.S. 105-129.105(c)(7) for income-producing rehabilitation projects, and G.S. 105-129.106(c)(6) for non-income-producing rehabilitation projects.
 - (22) "State-certified historic structure" is defined in G.S. 105-129.106(c)(5).
 - (23) "Structure" means "building" as defined by 36 C.F.R. 60.3(a), and includes but is not limited to houses, barns, churches, hotels, warehouses, mills. However, objects and sites as defined in 36 C.F.R. 60.3(j) and (l) do not qualify as structures.
- (b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.

Authority G.S. 105-129.105; 105-129.106; 105-129.107; 121-4(13); 121-8.

07 NCAC 04R .0920 APPLICATIONS

(a) Who may apply. 36 CFR 67.3(a)(1), (4), and (5) are incorporated by reference to establish who may apply for state historic tax credit under Article 3L of G.S. 105. An applicant may obtain a preliminary and non-binding determination of a property's historic significance within a National Register or certified historic district prior to undertaking a rehabilitation project by submitting a written request to the HPO.

(b) How to apply. Applications for certifications of proposed rehabilitation, historic significance, and completed rehabilitation as set forth by Rules .0921 and .0923 of this Section shall be submitted on the State's Historic Preservation Certification Application, available upon request from the HPO. Two copies of the application and supporting documentation, including photographs and plans are required.

(c) Submissions. Requests for certifications and approvals of proposed rehabilitation projects shall be mailed to the HPO at the following address: Attention: Tax Credit Coordinator, State Historic Preservation Office, 4617 Mail Service Center, Raleigh, NC 27699-4617.

(d) Incomplete application. Where documentation as defined in Rules .0921 and .0923 of this Section is not provided, the owner will be notified in writing of the information necessary to complete the review. The application shall be placed on hold pending the receipt of complete information. If complete information is not received within 30 days from the date of the request to the owner, the application shall be returned to the owner due to insufficient documentation.

(e) Approvals. Approval of applications and any amendments shall be conveyed to the owner only in writing by the SHPO or his or her duly authorized representative. Decisions with respect to certifications shall be made on the basis of the descriptions contained in the application and other documentation as defined in Rule .0923(a)(1) of this Section. In the event of any discrepancy between the application and other supplementary material submitted with it (such as architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy is not resolved, the description in the application shall take precedence.

(f) 36 CFR 67.3(b)(7) is incorporated by reference for State income-producing historic tax credit projects. Reviews of State historic tax credit projects will not be undertaken if the owner has objected to the listing of the property in the National Register of Historic Places.

Authority G.S. 105-129.105; 105-129.106; 105-129.107.

07 NCAC 04R .0921 CERTIFICATIONS OF HISTORIC SIGNIFICANCE

(a) Applicant request for certification of historic significance. 36 C.F.R. 67.4(a) is incorporated by reference for an applicant's request to the SHPO for certifications of historic significance. The owner may contact the HPO to determine whether or not a property is already individually listed in the National Register of

Historic Places or located within a National Register or certified historic district.

(b) Determination of historic significance. 36 C.F.R. 67.4(c) is incorporated by reference for determinations of historic significance in the case of a property located within the boundaries of a historic district and the owner wishes to determine if the property is a certified historic structure or a preliminary determination of significance under Rule .0920(a) of this Section.

(c) Historically functionally related structures. 36 C.F.R. 67.4(d)(2) and (e) are incorporated by reference for historically functionally related structures, and references in these cited C.F.R. sections to the "Secretary" shall mean "SHPO".

(e) Moved structures. If a structure is to be moved as part of a rehabilitation for which certification is sought, the owner must follow the procedures outlined in 36 C.F.R. 60 and 36 C.F.R. 67.4(h), or risk denial of a certification of historic significance.

(f) Contributing properties. Properties within historic districts shall be evaluated to determine if they contribute to the historic significance of the district by application of the standards set forth in Rule .0922 of this Section.

(g) Once the significance of a property located within a National Register or certified historic district has been determined by the SHPO, written notification shall be sent to the owner.

Authority G.S. 105-129.105; 105-129.106; 105-129.107.

07 NCAC 04R .0922 STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN NATIONAL REGISTER OR CERTIFIED HISTORIC DISTRICTS

(a) 36 C.F.R. 67.5(a) is incorporated by reference to evaluate significance within National Register or certified historic districts, and references in these cited C.F.R. sections to the "Secretary" shall mean "SHPO". Structures that contribute to the historic significance of a district are certified historic structures.

(b) If non-historic surface material obscures a facade, the owner shall remove the surface material as part of the rehabilitation so that a determination of significance in accord with 36 C.F.R. 67.5(e), can be made. If the previously obscured facade has retained historic integrity and the property contributes to the historic district in accord with the NPS publication How to Apply the National Register Criteria for Evaluation: Bullet 15, it will be deemed a certified historic structure.

(c) If a property is located in a National Register or certified historic district but outside the district's period of significance, the National Register nomination or certification report for the district must be amended in accord with National Register amended procedures set forth in NPS publication How to Complete the National Register Registration Form: Bullet 16A to expand the period of significance before a request for final certification is submitted to the SHPO.

Authority G.S. 105-129.105; 105-129.106; 105-129.107.

07 NCAC 04R .0923 CERTIFICATIONS OF REHABILITATION

(a) Owners seeking to have their State rehabilitation project certified as meeting the Standards for Rehabilitation shall comply with the procedures below.

(1) To initiate review of a rehabilitation project for certification purposes, an owner shall submit an application to the SHPO. Applications are available upon request from the HPO. Information and documentation as set forth in 36 C.F.R. 67.6(a)(1) shall accompany the application. Substituting a State form for the federal Part 2 of the Historic Preservation Certification Application, 36 C.F.R. 67.6(a)(1) is otherwise incorporated by reference and applies.

(2) A project does not become a certified rehabilitation until it is completed by the owner and certified by the SHPO. Substituting State forms for the NPS Part 2 of the Historic Preservation Certification Application and NPS Request for Certification of Completed Work, 36 C.F.R. 67.6(a)(2) is otherwise incorporated by reference and applies.

(b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment as determined by the SHPO, as well as related demolition, new construction or rehabilitation work that affects the historic qualities, integrity or landscape features, and environment of the certified historic structure(s). More specific considerations in this regard are set forth in 36 C.F.R. 67.2 and 36 C.F.R. 67.6(b)(1) through (7), and incorporated by reference, and references in these cited C.F.R. sections to the "Secretary" shall mean "SHPO", and to "Internal Revenue Service" shall mean "Department of Revenue". An owner undertaking a rehabilitation project shall not be held responsible for prior work not part of the current project and undertaken prior to January 1, 2016.

(c) Upon receipt of a complete application describing the rehabilitation project, the SHPO shall determine if the project meets the "Standards for Rehabilitation." If the proposed project does not meet the "Standards for Rehabilitation," the owner shall be advised of that fact in writing and, where possible, shall be advised of necessary revisions, in the form of conditions that will bring the proposed rehabilitation project into compliance with the Standards.

(d) Once a proposed project has been approved, changes in the work as described in the application must be brought to the attention of the SHPO by written statement to ensure continued conformance to the Standards. The SHPO shall notify the owner in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) To facilitate project review, the SHPO, by and through HPO staff, reserves the right to conduct on-site inspections of completed or pending projects to confirm matters represented in applications, to review any alterations, and to determine if the work meets the "Standards for Rehabilitation."

(f) If a completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter from the SHPO or his/her duly authorized representative shall be sent to the owner.

Authority G.S. 105-129.105; 105-129.106; 105-129.107.

07 NCAC 04R .0924 STANDARDS FOR REHABILITATION

(a) 36 C.F.R. 67.7(a) - (d), (f) are incorporated by reference and set forth the Standards for Rehabilitation and criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation; references in these cited C.F.R. sections to the "Secretary" shall mean "SHPO". For further information on treatments that comply with the Standards, applicants are encouraged to consult NPS Guidelines for Rehabilitating Historic Building and NPS Preservation Briefs can be found at the following website: <https://www.nps.gov/tps/standards/rehabilitation/rehab/> and <https://www.nps.gov/tps/how-to-preserve/briefs.htm>. In addition to those treatments outlined in 36 C.F.R. 67.7, other treatments that do not comply with the Standards for Rehabilitation include the following:

- (1) removal of character-defining historic exterior or interior materials and features, such as doors, windows, woodwork, and significant landscape features;
- (2) excessive site paving; installing undocumented or non-period features; excessive alteration of exterior/interior features or spaces; removal of plaster from interior masonry walls to expose underlying masonry surface;
- (3) using sandblasting or damaging water pressure as an exterior cleaning method;
- (4) introduction of sealers or non-breathable materials on masonry surface, insulation, storm windows, and epoxy as contraindicated by NPS Guidelines for Rehabilitating Historic Buildings and NPS Preservation Briefs;
- (5) installation of inappropriate replacement doors and windows such as metal or vinyl clad windows in place of wood windows; or
- (6) replacement of non-deteriorated or repairable materials such as windows or millwork; painting unpainted masonry surfaces; and installation of artificial siding.

(b) Prior approval of a project by local agencies and organizations does not ensure certification by the SHPO for State tax credit purposes. The Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property, and where, applicable, the district in which it is located.

Authority G.S. 105-129.105; 105-129.106; 105-129.107.

07 NCAC 04R .0925 FEES FOR PROCESSING REHABILITATION CERTIFICATION REQUESTS

(a) The North Carolina Department of Natural and Cultural Resources shall charge fees for reviewing income-producing and non-income-producing rehabilitation certification requests in accordance with the schedule in Paragraph (e) of this Rule.

(b) Payment shall be made payable to: North Carolina Department of Natural and Cultural Resources. A certification decision by the State Historic Preservation Office shall not be

issued on an application until the appropriate remittance is received by the department. Fees are nonrefundable.

(c) No fee shall be charged for rehabilitations under twenty-five thousand dollars (\$25,000).

(d) Initial fee for proposed rehabilitation project. The fee to initiate review of a proposed rehabilitation project over twenty-five thousand dollars (\$25,000) is two hundred fifty dollars (\$250.00). The initial fee for review of a proposed rehabilitation project shall be credited towards and deducted from the final review fee.

(e) Final review fee. The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work, in accordance with the following schedule.

<u>Completed Qualifying Rehabilitation Expenditures</u>	<u>Fee</u>
<u>\$5,000 - \$25,000</u>	<u>\$0</u>
<u>\$25,001 - \$50,000</u>	<u>\$250</u>
<u>\$50,001 - \$75,000</u>	<u>\$500</u>
<u>\$75,001 - \$100,000</u>	<u>\$750</u>
<u>\$100,001 - \$150,000</u>	<u>\$1,000</u>
<u>\$150,001 - \$200,000</u>	<u>\$1,500</u>
<u>\$200,001 - \$300,000</u>	<u>\$1,750</u>
<u>\$300,001 - \$400,000</u>	<u>\$2,000</u>
<u>\$400,001 - \$500,000</u>	<u>\$2,250</u>
<u>\$500,001 - \$1,000,000</u>	<u>\$2,750</u>
<u>\$1,000,001 - \$5,000,000</u>	<u>\$5,750</u>
<u>\$5,000,001 or more</u>	<u>\$8,750</u>

Fees for review of non-income-producing projects shall not exceed one thousand dollars (\$1,000) per discrete property parcel every five years, as qualifying rehabilitation expenditures for purposes of a tax credit are limited to one hundred fifty thousand dollars (\$150,000) per G.S. 105-129.101(b).

(f) In the following cases, the initial fee for preliminary review of proposed projects is two hundred fifty dollars (\$250.00) and the final fee for review of completed projects is computed on the basis of the total completed qualifying rehabilitation expenditures:

- (1) In the case of a rehabilitation project that includes more than one certified historic structure where the structures are judged by the reviewing authority to have been functionally related historically to serve an overall purpose per Rule .0921(c) of this Section; or
- (2) In the case of multiple building projects where:
 - (A) there is no historic functional relationship among the structures that are under the same ownership;
 - (B) are located in the same historic district;
 - (C) are adjacent or contiguous;
 - (D) are of the same architectural type (e.g., rowhouses, loft buildings, commercial buildings); and

(E) are submitted by the owner for review at the same time.

Authority G.S. 105-129.105; 105-129.106; 105-129.107.

07 NCAC 04R .0926 COORDINATION WITH THE FEDERAL INCOME-PRODUCING HISTORIC PRESERVATION REHABILITATION PROGRAM

(a) A taxpayer is not required to apply for or pay the State fee for reviewing an income-producing rehabilitation certification request if the taxpayer is not going to utilize the State tax incentive.

(b) National Park Service certification of a property as historically significant shall be deemed to be certification of a property as historically significant by the State Historic Preservation Officer.

(c) The State Historic Preservation Officer shall certify and forward income-producing rehabilitation projects to the National Park Service for review, and National Park Service review shall constitute final certification. The National Park Service certification shall not be deemed to be project certification by the State Historic Preservation Officer.

(d) Taxpayers are cautioned that deadlines and requirements for state certifications may differ from deadlines and requirements for federal certifications.

Authority G.S. 105-129.105; 105-129.107.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 10A NCAC 41C .0702.

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

Proposed Effective Date: *December 1, 2016*

Public Hearing:

Date: *September 20, 2016*

Time: *10:00 a.m.*

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

Reason for Proposed Action: *This rule governs the required reporting of industrial diseases, illnesses, and injuries that are dangerous to the public health. The rule amendment proposes to add Carbon Monoxide (CO) to the list of reportable illnesses. CO poisoning incidents are totally preventable; yet each year North Carolinians are getting sick and dying from CO poisoning. Although the Occupational and Environmental Epidemiology Branch monitors CO poisoning throughout the state, we currently do not capture all cases because many CO poisoning victims do not visit the emergency department or call the Carolinas Poison Center. For example, cases seen by private physicians, outpatient*

clinics, and urgent care clinics are not captured in the emergency departments' data.

Public health currently does not have data on the main sources causing CO poisoning and the circumstances surrounding these incidents, including equipment details if incidents occur at the workplace.

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: September 30, 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 41 – EPIDEMIOLOGY HEALTH

SUBCHAPTER 41C – OCCUPATIONAL HEALTH

SECTION .0700 – OCCUPATIONAL HEALTH SURVEILLANCE

10A NCAC 41C .0702 REPORTABLE DISEASES, ILLNESSES, AND INJURIES

(a) The following named diseases, illnesses, and injuries are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease, illness, and injury is diagnosed:

- (1) asbestosis - 15 working days;
(2) silicosis - 15 working days;
(3) elevated blood lead levels for adults aged 18 years of age and above - 15 working days;
(4) serious and preventable injuries caused by tractors, farm equipment, or farm machinery

that occur while working on a farm - 15 working days;

(5) work-related carbon monoxide poisoning - 15 working days.

(b) All laboratories providing diagnostic service in North Carolina shall report to the Occupational Health Section elevated blood lead levels for adults aged 18 years of age and above.

(c) Physicians are not required to report elevated blood lead levels for adults aged 18 years of age and above when a laboratory providing diagnostic service in North Carolina reports elevated blood lead levels.

Authority G.S. 130A-455; 130A-456; 130A-457; 130A-458.

CHAPTER 12 – PARKS AND RECREATION AREA RULES

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Natural and Cultural Resources intends to readopt with substantive changes the rules cited as 15A NCAC 12H .0103-.0105, .0201-.0208, .0301-.0308, and .0401-.0403.

Link to agency website pursuant to G.S. 150B-19.1(c): http://www.ncdcr.gov/

Proposed Effective Date: March 1, 2017

Public Hearing:

Date: August 30, 2016

Time: 10:00 a.m.-12:00 p.m.

Location: Office of State Archives, 109 East Joes Street, 3rd Floor (Conference Room), Raleigh, NC 27699

Reason for Proposed Action: The proposed rules are necessary to carry out the functions of the Nature Preserves Act (Part 42 of Ch. 143B of the N.C.G.S.). Specifically, this set of rules seeks to establish a format process for the selection, registration, and dedication of qualified natural areas and nature preserves.

Comments may be submitted to: Misty Buchanan, 1651 Mail Service Center, Raleigh, NC 27699, phone (919) 707-8107, email misty.buchanan@ncdcr.gov

Comment period ends: September 30, 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)

SUBCHAPTER 12H - NATURAL HERITAGE PROGRAM

SECTION .0100 – GENERAL PROVISIONS

15A NCAC 12H .0103 DEFINITIONS AS USED IN THIS SUBCHAPTER

In addition to the definitions in G.S. ~~113A-164.3~~; 143B-135.254; the following terms shall apply to this Subchapter:

- (1) "Natural diversity" means the ~~native range of~~ plant and animal species, geological features, plant communities, ecosystem ~~types~~-types, and other natural features.
- (2) "Natural Heritage Areas List" means a list of those Natural areas recommended by the Natural Heritage Program that are of special importance to the maintenance of the state's natural diversity and that may warrant protection by registration or dedication.
- ~~(3) "Registry of Natural Heritage Areas" means a list of registered areas.~~
- (3) A "Natural community" means any area with a distinct and reoccurring assemblage of plants, animals, bacteria, and fungal species naturally associated with each other and their physical environment.

Authority G.S. 143B-135.252; 143B-135-254; 143B-135.256.

15A NCAC 12H .0104 RESPONSIBILITIES AND DUTIES OF NATURAL HERITAGE PROGRAM

~~The Natural Heritage Program shall be responsible for conducting and maintaining the state's inventory of natural areas and natural diversity resources including endangered and threatened species; for identifying the state's most important natural areas; for data exchange with other public agencies; for arranging the registration of natural areas and dedication of nature preserves; for maintaining a plan governing the system of registered and dedicated natural areas; and for establishing means for the protection and management of the state's natural heritage resources, as further described in the Division's administrative manual and the program's operations manual and public information documents.~~

Authority G.S. 113-3; 113-8; 113A-164.4.

15A NCAC 12H .0105 NATURAL HERITAGE ADVISORY COMMITTEE

~~(a) There is a~~ The Natural Heritage Advisory Committee shall be composed of nine members appointed by the secretary. ~~Secretary, in accordance with The Nature Preserves Act G.S. 143B-135.256(6).~~

~~(b) Purpose. The purpose of the committee is to advise the secretary and department on matters concerning the identification, selection, registration, dedication, protection, and management of natural areas and preservation of North Carolina's natural diversity, and to coordinate and facilitate cooperative efforts among public, private, academic, and scientific bodies engaged in natural heritage inventory and protection activities.~~

~~(c)(b) Functions, Composition, Terms of Service. The Natural Heritage Advisory Committee shall:~~

- (1) advise and make recommendations to the Department on inventory and evaluation of natural areas;
- (2) review and make recommendations for registration, acquisition, and dedication of Natural areas and Nature preserves by the Department;
- (3) review and make recommendations on Department priorities and plans for the selection of particular natural areas for state acquisition and for designation of nature preserves;
- (4) review and make recommendations on master plans, management plans, and other plans and proposals for development and use of ~~natural~~ lands administered by the Department;
- (5) advise the Secretary on policies, rules, and regulations governing management, protection, and use of ~~designated~~ registered Natural areas and dedicated Nature preserves by the Department;
- (6) advise and consult with the Secretary and Department staff on policies and programs relating to preservation of natural diversity and outstanding Natural areas in the state; and
- (7) consult and coordinate with other public agencies, conservation organizations, and scientific bodies on matters concerning natural diversity inventory and Natural areas identification, acquisition, management, and dedication.

~~Specific functions, committee composition, Terms of service, and operation are further described in the Division's administrative manual.~~

~~(d)(c) Travel Expenses. Members of the committee, except ex-officio members, are entitled to per diem and necessary travel and subsistence expenses in accordance with G.S. 143B-10(d).~~

Authority G.S. 143B-10; 143B-135.256.

SECTION .0200 - REGISTRY OF NATURAL HERITAGE AREAS

15A NCAC 12H .0201 OBJECTIVES OF REGISTRY

The North Carolina Registry of Natural Heritage Areas is a recognition program based upon the Natural Heritage Areas List an official list of significant natural areas derived from the Natural Heritage Program's inventory of elements of natural diversity. The Registry is a voluntary, non-regulatory, non-binding recognition program. Objectives of the North Carolina Registry of Natural Heritage Areas are ~~to~~ to protect Natural areas as defined in G.S. 143B-135.254.

- ~~(1) protect significant examples of the total diversity of natural features occurring in the state;~~
- ~~(2) establish reserves for breeding stocks of endangered, threatened, or otherwise unique species of plants and animals;~~
- ~~(3) encourage educational activities and scientific research;~~
- ~~(4) preserve unique and unusual natural features; and~~
- ~~(5) protect natural areas against uses that would destroy their natural conditions.~~

Authority G.S. 143B-135.254; 143B-135.256.

15A NCAC 12H .0202 CRITERIA FOR ELIGIBILITY

(a) For an area to qualify as a Natural Heritage Area and be eligible for registration or dedication, the area shall possess one or more of the following natural values:

- (1) a habitat for individual species of plants or animals that are in danger of or threatened by extirpation;
- (2) an exemplary or rare terrestrial Natural community;
- (3) an exemplary or rare aquatic community;
- (4) ~~outstanding geologic or geomorphic~~ features that illustrates geologic processes or the history of the earth;
- (5) ~~a~~ unique or unusual natural ecological features ~~such as old growth forest conditions or unusual vegetation types; types; or~~
- (6) ~~other~~ biological or ecological phenomena of significance, ~~such as a major bird rookery or bat colony~~ significance.

(b) In addition to the criteria stated in Paragraph (a) of this Rule, an area shall be evaluated with respect to the following factors:

- (1) the presence of ecological ~~natural~~ values ~~not adequately~~ represented in previously registered Natural Heritage Areas;
- (2) the Natural diversity of the area; diversity of natural types of flora and fauna;
- (3) the quality and viability of the natural environmental features (i.e., self-sufficiency of the ~~natural~~ ecosystem when properly managed; degree of vulnerability to disturbances and intrusions);
- (4) ~~absence of damaging land uses, logging, grazing, erosion, intrusion by exotic species, etc., or the extent to which past disturbances or land uses have altered natural features; Natural~~

~~communities. Considering that nearly all areas of the State have been altered by human intrusions to some extent and considering that certain natural elements require manipulative management, an area should not be denied recognition solely because of past disturbances; An area may be considered even if it shows evidence of past disturbance;~~

- (5) the capability of being ability to be managed so as to protect and maintain ecological natural features in a natural condition, and a defined buffer area zone is desirable to ensure assure protection. ~~(a~~ A buffer zone, where possible, should follow ~~naturally~~ defensible boundaries and should help protect the site against adverse effects from use and development of adjacent ~~land; land~~. The buffer zone may be included in the designated area but need not itself possess special natural values); any eligibility criteria as set forth in this Rule;
- (6) compatibility of protective management practices with current use practices on adjacent lands; and
- (7) scientific and educational value.

Authority G.S. 143B-135.256; 143B-135.258.

15A NCAC 12H .0203 REGISTRATION PROCESS

(a) Nomination.

- (1) Nominations for the Registry of Natural Heritage Areas may be made by the Natural Heritage Program staff, by other public agencies, by members of the Natural Heritage areas Advisory Committee, or and by any other resident or property owner of the State. Nominations shall be ~~submitted~~ submitted, in writing, to the North Carolina Natural Heritage ~~Program. Program, 1651 Mail Service Center, Raleigh, North Carolina 27699.~~
- (2) ~~The Natural Heritage Areas Nomination Form or equivalent information shall be submitted in order to provide the Natural Heritage Program with general information on location, owner or administering agency, current use, and natural significance of proposed areas. The Natural Heritage Program staff shall, if necessary, shall conduct an on-site evaluation of a nominated area in order to gather additional information on which to determine that the area meets eligibility criteria. The nomination form can be obtained at the address of the Natural Heritage Program.~~
- (3) After reviewing sufficient information on a nominated area, the Natural Heritage Program staff shall determine if an area qualifies for the registry and shall document its findings in an evaluation report with recommendations for action. ~~For each nominated site worthy of registration worthy for registration, the Natural~~

~~Heritage Program staff coordinator shall prepare a statement of significance and shall sign a statement of recommendation that the area is found eligible for the Registry of Natural Heritage Areas. The Natural Heritage Program staff coordinator, in cases when a site is found not to meet eligibility criteria, shall prepare a negative report explaining the decision. The Natural Heritage Advisory Committee shall review both positive and negative recommendations.~~

(4) ~~Nominations initiated by the public or other agencies shall be accepted or rejected (with a full an explanation accorded upon of a rejection) by the Department within one year six months of receipt. The nominator may request petition for consideration again if significant new information is forwarded to the Natural Heritage Program.~~

(b) Notification of Landowner or Administrator. Once an area is nominated and is appears potentially eligible for recommended for registration, the Natural Heritage Program staff shall notify the owner or administering agency. ~~This notification may not be necessary at this point if the owner nominated or knew about the nomination of the property.~~ The owner may request that the property be or not be considered further for registration.

(c) Review Process. All nominations and recommendation ~~statements reports~~ shall be submitted by the Natural Heritage Program to the Natural Heritage Advisory Committee ("Committee"), for its review and approval. ~~The Natural Heritage Advisory Committee shall receive and review nominations at its regularly scheduled meetings. Upon approval of the nomination by the Committee, the chairman or acting chairman of the advisory committee, upon committee approval of the nomination, shall sign the statement of recommendation and before approval submit it for review by the Division Director. of the Division of Parks and Recreation and submission. If the Division Director approves the statement of recommendation, it shall be submitted to the Secretary or his designee. The Secretary or his designee shall solicit review and comment upon comments about the nomination from the landowner or managing agency at appropriate agencies. Recommendation statements statements, comments, and a report of the owner's willingness to accept registration shall then be forwarded submitted to the Secretary. for final decision on eligibility.~~

(d) Designation. ~~Upon receipt of the recommendations from the Natural Heritage Program and Natural Heritage Advisory Committee and reviews by appropriate divisions and agencies, The Secretary shall decide whether the nominated area is eligible for listing in the Registry of Natural Heritage Areas. The registration of a site shall be the voluntary decision of the landowner or administering agency, pursuant to G.S. 143B-135.258, the Secretary shall have the option of approving or not approving an area as eligible for the registry. The registration of a site is ultimately the voluntary decision of the landowner or administering agency.~~

(e) ~~The owner or a competent volunteer shall annually report to the Natural Heritage Program Director at least once a year on the condition of the Registered area. The Natural Heritage Program~~

shall maintain a file that contains an annual status and management report of each Registered area.

Authority G.S. 143B-135.256; 143B-135.258.

15A NCAC 12H .0204 REGISTRATION

(a) ~~A natural area shall become officially registered when a voluntary agreement to protect the site for its specified natural values has been signed by the owner and the Secretary, according to requirements of this Rule. The owner shall be given a certificate signifying the inclusion of the area on the registry.~~

(b) ~~After the Secretary approves an area as eligible for registration, the Natural Heritage Program shall offer the owner or administering agency the opportunity of placing the designated part of the property on the registry in return for signing a non-binding agreement (promise of intent) to manage the site for the protection of the significant natural elements. Natural Heritage Area Registry status for an area shall become effective upon the signing of the letter of agreement by the Secretary and the landowner or administering agency.~~

(c) ~~In cases when an area recommended to the registry is administered by the Department, the Secretary shall have the decision of registering or not registering the area, upon receiving the recommendation of the management agency. In cases when another public agency other than the Department is the administrator or owner of an area which is recommended to the registry, the registration will become effective upon the signing of the agreement by the Secretary and the responsible executive of the administering agency.~~

(d) ~~Upon signing of the agreement, the Department shall present the owner or administering agency with a certificate which indicates the area is a registered natural heritage area. The owner or a competent volunteer shall be requested to report to the Natural Heritage Program at least once a year on the condition of the area. The Natural Heritage Program shall maintain a file on each registered area that contains complete documentation, annual status report, and management reports.~~

(e) ~~The owner must be advised that it is his option to publicize the registration.~~

Authority G.S. 113-3; 113-8; 113A-164.4; 113A-164.5.

15A NCAC 12H .0205 RESCISSION

(a) ~~The registration agreement may be terminated at any time upon notification by either party. Such termination shall remove the area from the Registry.~~

(b) ~~The Secretary may rescind recognition if the owner fails to carry out the promised protection practices. The written agreement between the landowner and the Department shall request 30 days notification by either party before the agreement is terminated. The secretary has the authority to rescind registry status for any area on department administered property. Such action should occur only after it has been clearly shown that there is a higher, better and more important use for an area. Rescission shall not affect existing statutory protection for an area.~~

(e)(a) ~~Any person one may petition submit, in writing, a request to the Department to remove an area from the Registry if he or she believes the site no longer deserves recognition meets the criteria for Registration as set forth in Rule .0202 of this Section. The~~

~~petition request~~ for removal ~~must shall~~ explain the changes that have occurred since the area was ~~registered~~-registered and why the area no longer meets the criteria for Rule .0202 of this Section. All requests made under this Section must be submitted to the North Carolina Natural Heritage Program, 1651 Mail Service Center, Raleigh, North Carolina 27699. After considering the ~~petition request~~, the Secretary, upon recommendation of the Natural Heritage Program staff and Natural Heritage Advisory Committee, may order removal ~~by signing a rescission order from the Registry.~~

~~(4)(b)~~ Rescission shall remove the area from the Registry of Natural Heritage Areas, and the owner or administering agency shall be requested to return the certificate signifying the area's inclusion on the Registry. ~~Any person~~ Anyone who is a person aggrieved by any of the steps in the process described in this Rule may seek an administrative hearing as set forth provided by the Departmental administrative hearing rules as located in 15A NCAC 1B .0200; 07 NCAC 01B .0106.

Authority G.S. 143B-135.256; 143B-135.258.

15A NCAC 12H .0206 PUBLIC ACCESS

Registration of a natural area ~~shall not does not provide or require rights create a right~~ of public access to a Registered area. Any person visiting a Registered area ~~Visitors must shall first~~ obtain the permission of the ~~landowner~~ owner or managing agency before entering the property. The landowner or managing agency retains the option to restrict publicity and access to the property.

Authority G.S. 143B-135.256.

15A NCAC 12H .0207 MANAGEMENT OF REGISTERED NATURAL AREAS

(a) The guiding standards for managing and using registered Natural Heritage Areas are to protect their natural values and to maintain the areas in as nearly a natural condition as possible. Because each area is likely to be dissimilar ~~to from~~ all others in the natural elements present and in certain other respects, each area will require ~~different site-specific~~ management practices. Public agencies, especially the Department, administering registered natural areas should be encouraged to develop management plans for the sites. Management of an area shall be in a manner intended to protect or enhance its natural value. The Department shall design a boundary sign for registered natural areas for the optional use by the owner or administering agency.

(b) Any owner of a registered Natural Heritage Area may request land management advice from the Department.

Authority G.S. 143B-135.256; 143B-135.258.

15A NCAC 12H .0208 DESIGNATION OF NATURAL AREAS ON STATE LANDS

~~(a) This Rule establishes procedures for designating Natural Heritage Areas on state lands that are administered by agencies other than the Department of Natural Resources and Community Development. Procedures for designating such areas on department administered lands are set forth in this Section.~~

~~(b)(a) Sequence~~-The sequence of action for designating and protecting other State-owned Natural Heritage Areas is as follows:

- (1) The Natural Heritage Program shall evaluate Natural areas on State lands and determine their qualifications as Natural Heritage ~~Areas, Areas~~ based on consideration of the presence of exceptional, unique, endangered, or exemplary ecological and geomorphic resources, and based on the importance of a candidate site to the management, integrity, and viability of adjacent Natural Heritage Areas. Natural Heritage Program staff ~~will shall~~ consult with the Department's Natural Heritage Advisory Committee for advisory opinions on the qualifications of ~~sites, sites~~ sites pursuant to according to procedures set forth in Rule .0204 .0203 of this Section.
- (2) Staff shall notify the Secretary when a State-owned site appears to qualify for recognition as a significant natural Natural Heritage Area. The Secretary ~~shall will~~ determine whether to recommend the site as a Natural Heritage Area.
- (3) If the Secretary decides to recommend a site as a Natural Heritage Area, the Secretary or his designee shall ~~so~~ notify the head of the principal state agency that administers the recommended site and the Director of the Office of State Property in the Department of Administration.
- (4) The ~~secretary, Secretary,~~ or his designee, may request that the agency administering the recommended site:
 - (A) enter into agreement to designate the site as a Natural Heritage Area, and manage the site ~~in a manner consistent with the maintenance and protection of significant natural resources; as required in Rule .0207 of this Section;~~ and arrange for the entry of the site on the Department's Registry of Natural Heritage Areas pursuant to procedures set forth in the Section;
 - (B) enter into a cooperative management agreement whereby the Department assists in coordinated management of the site; or
 - (C) transfer responsibility for management of the site to the Department of ~~Environment and Natural and Cultural Resources and Community Development Resources.~~
- (5) If an agreement is reached between the Department and the agency that administers the site in accordance with ~~to actions~~ Subparagraphs (4)(A) and (4)(B) ~~is reached, of this Rule,~~ the Department of Administration shall be informed and provided with a copy of the agreement documents for its approval or disapproval.

- (6) If an agreement is reached between the Department and the agency that administers the site in accordance with ~~to action~~ Subparagraph (4)(C) is reached of this Rule, the Department of Administration shall be consulted and requested to arrange for transfer of management responsibility.
- (7) ~~If no agreement can be reached between this Department and the agency that administers the site, the secretary may ask the Department of Administration to review the site's qualifications as a Natural Heritage Area and to evaluate ways to use and manage the site that will promote and protect the natural heritage resources. The secretary may also request the Department of Administration to allocate or reallocate land or certain interests in land to the Department of Natural Resources and Community Development for use and management. A request to allocate or reallocate land will be made under the rules at 1 NCAC 6A .0400, et. seq.~~

- ~~(2) Provide sites for scientific research and examples for scientific comparison with more disturbed sites.~~
- ~~(3) Provide sites for educational activities and places where people may observe Natural biotic resources and environmental systems.~~
- ~~(4) Provide habitat for the survival of rare plants or animals or natural communities or other significant biological features.~~
- ~~(5) Provide opportunities for contemplation or outdoor recreation compatible with the protection of the natural area.~~
- ~~(6) Provide places for the preservation of natural beauty.~~

Authority G.S. 143B-135.252; 143B-135.256; 143B-135.260; 143-135.270.

15A NCAC 12H .0302 DEDICATION PROCESS

- (a) ~~Each area proposed for dedication as a Nature preserve shall be examined and reported on in writing to the Secretary by the Natural Heritage Program or other person or persons designated by the Secretary.~~
- (b) ~~The report on the proposed area shall include information on its location, legal description, ownership, provision for custody and management, general character, natural types, environmental significance, degree of past disturbance, relation to adjoining lands, potential as a nature preserve, and interest of the owner in dedication.~~
- ~~(c)~~ (a) Upon receipt of the ~~report and~~ recommendation from the Natural Heritage Program and recommendation from the Natural Heritage Advisory Committee, the Secretary shall ~~make a determination that the~~ determine whether the proposed area qualifies under criteria set forth ~~under~~ in Rule .0202 of this Subchapter and constitutes a natural area worthy of protection through dedication as a Nature preserve, and ~~if the~~ whether the owner is willing to have the land or a portion thereof dedicated as a Nature ~~preserve, preserve~~ through the Office of State Property ~~to the Governor and Council of State.~~
- ~~(d)~~ (b) A natural area shall become a nature preserve upon ~~acceptance of articles of dedication by the Governor and Council of State.~~ Nature preserves are created when Natural areas are dedicated by:

- (1) a person or other owner who transfers to the State the title or other interest in the land with Articles of dedication agreed to by the owner and the State. The Articles of dedication shall include a statement of the public purposes served by the dedication and declare that the State shall hold such title or interests in trust for the public as a dedicated preserve under terms and authority of the Nature Preserves Act, G.S. ~~113A-164.7-~~ 143B-135.262; or
- (2) any local unit of government that transfers fee simple title or other interest in land to the State through Articles of dedication agreed to by the local government agency and the State. The Articles of dedication shall include a statement of the public purposes served by the dedication

Authority G.S. 143B-135.258; 143B-135.264.

SECTION .0300 - DEDICATION OF NATURE PRESERVES

15A NCAC 12H .0301 OBJECTIVES OF DEDICATION

(a) The State may accept the dedication of Nature preserves on lands deemed by the Secretary to qualify as outstanding natural areas, based on the criteria of eligibility as set forth in Rule .0202 of this Subchapter. ~~The owner of a qualified natural area may dedicate a nature preserve by transferring fee simple title or other interest, estate, or right in his land, or portion thereof, to the State. Dedicated nature preserves may be acquired by gift, grant, or purchase.~~ The Secretary may recommend to the Governor and Council of State, through the Director of the Office of State Property in the Department of Administration, that an area be dedicated as a nature preserve. Dedication of a preserve becomes effective only upon acceptance of articles of dedication by the Governor and Council of State. Articles of dedication shall be recorded in the ~~county(ies)~~ county in which the nature preserve is located, in the Office of State Property, and in the office of the Natural Heritage Program.

(b) ~~Preserves, Nature preserves~~ created by dedication are declared to be at their highest and best use for public benefit ~~if they by serving~~ serve one or more of the ~~following~~ public purposes: purposes described in G.S. 143B-135.252.

- (1) ~~Contribute to the growth and development of public understanding of and empathy for natural systems, and the consequent development of public understanding for the interdependence of all forms of life and vital dependence of the health of the human community on the health of other natural communities.~~

and name the State as trustee for the ~~dedication.~~
dedication; or

- (3) the State itself for State-owned lands through Articles of dedication, and declaring the State as trustee for the dedication, subject to allocation pursuant to the provisions of G.S. 143-341(4)g. The Secretary and Director of the Office of State Property shall make recommendations to the Governor and Council of State for dedicating State-owned lands as Nature preserves.

Authority G.S. 143B-135.256; 143B-135.260; 143B-135.262; 143B-135.264; 143B-135.266; 143B-135.268.

15A NCAC 12H .0303 ARTICLES OF DEDICATION

(a) Articles of dedication shall include ~~be developed and accepted~~ as follows:

- (1) A statement indicating the public purposes served by the dedication and declaring that the State shall hold such title or interest to the area in trust for the public as a dedicated Nature preserve under the terms and authority set forth in G.S. 143B-135.262; and describe the Articles of dedication must consist of such rights and restrictions as: ~~as will adequately protect:~~
- (A) will adequately protect the qualifying natural features values of the dedicated area consistent with the criteria set forth inef the land under Rule .0202 of this Subchapter; and
- (B) will provide and protect the public purposes described in the Articles of dedication and complying with as set forth in Rule .0301(b) of this Section.
- ~~(2) Articles of dedication shall contain provisions relating to the management, use, development, transfer, and public access, and may contain any other restrictions and provisions as may be necessary or advisable to protect the public purposes described in the articles.~~
- ~~(3)(2) Articles of dedication shall specify the primary custodian who will be responsible for managing the Nature preserve in accordance with the Articles of dedication and these regulations.~~
- ~~(4) Articles of dedication may define, consistently with the public purposes of the dedication, the respective rights and duties of the owner and of the State, and provide procedures to be followed in case of violations of the restrictions.~~
- ~~(5) Articles of dedication may recognize and create reversionary rights, transfers upon conditions or with limitations, and gifts over, as provided by G.S. 113A 164.6(b)(3) and (e).~~
- ~~(6) Articles of dedication shall be filed by the State with the county register(s) of deeds in the county(ies) where the land lies and shall become and remain part of the deed until and~~

~~unless extinguished by the State under provisions in G.S. 113A 164.6(e).~~

- ~~(7) Articles of dedication may be acquired by purchase, gift, or grant, or may be established by the State on lands or interests in lands that it holds, however acquired.~~
- ~~(8) Articles of dedication may not be accepted and recorded without express approval of the Governor and Council of State.~~
- ~~(9)(3) Articles of dedication shall include the right of the State or its agents to enter the dedicated lands at reasonable times to inspect its condition and to enforce the Articles of dedication dedication, as needed. This right of inspection shall not in and of itself constitute create an automatic right of public access.~~
- ~~(10) Articles of dedication may provide public access. Such access is preferred where it will not interfere with the qualities of the natural area or subvert the value of the public purposes served by dedication.~~
- ~~(11) Articles of dedication may vary in provisions from one nature preserve to another in accordance with differences in the characteristics and conditions of the area involved, or for other reasons found necessary by the State and the landowner, grantor, devisior, or donor.~~
- ~~(4) any other provision necessary to carry out the purpose of this Subchapter.~~

(b) Articles of dedication on land remaining in private ownership shall contain a provision notifying the State before any sale or transfer by deed or lease of the land or other interests therein. The State ~~will~~ shall not regulate or prohibit such sale or transfer, but shall ensure that the grantee or lessee is familiar with the Articles of dedication. ~~and understands their meaning and that they are binding on him.~~ The Articles of dedication shall contain a provision indicating that any transfer of any interest in the dedicated Nature preserve shall be subject to the conditions set forth in the Articles of dedication. The county register(s) of deeds should notify the State whenever dedicated lands are transferred by will or as part of an estate. Local government agencies holding dedicated lands shall notify the State at least 30 days before sale or transfer of the lands or interests therein, and such sale or transfer shall not subvert the purposes of G.S. 113A 164. Sale or transfer of dedicated preserves in State ownership shall not subvert the purposes of G.S. 113A 164.7.

Authority G.S. 143B-135.260; 143B-135.262; 143B-135.264; 143B-135.266; 143B-135.268.

15A NCAC 12H .0304 BUFFER AREAS

(a) For the purpose of protecting a Nature preserve, adjoining land that is not otherwise suitable for dedication as a Nature preserve may be dedicated as a buffer area in the same manner as a Nature preserve under this Section. A buffer area, where possible, should help protect the site against adverse effects from use and development of adjacent land. The buffer area may be

included in the designated area but need not itself possess eligibility criteria.

(b) The articles of dedication may contain provisions for the management, use, development, and public access of the buffer area that differ from those for the adjacent nature preserve. Provisions in the Articles of dedication for the management, use, development, and public access of the buffer area may differ from those used for the adjacent Nature preserve.

Authority G.S. 143B-135.256; 143B-135.260.

15A NCAC 12H .0305 PUBLIC TRUST

~~The State holds dedicated lands in trust on behalf of the people of North Carolina.~~

~~(1) The State shall have authority to promulgate such rules, regulations, and policies as are necessary to ensure its ability to protect the public purposes served by dedicated preserves.~~

~~(2)(a) Members of the public may bring notice to the Secretary or his agents of suspected violations of terms of dedications. The Natural Heritage Program shall will respond promptly to investigate notices of violations and shall maintain ongoing monitoring of all dedicated preserves. Subsequent to investigation of a notice of violation, the Natural Heritage Program shall respond to the notifying party and recommend appropriate action to the Secretary. The Attorney General may, on his initiative or at the request of the Secretary, Governor, or Council of State, initiate actions in equity which may include requests for punitive damages and/or for injunctive relief against violators of the articles of dedication on any land so dedicated.~~

~~(3)(b) The Natural Heritage Program shall maintain administrative records for dedicated areas. These shall be available for public review at reasonable times, and copies will be available at cost.~~

~~(4)(c) The State may enter into contracts and agreements with other agencies and persons to manage and/or and monitor dedicated preserves, but the State may shall not abdicate its trusteeship for dedicated lands through such contracts or agreements.~~

Authority G.S. 143B-135.256; 143B-135.262.

15A NCAC 12H .0306 AMENDMENTS

~~(a) Articles of dedication may be amended by the State, subject to the approval of the Governor and Council of State and with the written concurrence of the owner (if not the State), upon finding that such amendment will not permit an impairment, disturbance, use, or development of the area inconsistent with the purposes of G.S. 113A-164.7. Amendments that remove some portion of the existing Articles of dedication shall not may be approved until only after a public hearing in the county(ies) county where the dedicated preserve lies. The State shall provide not less than 30 days 30-day notice of such hearing in the newspaper(s) newspaper of largest circulation in the county where the land lies. The State shall provide not less than 30 days 30-day notice to the chief county and/or and municipal administrative officials in the jurisdiction(s) jurisdiction where the land lies.~~

~~(b) Where purposes of G.S. 113A-164.7 or the purposes of the original dedication will be violated by a proposed amendment, the~~

~~Governor and Council of State must find that the amendment serves a clear and unavoidable public necessity and no prudent alternative exists, and but only then only after a public hearing with notice provided in Rule .0306(a) of this Section and then only with the concurrence of the Governor and Council of State. Notwithstanding the provisions of Paragraph (a) of this Rule, Articles of dedication may be amended even if the purposes of G.S. 143B-135.262 or the original dedication will be violated under the following circumstances:~~

- ~~(1) the Governor and Council of State find that an amendment serves a clear and unavoidable public necessity and no prudent alternative exists;~~
- ~~(2) after a public hearing with notice provided in Paragraph (a) of this Rule; and~~
- ~~(3) with the concurrence of the Governor and Council of State.~~

~~(c) After the public hearing and finding by the Governor and Council of State, the State shall publish a statement of its findings in the newspaper(s) of largest circulation in the county(ies) where the land lies at least 30 days before the amended dedication amendment is final.~~

Authority G.S. 143-135.256; 143B-135.260; 143B-135.268.

15A NCAC 12H .0307 EXTINGUISHMENT BY THE STATE

~~(a) Articles of dedication may be extinguished by amendment and the dedication abandoned when the qualifying features of the land have been destroyed or irretrievably damaged and the public purposes of the dedication have been utterly frustrated and then only after a public hearing with notice provided as described in Rule .0306(a) of this Section and only then with the concurrence of the Governor and Council of State. Articles of dedication may be extinguished by amendment and the dedication abandoned only under the following circumstances:~~

- ~~(1) the qualifying features of the land have been destroyed or irretrievably damaged;~~
- ~~(2) the public purposes of the dedication have been frustrated;~~
- ~~(3) after a public hearing with notice provided as described in Rule .0306(a) of this Section; and~~
- ~~(4) with the concurrence of the Governor and Council of State.~~

~~(b) Where articles of dedication are proposed to be extinguished for other reasons, the State must find that the extinguishment and abandonment serves an imperative and unavoidable public necessity and that no prudent alternative exists, and then only after a public hearing with notice provided as described in Rule .0306(a) and only then with the concurrence of the Governor and Council of State. Notwithstanding the provisions of Paragraph (a) of this Rule, Articles of dedication may be extinguished by amendment and the dedication abandoned only under the following circumstances:~~

- ~~(1) the State finds that the extinguishment and abandonment serves an imperative and unavoidable public necessity and that no prudent alternative exists;~~

- (2) ~~after a public hearing with notice provided as described in Rule .0306(a) of this Section; and~~
- (3) ~~with the concurrence of the Governor and Council of State.~~

(c) After the public hearing, the State shall publish a statement of its findings in the ~~newspaper(s)~~ newspaper of largest circulation in the ~~county(ies)~~ county where the land lies at least 30 days before the extinguishment is final.

Authority G.S. 143B-135.256; 143B-135.260(c).

15A NCAC 12H .0308 MUTUAL TERMINATION

(a) Articles of dedication ~~may terminate~~ shall terminate only under the following circumstances:

- (1) in accordance with the terms of the Articles of dedication itself; or
- (2) in accordance with the nature and duration of the underlying legal interest in the property being placed under the Articles of dedication; or
- (3) upon mutual written consent executed by and between the owner, its successors or assigns, and the State.

(b) ~~Articles of dedication may be terminated upon mutual written consent executed by and between the owner, its successors or assigns, and the State.~~

Authority G.S. 143B-135.256; 143B-135.260(c).

SECTION .0400 - MANAGEMENT: USE: AND PROTECTION OF DEDICATED NATURE PRESERVES

15A NCAC 12H .0401 MANAGEMENT PLAN

A management plan shall be prepared for each dedicated Nature preserve. The Articles of dedication shall assign responsibility for the preparation of the management plan. The Secretary of the Department of Natural Resources ~~and Community Development and Cultural~~ or his designee shall ~~have the responsibility for approval of review~~ all management plans and their revisions, and shall approve those plans that implement the principles set forth in Rule .0402 of this Section. The Secretary or his designee shall monitor all dedicated preserves and report violations of the approved plan, ~~or other~~ situations that may violate the Articles of dedication, or which may be actions harmful to the natural resources of the preserve. In the event that the owner or the agency managing the dedicated preserve does not adopt an approved management plan or does not adhere to the provisions of the plan, the Secretary may request the Department of Administration to take appropriate action, which may include ~~but is not limited to,~~ mediation, reallocation of the land to another agency, or referral to the Office of the Attorney General.

Authority G.S. 143B-135.256; 143B-135.262; 143-341; 143-342.

15A NCAC 12H .0402 MANAGEMENT PRINCIPLES

The following management principles shall apply ~~for to~~ all dedicated preserves, unless exceptions are expressly provided in the Articles of ~~dedication~~ dedication:

- (1) the essential natural character of the property shall be ~~maintained~~ maintained;
- (2) improvements, including building of all types, trails, parking areas, vehicular roadways, signs, fences, steps, and bridges, shall only be constructed when necessary for the security, safety, information, ~~or access of the public or and those improvements necessary~~ for the maintenance and management of the preserve. preserve;
- (3) destruction of flora and fauna shall not be permitted except for the purpose of preserving or regenerating species and Natural communities of concern, or for the purpose of establishing and maintaining public access facilities. In case of either exception, manipulation of the flora and fauna shall be consistent and compatible with the ecological natural character of the area and shall not be ~~seriously~~ damaging or detrimental to the natural quality of the preserve. preserve;
- (4) no motorized vehicles shall be permitted on the dedicated property other than those utilized by the owner or the owner's agents in management and protection of the property or used by the general public for ingress and egress to the property in compliance with the management plan for the ~~preserve~~ preserve;
- (5) no signs, billboards, or other advertising of any kind shall be erected, with the exception for of informational and directional signs related to the designation of the area as a preserve and public access to the ~~preserve~~ preserve;
- (6) no change shall be made in the ~~natural~~ topography of the preserve except for those minimal alterations ~~which that~~ may be necessary to provide on-foot access to the public for visitation or observation; this shall be done if the change is ~~wholly~~ compatible and consistent with the character of the property, and where no detrimental effect ~~shall result.~~ will result;
- (7) no activity shall be allowed ~~which might that~~ may pollute any stream or body of water in the ~~preserve~~ preserve;
- (8) no stream in the preserve shall be dammed, impounded, or have its course ~~altered~~ altered as a result of human activity;
- (9) visitor activities shall be controlled to prevent significant disturbance and environmental degradation ~~to of the~~ preserve. preserve;
- (10) prescribed fire and necessary fire lines may be used as management tools ~~in such areas or situations where needed~~ to maintain or protect the natural community type. type;
- (11) the cutting or removal of trees, dead or alive, is shall be prohibited, except that which is expressly permitted by an approved

- management plan or is necessary for public ~~safety-safety~~:
- (12) persons wishing to engage in scientific research or collection of natural materials within a preserve shall first secure written permission from the owner and the management ~~agency-agency~~ agency;
 - (13) when necessary and feasible, boundaries of a preserve shall be made clearly evident by placing markers or boundary signs at corners and/or other strategic ~~locations-locations~~ locations;
 - (14) control of exotic (non-native) species may be undertaken where eradication ~~can-may~~ can be accomplished without undue disturbance of the area's natural conditions ~~conditions~~; ~~or without requiring relatively long periods of time for natural restoration~~; and
 - (15) no other acts or uses ~~which-that~~ are detrimental to the maintenance of the property in its natural condition shall be allowed including ~~but not limited to~~ disturbance of the soil, mining, commercial or industrial uses, timber harvesting, ditching and draining, or depositing waste materials.

Authority G.S. 143B-135.256; 143B-135.262.

15A NCAC 12H .0403 MANAGEMENT RULES FOR PRESERVES

Additional management rules consistent ~~and compatible~~ with the general management principles for all dedicated preserves, as set forth in Rule .0402 of this Section, may be adopted through an amendment to the Articles of dedication by those divisions of the Department of Natural Resources and Community Development to which dedicated preserves are allocated for management the owner or managing agency, in accordance with Rule .0306 of this Subchapter. ~~Such additional management rules shall be contained in the Division's administrative manual.~~

Authority G.S. 143B-135.256; 143B-135.262.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Department of Transportation intends to readopt without substantive changes the rules cited as 19A NCAC 06B .0402, .0405, .0406, .0410, .0411, and .0413.

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 is available on the OAH website: <http://reports.oah.nc.us/ncac.asp>.

Link to agency website pursuant to G.S. 150B-19.1(c): www.ncdot.gov/about/regulations/rules/

Proposed Effective Date: December 1, 2016

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than August 16, 2016 to Helen Landi, Rulemaking Coordinator, NC Department of Transportation, 1501 Mail Service Center, Raleigh, NC 27699-1501.*

Reason for Proposed Action: *The rules are being readopted without substantive changes. This action is necessary to meet the requirements set out for the Periodic Review of Rules. The changes include updating mailing information and making minor stylistic edits to text.*

Comments may be submitted to: Helen Landi, 1501 Mail Service Center, Raleigh, NC 27699-1501, email hlandi@ncdot.gov

Comment period ends: September 30, 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 06 – TRANSIT, RAIL, AND AVIAITON

SUBCHAPTER 06B - PUBLIC TRANSPORTATION AND RAIL PROGRAM

SECTION .0400 - RAIL INDUSTRIAL ACCESS PROGRAM

19A NCAC 06B .0402 IDENTIFYING INFORMATION (READOPTION WITHOUT SUBSTANTIVE CHANGES)

19A NCAC 06B .0405 INELIGIBLE COSTS (READOPTION WITHOUT SUBSTANTIVE CHANGES)

PROPOSED RULES

**19A NCAC 06B .0406 APPLICATION (READOPTION
WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 06B .0411 ALLOCATION OF FUNDING
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 06B .0410 APPLICATION EVALUATION
(READOPTION WITHOUT SUBSTANTIVE CHANGES)**

**19A NCAC 06B .0413 REQUESTS FOR
REIMBURSEMENT (READOPTION WITHOUT
SUBSTANTIVE CHANGES)**

APPROVED RULES

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

Rules approved by the Rules Review Commission at its meeting on June 16, 2016.

**REGISTER CITATION TO THE
NOTICE OF TEXT**

STATE BUDGET AND MANAGEMENT, OFFICE OF

<u>Budget Manual</u>	09	NCAC 03A	.0103	30:14 NCR
<u>Purpose</u>	09	NCAC 03M	.0101*	30:14 NCR
<u>Definitions</u>	09	NCAC 03M	.0102*	30:14 NCR
<u>Allowable Uses of State Funds</u>	09	NCAC 03M	.0201*	30:14 NCR
<u>Recipient/Subrecipient Responsibilities</u>	09	NCAC 03M	.0202	30:14 NCR
<u>Subgrantee Responsibilities</u>	09	NCAC 03M	.0203	30:14 NCR
<u>Minimum Reporting Requirements for Recipients and Agency Responsibilities</u>	09	NCAC 03M	.0205*	30:14 NCR
<u>Office of the State Auditor Responsibilities</u>	09	NCAC 03M	.0401*	30:14 NCR
<u>Office of State Budget and Management Responsibilities</u>	09	NCAC 03M	.0501	30:14 NCR
<u>Grant Documentation</u>	09	NCAC 03M	.0601*	30:14 NCR
<u>Subordination of Other Contracts Agreements</u>	09	NCAC 03M	.0701	30:14 NCR
<u>Required Contract Provisions</u>	09	NCAC 03M	.0702	30:14 NCR
<u>Grant Monitoring and Evaluation</u>	09	NCAC 03M	.0703*	30:14 NCR
<u>Noncompliance with Rules</u>	09	NCAC 03M	.0704	30:14 NCR
<u>Recovery of State Funds</u>	09	NCAC 03M	.0801*	30:14 NCR
	09	NCAC 03M	.0802*	30:14 NCR

MEDICAL CARE COMMISSION

<u>Definitions</u>	10A	NCAC 13D	.2001*	30:12 NCR
<u>Reporting and Investigating Abuse, Neglect or Misappropri...</u>	10A	NCAC 13D	.2210*	30:12 NCR
<u>Nurse Staffing Requirements</u>	10A	NCAC 13D	.2303*	30:12 NCR
<u>Preservation of Medical Records</u>	10A	NCAC 13D	.2402	30:12 NCR
<u>Use of Nurse Practitioners and Physician Assistants</u>	10A	NCAC 13D	.2503*	30:12 NCR
<u>Required Spaces</u>	10A	NCAC 13D	.3201*	30:12 NCR

PUBLIC HEALTH, COMMISSION FOR

<u>General</u>	10A	NCAC 45A	.0101*	n/a G.S. 150B-21.5
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CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Basic Law Enforcement Training</u>	12	NCAC 09B	.0205	30:14 NCR
<u>Basic Training - Juvenile Court Counselors and Chief Cour...</u>	12	NCAC 09B	.0235	30:14 NCR
<u>Basic Training - Juvenile Justice Officers</u>	12	NCAC 09B	.0236	30:14 NCR
<u>Terms and Conditions of Specialized Instructor Certification</u>	12	NCAC 09B	.0305*	30:14 NCR
<u>Military Transferees</u>	12	NCAC 09B	.0701*	30:14 NCR
<u>Instructors: Annual In-Service Training</u>	12	NCAC 09E	.0104*	30:14 NCR

APPROVED RULES

<u>Minimum Training Specifications: Annual In-Service Training</u>	12	NCAC 09E	.0105*	30:14 NCR
PUBLIC SAFETY, DEPARTMENT OF				
<u>Authority</u>	14B	NCAC 13	.0102*	29:24 NCR
<u>Arrests</u>	14B	NCAC 13	.0201*	29:24 NCR
<u>Traffic Collisions</u>	14B	NCAC 13	.0202*	29:24 NCR
<u>State Parking Lots</u>	14B	NCAC 13	.0203	29:24 NCR
COASTAL RESOURCES COMMISSION				
<u>AECs Within Ocean Hazard Areas</u>	15A	NCAC 07H	.0304*	30:14 NCR
WILDLIFE RESOURCES COMMISSION				
<u>Craven County</u>	15A	NCAC 10F	.0347*	30:15 NCR
ENVIRONMENTAL MANAGEMENT COMMISSION				
<u>General</u>	15A	NCAC 13A	.0101*	30:12 NCR
<u>Definitions</u>	15A	NCAC 13A	.0102*	30:12 NCR
<u>Petitions - Part 260</u>	15A	NCAC 13A	.0103*	30:12 NCR
<u>Identification and Listing of Hazardous Wastes - Part 261</u>	15A	NCAC 13A	.0106*	30:12 NCR
<u>STDS Applicable to Generators of Hazardous Waste-Part</u>	15A	NCAC 13A	.0107*	30:12 NCR
<u>STDS Applicable for Transporters of Hazardous Waste</u>	15A	NCAC 13A	.0108*	30:12 NCR
BARBER EXAMINERS, BOARD OF				
<u>Physical and Mailing Address</u>	21	NCAC 06A	.0102*	30:14 NCR
<u>Mailing List</u>	21	NCAC 06B	.0202*	30:14 NCR
<u>Information Requests</u>	21	NCAC 06B	.0204*	30:14 NCR
<u>Acknowledgement</u>	21	NCAC 06B	.0306*	30:14 NCR
<u>Control of Hearings</u>	21	NCAC 06B	.0307*	30:14 NCR
<u>Records</u>	21	NCAC 06B	.0309*	30:14 NCR
<u>Request for Declaratory Ruling</u>	21	NCAC 06B	.0501*	30:14 NCR
<u>Contents of Request</u>	21	NCAC 06B	.0502*	30:14 NCR
<u>Administrative Hearings</u>	21	NCAC 06C	.0101	30:14 NCR
<u>Request</u>	21	NCAC 06C	.0201*	30:14 NCR
<u>Contents of Request</u>	21	NCAC 06C	.0204*	30:14 NCR
<u>Acknowledgement</u>	21	NCAC 06C	.0205*	30:14 NCR
<u>Notice and Hearing</u>	21	NCAC 06C	.0502*	30:14 NCR
<u>Additional Information on Notices and Hearings</u>	21	NCAC 06C	.0503*	30:14 NCR
<u>Written Answers to Notice</u>	21	NCAC 06C	.0504*	30:14 NCR
<u>Who Hears Contested Cases</u>	21	NCAC 06C	.0601*	30:14 NCR
<u>Location</u>	21	NCAC 06C	.0701*	30:14 NCR
<u>Requirements for Intervention</u>	21	NCAC 06C	.0801*	30:14 NCR
<u>Allowance</u>	21	NCAC 06C	.0807*	30:14 NCR
<u>Denial</u>	21	NCAC 06C	.0808*	30:14 NCR
<u>Bias of Board Member</u>	21	NCAC 06C	.0903*	30:14 NCR
<u>Bias Claimed by Party</u>	21	NCAC 06C	.0904*	30:14 NCR

APPROVED RULES

<u>Affidavit of Disqualification</u>	21	NCAC 06C	.0905*	30:14	NCR
<u>Filing Affidavit</u>	21	NCAC 06C	.0906*	30:14	NCR
<u>Disqualification</u>	21	NCAC 06C	.0907*	30:14	NCR
<u>Contested Case Hearings</u>	21	NCAC 06D	.0101*	30:14	NCR
<u>Physical Structure</u>	21	NCAC 06F	.0101*	30:14	NCR
<u>Manager</u>	21	NCAC 06F	.0102*	30:14	NCR
<u>Filing</u>	21	NCAC 06F	.0103*	30:14	NCR
<u>Instructors</u>	21	NCAC 06F	.0104*	30:14	NCR
<u>Re-Entering School</u>	21	NCAC 06F	.0109*	30:14	NCR
<u>Copies of Barber School Records</u>	21	NCAC 06F	.0111*	30:14	NCR
<u>Student Permit</u>	21	NCAC 06F	.0113*	30:14	NCR
<u>Signatures on Reports</u>	21	NCAC 06F	.0114*	30:14	NCR
<u>Fees</u>	21	NCAC 06F	.0118*	30:14	NCR
<u>Intrastate Transfers</u>	21	NCAC 06F	.0119*	30:14	NCR
<u>Barber School Curricula</u>	21	NCAC 06F	.0120*	30:14	NCR
<u>Penal Institutions</u>	21	NCAC 06F	.0121*	30:14	NCR
<u>Uniforms and Identification</u>	21	NCAC 06F	.0122*	30:14	NCR
<u>Time Clock and Recordation of Student Hours</u>	21	NCAC 06F	.0123*	30:14	NCR
<u>Student Hours</u>	21	NCAC 06F	.0124*	30:14	NCR
<u>School Handbooks and Enrollment Agreements</u>	21	NCAC 06F	.0125*	30:14	NCR
<u>Extended Education</u>	21	NCAC 06F	.0126*	30:14	NCR
<u>Grades</u>	21	NCAC 06G	.0103*	30:14	NCR
<u>Duties and Responsibilities</u>	21	NCAC 06H	.0101*	30:14	NCR
<u>Forfeiture of Fee</u>	21	NCAC 06J	.0102*	30:14	NCR
<u>Renewal as Registered Apprentice; Waiver</u>	21	NCAC 06J	.0103*	30:14	NCR
<u>Student Permission to Barber</u>	21	NCAC 06J	.0106*	30:14	NCR
<u>Examination</u>	21	NCAC 06J	.0108*	30:14	NCR
<u>Identification</u>	21	NCAC 06J	.0109*	30:14	NCR
<u>Notification of Address Change</u>	21	NCAC 06J	.0110*	30:14	NCR
<u>Registered Barber</u>	21	NCAC 06K	.0101*	30:14	NCR
<u>Forfeiture of Fee</u>	21	NCAC 06K	.0103*	30:14	NCR
<u>Identification</u>	21	NCAC 06K	.0110*	30:14	NCR
<u>Notification of Change of Address</u>	21	NCAC 06K	.0111	30:14	NCR
<u>Measurements of Barber Shop</u>	21	NCAC 06L	.0102*	30:14	NCR
<u>Equipment</u>	21	NCAC 06L	.0103*	30:14	NCR
<u>Shop Permits</u>	21	NCAC 06L	.0104*	30:14	NCR
<u>Fees</u>	21	NCAC 06L	.0105*	30:14	NCR
<u>Separation From Other Businesses; Residential Shops;</u>	21	NCAC 06L	.0106*	30:14	NCR
<u>Lavatory</u>	21	NCAC 06L	.0107*	30:14	NCR
<u>Moved Shop</u>	21	NCAC 06L	.0108*	30:14	NCR
<u>Commercial Chemicals</u>	21	NCAC 06L	.0109*	30:14	NCR
<u>Where Barber Services May Be Performed</u>	21	NCAC 06L	.0111*	30:14	NCR
<u>Rented Booth Space</u>	21	NCAC 06L	.0112*	30:14	NCR
<u>Diseases</u>	21	NCAC 06L	.0113*	30:14	NCR
<u>Policy Prohibiting Pets</u>	21	NCAC 06L	.0114*	30:14	NCR
<u>Inspections of Shops</u>	21	NCAC 06L	.0115*	30:14	NCR
<u>Additional Duties of Barber Shop Owners and Managers and</u>	21	NCAC 06L	.0116	30:14	NCR

APPROVED RULES

<u>General Sanitation</u>	21	NCAC 06L	.0117*	30:14 NCR
<u>Notification of Change of Address</u>	21	NCAC 06L	.0120*	30:14 NCR
<u>Duties and Responsibilities</u>	21	NCAC 06M	.0102*	30:14 NCR
<u>Fees</u>	21	NCAC 06N	.0101*	30:14 NCR
<u>Form Bar-1</u>	21	NCAC 06N	.0102*	30:14 NCR
<u>Form Bar-4</u>	21	NCAC 06N	.0105*	30:14 NCR
<u>Form Bar-6</u>	21	NCAC 06N	.0107*	30:14 NCR
<u>Form Bar-8</u>	21	NCAC 06N	.0109*	30:14 NCR
<u>Form Bar-10</u>	21	NCAC 06N	.0111*	30:14 NCR
<u>Access to Forms</u>	21	NCAC 06N	.0112*	30:14 NCR
<u>Schedule of Penalties</u>	21	NCAC 06O	.0101*	30:14 NCR
<u>Licensing of Barber Shops</u>	21	NCAC 06O	.0102*	30:14 NCR
<u>Licensing of Barber Schools</u>	21	NCAC 06O	.0103*	30:14 NCR
<u>Unsupervised Apprentice</u>	21	NCAC 06O	.0104*	30:14 NCR
<u>Unlicensed Barber</u>	21	NCAC 06O	.0105*	30:14 NCR
<u>Display of Current License</u>	21	NCAC 06O	.0106*	30:14 NCR
<u>Fraudulent Misrepresentations or Submission of</u>	21	NCAC 06O	.0107*	30:14 NCR
<u>Inspections of Shops and Schools</u>	21	NCAC 06O	.0108*	30:14 NCR
<u>Expired License</u>	21	NCAC 06O	.0109*	30:14 NCR
<u>Adequate Premises</u>	21	NCAC 06O	.0110*	30:14 NCR
<u>School Instructors</u>	21	NCAC 06O	.0111*	30:14 NCR
<u>Identification</u>	21	NCAC 06O	.0112*	30:14 NCR
<u>Barber Shops in Residences and Mobile Homes</u>	21	NCAC 06O	.0113*	30:14 NCR
<u>Animals in Barber Shops</u>	21	NCAC 06O	.0114*	30:14 NCR
<u>School Failing to Maintain, Falsifying, or Failing to Sub...</u>	21	NCAC 06O	.0115*	30:14 NCR
<u>Unlicensed School Instructors</u>	21	NCAC 06O	.0116*	30:14 NCR
<u>Barber Failing to Maintain or Produce Exemption Log</u>	21	NCAC 06O	.0117*	30:14 NCR
<u>Unlicensed Barber Student</u>	21	NCAC 06O	.0118*	30:14 NCR
<u>Failure to Notify Board of Change Address</u>	21	NCAC 06O	.0119*	30:14 NCR
<u>Failure to Display Sanitation Grade and Shop Permit in a ...</u>	21	NCAC 06O	.0121*	30:14 NCR
<u>Failure to Notify Board of Change of Barber Shop or</u>	21	NCAC 06O	.0122*	30:14 NCR
<u>Barbering</u>	21	NCAC 06P	.0101*	30:14 NCR
<u>Barbering Exemptions</u>	21	NCAC 06P	.0102*	30:14 NCR
<u>General Definitions</u>	21	NCAC 06P	.0103*	30:14 NCR
<u>Effect of Child Support Default on License or Certificate</u>	21	NCAC 06Q	.0102*	30:14 NCR
<u>Display of Sign or Barber Pole</u>	21	NCAC 06R	.0101*	30:14 NCR
<u>General Examination Instructions</u>	21	NCAC 06S	.0101*	30:14 NCR

INTERPRETER AND TRANSLITERATOR LICENSING BOARD

<u>Renewal of a Provisional License</u>	21	NCAC 25	.0205*	30:13 NCR
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RESPIRATORY CARE BOARD

<u>Exemptions</u>	21	NCAC 61	.0202*	30:12 NCR
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The following Rules are subject to the next Legislative Session. (see G.S. 150B-21.3(b1))

ENVIRONMENTAL MANAGEMENT COMMISSION

Water Quality Management Plans

15A NCAC 02B .0227*

30:12 NCR

**TITLE 09 – OFFICE OF GOVERNOR AND LT.
GOVERNOR**

09 NCAC 03A .0103 BUDGET MANUAL

*History Note: Authority G.S. 143-2;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Amended Eff. April 1, 1989;
Repealed Eff. July 1, 2016.*

09 NCAC 03M .0101 PURPOSE

Pursuant to G.S. 143C-6-23, the rules in this Subchapter establish reporting requirements for non-State entities that receive, hold, use, or expend State financial assistance and ensure the uniform administration of State financial assistance by all State agencies, recipients, and subrecipients. The requirements of this subchapter shall not apply to:

- (1) State financial assistance to non-State entities subject to the audit and other reporting requirements of the Local Government Commission.
- (2) Tuition assistance to students.
- (3) Public assistance payments from Federal entitlement programs to or on behalf of enrolled individuals.
- (4) State funds disbursed to a contractor as defined in this Subchapter.

*History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Amended Eff. October 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015;
Amended Eff. July 1, 2016.*

09 NCAC 03M .0102 DEFINITIONS

As used in this Subchapter:

- (1) "Agency" means every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority, or other unit of government of the State or of any county, unit, special district, or other political subdivision of state or local government.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Division of the North Carolina

Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.

- (4) "Contract" means a legal instrument that is used to document a relationship between the agency, and a recipient or between a recipient and subrecipient.
- (5) "Contractor" means an entity subject to the contractor requirements, as well as any entity that would be subject to the contractor requirements but for a specific statute or rule exempting that entity from the contractor requirements.
- (6) "Contractor requirements" means Article 3, 3C, 3D, 3E, 3G, or 8 of Chapter 143 of the General Statutes and related rules.
- (7) "Fiscal Year" means the annual operating year of the non-State entity.
- (8) "Financial Statement" means a report providing financial data relative to a given part of an organization's operations or status.
- (9) "Non-State Entity" has the meaning in G.S. 143C-1-1(d)(18).
- (10) "Recipient" means a non-State entity that receives State financial assistance directly from a State agency to carry out part of a State program, but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For purposes of this Subchapter, "recipient" also includes a non-State entity that would be considered a "subrecipient" pursuant to 2 CFR 200.93 for Federal funds subawarded by a recipient State agency, but does not include a subrecipient as defined in Item (14) of this Rule.
- (11) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (12) "State financial assistance" means State funds disbursed as a grant, cooperative agreement, non-cash contribution, food commodities, or direct appropriation to a recipient or subrecipient as defined in Item (10) and (14) of this Rule.
- (13) "State Funds" means any funds appropriated by the North Carolina General Assembly or

collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are disbursed as financial assistance to other organizations.

- (14) "Subrecipient" means a non-State entity that receives State financial assistance from a recipient to carry out part of a State program; but does not include an individual that is a beneficiary of such program. This definition of "subrecipient" applies throughout these Rules, except as used in Item (10) of this Rule.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Amended Eff. October 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. April 25, 2015; Amended Eff. July 1, 2016.

09 NCAC 03M .0201 ALLOWABLE USES OF STATE FINANCIAL ASSISTANCE

Expenditures of State financial assistance by any recipient or subrecipient shall be in accordance with the cost principles outlined in the Code of Federal Regulations, 2 CFR, Part 200. If the State financial assistance includes federal sources, the recipient or subrecipient shall ensure adherence to the cost principles established in the Code of Federal Regulations, 2 CFR, Part 200.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Readopted Eff. July 1, 2016.

09 NCAC 03M .0202 RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES

A recipient or subrecipient that receives State financial assistance shall ensure that those funds are utilized for their intended purpose and shall expend those funds in compliance with requirements established by this Subchapter and their contract. Recipients and subrecipients shall:

- (1) Provide the information required by the disbursing agency in order to comply with the procedures for disbursement of funds.
- (2) Maintain reports and accounting records that support the allowable expenditure of State funds. Recipients and subrecipients shall make available all reports and records for inspection by the awarding agency, the Office of State Budget and Management, and the Office of the State Auditor for oversight, monitoring, and evaluation purposes.
- (3) Ensure that subrecipients comply with all reporting requirements established by this Subchapter and their contract and report to the appropriate disbursing entity.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Readopted Eff. July 1, 2016.

09 NCAC 03M .0203 SUBGRANTEE RESPONSIBILITIES

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Repealed Eff. July 1, 2016.

09 NCAC 03M .0205 MINIMUM REPORTING REQUIREMENTS FOR RECIPIENTS AND SUBRECIPIENTS

(a) For the purposes of this Subchapter, there are three reporting levels established for recipients and subrecipients receiving State financial assistance. Reporting levels are based on the level of State financial assistance from all funding sources. The reporting levels are:

- (1) Level I – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount less than twenty-five thousand dollars (\$25,000) within its fiscal year.
- (2) Level II - A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount of at least twenty-five thousand (\$25,000) or greater, but less than five hundred thousand dollars (\$500,000) within its fiscal year.
- (3) Level III – A recipient or subrecipient that receives, holds, uses, or expends State financial assistance in an amount equal to or greater than five hundred thousand dollars (\$500,000) within its fiscal year.

(b) Agencies shall establish reporting requirements for recipients that meet the following reporting standards on an annual basis:

- (1) All recipients and subrecipients shall provide a certification that State financial assistance received or held was used for the purposes for which it was awarded.
- (2) All recipients and subrecipients shall provide an accounting of all State financial assistance received, held, used, or expended.
- (3) Level II and III recipients and subrecipients shall report on activities and accomplishments undertaken by the recipient, including reporting on any performance measures established in the contract.
- (4) Level III recipients and subrecipients shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book.

(c) All reports shall be filed with the disbursing agency in the format and method specified by the agency no later than three months after the end of the recipient's fiscal year, unless the same information is already required through more frequent reporting.

Audits must be provided to the funding agency no later than nine months after the end of the recipient's fiscal year.

(d) Agency-established reporting requirements to meet the standards set forth in Paragraph (b) of this Rule shall be specified in each recipient's contract.

(e) Unless prohibited by law, the costs of audits made in accordance with the provisions of this Rule shall be allowable charges to State and Federal awards. The charges may be considered a direct cost or an allocated indirect cost, as determined in accordance with cost principles outlined in the Code of Federal Regulations, 2 CFR Part 200. The cost of any audit not conducted in accordance with this Subchapter shall not be charged to State awards.

(f) Notwithstanding the provisions of this Subchapter, a recipient may satisfy the reporting requirements of Subparagraph (b)(4) of this Rule by submitting a copy of the report required under federal law with respect to the same funds.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Readopted Eff. July 1, 2016.

09 NCAC 03M .0401 AGENCY RESPONSIBILITIES

(a) An agency that receives State funds and disburses those funds as State financial assistance to a recipient shall:

- (1) Notify each recipient, at the time the State financial assistance award is made, of the purpose of the award and the reporting requirements established in this Subchapter.
- (2) Prior to disbursing any State financial assistance:
 - (A) Register each State assistance program with the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management.
 - (B) Execute a contract with the recipient that complies with the requirements of this Subchapter.
 - (C) Report each individual award to the Office of State Budget and Management in the format and method specified by the Office of State Budget and Management.
 - (D) Follow the procedures for disbursement of State financial assistance.
- (3) Develop compliance supplement reports that describe standards of compliance and audit procedures to give direction to independent auditors. This report shall be provided to the State and Local Government Finance Division in the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.
- (4) Develop a monitoring plan for each State assistance program the agency oversees and submit the plan to the Office of State Budget and Management for approval.

(5) Perform monitoring and oversight functions as specified in agency monitoring plans to ensure that State financial assistance is used for authorized purposes in compliance with laws, regulations, and the provisions of contracts, and that performance goals are achieved.

(6) Ensure that State financial assistance is spent consistent with the purposes for which it was awarded.

(7) Determine that reporting requirements have been met by the recipient and that all reports have been completed and submitted in accordance with the recipient's contract.

(8) Monitor compliance by recipients with all terms of a contract. Upon determination of noncompliance the agency shall take appropriate action as specified in Section .0800 of this Subchapter.

(9) Require agency internal auditors to conduct periodic audits of agency compliance with requirements of this Subchapter.

(10) Provide all requested documentation when subject to an audit of compliance with the requirements of this Subchapter. Audits may be conducted by the Office of State Budget and Management, the Office of the State Auditor, or the agency's internal auditor.

(b) Each recipient shall ensure that subrecipients have complied with the applicable provisions of this Subchapter. Failure to comply with such provisions shall be the basis for an audit exception.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Readopted Eff. July 1, 2016.

09 NCAC 03M .0501 OFFICE OF THE STATE AUDITOR RESPONSIBILITIES

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Repealed Eff. July 1, 2016.

09 NCAC 03M .0601 OFFICE OF STATE BUDGET AND MANAGEMENT RESPONSIBILITIES

The Office of State Budget and Management shall:

- (1) Provide guidelines to agencies for developing monitoring plans and establishing reporting processes that meet the requirements established in this Subchapter.
- (2) Maintain a Suspension of Funding list readily accessible to any interested party that identifies any recipient found in noncompliance with the requirements of this Subchapter or the terms of their contract. This list shall serve as notice to other agencies that no further State financial assistance shall be provided to that recipient until they are removed from the list.

- (3) Periodically audit State agencies to ensure compliance with requirements set forth in Section .0400 of this Subchapter.
- (4) Upon notification from a disbursing agency that a recipient is no longer noncompliant with the requirements set forth in Section .0200 of this Subchapter, validate that all such noncompliance has been corrected prior to the removal of that recipient from the Suspension of Funding listing. A recipient may appeal to the Office of State Budget and Management to be removed from the Suspension of Funding list if they believe they have been suspended in error. Once removed from the Suspension of Funding list, the recipient is eligible for current and future State financial assistance.
- (5) Take appropriate administrative action when the Director of the Budget finds that the recipient has spent or encumbered State funds for an unauthorized purpose, including ensuring allegations of criminal violations are reported to the Attorney General and the State Bureau of Investigation by the disbursing agency.
- (6) If the funds are a pass-through of funds awarded by an agency of the United States, consult with the awarding agency of the United States and the State agency that is the recipient of the pass-through funds prior to taking actions authorized by this Subchapter.

- (1) A specification of the purpose of the award, services to be provided, objectives to be achieved, and expected results;
- (2) The source of funds (such as federal or state) must be identified, including the CFDA number and percentages of each source where applicable.
- (3) Account coding information sufficient to provide for tracking of the disbursement through the disbursing agency's accounting system.
- (4) Agreement to maintain all pertinent records for a period of five years or until all audit exceptions have been resolved, whichever is longer.
- (5) Names of all parties to the terms of the contract. For the recipient or subrecipient, each contract shall contain the employer/tax identification number, address, contact information, and the recipient's or subrecipient's fiscal year end date.
- (6) Signatures binding all parties to the terms of the contract.
- (7) Duration of the contract, including the effective and termination dates.
- (8) Amount of the contract and schedule of payment(s).
- (9) Particular duties of the recipient.
- (10) Required reports and reporting deadlines.
- (11) Provisions for termination by mutual consent with 60 days written notice to the other party, or as otherwise provided by law.
- (12) A provision that the awarding of State financial assistance is subject to allocation and appropriation of funds to the agency for the purposes set forth in the contract.
- (13) Provision that requires reversion of unexpended State financial assistance to the agency upon termination of the contract.
- (14) A provision that requires compliance with the requirements set forth in this Subchapter, including audit oversight by the Office of the State Auditor, access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding.
- (15) A clause addressing assignability and subcontracting, including the following:
 - (a) The recipient or subrecipient is not relieved of any of the duties and responsibilities of the original contract.
 - (b) The subrecipient agrees to abide by the standards contained in this Subchapter and to provide information in its possession that is needed by the recipient to comply with these standards.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Readopted Eff. July 1, 2016.

09 NCAC 03M .0701 GRANT DOCUMENTATION

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Repealed Eff. July 1, 2016.

09 NCAC 03M .0702 SUBORDINATION OF OTHER CONTRACTS AGREEMENTS

No contract agreements shall act to eliminate or diminish the requirements contained in this Subchapter.

History Note: Authority G.S. 143C-6-22; 143C-6-23; Eff. July 1, 2005; Readopted Eff. July 1, 2016.

09 NCAC 03M .0703 REQUIRED CONTRACT PROVISIONS

Prior to receiving State financial assistance, the recipient shall sign a contract with the agency that shall contain the obligations of both parties. Prior to disbursing any State financial assistance, each agency shall sign a contract with the recipient requiring compliance with the rules in this Subchapter. The requirements of this Rule shall also be applicable to all subrecipient relationships. Each contract agreement shall contain:

History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Readopted Eff. July 1, 2016.

09 NCAC 03M .0704 GRANT MONITORING AND EVALUATION

History Note: Authority G.S. 143C-6-22; 143C-23;
Eff. July 1, 2005;
Repealed Eff. July 1, 2016.

09 NCAC 03M .0801 NONCOMPLIANCE WITH RULES

(a) An agency shall not disburse any State financial assistance to an entity that is on the Suspension of Funding list.

(b) When a non-State entity does not comply with the requirements of this Subchapter, the agency shall take measures to ensure that the requirements are met, including:

- (1) Communicating the requirements to the non-State entity.
- (2) Requiring a response from the non-State entity upon a determination of noncompliance.
- (3) Suspending payments to the non-State entity until the non-State entity is in compliance.

(c) When an agency discovers evidence of management deficiencies or criminal activity leading to the misuse of funds, the agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:

- (1) Suspend payments until the matter has been fully investigated and corrective action has been taken.
- (2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.
- (3) Report possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with G.S. 143B-920.

(d) Upon determination of noncompliance with requirements of the contract that are not indicative of management deficiencies or criminal activity, the agency shall give the recipient or subrecipient 60 days written notice to take corrective action. If the recipient or subrecipient has not taken the appropriate corrective action after the 60-day period, the disbursing agency shall notify the Office of State Budget and Management and take the appropriate action or actions, such as:

- (1) Suspend payments pending negotiation of a plan of corrective action.
- (2) Terminate the contract and take action to retrieve unexpended funds or unauthorized expenditures.
- (3) Offset future payments with any amounts improperly spent.

(e) Each disbursing agency shall ensure that recipients and subrecipients have complied with the applicable provisions of this Subchapter.

(f) Agencies are subject to audit for compliance with the requirements of this Subchapter by the Office of State Budget and Management, the Office of the State Auditor, and agency internal

auditors. Any finding of noncompliance by an agency shall be reported to the Office of State Budget and Management to take appropriate action, as set forth in this Rule.

(g) The Office of State Budget and Management shall notify the agency of the finding and provide 60 days to take corrective action. After the 60-day period, the Office of State Budget and Management shall conduct a follow-up audit to determine if appropriate corrective action has been taken. If an awarding agency fails to take appropriate corrective action or is repeatedly found to be out of compliance with the requirements of this Subchapter, the Office of State Budget and Management shall notify the head of the agency and the State Auditor of the finding.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Readopted Eff. July 1, 2016.

09 NCAC 03M .0802 RECOVERY OF STATE FUNDS

(a) The disbursing agency shall take appropriate administrative action to recover State financial assistance in the event a recipient or subrecipient:

- (1) Is unable to fulfill the obligations of the contractual agreement.
- (2) Is unable to accomplish the purposes of the award.
- (3) Is noncompliant with the reporting requirements.
- (4) Has inappropriately used State financial assistance.

(b) The disbursing agency shall seek the assistance of the Attorney General in the recovery and return of State financial assistance if legal action is required.

(c) Any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the use of State financial assistance shall be reported by the agency to the Office of State Budget and Management, the Attorney General, and the State Bureau of Investigation.

History Note: Authority G.S. 143C-6-22; 143C-6-23;
Eff. July 1, 2005;
Readopted Eff. July 1, 2016.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 13D .2001 DEFINITIONS

The following definitions will apply throughout this Subchapter:

- (1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain, or mental anguish.
- (2) "Accident" means an unplanned event resulting in the injury or wounding, no matter how slight, of a patient or other individual.
- (3) "Addition" means an extension or increase in floor area or height of a building.
- (4) "Administrator" as defined in G.S. 90-276(4).

- (5) "Alteration" means any construction or renovation to an existing structure other than repair, maintenance, or addition.
- (6) "Brain injury long term care" means an interdisciplinary, intensive maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Brain injury long term care is provided through a medically supervised interdisciplinary process and is directed toward maintaining the individual at the optimal level of physical, cognitive, and behavioral functions.
- (7) "Capacity" means the maximum number of patient or resident beds for which the facility is licensed to maintain at any given time.
- (8) "Combination facility" means a combination home as defined in G.S. 131E-101.
- (9) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living, including bathing, dressing, grooming, transferring, eating, and using speech, language, or other communication systems. A comprehensive, inpatient rehabilitation program utilizes a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psychosocial, and cognitive deficits.
- (10) "Department" means the North Carolina Department of Health and Human Services.
- (11) "Director of nursing" means a registered nurse who has authority and direct responsibility for all nursing services and nursing care.
- (12) "Discharge" means a physical relocation of a patient to another health care setting, the discharge of a patient to his or her home, or the relocation of a patient from a nursing bed to an adult care home bed, or from an adult care home bed to a nursing bed.
- (13) "Existing facility" means a facility currently licensed, a proposed facility, a proposed addition to a licensed facility, or a proposed remodeled licensed facility that will be built according to design development drawings and specifications approved by the Department for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter, to the effective date of this Rule.
- (14) "Facility" means a nursing facility or combination facility as defined in this Rule.
- (15) "Incident" means any accident, event, or occurrence that is unplanned, or unusual, and has actually caused harm to a patient, or has the potential for harm.
- (16) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.
- (17) "Interdisciplinary" means an integrated process involving representatives from disciplines of the health care team.
- (18) "Licensee" means the person, firm, partnership, association, corporation, or organization to whom a license to operate the facility has been issued. The licensee is the legal entity that is responsible for the operation of the business.
- (19) "Medication error rate" means the measure of discrepancies between medication that was ordered for a patient by the health care provider and medication that is actually administered to the patient. The medication error rate is calculated by dividing the number of errors observed by the surveyor by the opportunities for error, multiplied times 100.
- (20) "Misappropriation of property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a patient's belongings or money without the patient's consent.
- (21) "Neglect" means a failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.
- (22) "New facility" means a proposed facility, a proposed addition to an existing facility, or a proposed remodeled portion of an existing facility that will be built according to design development drawings and specifications approved by the Department for compliance with the standards established in Sections .3100, .3200, and .3400 of this Subchapter after the effective date of this Rule.
- (23) "Nurse Aide" means a person who is listed on the N.C. Nurse Aide Registry and provides nursing or nursing-related services to patients in a nursing home. A nurse aide is not a licensed health professional. Nursing homes that participate in Medicare or Medicaid shall comply with 42 CFR Part 483.75(e), which is incorporated by reference, including subsequent amendments. The Code of Federal Regulations may be accessed at http://www.access.gpo.gov/nara/cfr/waisidx_08/42cfr483_08.
- (24) "Nursing facility" means a nursing home as defined in G.S. 131E-101.
- (25) "Patient" means any person admitted for nursing care.

- (26) "Remodeling" means alterations, renovations, rehabilitation work, repairs to structural systems, and replacement of building systems at a nursing or combination facility.
- (27) "Repair" means reconstruction or renewal of any part of an existing building for the purpose of its maintenance.
- (28) "Resident" means any person admitted for care to an adult care home part of a combination facility as defined in G.S. 131E-101
- (29) "Respite care" means services provided for a patient on a temporary basis, not to exceed 30 days.
- (30) "Surveyor" means an authorized representative of the Department who inspects nursing facilities and combination facilities to determine compliance with rules as set forth in G.S. 131E-117; Subchapters 13D and 13F of this Chapter; and 42 CFR Part 483, Requirements for States and Long Term Care Facilities.
- (31) "Ventilator dependence" means a physiological dependency by a patient on the use of a ventilator for more than eight hours a day.
- (32) "Violation" means a failure to comply with the regulations, standards, and requirements set forth in G.S. 131E-117 and 131D-21; Subchapters 13D and 13F of this Chapter; or 42 CFR Part 483, Requirements for States and Long Term Care Facilities, that directly relates to a patient's or resident's health, safety, or welfare, or which creates a substantial risk that death, or serious physical harm will occur.

History Note: Authority G.S. 131E-104; RRC objection due to lack of statutory authority Eff. July 13, 1995; Eff. January 1, 1996; Readopted Eff. July 1, 2016.

10A NCAC 13D .2210 REPORTING AND INVESTIGATING ABUSE, NEGLECT OR MISAPPROPRIATION

- (a) A facility shall take measures to prevent patient abuse, patient neglect, or misappropriation of patient property, including orientation and instruction of facility staff on patients' rights and the screening of and requesting of references for all prospective employees.
- (b) A facility shall ensure that the Division of Health Service Regulation is notified within 24 hours of the facility's becoming aware of any allegation against health care personnel of any act listed in G.S. 131E-256(a)(1).
- (c) A facility shall investigate allegations of any act listed in G.S. 131E-256(a)(1), shall document all information pertaining to such investigation, and shall take the necessary steps to prevent further incidents while the investigation is in progress.
- (d) A facility shall ensure that the report of investigation is printed or typed and sent to the Division of Health Service Regulation

within five working days of the allegation. The report shall include:

- (1) the date and time of the alleged incident;
- (2) the patient's full name and room number;
- (3) details of the allegation and any injury;
- (4) names of the accused and any witnesses;
- (5) names of the facility staff who investigated the allegation;
- (6) results of the investigation; and
- (7) any corrective action that was taken by the facility.

History Note: Authority G.S. 131E-104; 131E-131; 131E-255; 131E-256; Eff. January 1, 1996; Amended Eff. July 1, 2014; February 1, 2013; August 1, 2008; October 1, 1998; Readopted Eff. July 1, 2016.

10A NCAC 13D .2303 NURSE STAFFING REQUIREMENTS

(a) A facility shall provide licensed nursing staff sufficient to accomplish the following:

- (1) patient needs assessment;
- (2) patient care planning; and
- (3) supervisory functions in accordance with the levels of patient care advertised or offered by the facility.

(b) A facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the physical, mental, and psychosocial well-being of each patient, as determined by patient assessments and individual plans of care.

(c) A multi-storied facility shall have at least one nurse aide on duty on each patient care floor at all times.

(d) Except for designated units with higher staffing requirements noted elsewhere in this Subchapter, daily direct patient care nursing staff, licensed and unlicensed, shall include:

- (1) at least one licensed nurse on duty for direct patient care at all times; and
- (2) a registered nurse for at least eight consecutive hours a day, seven days a week. This coverage may be spread over more than one shift if such a need exists. The director of nursing may be counted as meeting the requirements for both the director of nursing and patient staffing for facilities with a total census of 60 nursing beds or less.

History Note: Authority G.S. 131E-104; 131E-114.1; Eff. January 1, 1996; Amended Eff. January 1, 2013; Readopted Eff. July 1, 2016.

10A NCAC 13D .2402 PRESERVATION OF MEDICAL RECORDS

(a) A facility shall keep medical records on file for five years following the discharge of an adult patient.

(b) Notwithstanding Paragraph (c) of this Rule, if the patient is a minor when discharged from the nursing facility, the records shall

be kept on file until his or her 19th birthday and for the additional time specified in G.S. 1-17(b) for commencement of an action on behalf of a minor.

(c) If a facility discontinues operation, the licensee shall inform the Division of Health Service Regulation where its records are stored. For five years after a facility discontinues operations, records shall be stored with a business offering medical record storage and retrieval services.

(d) All medical records are confidential. A facility shall comply with 42 CFR Parts 160, 162 and 164 of the Health Insurance Portability and Accountability Act.

(e) At the time of the inspection, a facility shall inform the surveyor of the name of any patient who has denied the Department access to his or her medical record pursuant to G.S. 131E-105.

History Note: Authority G.S. 131E-104; 131E-105; Eff. January 1, 1996. Amended Eff. November 1, 2014; Readopted Eff. July 1, 2016.

10A NCAC 13D .2503 USE OF NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS

(a) Any facility that employs nurse practitioners or physician assistants shall maintain the following information for each nurse practitioner and physician assistant:

- (1) verification of current approval to practice as a nurse practitioner by the Medical Board and Board of Nursing for each practitioner, or verification of current approval to practice as a physician assistant by the Medical Board for each physician assistant; and
- (2) a copy of the job description or contract signed by the nurse practitioner or physician assistant and the supervising physicians.

(b) The privileges of the nurse practitioner or physician assistant shall be defined by the facility's policies and procedures, and shall be limited to those privileges authorized in 21 NCAC 36 .0802 and .0809 for the nurse practitioner or 21 NCAC 32S .0212 for the physician assistant.

History Note: Authority G.S. 131E-104; Eff. January 1, 1996; Amended Eff. November 1, 2014; Readopted Eff. July 1, 2016.

10A NCAC 13D .3201 REQUIRED SPACES

(a) A facility shall meet the following requirements for bedrooms:

- (1) single bedrooms shall be provided with not less than 100 square feet of floor area;
- (2) bedrooms with more than one bed shall be provided with not less than 80 square feet of floor area per bed;
- (3) bedrooms shall have windows with views to the outdoors. The gross window area shall not be less than eight percent of the bedroom floor area required by Subparagraphs (1) and (2) of this Paragraph;

- (4) each bedroom shall be provided with one closet or wardrobe per bed. In nursing facilities and the nursing home portion of combination facilities, the closet or wardrobe shall have clothing storage space of not less than 36 cubic feet per bed with one-half of this space for hanging clothes. In the adult care home portion of a combination facility, the closet or wardrobe shall have clothing storage space of not less than 48 cubic feet per bed with one-half of this space for hanging clothes; and
- (5) floor space for closets, toilet rooms, vestibules, or wardrobes shall not be included in the areas required by this Subparagraph.

(b) A facility shall meet the following requirements for dining, activity, and common use areas:

- (1) nursing facilities and the nursing home portion of combination facilities shall have:
 - (A) a separate area or areas set aside for dining, measuring not less than 10 square feet per bed;
 - (B) a separate area or areas set aside for activities, measuring not less than 10 square feet per bed; and
 - (C) an additional dining, activity and common use area or areas, measuring not less than five square feet per bed. This area may be in a separate area or combined with the separate dining and activity areas required by Part (A) and (B) of this Subparagraph.
- (2) the adult care home portion of combination facilities shall have:
 - (A) a separate area or area set aside for dining, measuring not less than 14 square feet per bed; and
 - (B) a separate area or areas set aside for activities, measuring not less than 16 square feet per bed.
- (3) the dining room area or areas required by this Paragraph may be combined.
- (4) the activity area or areas in nursing facilities and the nursing home portion of combination facilities shall not be combined with the activity area or areas in the adult care home portion of combination facilities.
- (5) floor space for physical, occupational, and rehabilitation therapy shall not be included in the areas required by this Paragraph. Closets and storage units for equipment and supplies shall not be included in the areas required by this Paragraph.
- (6) dining, activity, and common use areas shall be designed and equipped to provide accessibility to both patients and residents confined to wheelchairs and ambulatory patients or residents.
- (7) dining, activity, and common use areas required by this Paragraph shall have windows with

views to the outdoors. The gross window area shall not be less than eight percent of the required floor area required by Subparagraphs (1) and (2) of this Paragraph.

- (8) for facilities designed with household units for 30 or fewer patients or residents, the dining and activity areas may be combined.

(c) Outdoor areas for individual and group activities shall be provided and shall be accessible to patients and residents with physical disabilities. In the adult care portion of a combination facility, a nursing unit with a control mechanism and staff procedures as required by Rule .3404(f) of this Subchapter shall have direct access to an outdoor area.

(d) Some means for patients and residents to lock personal articles within the facility shall be provided.

(e) A facility shall meet the following requirements for toilet rooms, tubs, showers, and central bathing areas:

- (1) a toilet room shall contain a toilet and lavatory. If a lavatory is provided in each bedroom, the toilet room is not required to have a lavatory.
- (2) a toilet room shall be accessible from each bedroom without going through the general corridor.
- (3) one toilet room may serve two bedrooms, but not more than eight beds.
- (4) one tub or shower shall be provided for each 15 beds not individually served by a tub or shower.
- (5) for each 120 beds or fraction thereof, a central bathing area shall be provided with the following:
 - (A) a bathtub or a manufactured walk-in bathtub or a similar manufactured bathtub designed for easy transfer of patients and residents into the tub. Bathtubs shall be accessible on three sides. Manufactured walk-in bathtubs or a similar manufactured bathtubs shall be accessible on two sides;
 - (B) a roll-in shower designed and equipped for unobstructed ease of shower chair entry and use. If a bathroom with a roll-in shower designed and equipped for unobstructed ease of shower chair entry adjoins each bedroom in the facility, the central bathing area is not required to have a roll-in shower;
 - (C) a toilet and lavatory; and
 - (D) a cubicle curtain enclosing the toilet, tub, and shower. A closed cubicle curtain at one of these plumbing fixtures shall not restrict access to the other plumbing fixtures.

(f) For each nursing unit, or fraction thereof on each floor, the following shall be provided:

- (1) a medication preparation area with:
 - (A) a counter;

- (B) a double locked narcotic storage area under the visual control of nursing staff;
- (C) a medication refrigerator;
- (D) eye-level medication storage;
- (E) cabinet storage; and
- (F) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;

(2) a clean utility room with:

- (A) a counter;
- (B) storage; and
- (C) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin;

(3) a soiled utility room with:

- (A) a counter;
- (B) storage; and
- (C) a sink. The sink shall be trimmed with valves that can be operated without hands. If the sink is equipped with blade handles, the blade handles shall not be less than four and one half inches in length. The sink water spout shall be mounted so that its discharge point is a minimum of 10 inches above the bottom of the sink basin. The soiled utility room shall be equipped for the cleaning and sanitizing of bedpans as required by 15A NCAC 18A .1312 Toilet: Handwashing: Laundry: And Bathing Facilities;

(4) a nurses' toilet and locker space for personal belongings;

(5) a soiled linen storage room. If the soiled linen storage room is combined with the soiled utility room, a separate soiled linen storage room is not required;

(6) clean linen storage provided in one or more of the following:

- (A) a separate linen storage room;
- (B) cabinets in the clean utility room; or
- (C) a linen closet;

(7) a nourishment station in an area enclosed with walls and doors with:

- (A) work space;
- (B) cabinets;

- (C) refrigerated storage; and
 - (D) a small stove, microwave, or hot plate;
 - (8) an audio-visual nurse-patient call system arranged to ensure that a patient's or resident's call in the facility notifies and directs staff to the location where the call was activated;
 - (9) a control point located no more than 150 feet from the furthest patient or resident bedroom door with:
 - (A) an area for charting patient and resident records;
 - (B) space for storage of emergency equipment and supplies; and
 - (C) nurse patient call and alarm annunciation systems; and
 - (10) a janitor's closet.
 - (g) If a facility is designed with patient or resident household units, a patient and resident dietary area located within the patient or resident household unit may substitute for the nourishment station. The patient or resident dietary area shall be for the use of staff, patients, residents, and families. The patient or resident dietary area shall contain:
 - (1) cooking equipment;
 - (2) a kitchen sink;
 - (3) refrigerated storage; and
 - (4) storage areas.
 - (h) Clean linen storage shall be provided in a separate room from bulk supplies.
 - (i) The kitchen area and laundry area each shall have a janitor's closet. Administration, occupational and physical therapy, recreation, personal care, and employee areas shall be provided janitor's closets and may share one as a group.
 - (j) Stretcher and wheelchair storage shall be provided.
 - (k) The facility shall provide patient and resident storage at the rate of not less than five square feet of floor area per licensed bed. This storage space shall:
 - (1) be used by patients and residents to store out-of-season clothing and suitcases;
 - (2) be either in the facility or within 500 feet of the facility on the same site; and
 - (3) be in addition to the other storage space required by this Rule.
 - (l) Office space shall be provided for business transactions. Office space shall be provided for persons holding the following positions:
 - (1) administrator;
 - (2) director of nursing;
 - (3) social services director;
 - (4) activities director; and
 - (5) physical therapist.
 - (m) Each combination facility shall provide a minimum of one residential washer and residential dryer in a location accessible by adult care home staff, residents, and residents' families.
- History Note: Authority G.S. 131E-104; 42 CFR 483.70; Eff. January 1, 1996; Amended Eff. August 1, 2014; October 1, 2008; Readopted Eff. July 1, 2016.*

10A NCAC 45A .0101 GENERAL

- (a) The purpose of this Subchapter is to establish uniform policies and procedures for the administration of all Department of Health and Human Services' payment programs for which the Commission for Public Health has been granted rulemaking authority.
- (b) In the event of conflict between the rules in this Subchapter and the rules adopted by the various payment programs, the rules of this Subchapter shall control.
- (c) Persons who wish to receive rule-making notices concerning the rules in this Subchapter may send a written request to Purchase of Care Services Unit, Division of Public Health, 1907 Mail Service Center, Raleigh, NC 27699-1907.

History Note: Authority G.S. 130A-5(3); 130A-124; 130A-127; 130A-129, 130A-205; Eff. July 1, 1981; Amended Eff. July 1, 1983; April 1, 1982; January 1, 1982; Temporary Amendment Eff. August 31, 1983, for a period of 120 days to expire on December 29, 1983; Amended Eff. December 29, 1983; Transferred and Recodified from 10 NCAC 4C .0101 Eff. April 4, 1990; Amended Eff. January 1, 2014; April 1, 1999; April 1, 1993, December 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. January 13, 2015; Amended Eff. June 1, 2016.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

- (a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.
- (b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 616 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

(1)	LEGAL UNIT	
(A)	Motor Vehicle Laws	20 Hours
(B)	Preparing for Court and Testifying in Court	12 Hours
(C)	Elements of Criminal Law	24 Hours
(D)	Juvenile Laws and Procedures	8 Hours
(E)	Arrest, Search and Seizure/Constitutional Law	28 Hours
(F)	Alcohol Beverage Control (ABC)Laws and Procedures	4 Hours
	UNIT TOTAL	96 Hours
(2)	PATROL DUTIES UNIT	
(A)	Techniques of Traffic Law Enforcement	24 Hours

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	(B) Explosives and Hazardous Materials Emergencies	12 Hours	TOTAL COURSE HOURS	616 Hours
	(C) Traffic Crash Investigation	20 Hours		
	(D) In-Custody Transportation	8 Hours		
	(E) Crowd Management	12 Hours		
	(F) Patrol Techniques	28 Hours		
	(G) Law Enforcement Communication and Information Systems	8 Hours		
	(H) Anti-Terrorism	4 Hours		
	(I) Rapid Deployment	8 Hours		
	UNIT TOTAL	124 Hours		
(3)	LAW ENFORCEMENT COMMUNICATION UNIT			
	(A) Responding to Victims and the Public	10 Hours		
	(B) Domestic Violence Response	12 Hours		
	(C) Ethics for Professional Law Enforcement	4 Hours		
	(D) Individuals with Mental Illness and Developmental Disabilities	8 Hours		
	(E) Crime Prevention Techniques	6 Hours		
	(F) Communication Skills for Law Enforcement Officers	8 Hours		
	UNIT TOTAL	48 Hours		
(4)	INVESTIGATION UNIT			
	(A) Fingerprinting and Photographing Arrestee	6 Hours		
	(B) Field Note-taking and Report Writing	12 Hours		
	(C) Criminal Investigation	34 Hours		
	(D) Interviews: Field and In-Custody	16 Hours		
	(E) Controlled Substances	12 Hours		
	(F) Human Trafficking	2 Hours		
	UNIT TOTAL	82 Hours		
(5)	PRACTICAL APPLICATION UNIT			
	(A) First Responder	32 Hours		
	(B) Firearms	48 Hours		
	(C) Law Enforcement Driver Training	40 Hours		
	(D) Physical Fitness (classroom instruction)	8 Hours		
	(E) Fitness Assessment and Testing	12 Hours		
	(F) Physical Exercise 1 hour daily, 3 days a week	34 Hours		
	(G) Subject Control Arrest Techniques	40 Hours		
	UNIT TOTAL	214 Hours		
(6)	SHERIFF-SPECIFIC UNIT			
	(A) Civil Process	24 Hours		
	(B) Sheriffs' Responsibilities: Detention Duties	4 Hours		
	(C) Sheriffs' Responsibilities: Court Duties	6 Hours		
	UNIT TOTAL	34 Hours		
(7)	COURSE ORIENTATION	2 Hours		
(8)	TESTING	16 Hours		

(c) The "Basic Law Enforcement Training Manual" published by the North Carolina Justice Academy shall be used as the curriculum for this training course. Copies of this publication may be inspected at the office of the agency:
Criminal Justice Standards Division

North Carolina Department of Justice
1700 Tryon Park Drive
Post Office Drawer 149
Raleigh, North Carolina 27602

and may be obtained at the cost of printing and postage from the North Carolina Justice Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(d) The "Basic Law Enforcement Training Course Management Guide" published by the North Carolina Justice Academy shall be used by school directors in planning, implementing, and delivering basic training courses. Copies of this guide may be obtained at the cost of printing and postage from the Justice Academy.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. July 1, 2016; January 1, 2015; February 1, 2014; July 1, 2011; July 1, 2009; January 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.

12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for Juvenile Court Counselors and Chief Court Counselors shall consist of a minimum of 154 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a Juvenile Court Counselor and a Chief Court Counselor.

(b) Each basic training course for Juvenile Court Counselors shall include training in the following topic areas:

- (1) Juvenile Justice Common Core:
 - (A) Juvenile Justice Overview 2 hours
 - (B) Basic Individual Counseling Skills 8 hours
 - (C) Interpersonal Communication Skills 8 hours
 - (D) Working with Families 3 hours
 - (E) Characteristics of Delinquents 4 hours
 - (F) Unlawful Workplace Harassment 2 hours
 - (G) Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace 2 hours
 - (H) Staff and Juvenile Relationships 4 hours
 - (I) Gang Awareness 4 hours

(J)	Situational Awareness and Risk Assessment	4 hours
(K)	Restraints, Controls and Defensive Techniques	28 hours
(L)	Mechanical Restraints	4 hours
(M)	Secure Transportation	4 hours
(N)	Mental Health	8 hours
(O)	CPR	4 hours
(P)	First Aid	4 hours
(Q)	Employee Fitness and Wellness	4 hours
(R)	Multi-Generational Workforce	3 hours
(S)	Understanding Workplace Differences	4 hours
	Total Hours	104 hours
(2)	Juvenile Court Counselor Specific:	
(A)	Roles and Responsibilities	8 hours
(B)	Juvenile Law	8 hours
(C)	Intake	8 hours
(D)	Risk and Needs Assessment	4 hours
(E)	Report Writing and Documentation	12 hours
(F)	Interviewing	6 hours
(G)	Driver Safety	4 hours
	Total Hours	50 hours
	Total Course Hours	154 hours

(c) The "Juvenile Court Counselor Basic Training Manual" as published by the North Carolina Department of Public Safety shall be applied as the curriculum for delivery of Juvenile Court Counselor basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety
 2211 Schieffelin Road
 Apex, North Carolina 27502

(d) Upon completion of a Commission-certified training course for Juvenile Court Counselors and Chief Court Counselors, the Director of the school conducting the course shall notify the Commission of training completion by submitting a Report of Training Course Completion for each trainee. The Report of Training Completion Form is located on the agency's website: http://www.ncdoj.gov/getattachment/fbf3480c-05a1-4e0c-a81a-04070dea6199/F-11-Form_10-2-14.pdf.aspx.

(e) Employees of the Division of Adult Correction and Juvenile Justice who have completed the minimum 152 hour training program accredited by the Commission pursuant to Rule .0236 of this Section after January 1, 2013 who transfer from a Juvenile Justice Officer position to a Juvenile Court Counselor position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Court Counselor under Subparagraph (b)(2) of this Rule.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004; Amended Eff. July 1, 2016; August 1, 2015; May 1, 2014.

12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS

(a) The basic training course for Juvenile Justice Officers shall consist of a minimum of 152 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for Juvenile Justice Officers shall include training in the following identified topic areas:

(1)	Juvenile Justice Common Core:	
(A)	Juvenile Justice Overview	2 hours
(B)	Basic Individual Counseling Skills	8 hours
(C)	Interpersonal Communication Skills	8 hours
(D)	Working with Families	3 hours
(E)	Characteristics of Delinquents	4 hours
(F)	Unlawful Workplace Harassment	2 hours
(G)	Career Survival: Integrity and Ethics in the North Carolina Department of Public Safety Workplace	2 hours
(H)	Staff and Juvenile Relationships	4 hours
(I)	Gang Awareness	4 hours
(J)	Situational Awareness and Risk Assessment	4 hours
(K)	Restraints, Controls and Defensive Techniques	28 hours
(L)	Mechanical Restraints	4 hours
(M)	Secure Transportation	4 hours
(N)	Mental Health	8 hours
(O)	CPR	4 hours
(P)	First Aid	4 hours
(Q)	Employee Fitness and Wellness	4 hours
(R)	Multi-Generational Workforce	3 hours
(S)	Understanding Workplace Differences	4 hours
	Total Hours	104 hours
(2)	Juvenile Justice Officer Specific:	
(A)	Treatment Program Operations	4 hours
(B)	Maintaining Documentation of Activities and Behaviors	6 hours
(C)	Basic Group Leadership Skills	8 hours
(D)	Crisis Intervention Techniques	8 hours
(E)	Effective Behavior Management	12 hours
(F)	Health Services Overview	2 hours
(G)	Trauma and Delinquents	6 hours
(H)	Contraband and Search Techniques	2 hours
	Total Hours	48 hours
	Total Course Hours	152 hours

(c) The "Juvenile Justice Officer Basic Training Manual" as published by the North Carolina Department of Public Safety

shall be applied as the curriculum for delivery of Juvenile Justice Officer basic training courses. Copies of this publication may be inspected at or purchased at the cost of printing and postage from the office of the agency:

The Office of Staff Development and Training
 North Carolina Department of Public Safety
 2211 Schieffelin Road
 Apex, North Carolina 27502

(d) Upon completion of a Commission-certified training course for Juvenile Justice Officers the Director of the school conducting the course shall notify the Commission of the training completion by submitting a Report of Training Course Completion for each trainee. The Report of Training Completion Form is located on the agency's website: http://www.ncdoj.gov/getattachment/fbf3480c-05a1-4e0c-a81a-04070dea6199/F-11-Form_10-2-14.pdf.aspx.

(e) Employees of the Division of Adult Correction and Juvenile Justice who have completed the minimum 154 hour training program accredited by the Commission under Rule .0235 of this Section after January 1, 2013 who transfer from a Juvenile Court Counselor position to a Juvenile Justice Officer position shall be required to complete only the portions of the course identified as specific to the duties and responsibilities of a Juvenile Justice Officer pursuant to Subparagraph (b)(2) of this Rule.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004; Amended Eff. July 1, 2016; August 1, 2015; May 1, 2014.

12 NCAC 09B .0305 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for Specialized Instructor Certification as set forth in Rule .0304 of this Section shall be issued a certification to run concurrently with the existing General Instructor Certification, except as set out in Paragraph (d) of this Rule. The applicant shall apply for certification as a Specialized Instructor within 60 days from the date the applicant achieved a passing score on the state comprehensive exam for the respective Specialized Instructor training course.

(b) The requirements for certification as a specialized instructor are determined by the expiration date of the existing General Instructor Certification. The following requirements apply during the initial period of certification:

- (1) where certification for both General Probationary Instructor as set forth in Rule .0303 of this Section and Specialized Instructor Certification are issued on the same date, the instructor is required to satisfy the teaching requirement for only the general probationary instructor certification. The instructor may satisfy the teaching requirement for the General Probationary Instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or general status, the specialized

instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued;

- (3) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are 12 months or more until the certifications' expiration date, the instructor shall teach 12 hours for each specialized topic for which certification has been issued; and
- (4) where Specialized Instructor Certification becomes concurrent with an existing active period of General Instructor Certification, and there are fewer than 12 months until the certification expiration date, the instructor shall not be required to teach any hours for the specialized subject.

(c) The term of certification as a specialized instructor shall not exceed the 36 month period of General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three-year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted and that instruction was provided in a Commission-accredited basic training or Specialized Instructor Training course or in-service training course, pursuant to 12 NCAC 09E .0105. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators and written certification from a School Director or In-Service Training Coordinator;
- (2) proof that the applicant has, within the three-year period preceding application for renewal, attended and completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution that provided the instructor updates; and
- (A) a favorable written recommendation from a School Director or In-Service Training Coordinator completed on a Commission Renewal of Instructor and Professional Lecturer Certification Form that the instructor taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. The teaching must have occurred in a

- Commission-accredited basic training or Specialized Instructor Training course, pursuant to 12 NCAC 09C .0401, or an in-service training course, pursuant to 12 NCAC 09E .0105 during the three-year period of Specialized Instructor Certification; or
- (B) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. The evaluation shall be certified on a Commission Instructor Evaluation Form, located on the agency's website: <http://www.ncdoj.gov/getdoc/c2eba6a-a-12bc-4303-bf4b-5fa0431ef5a1/F-16-6-11.aspx>.
- (3) proof that the individual applying for renewal as a Specialized Firearms Instructor has achieved a minimum score of 92 on the day and night Basic Law Enforcement Training firearms qualification courses, administered by a certified Specialized Firearms Instructor, within the three-year period preceding the application for renewal.
- (4) proof that the individual applying for renewal as a Specialized Physical Fitness Instructor has passed the Basic Law Enforcement Training Police Officer Physical Abilities Test, administered by a certified Specialized Physical Fitness Instructor, within the three-year period preceding the application for renewal.

Upon the applicant's submission of the required documentation for renewal, the Commission staff shall renew the certification as a Specialized Instructor. The renewal shall simultaneously renew the General Instructor certification for a concurrent three year period.

(d) Certification as a Specialized Instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topic areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for Specialized Instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas shall be maintained.

(e) All instructors shall remain active during their period of certification. Any Specialized Instructor training courses

previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not teach at least 12 hours in each of the specialized topics during the three-year period for which certification was granted. Upon application for re-certification, the applicants shall meet the requirements of Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" shall be permissible. However, the guest participants are subject to the on-site supervision of a Commission-certified instructor and shall be authorized by the School Director. A guest participant shall be used only to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. July 1, 2016; August 1, 2015; May 1, 2014; June 1, 2012; November 1, 2007; January 1, 2006; December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987.

12 NCAC 09B .0701 MILITARY TRANSFEREES

(a) Pursuant to G.S. 17C-10.1 a current or honorably-discharged former military police officer seeking certification as a law enforcement officer shall submit to the Standards Division a completed Form F-21, Request for Military Evaluation for BLET, and copies of the individual's military law enforcement training and personnel records and Certificate of Release or Discharge documentation from Military Service. Form F-21 is located on the agency's website: http://www.ncdoj.gov/getdoc/f7c44036-d56a-4c12-90a3-d73a8806493f/F-21_Military-EvalCJ_6-8-15.aspx.

(b) Upon receipt of the documentation prescribed in Paragraph (a) of this Rule, the Standards Division shall evaluate the applicant's combined training and experience pursuant to G.S. 93B-15.1 to determine if the applicant's combined training and experience is substantially equivalent to or exceeds the minimum requirements for employment as a law enforcement officer as prescribed in Rules 09B .0101, 09B .0111, and 09B .0403 of this Subchapter.

(c) The Division shall issue probationary certification, pursuant to Rule 09C .0303 of this Chapter, to an applicant who meets the following requirements:

- (1) has completed a formal military basic training program and been awarded a military police occupational specialty rating;
- (2) has performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of application for certification as a law enforcement officer; and
- (3) whose combined training and experience is determined to be substantially equivalent to or exceeds the minimum expectations for employment as a law enforcement officer as prescribed in Rules .0101, .0111, and .0403(2) of this Subchapter.

(d) An applicant certified pursuant to Paragraph (c) of this Rule shall complete, within one year of being issued certification, the following with passing scores pursuant to Rule .0405(b) of this Subchapter:

- (1) the Basic Law Enforcement Training topics pursuant to Rule .0205(b)(1) and (b)(6)(A) of this Subchapter; and
- (2) the Basic Law Enforcement Training comprehensive written exam pursuant to Rule .0406(d) of this Subchapter.

(e) An applicant certified pursuant to Paragraph (c) of this Rule shall complete the in-service Firearms Training and Qualification course pursuant to 12 NCAC 09E .0106 prior to beginning employment with the hiring agency.

(f) The Division shall issue certification to a current or honorably discharged military police officer whose combined training and experience is not substantially equivalent to or does not exceed the minimum requirements for employment as a law enforcement officer, as specified in Rule .0403 of this Subchapter, if the applicant meets the following requirements:

- (1) completed a formal military basic training program and been awarded a military police occupational specialty rating;
- (2) performed military police officer duties in any of the branches of military service, active or reserve, or the National Guard for not less than two of the five years preceding the date of application for certification as a law enforcement officer;
- (3) meets the minimum standards for law enforcement officers as prescribed in Rule .0101 and Rule .0111 of this Subchapter;
- (4) completes with passing scores pursuant to Rule .0405(b) of this Subchapter the Basic Law Enforcement Training topics pursuant to Rule .0205(b)(1), (b)(2)(F), (b)(3)(B), (b)(3)(D), (b)(4)(F), (b)(5)(C), (b)(5)(G), (b)(6)(A), and (b)(7) of this Subchapter; and
- (5) achieves a passing score on the Basic Law Enforcement Training comprehensive written examination pursuant to Rule .0406(d) of this Subchapter.

(g) The Division shall waive any training topic in Paragraph (f)(4) of this Rule if the applicant provides documentation indicating he or she has completed substantially equivalent combined military training and experience in that topic.

(h) Members of the Air/Army National Guard and Military Reserve Components who have performed as a military police officer for not less than 1,040 hours during the five years preceding the date of application for certification shall be deemed to satisfy the requirements of Paragraph (c)(2) and Paragraph (f)(2) of this Rule.

(i) An applicant who, after completing the required training in Paragraph (d)(1) or (f)(4) this Rule, fails to achieve a passing score on the Basic Law Enforcement Training comprehensive written exam may be retested in the units the applicant failed. An applicant who fails three or more units must enroll in and complete with passing scores a subsequent delivery of the Basic

Law Enforcement Training course in its entirety in order to be eligible for certification.

(j) An active duty military police officer who obtains certification while on active duty under this Rule may retain the certification for the duration of active duty provided the officer continues to perform military police officer duties and complies with the in-service training requirements, as specified in Rule .0105 of this Chapter. An active duty military police officer who is unable to complete annual in-service requirements due to deployment or overseas assignment shall have 12 months from the time the officer returns to the United States in which to complete the in-service training requirements, as specified in Rule .0105 of this Chapter for each year he or she was unable to complete due to overseas assignment. The officer shall retain the certification for a period of one year following separation from active duty.

(k) When completing the required training topics specified in Paragraph (d)(1) or Paragraph (f)(4) of this Rule, the individual shall meet all requirements specified in Rule .0203 and Rule .0405 of this Subchapter.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 93B-15.1;

Eff. July 1, 2016.

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306, except for instructors:
 - (A) delivering CPR certifications that include cognitive and skills testing;
 - (B) delivering use of equipment training conducted by a manufacturer, manufacturer's representative or a service provider and documented through a certificate of completion; or
 - (C) delivering Incident Command System training for NIMS (National Incident Management System) compliance who are certified through FEMA (Federal Emergency Management Agency) as Incident Command Instructors.

In addition, each instructor certified by the Commission to teach in a Commission-accredited basic training, Speed Measuring Instrument Operator or Instructor training, Instructor or Specialized Instructor training, or Commission-recognized in-service training course shall remain competent in his or her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by completing all instructor updates issued by the Commission.

- (2) Instructors who teach a required in-service training topic, other than a topic taught pursuant to Paragraph (1) of this Rule, or a Firearms

Training and Qualification course pursuant to Rule .0105(a)(1) of this Section, shall achieve a passing grade on a topic specific test developed by the North Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training topic online shall also complete the in-service training for the topic he or she will be teaching. Instructors who teach an in-service training topic in a traditional classroom format will receive credit toward their own in-service training requirements, provided that they pass all required tests and have their instruction documented by the Department Head or In-Service Training Coordinator once completed.

- (3) The instructor shall deliver the training consistent with the specifications established in Rules 09E .0105 and .0106.
- (4) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department Head.
- (5) When the officer fails to qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form F-9A (Firearms Qualification and Record) to the officer that shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department Head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

All Commission forms are available for download on the Criminal Justice Standards Division website: <http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. July 1, 2016; May 1, 2014; February 1, 2013; April 1, 2008; January 1, 2006; January 1, 2005.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

(a) The following are established as topics, specifications, and hours to be included in each law enforcement officer's annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. These specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) 2016 Firearms Training and Qualification (6 credits);
- (2) 2016 Legal Update (4 credits);
- (3) 2016 Juvenile Minority Sensitivity Training: The Color of Justice (2 credits);

- (4) Human Trafficking Awareness (2 credits);
- (5) North Carolina Firearms Laws: Citizens and Guns (minimum of 2 credits); and
- (6) 2016 Department Topics of Choice (10 credits). The Department Head may choose any topic, provided the lesson plan is written in Instructional Systems Design format and is taught by an instructor who is certified by the Commission. Topics delivered pursuant to Rule .0104(1) of this Section to satisfy this requirement shall not be required to be written in Instructional Systems Design format or delivered by an instructor certified by the Commission.

(b) The "Specialized Firearms Instructor Training Manual" published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(c) The "In-Service Lesson Plans" published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the:

Criminal Justice Standards Division
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, North Carolina 27610

and may be obtained at the cost of printing and postage from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

(d) Lesson plans are designed to be delivered in hourly increments. A student who completes an online in-service training topic shall receive the number of credits that correspond to the number of hours of traditional classroom training, regardless of the amount of time the student spends completing the course.

(e) Completion of training shall be demonstrated by passing a written test for each in-service training topic, as follows:

- (1) A written test comprised of at least five questions per credit shall be developed by the agency or the North Carolina Justice Academy for each in-service training topic requiring testing. Written courses that are more than four credits in length are required to have a written test comprising of a minimum of 20 questions. The Firearms Training and Qualifications in-service course and topics delivered pursuant to

- Rule .0104(1) of this Section shall be exempt from this written test requirement;
- (2) A student shall pass each test by achieving 70 percent correct answers; and
 - (3) A student who completes a topic of in-service training in a traditional classroom setting or online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student shall complete the in-service training topic in a traditional classroom setting before taking the exam a third time.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989;
Amended Eff. January 1, 2005; November 1, 1998;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. July 1, 2016; January 1, 2016; January 1, 2015;
February 1, 2014; June 1, 2012; February 1, 2011; January 1, 2010; April 1, 2009; April 1, 2008; February 1, 2007; January 1, 2006.

TITLE 14B – DEPARTMENT OF PUBLIC SAFETY

14B NCAC 13 .0102 AUTHORITY

(a) Police officers of State Capitol Police shall be appointed as special police officers and have the same power of arrest as the police officers of the City of Raleigh. Such authority may be exercised within the same territorial jurisdiction as exercised by the police officers of the City of Raleigh, or deputy sheriff of Wake County on any property owned, leased, or maintained by the State located in the County of Wake.

(b) These police officers shall receive the minimum training as required by Criminal Justice Education and Training Standards Commission and shall be certified as law enforcement officers.

History Note: Authority G.S. 143B-911;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Transferred from T01.03C Eff. November 25, 1986;
Amended Eff. July 1, 1987;
Transferred from 01 NCAC 04H .0104 Eff. June 1, 2013;
Amended Eff. July 1, 2016.

14B NCAC 13 .0201 ARRESTS

Any time an arrest is made, the arresting officer shall follow these procedures:

- (1) Identify himself or herself, as a law enforcement officer;
- (2) Inform the individual that he or she is under arrest;
- (3) Inform the arrestee of the charge or charges;
- (4) Transport the arrestee to a judicial official for booking unless the arrestee is released subsequent to a summons or citation to appear in court; and
- (5) Complete report(s) of arrest.

History Note: Authority G.S.; 143B-911;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Transferred from T01.03C Eff. November 25, 1986;
Transferred from 01 NCAC 04H .0201 Eff. June 1, 2013;
Amended Eff. July 1, 2016.

14B NCAC 13 .0202 TRAFFIC COLLISIONS

All traffic collisions occurring on state property must be reported to State Capitol Police by the involved drivers. All collisions shall be investigated by the State Capitol Police. Collisions estimated to have damage of at least one thousand dollars (\$1000) or involving death or personal injury shall be reported to the Division of Motor Vehicles by the State Capitol Police. The reports of those collisions with damage less than one thousand dollars (\$1000) and not involving death or personal injury shall be filed with State Capitol Police.

History Note: Authority G.S. 143B-911;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Transferred from T01.03C Eff. November 25, 1986;
Amended Eff. July 1, 1987;
Transferred from 01 NCAC 04H .0206 Eff. June 1, 2013;
Amended Eff. July 1, 2016.

14B NCAC 13 .0203 STATE PARKING LOTS

History Note: Authority G.S. 143B-900;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Transferred from T01.03C Eff. November 25, 1986;
Transferred from 01 NCAC 04H .0207 Eff. June 1, 2013;
Repealed Eff. July 1, 2016.

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

15A NCAC 02B .0227 WATER QUALITY MANAGEMENT PLANS

(a) In implementing the water quality standards to protect the "existing uses" [as defined by Rule .0202 of this Section] of the waters of the state or the water quality that supports those uses, the Commission shall develop water quality management plans on a priority basis to attain, maintain or enhance water quality throughout the state. Additional specific actions deemed necessary by the Commission to protect the water quality or the existing uses of the waters of the state shall be specified in Paragraph (b) of this Rule. These actions may include anything within the powers of the Commission. The Commission may also consider local actions that have been taken to protect a waterbody in determining the appropriate protection options to be incorporated into the water quality management plan.

(b) All waters determined by the Commission to be protected by a water quality management plan are listed with specific actions either in Rules .0601 - .0608 of this Subchapter that address the Goose Creek watershed (Yadkin Pee-Dee River Basin) or as follows:

- (1) The Lockwoods Folly River Area (Lumber River Basin), which includes all waters of the lower Lockwoods Folly River in an area extending north from the Intracoastal Waterway to a line extending from Genoes Point to Mullet Creek, shall be protected by the specific actions described in Parts (A) through (D) of this Subparagraph.
 - (A) New development activities within 575' of the mean high water line that require a Sedimentation Erosion Control Plan or a CAMA major development permit shall comply with the low density option of the coastal stormwater requirements as specified in 15A NCAC 02H .1005(3)(a).
 - (B) New or expanded NPDES permits shall be issued only for non-domestic, non-industrial process type discharges such as non-industrial process cooling or seafood processing discharges. A public hearing shall be mandatory for any proposed (new or expanded) NPDES permit to this protected area.
 - (C) New or expanded marinas shall be located in upland basin areas.
 - (D) No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of "submerged aquatic vegetation habitat" or "shellfish producing habitat" that are defined in 15A NCAC 03I .0101, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the protected area or maintenance dredging for activities such as agriculture.
- (2) A part of the Cape Fear River (Cape Fear River Basin) comprised of a section of Index No.18-(71) from upstream mouth of Toomers Creek to a line across the river between Lilliput Creek and Snows Cut shall be protected by the Class SC Sw standards as well as the following site-specific action: All new individual NPDES wastewater discharges and expansions of existing individual NPDES wastewater discharges shall be required to provide treatment for oxygen consuming wastes as described in Parts (A) through (C) of this Subparagraph.
 - (A) Effluent limitations shall be as follows: BOD5 = 5 mg/l, NH3-N = 1 mg/l and DO = 6 mg/l, or utilize site-specific best available technology on a case-by-case basis for industrial discharges in accordance with Rule .0406 (e) of this Subchapter.

- (B) Seasonal effluent limits for oxygen consuming wastes shall be considered in accordance with Rule .0404 of this Subchapter.
- (C) Any new or expanded permitted pollutant discharge of oxygen consuming waste shall not cause the dissolved oxygen of the receiving water to drop more than 0.1 mg/l below the modeled in-stream dissolved oxygen at total permitted capacity for all discharges.

History Note: Authority G.S. 143-214.1; 143-215.8A; Eff. October 1, 1995; Amended Eff. January 1, 1996; Amended Eff. Pending Legislative Review.

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.
- (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean

inlets. This area extends landward from the mean low water line a distance sufficient to encompass that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties and channelization. The areas on the maps identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

- (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and
- (b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule. Photocopies are available at no charge.

- (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an Unvegetated Beach Area on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.

- (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the

Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124; Eff. September 9, 1977; Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985; Temporary Amendment Eff. October 10, 1996; Amended Eff. April 1, 1997; Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997; Temporary Amendment Eff. October 22, 1997; Amended Eff. July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.

15A NCAC 10F .0347 CRAVEN COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Craven County:

- (1) that portion of Northwest Creek between the entrance buoys at Fairfield Harbour Marina and the mouth of Spring Creek, and to all of Spring Creek, including the bulkheaded area of Fairfield Harbour, in Craven County;
- (2) that area of water between the entrance buoys of the Olde Towne Lake, from the Trent River and including all of Olde Towne Lake and the bulkhead area of Olde Towne Harbour itself;
- (3) Matthews Point Marina. That triangular area in the waters at the end of the Matthews Point Marina main pier, between a point 300 feet east of the pier at 34.90619 N, 76.76490 W, and a point 300 feet west of the pier at 34.90610 N, 76.76262 W, and a point 150 feet south of the pier at 34.90571 N, 76.76377 W, which is located at the confluence of Clubfoot and Mitchell Creeks off of the Neuse River;
- (4) that area of water within 50 yards of the fuel dock at Eastern Carolina Yacht Club; and
- (5) that portion of Slocum Creek in the City of Havelock, shore to shore east of a line from a point on the northern shore at 34.89122 N, 76.92302 W to a point on the southern shore at 34.89102 N, 76.92304 W and extending northeast, shore to shore to a line from a point on the northern shore at 34.8937 N, 76.92109 W to a point on the southeast shore at 34.89358 N, 76.92089 W.

(b) Speed Limit. No person shall operate any vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Green Springs Boys Club Swimming Area - No person shall operate a vessel within the Green Springs Boys Club Swimming Area along the Neuse River as designated by marker buoys and float lines.

(d) Placement and Maintenance of Markers. The Board of Commissioners of Craven County is hereby designated a suitable agency for placement and maintenance of the markers implementing Subparagraphs (a)(1), (2), (3), and (4) of this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

(e) The City of Havelock is hereby designated a suitable agency for placement and maintenance of the markers implementing Subparagraph (a)(5) of this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

History Note: Authority G.S. 75A-3; 75A-15; Eff. August 1, 1984; Amended Eff. December 1, 1990; October 1, 1989; June 1, 1989; Temporary Amendment Eff. April 1, 1998; Amended Eff. July 1, 2016; July 1, 1998.

15A NCAC 13A .0101 GENERAL

(a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.

(b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:

When used in any of the federal regulations incorporated by reference throughout this Subchapter, except where the context requires references to remain without substitution (including with regard to forms, publications and regulations concerning international shipments, variances from land disposal restrictions and other program areas over which the federal government retains sole authority): "United States" shall mean the State of North Carolina; "Environmental Protection Agency," "EPA" and "Agency" shall mean the Department of Environmental Quality; and "Administrator," "Regional Administrator," "Assistant Administrator" and "Director" shall mean the Secretary of the Department of Environmental Quality. The North Carolina Solid Waste Management Act and other applicable North Carolina General Statutes set forth in G.S. 130A shall be substituted for references to "the Solid Waste Disposal Act," "the Resource Conservation and Recovery Act" and "RCRA" where required by context.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through 260.3 (Subpart A), "General," are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 260.11, "References," is incorporated by reference including subsequent amendments and editions.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules shall submit a written request to the Hazardous Waste Section, 1646 Mail Service Center, Raleigh, N.C. 27699-1646. Upon receipt of each request, individuals shall be placed on a mailing list to receive notices.
- (2) Material incorporated by reference in the Federal Register may be obtained from the U. S. Government Bookstore's website at <https://bookstore.gpo.gov/products/sku/769-004-00000-9?ctid=> for a cost of nine hundred twenty nine dollars (\$929.00) and at <http://www.epa.gov/laws-regulations/regulations>, free of charge.
- (3) The North Carolina Hazardous Waste Management Rules may be obtained from the Hazardous Waste Section at the cost to the Section.
- (4) All material is available for inspection at the Department of Environmental Quality, Hazardous Waste Section, 217 West Jones Street, Raleigh, NC and at <http://deq.nc.gov/about/divisions/waste-management/waste-management-rules/hazardous-waste-rules>.

History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. September 1, 1979; Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987; May 1, 1987; Transferred and Recodified from 10 NCAC 10F .0001 Eff. April 4, 1990; Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992; December 1, 1991; Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996; Amended Eff. July 1, 2016; August 1, 2004; August 1, 2000; August 1, 1998; August 1, 1997.

15A NCAC 13A .0102 DEFINITIONS

(a) The definitions contained in G.S. 130A-290 apply to this Subchapter.

(b) 40 CFR 260.10 (Subpart B), "Definitions," is incorporated by reference, including subsequent amendments and editions except that the definitions for "Disposal," "Landfill," "Management or hazardous waste management," "Person," "Sludge," "Storage," and "Treatment" are defined by G.S. 130A-290 and are not incorporated by reference and the definition in 260.10 for "Contained" is not incorporated by reference.

(c) The following definition shall be substituted for "Contained": "Contained" means held in a unit (including a land-based unit as defined in this subpart) that meets the following criteria:

- (1) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials or hazardous constituents originating from the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. "Unpermitted releases" means releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, windblown dust, fugitive air emissions, and catastrophic unit failures;
- (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and
- (3) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions.
- (4) hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are presumptively contained.

(d) The following additional definitions shall apply throughout this Subchapter:

- (1) "Section" means the Hazardous Waste Section, in the Division of Waste Management, Department of Environmental Quality.
- (2) The "Department" means the Department of Environmental Quality (DEQ).
- (3) "Division" means the Division of Waste Management (DWM).
- (4) "Long Term Storage" means the containment of hazardous waste for an indefinite period of time in a facility designed to be closed with the hazardous waste in place.
- (5) "Off-site Recycling Facility" means any facility that receives shipments of hazardous waste from off-site to be recycled or processed for recycling through any process conducted at the facility, but does not include any facility owned or operated by a generator of hazardous waste solely to recycle their own waste.

History Note: Authority G.S. 130A 294(c); 150B-21.6; Eff. September 1, 1979; Amended Eff. June 1, 1989; June 1, 1988; February 1, 1987; October 1, 1986; Transferred and Recodified from 10 NCAC 10F .0002 Eff. April 4, 1990;

Amended Eff. April 1, 1993; October 1, 1990; August 1, 1990; Recodified from 15A NCAC 13A .0002 Eff. December 20, 1996; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2009; Amended Eff. July 1, 2010; Temporary Amendment Eff. December 1, 2015; Amended Eff. July 1, 2016.

15A NCAC 13A .0103 PETITIONS - PART 260

- (a) All rulemaking petitions for changes in this Subchapter shall be made in accordance with 15A NCAC 02I .0501.
- (b) In applying the federal requirements incorporated by reference in Paragraph (c) of this Rule, 15A NCAC 02I .0501 shall be substituted for references to 40 CFR 260.20.
- (c) 40 CFR 260.21 through 260.43 (Subpart C), "Rulemaking Petitions," are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. June 1, 1988; May 1, 1987; January 1, 1986; October 1, 1985; Transferred and Recodified from 10 NCAC 10F .0028 Eff. April 4, 1990; Amended Eff. April 1, 1993; November 1, 1991; October 1, 1990; Recodified from 15A NCAC 13A .0003 Eff. December 20, 1996; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2009; Amended Eff. July 1, 2010; Temporary Amendment Eff. December 1, 2015; Amended Eff. July 1, 2016.

15A NCAC 13A .0106 IDENTIFICATION AND LISTING OF HAZARDOUS WASTES - PART 261

- (a) 40 CFR 261.1 through 261.9 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.
- (b) 40 CFR 261.10 through 261.11 (Subpart B), "Criteria for Identifying the Characteristics of Hazardous Waste and for Listing Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (c) 40 CFR 261.20 through 261.24 (Subpart C), "Characteristics of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.
- (d) 40 CFR 261.30 through 261.37 (Subpart D), "Lists of Hazardous Wastes" are incorporated by reference including subsequent amendments and editions.
- (e) 40 CFR 261.38 through 261.41 (Subpart E), "Exclusions/Exemptions" are incorporated by reference including subsequent amendments and editions.
- (f) 40 CFR 261.140 through 261.151 (Subpart H), "Financial Requirements for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.
- (g) 40 CFR 261.170 through 261.179 (Subpart I), "Use and Management of Containers" are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 261.190 through 261.200 (Subpart J), "Tank Systems" are incorporated by reference including subsequent amendments and editions.

(i) 40 CFR 261.400 through 261.420 (Subpart M), "Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials" are incorporated by reference including subsequent amendments and editions.

(j) 40 CFR 261.1030 through 261.1049 (Subpart AA), "Air Emission Standards for Process Vents" are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 261.1050 through 261.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks" are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 261.1080 through 261.1090 (Subpart CC), "Air Emission Standards for Tanks and Containers" are incorporated by reference including subsequent amendments and editions.

(m) The Appendices to 40 CFR Part 261 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. June 1, 1988; February 1, 1988; December 1, 1987; August 1, 1987; Transferred and Recodified from 10 NCAC 10F .0029 Eff. April 4, 1990; Recodified from 15A NCAC 13A .0007 Eff. August 30, 1990; Amended Eff. January 1, 1996; April 1, 1993; February 1, 1992; December 1, 1990; Recodified from 15A NCAC 13A .0006 Eff. December 20, 1996; Amended Eff. April 1, 2007; August 1, 2000; Temporary Amendment Eff. January 1, 2009; Amended Eff. July 1, 2010; Temporary Amendment Eff. December 1, 2015; Amended Eff. July 1, 2016.

15A NCAC 13A .0107 STDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE - PART 262

(a) 40 CFR 262.10 through 262.12 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 262.20 through 262.27 (Subpart B), "The Manifest" are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 262.30 through 262.34 (Subpart C), "Pre-Transport Requirements" are incorporated by reference including subsequent amendments and editions.

(d) 40 CFR 262.40 through 262.44 (Subpart D), "Recordkeeping and Reporting" are incorporated by reference including subsequent amendments and editions. In addition, a generator shall keep records of inspections and results of inspections required by Section 262.34 for at least three years from the date of the inspection.

(e) 40 CFR 262.50 through 262.58 (Subpart E), "Exports of Hazardous Waste" are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 262.60 (Subpart F), "Imports of Hazardous Waste" is incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 262.70 (Subpart G), "Farmers" is incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 262.80 through 262.89 (Subpart H), "Transfrontier Shipments of Hazardous Waste for Recovery within the OECD" are incorporated by reference including subsequent amendments and editions, except that 40 CFR 262.89(e) is not incorporated by reference.

(i) 40 CFR 262.200 through 262.216 (Subpart K), "Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities" is incorporated by reference including subsequent amendments and editions.

(j) The appendix to 40 CFR Part 262 is incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. December 1, 1988; June 1, 1988; August 1, 1987; May 1, 1987; Transferred and Recodified from 10 NCAC 10F .0030 Eff. April 4, 1990; Amended Eff. August 1, 1990; Recodified from 15A NCAC 13A .0008 Eff. August 30, 1990; Amended Eff. April 1, 1993; October 1, 1990; Recodified from 15A NCAC 13A .0007 Eff. December 20, 1996; Amended Eff. July 1, 2016; April 1, 2010; November 1, 2007; January 1, 2007; April 1, 2001; August 1, 1998.

15A NCAC 13A .0108 STDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE - PART 263

(a) 40 CFR 263.10 through 263.12 (Subpart A), "General" are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 263.20 through 263.25 (Subpart B), "Compliance With the Manifest System and Recordkeeping" are incorporated by reference including subsequent amendments and editions.

(c) Upon discovering a significant manifest discrepancy, the transporter shall attempt to reconcile the discrepancy with the waste generator (e.g. with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the transporter on the 16th day shall submit to the Department a letter describing the discrepancy and attempts to reconcile it with a copy of the manifest or shipping paper at issue.

(d) "Manifest discrepancies" means differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a transporter actually transports. Significant discrepancies in quantity shall be as follows: for bulk waste, variations greater than 10 percent in weight; and, for batch waste, any variation in piece count (e.g. a discrepancy of one drum in a truckload). Significant discrepancies in type are obvious differences that may be discovered by inspection or waste analysis (e.g. waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper).

(e) 40 CFR 263.30 through 263.31 (Subpart C), "Hazardous Waste Discharges" are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6;

Eff. November 19, 1980;
Amended Eff. June 1, 1988; August 1, 1987; May 1, 1987;
October 1, 1986;
Transferred and Recodified from 10 NCAC 10F .0031 Eff. April 4, 1990;
Recodified from 15A NCAC 13A .0009 Eff. August 30, 1990;
Amended Eff. April 1, 1993; October 1, 1990;
Recodified from 15A NCAC 13A .0008 Eff. December 20, 1996;
Amended Eff. July 1, 2016; August 1, 2000.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

CHAPTER 06 – BOARD OF BARBER EXAMINERS

21 NCAC 06A .0102 PHYSICAL, MAILING, AND WEBSITE ADDRESS

- (a) The address of the Board is 5809-102 Departure Drive, Raleigh, North Carolina 27616.
- (b) The website address of the Board is www.ncbarbers.com.

History Note: Authority G.S. 86A-6;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. June 1, 2008; May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06B .0202 MAILING LIST

Any person or agency desiring to be placed on the mailing list for the Board's rule-making notices may file such request in writing furnishing his or her or the agency name and mailing address to the Chairman at the office address listed in 21 NCAC 06A .0102.

History Note: Authority G.S. 150B-21.2(d);
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06B .0204 INFORMATION REQUESTS

History Note: Authority G.S. 150B-21.2(d);
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed Eff. July 1, 2016.

21 NCAC 06B .0306 ACKNOWLEDGMENT

History Note: Authority G.S. 150B-21.2(f);
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed Eff. July 1, 2016.

21 NCAC 06B .0307 CONTROL OF HEARINGS

- (a) The presiding officer at a rule-making hearing shall have control of the proceedings including the following:

- (1) the recognition of speakers;
 - (2) the time allotment for presentations and extension of any time allotments; and
 - (3) the management of the hearing.
- (b) The presiding officer at all times shall ensure that each person participating in the hearing is given an equal opportunity to present views, data, and comments.

History Note: Authority G.S. 150B-21.2(e);
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06B .0309 RECORDS

- (a) A record of all rule-making proceedings shall be maintained permanently.
- (b) The record shall be maintained on file at the Board's office address listed in 21 NCAC 06A .0102.

History Note: Authority G.S. 150B-21.2(i);
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06B .0501 REQUEST FOR DECLARATORY RULING

All requests for declaratory rulings shall be in writing and mailed to the Chairman at the office address in 21 NCAC 06A .0102.

History Note: Authority G.S. 150B-4;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. June 1, 2008; May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06B .0502 CONTENTS OF REQUEST

All requests for a declaratory ruling shall include the following information:

- (1) the name and address of petitioner;
- (2) the statute, rule, or order to which the petition relates;
- (3) a statement of the manner in which the petitioner is affected, or thinks that he or she may be affected, by the rule, statute, or order and its application to him or her; and
- (4) a statement of whether an oral hearing is desired and if so, the reasons for an oral hearing.

History Note: Authority G.S. 150B-4;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06C .0101 ADMINISTRATIVE HEARINGS

Any person whose rights, duties, or privileges are affected by official actions of the Board shall be entitled to a hearing pursuant to G.S. 150B-38.

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.*

21 NCAC 06C .0201 REQUEST

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Repealed Eff. July 1, 2016.*

21 NCAC 06C .0204 CONTENTS OF REQUEST

A written request for an administrative hearing shall contain the following information:

- (1) the name and address of petitioner;
- (2) a statement of the Board action being challenged;
- (3) a statement of the way in which the petitioner has been aggrieved; and
- (4) a demand for a hearing.

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Readopted Eff. July 1, 2016.*

21 NCAC 06C .0205 ACKNOWLEDGEMENT

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. June 1, 2008; May 1, 1989;
Repealed Eff. July 1, 2016.*

21 NCAC 06C .0502 NOTICE AND HEARING

In determining periods between notice and hearing, the Chairman shall consider the following factors:

- (1) the complexity of the issues involved;
- (2) the probable length of the presentations at the hearing;
- (3) the number of parties;
- (4) the probable success of notifying all the parties without resorting to publication; and
- (5) the time and place of regularly scheduled meetings of the Board.

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.*

21 NCAC 06C .0503 ADDITIONAL INFORMATION ON NOTICES AND HEARINGS

21 NCAC 06C .0504 WRITTEN ANSWERS TO NOTICE

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed Eff. July 1, 2016.*

21 NCAC 06C .0601 WHO HEARS CONTESTED CASES

*History Note: Authority G.S. 150B-40;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed Eff. July 1, 2016.*

21 NCAC 06C .0701 LOCATION

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed Eff. July 1, 2016.*

21 NCAC 06C .0801 REQUIREMENTS FOR INTERVENTION

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed Eff. July 1, 2016.*

21 NCAC 06C .0807 ALLOWANCE

If the Board decides to allow intervention, notification of that decision shall be issued to all parties, including the petitioner. In cases of permissive intervention, the notification shall include a statement of the limitations, if any, of time, subject matter, evidence, or any other matters deemed necessary by the Board that are imposed upon the intervenor.

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.*

21 NCAC 06C .0808 DENIAL

*History Note: Authority G.S. 150B-38;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Repealed Eff. July 1, 2016.*

21 NCAC 06C .0903 BIAS OF BOARD MEMBER

If for any reason a member of the Board determines that personal bias or other factors precludes him or her from being able to hear a contested case and perform all duties in an impartial manner, he or she shall submit in writing to the Chairman his or her disqualification and the reasons therefore as required by Chapter 138A of the General Statutes.

History Note: Authority G.S. 138A-36; 150B-38; 150B-40; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. June 1, 2008; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06C .0904 BIAS CLAIMED BY PARTY

History Note: Authority G.S. 150B-40; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. May 1, 1989; Repealed Eff. July 1, 2016.

21 NCAC 06C .0905 AFFIDAVIT OF DISQUALIFICATION

An affidavit of disqualification shall state all facts the party deems relevant to the disqualification of the member of the Board.

History Note: Authority G.S. 150B-40; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06C .0906 FILING AFFIDAVIT

An affidavit of disqualification shall be considered timely if filed before commencement of the hearing.

History Note: Authority G.S. 150B-40; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06C .0907 DISQUALIFICATION

The members of the Board who are not challenged in an affidavit of disqualification shall decide whether to disqualify the person being challenged by the following procedural rules:

- (1) The person whose disqualification is to be determined shall not participate in the decision but may be called upon to furnish information to the remaining members of the Board.
- (2) The Chairman shall appoint a member of the Board or the Executive Director to investigate the allegations of the affidavit, if necessary.
- (3) If appointed under Item (2) of this Rule, the investigator shall report his or her findings and recommendations to the remaining members of the Board, who shall then decide whether to disqualify the challenged individual.

History Note: Authority G.S. 150B-40; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. September 1, 2013; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06D .0101 CONTESTED CASE HEARINGS

History Note: Authority G.S. 150B-38; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. May 1, 1989; Repealed Eff. July 1, 2016.

21 NCAC 06F .0101 PHYSICAL STRUCTURE

(a) For the purpose of this Rule, "practical area" means the area of the school where barbering services are provided.

(b) The physical structure of barber schools in North Carolina shall conform to the following criteria:

- (1) be a minimum of 14 linear feet wide;
- (2) be equipped with a minimum of 10 barber chairs that meet the sanitary conditions required by G.S. 86A-15(a)(2);
- (3) have a minimum of 896 square feet in the practical area for the first 10 chairs;
- (4) have an additional 70 square feet in the practical area for each additional barber chair over the required 10;
- (5) have at least five linear feet of space between each chair, center to center;
- (6) have no more than two students enrolled per barber chair;
- (7) be equipped with toilet facilities with hand-washing sink or basin;
- (8) have concrete or wood floors covered with smooth, nonporous materials;
- (9) have instructional materials, such as blackboard space or slide programs;
- (10) have a workstand, with a mounted mirror with minimum dimensions of 36 inches tall and 20 inches wide, for each barber chair in the practical area, constructed of material that can be washed and cleansed;
- (11) have a tool cabinet for each barber chair, with a door to limit exposure of the tools to the open air;
- (12) have a towel cabinet, or other method of storage, so that clean towels are stored separate from used towels;
- (13) have at least one fully functional sink or lavatory, with hot and cold water, for each two barber chairs, located within seven unobstructed linear feet of each barber chair. This sink distance requirement does not apply to schools permitted on or before September 1, 2009;
- (14) have the school separate from any other place or type of business, except for a business

allowed by G.S. 86A-15(a)(1)(b), by a wall of ceiling height;

- (15) have a classroom area, separate from the practical area, with desk chairs sufficient to serve the number of students enrolled, and a desk and chair for the instructors;
- (16) have a means for electronic recordation of student hours;
- (17) have a sign displayed in each practical area of the school stating that all barbering services are performed by students; and
- (18) have a bulletin board hanging in each classroom area with a posting of the sanitation rules and minimum school curricula as set forth in 21 NCAC 06F .0120.

This Paragraph applies to barber schools permitted on or after December 1, 1994 or which undergo structural renovations after that date.

(c) All barber schools seeking a new permit shall receive a satisfactory building inspection by the jurisdiction having authority prior to obtaining a shop inspection pursuant to 21 NCAC 06L .0105.

History Note: Authority G.S. 86A-15; 86A-22; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. September 1, 2013; October 1, 2009; June 1, 2008; December 1, 1994; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06F .0102 MANAGER

- (a) Each barber school shall designate one of the instructors required by G.S. 86A-22(2) as the school manager.
- (b) The barber school manager is responsible for the school's compliance with G.S. 86A-15 and the rules in this Subchapter, whether present on the school premises or not.
- (c) A barber school manager shall not manage a barber shop or another barber school.

History Note: Authority G.S. 86A-15; 86A-22; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. April 1, 2010; May 1, 1989; March 1, 1983; Readopted Eff. July 1, 2016.

21 NCAC 06F .0103 FILING

- (a) Each barber school shall file with the Board the name of the manager of the school.
- (b) When a change in the management of a barber school occurs, the school shall report the change at least 30 days before the change is effective, except in emergencies, such as termination of a manager. If such change is due to an emergency, the filing shall be made not later than 10 days after the change of management has occurred.

History Note: Authority G.S. 86A-22; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. June 1, 2008; May 1, 1989; March 1, 1983;

Readopted Eff. July 1, 2016.

21 NCAC 06F .0104 INSTRUCTORS

- (a) At least one barber instructor shall supervise students engaged in barbering activities at all times.
- (b) Barber instructors shall barber only for the purpose of instruction or demonstration while on the premises of the barber school.
- (c) All course work as outlined under 21 NCAC 06F .0120 shall be taught by a certified barber instructor.

History Note: Authority G.S. 86A-22; 86A-23; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. September 1, 2009; June 1, 2008; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06F .0109 RE-ENTERING SCHOOL

A new application for a student permit shall be filed with the Board for:

- (1) each student who drops out and later re-enrolls in a barber school; and
- (2) any barber re-enrolling in barber school for additional instruction.

History Note: Authority G.S. 86A-22(3); Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06F .0111 COPIES OF BARBER SCHOOL RECORDS

- (a) Barber schools shall furnish to the Board copies of all records or reports the schools are required to keep, either by the North Carolina General Statutes or by the rules of the Board, including time sheets for instructors to verify compliance with 21 NCAC 06F .0104.
- (b) A school shall not refuse to submit any required records or reports due to a dispute or unfulfilled obligation with a student, instructor, or third party.

History Note: Authority G.S. 86A-22; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. September 1, 2009; June 1, 2008; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06F .0113 STUDENT PERMIT

- (a) The barber school shall submit an application as required by 21 NCAC 06N .0104 for a student permit to the Board at least 10 days prior to the student beginning classes.
- (b) A student cannot be enrolled in the school until the Board issues the student permit. The student shall receive no credit for training received in barber school until a student permit has been issued for the student and received by the school.
- (c) Within five business days of the date on which any student completes his or her course of study, drops out of school, or

transfers to another school, the barber school shall return the student permit to the Board.

(d) The Board issues a student permit only for the specific application. Once a student permit is issued, the Board shall not refund the fee.

History Note: Authority G.S. 86A-22;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. June 1, 2008; May 1, 1989; March 1, 1983;
Readopted Eff. July 1, 2016.

21 NCAC 06F .0114 SIGNATURES ON REPORTS

History Note: Authority G.S. 86A-22;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. December 1, 1994; May 1, 1989;
Repealed Eff. July 1, 2016.

21 NCAC 06F .0118 FEES

History Note: Authority G.S. 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Repealed Eff. July 1, 2016.

21 NCAC 06F .0119 INTRASTATE TRANSFERS

Students attending barber schools that qualify under Chapter 86A of the North Carolina General Statutes and the rules in this Subchapter may transfer from one school to another and receive credit for the attendance at each of the schools where the student was enrolled.

History Note: Authority G.S. 86A-22(5);
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989; March 1, 1983;
Readopted Eff. July 1, 2016.

21 NCAC 06F .0120 BARBER SCHOOL CURRICULA

(a) The following categories and courses shall comprise the minimum course work for all students at barber schools:

	Hours
Classroom Lecture and Study Periods:	
Hygiene and Good Grooming, Professional Ethics	25
Bacteriology, Sterilization, Sanitation	50
Implements, Honing, Stropping, and Shaving	30
Men's Haircutting	20
Cutting and Styling Curly Hair, Mustaches, and Beards	10
Shampooing and Rinsing, Scalp and Hair Treatments	10
Theory of Massage and Facial Treatments	5
Men's Razor Cutting, Women's Razor, and Shear Cutting	30
Finger Waving Men's Hair, Air Waving, and Curling Iron Techniques	5
Permanent Waving For Men, Chemical Hair Relaxing, and Blow Drying	25
Hair Coloring	10

Men's Hair Pieces	5
The Skin, Scalp, and Hair	30
Disorders of the Skin, Scalp, and Hair	15
Anatomy and Physiology	10
Electricity Therapy, Light Therapy, and Chemistry	10
Barber Styling, Shop Management, and Product Knowledge	70
Licensing Laws and Rules and History of Barbering	20

Supervised Practice in Barbering:	
Shampooing and Scientific Hair and Scalp Treatments	55
Shaving	50
Tapered Hair Cutting	250
Hair Styling of Men and Women	400
Facials, Massages, and Packs	10
Bleaching, Frosting, Hair Coloring, and Body Permanents	90
Cutting and Fitting Hair Pieces	5
Hair Straightening	5
The Analyzing and Treatment of Hair and Skin Disorders	10

Lectures and Demonstrations on Practical Work:	
Shampooing and Scientific Hair and Scalp Treatments	15
Shaving	20
Tapered Hair Cutting	70
Hair Styling of Men and Women	100
Facials, Massages, and Packs	5
Bleaching, Frosting, Hair Coloring, and Permanent Waving	30
Cutting and Fitting Hair Pieces	5
Hair Straightening	3
The Analyzing and Treating of Hair and Skin Disorder	10
Men's and Women's Razor Cutting	15
Total Hours	1528

(b) All barber schools shall use course books and training materials specifically created for the purpose of teaching barbering skills. Unless the course book or training material has separate and distinct sections covering the practice of barbering, cosmetology course books and training materials are not acceptable.

History Note: Authority G.S. 86A-22(1); 86A-22(4);
Eff. March 1, 1983;
Amended Eff. June 1, 2008; May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06F .0121 PENAL INSTITUTIONS

(a) The Board may enter into memoranda of understanding or other agreements with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice for the approval of schools of barbering at penal institutions within North Carolina.

(b) Schools operated by the Division of Adult Correction and Juvenile Justice shall comply with all rules in this Subchapter; however, they are exempt from the requirements of Rule .0101(7) and (11) of this Section.

History Note: Authority G.S. 86A-22;
Eff. June 1, 2008;
Readopted Eff. July 1, 2016.

21 NCAC 06F .0122 UNIFORMS AND IDENTIFICATION

All students shall wear a clean, washable uniform, smock, or similar professional attire along with a nametag at all times during instructional hours.

History Note: Authority G.S. 86A-22; Eff. September 1, 2009; Readopted Eff. July 1, 2016.

21 NCAC 06F .0123 RECORDS OF STUDENT HOURS

Each student shall use an electronic means to record instructional hours pursuant to .0124 of this Section. The school shall maintain student time data for one year following the individual student's graduation, transfer to another school, or termination of enrollment. Individual student time data shall be available for review by the Board.

History Note: Authority G.S. 86A-22; Eff. September 1, 2009; Readopted Eff. July 1, 2016.

21 NCAC 06F .0124 STUDENT HOURS

- (a) No student shall be given credit for more than eight total hours during any instruction day.
- (b) Students shall record their start time by electronic means upon entering the school for practical or theory hours. Students shall not record any period of break from instruction, even if remaining on school premises.
- (c) In meeting the minimum course work and designated barber school curricula required by Rule .0120 of this Section, no student shall be given credit for more than eight hours per month and 40 hours for the duration of enrollment in the school that were obtained by instruction or demonstration off school premises or from a field trip.

History Note: Authority G.S. 86A-22; Eff. September 1, 2009; Readopted Eff. July 1, 2016.

21 NCAC 06F .0125 SCHOOL HANDBOOKS AND ENROLLMENT AGREEMENTS

- (a) Every school shall provide a school handbook to its students upon enrollment containing the enrollment agreement, tuition fee schedule, any monetary penalties and fees, reimbursement policies, school rules and regulations, tardiness and absenteeism policies, a syllabus or list of the school curricula containing the minimum hours for each subject matter to be taught in accordance with Rule .0120 of this Section, and the grading system for said curricula.
- (b) A copy of the school handbook shall be submitted to the Board. An updated copy of the handbook shall be re-submitted to the Board following any amendment or revision.

History Note: Authority G.S. 86A-22; Eff. September 1, 2009; Readopted Eff. July 1, 2016.

21 NCAC 06F .0126 EXTENDED EDUCATION

For the purposes of this Rule, "extended education" is additional coursework beyond the 1,528 hours required to complete barber school, or to initially obtain a license from the North Carolina Board of Barber Examiners.

- (1) When a barber school wishes to provide extended education, the school shall:
 - (a) Submit a proposed curriculum or syllabus that:
 - (i) describes the purpose of the instruction;
 - (ii) indicates how many students are expected to participate in the instruction;
 - (iii) states where the instruction would be provided; and
 - (iv) states how many hours of instruction are required or will be provided in the course of instruction;
 - (b) Identify the instructors providing the instruction; and
 - (c) Submit samples of the advertising or promotion for the program.
- (2) After the instruction has been approved, the barber school shall notify the Board if there are any changes to the instruction, including suspension or discontinuation the class.
- (3) Upon approval, the course offering shall be subject to review of the barber school by the Board inspector. The inspector shall evaluate:
 - (a) Whether the school maintains accurate records as to the individuals in the class and the number of hours in the class;
 - (b) The presentation of the class;
 - (c) Whether the class is offered in classrooms for practical and academic instruction that meet the requirements of Rule .0101 of this Section; and
 - (d) Whether the class complies with the requirements of other barber school instruction.

History Note: Authority G.S. 86A-1; 86A-22; Eff. July 1, 2016.

21 NCAC 06G .0103 INSTRUCTOR EXAMINATION

- (a) A prospective instructor of barbering shall make a grade of at least 80 percent on both parts (written and practical) of the instructor's examination before being certified.
- (b) If any applicant to be licensed as a barber school instructor fails one portion of the examination, but passes the other portion, he or she may take and pass the failed portion within six months of the notification of failure. If the failed portion is not passed within six months of the notification of failure, the applicant shall take all parts of the examination again.

History Note: Authority G.S. 86A-23;

Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989; March 1, 1983;
Readopted Eff. July 1, 2016.

21 NCAC 06H .0101 DUTIES AND RESPONSIBILITIES

- (a) Barber school managers shall:
- (1) file for a school permit at least 30 days before opening the school for business;
 - (2) ensure that all students are instructed;
 - (3) ensure compliance with the North Carolina General Statutes governing barber schools and barbering and the administrative rules of the Board.
- (b) A barber school manager shall have 30 days to fill a vacancy to ensure compliance with G.S. 86A-22(2).
- (c) Managers of schools that are organized as nonprofits, have obtained a determination from the Internal Revenue Service recognizing their tax-exempt status, and wish to have the lower number of instructors allowed under G.S. 86A-22 shall provide to the Board a copy of the Internal Revenue Service determination before offering instruction with the reduced number of instructors.

History Note: Authority G.S. 86A-13; 86A-15; 86A-22;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. September 1, 2013; June 1, 2008; May 1, 1989;
March 1, 1983;
Readopted Eff. July 1, 2016.

21 NCAC 06J .0102 FORFEITURE OF FEE
21 NCAC 06J .0103 RENEWAL AS REGISTERED APPRENTICE; WAIVER

History Note: Authority G.S. 86A-24; 86A-25; 93B-15;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. April 1, 2010; February 1, 1996; December 1, 1994; May 1, 1989;
Repealed Eff. July 1, 2016.

21 NCAC 06J .0106 STUDENT PERMISSION TO BARBER

History Note: Authority G.S. 86A-11;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989;
Repealed Eff. July 1, 2016.

21 NCAC 06J .0108 EXAMINATION

If any applicant to be licensed as an apprentice barber fails either the written or practical portion of the examination, he or she shall take and pass the failed portion within six months of the notification of failure. If the failed portion is not passed within six months of the notification of failure, the applicant shall take both portions of the examination again.

History Note: Authority G.S. 86A-24;
Eff. March 1, 1983;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06J .0109 IDENTIFICATION

All apprentice barbers and student barbers with temporary permits shall maintain their license as defined in 21 NCAC 06P .0103(7) in their possession at all times while performing barbering services. The individual shall produce the identification to the Board's Executive Director or inspector upon request.

History Note: Authority G.S. 86A-1; 86A-10;
Eff. June 1, 2008;
Readopted Eff. July 1, 2016.

21 NCAC 06J .0110 NOTIFICATION OF ADDRESS CHANGE

All apprentice barbers and student barbers with temporary permits shall notify the Board within 60 days of any change in their permanent mailing address.

History Note: Authority G.S. 86A-11; 86A-24;
Eff. September 1, 2009;
Readopted Eff. July 1, 2016.

21 NCAC 06K .0101 REGISTERED BARBER

To become a registered barber, an applicant shall:

- (1) meet the qualifications in G.S. 86A-3;
- (2) furnish the Board with Form BAR-5 as set forth in 21 NCAC 06N .0106 and pay the fee according to 21 NCAC 06N .0101; and
- (3) make a score of at least 70 percent on the clinical portion of the registered barber examination.

History Note: Authority G.S. 86A-3; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. June 1, 2008; May 1, 1989;
Readopted Eff. July 1, 2016.

21 NCAC 06K .0103 FORFEITURE OF FEE

History Note: Authority G.S. 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. February 1, 1996; December 1, 1994; May 1, 1989;
Repealed Eff. July 1, 2016.

21 NCAC 06K .0110 IDENTIFICATION

All registered barbers shall maintain their permit as defined in 21 NCAC 06P .0103(7) in their possession at all times while performing barbering services. The individual shall produce the identification to the Board's Executive Director or inspector upon request.

*History Note: Authority G.S. 86A-1; 86A-10;
Eff. June 1, 2008;
Readopted Eff. July 1, 2016.*

21 NCAC 06K .0111 NOTIFICATION OF CHANGE OF ADDRESS

All registered barbers shall notify the Board within 60 days of any change in their permanent mailing address.

*History Note: Authority G.S. 86A-5; 86A-10; 86A-21;
Eff. September 1, 2009;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0102 MEASUREMENTS OF BARBER SHOP

- (a) Each barber shop shall be a minimum of 196 square feet measured from the inside walls of the shop, not including common areas shared with other businesses or residents.
- (b) Each chair shall be located in an area where there is no less than 12 linear feet from front wall to back wall, measured through the center of the chair, with the back wall being the wall or plain to which the backstand is affixed. There shall be a minimum of five linear feet of space between each barber chair, from center to center of each chair and there shall be no less than three linear feet from the center of any chair to any side wall. There shall be an unobstructed aisle in front of each chair of no less than four feet.
- (c) Paragraphs (a) and (b) apply to barber shops permitted on or after December 1, 1994 or that undergo modification or structural renovations on or after that date.
- (d) Barber shops permitted prior to February 1, 1976, shall be a minimum of 12 feet in width and 14 feet in length.
- (e) Barber shops permitted between February 1, 1976 and November 30, 1994 shall be a minimum of 14 feet in width and 14 feet in length.
- (f) Barber shops permitted within the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice prior to July 1, 2010 are exempt from the requirements of this Rule.

*History Note: Authority G.S. 86A-15;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. September 1, 2009; June 1, 2008; December 1, 1994; May 1, 1989;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0103 EQUIPMENT

- (a) Each barber shall have a cabinet for barbering equipment. The cabinets shall be constructed of material that may be cleaned.
- (b) Each shop shall have smooth finished walls, ceilings, and floors, with no exposed pipes.
- (c) Each barber chair shall be covered with a smooth, non-porous surface, such as vinyl or leather, which is easily cleaned as required by G.S. 86A-15(a)(2)(c).
- (d) Each shop shall have within the shop or building functioning toilet facilities for employees and patrons.

(e) Each barber shop shall have a cabinet, or other method of storage, such that clean towels are stored separate from used towels.

(f) In addition to the requirements of Paragraph (d) of this Rule, barber shops that are permitted on or after January 1, 1995 or undergo structural renovations after that date, shall have within the shop or building a hand-washing sink or lavatory for patrons with hot and cold water, soap, and disposable towels.

(g) Where a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners, the toilet facility and sink may be shared with the cosmetology shop.

(h) Paragraphs (a), (d), and (f) of this Rule do not apply to barber shops operated by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.

(i) All equipment and tools used in the practice of barbering as set forth in G.S. 86A-2 shall be suitable for the safe cutting of hair and shall be maintained in a sanitary and good operating condition as required by G.S. 86A-15(a)(2),

*History Note: Authority G.S. 86A-2; 86A-15;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. September 1, 2013; September 1, 2009; June 1, 2008; January 1, 1995; May 1, 1989; March 1, 1983;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0104 SHOP PERMITS

- (a) All applications for shop permits shall be on file in the office of the Board 15 days prior to the date when a shop will be complete and ready for inspection. Applications shall meet the requirements of 21 NCAC 06N .0102.
- (b) If the shop is not ready for inspection on a scheduled date, the owner or manager shall notify the Board.
- (c) Failure to notify the Board of a change of address shall result in forfeiture of the inspection fee.

*History Note: Authority G.S. 86A-1; 86A-13;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. May 1, 1989; March 1, 1983;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0105 FEES

The Board shall inspect all newly established or reopened barber shops before issuing a permit. The barber shop shall submit the fee established by 21 NCAC 06N .0101(a)(19) for inspection when submitting the application for a shop permit.

*History Note: Authority G.S. 86A-1; 86A-13; 86A-25;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. March 1, 1983;
Legislative Objection Lodged Eff. March 7, 1983;
Curative Amended Eff. April 6, 1983;
Amended Eff. May 1, 1989;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0106 SEPARATION FROM OTHER BUSINESSES; RESIDENTIAL SHOPS; MOBILE HOMES

(a) When a building or room is used for both a barber shop and for some other business and the building or room does not have air conditioning, ventilation, or heat outlets, or air circulation, the required partition between the shop and the other business may be completed from the floor up to a minimum of six feet with material from six feet to the ceiling that permits good air circulation.

(b) Notwithstanding Paragraph (a) of this Rule and 21 NCAC 06L .0102, when a barber shop is located within a shop licensed by the North Carolina Board of Cosmetic Art Examiners and was permitted on or after January 1, 1995, or undergoes modifications or structural renovations after that date, the area where the barber chair or chairs are located shall comply with the sanitary regulations in G.S. 86A-15(a) and this Subchapter not inconsistent with this Rule.

(c) A barber shop permitted on or after July 1, 2008 that operates in a residential building shall maintain a separate entrance that shall not open off the living quarters, and shall not have any doors or openings leading to the living quarters that are unlocked during business hours. Entrance through garages or any other rooms is not permitted.

(d) The toilet facilities or any sink in the living quarters of any residence shall not be considered to comply with the toilet facility and sink requirements in 21 NCAC 06L .0103 or the sink distance requirement in 21 NCAC 06L .0107.

(e) For barber shops permitted on or after July 1, 2008, mobile homes, motor homes, trailers or any type of recreational vehicle shall be permanently affixed so they cannot be moved. Any such structure approved for a barber shop shall maintain a separate entrance that shall not open off the living quarters, and shall not have any doors or openings to the living quarters that are unlocked during business hours.

History Note: Authority G.S. 86A-15; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. April 1, 2010; June 1, 2008; January 1, 1995; May 1, 1989; March 1, 1983; Readopted Eff. July 1, 2016.

21 NCAC 06L .0107 LAVATORY

(a) Each barber shop permitted before January 1, 1995 that is not modified or structurally renovated after that date shall have for each barber a functioning sink with hot and cold water, located at a convenient place as required by G.S. 86A-15(a)(1)(d).

(b) For barber shops permitted on or after January 1, 1995 or that undergo modifications or structural renovation after that date, a sink shall be located within seven unobstructed linear feet of each barber chair.

History Note: Authority G.S. 86A-15; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. June 1, 2008; January 1, 1995; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06L .0108 MOVED SHOP

History Note: Authority G.S. 86A-1; 86A-15; Eff. March 1, 1983; Amended Eff. September 1, 2009; Repealed Eff. July 1, 2016.

21 NCAC 06L .0109 COMMERCIAL CHEMICALS

(a) No person, shop, or school licensed or registered under Chapter 86A of the North Carolina General Statutes shall use any commercial chemical in the practice of barbering unless the commercial chemical is received with a list of all contents and instructions for its use.

(b) For the purposes of this Rule, "commercial chemical" is defined in G.S. 86A-5(b)(1).

History Note: Authority G.S. 86A-5; Eff. March 1, 1983; Amended Eff. May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06L .0111 WHERE BARBER SERVICES MAY BE PERFORMED

(a) Except as provided in this Rule, all barber services as defined in G.S. 86A-2 shall only be performed at a location permitted by the Board as a barber shop.

(b) A registered barber may perform barbering services in a client's home, and the home shall be exempt from the inspection requirements of G.S. 86A-15(b), under the following conditions:

- (1) The client upon whom barber services are being performed is unable, due to a medical necessity, to come to a licensed barber shop;
- (2) The licensed barber maintains a log of each instance where this exemption is used, including the name of the client, address of the home where the services were performed, the date services were performed, and the medical necessity requiring that barber services be provided in the home. The log shall be made available to the Board and its inspectors for review and
- (3) The licensed barber otherwise complies with G.S. 86A-15(a).

(c) For purposes of this Rule, a "client's home" includes the client's residence, nursing homes, rest homes, retirement homes, mental health institutions, and similar institutions where the client has established permanent residency.

History Note: Authority G.S. 86A-15(c); Eff. June 1, 2008; Amended Eff. April 1, 2010; Readopted Eff. July 1, 2016.

21 NCAC 06L .0112 RENTED BOOTH SPACE

(a) Where a barber shop rents or leases space to a barber, the Board shall hold the barbershop manager and licensee responsible for the barbering services performed in the rented or leased space and for the sanitary conditions of the rented or leased space.

(b) The Board's inspectors shall examine the entire premises of each shop irrespective of booth space allotments.

*History Note: Authority G.S. 86A-15;
Eff. June 1, 2008;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0113 DISEASES

(a) No holder of a registered barber, apprentice, or student barber permit shall serve a patron:

- (1) with an open sore or sores;
- (2) exhibiting symptoms of an infectious dermatologic disease or disorder;
- (3) with parasitic infestations of the skin or hair; or
- (4) with a communicable disease.

(b) No holder of a registered barber, apprentice, or student barber permit who knows he or she has an infectious dermatologic disease that can be spread by providing barbering services, infectious disease with open sore or sores on the hand or hands, or parasitic infestation of the skin or hair in a communicable stage or any other communicable disease shall provide barber service in a barber shop or, when authorized by Rule .0111 of this Section, in a client's home.

(c) The Board shall have the right to require a physical examination of any barber employed in any barber shop who is suspected of having an infectious dermatologic disease, infectious disease with open sore or sores on the hand or hands, or parasitic infestation of the skin or hair in a communicable stage.

*History Note: Authority G.S. 86A-15;
Eff. June 1, 2008;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0114 PETS PROHIBITED

With the exception of trained guide or assistance animals, no animals shall be permitted in a barber shop.

*History Note: Authority G.S. 86A-15;
Eff. June 1, 2008;
Amended Eff. September 1, 2013;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0115 INSPECTIONS OF SHOPS

(a) The Board's Executive Director and its inspectors may enter and make inspections of any shop during its business hours for the purpose of determining whether or not G.S. 86A and the Board's administrative rules are being followed. Persons authorized to make an inspection of shops shall prepare a report according to Rule .0119 of this Section. The report shall be signed by the inspector. The inspector shall leave a copy of the inspection report with the owner or manager, or at the shop if the owner or manager are unavailable. The manager shall retain the inspection report within the barber shop until the next inspection and make it available for review by the public upon request. The copy of any violation notice shall be left with the owner or manager, and retained within the barbering area until the violation is resolved with the Board.

(b) The Board's Executive Director and its inspectors may inspect all areas of the shop, including the backstand and its drawers and

cabinets, and any other drawers, closets or other enclosures within the permitted shop.

(c) The Board's Executive Director and its inspectors may determine and assign numerical and letter sanitary grades to a shop following inspections as set forth in Rules .0118 and 21 NCAC 06L .0119 of this Section. The grade shall be displayed in a place visible to the public at the front of the shop.

*History Note: Authority G.S. 86A-5(a)(1); 86A-15;
Eff. June 1, 2008;
Amended Eff. April 1, 2010;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0116 BARBER SHOP MANAGERS

(a) All barber shop managers shall verify that any licensee employed in the barber shop is the person whose name appears on the license or permit prior to allowing the licensee to perform barbering services in the shop. This verification shall be based on government issued identification.

(b) A barber shop manager shall not manage another barber shop or a barber school.

(c) The shop manager is responsible for the sanitary condition, as defined in 21 NCAC 06P .0103(10), of the entire shop.

(d) The barber shop manager is accountable for activities at the shop whether present on the premises or not.

*History Note: Authority G.S. 86A-15; 86A-22;
Eff. June 1, 2008;
Amended Eff. April 1, 2010;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0117 GENERAL SANITATION

All barber shops shall remain free of any signs of rodents, vermin, insects, mold, mildew, or water damage.

*History Note: Authority G.S. 86A-15;
Eff. June 1, 2008;
Readopted Eff. July 1, 2016.*

21 NCAC 06L .0120 NOTIFICATION OF CHANGE OF ADDRESS

The barber shop owner or manager shall notify the Board of a change in the barber shop's mailing or, if changed by the United States Postal Service, the physical address, within five business days of the change.

*History Note: Authority G.S. 86A-1;
Eff. September 1, 2009;
Readopted Eff. July 1, 2016.*

21 NCAC 06M .0102 DUTIES AND RESPONSIBILITIES

*History Note: Authority G.S. 86A-7; 86A-13; 86A-15; 86A-22;
Eff. February 1, 1976;
Readopted Eff. February 8, 1978;
Amended Eff. September 1, 2013; June 1, 2008; December 1, 1994; May 1, 1989; March 1, 1983;*

Repealed Eff. July 1, 2016.

21 NCAC 06N .0101 FEES

(a) The Board charges the following amounts for the fees authorized by G.S. 86A-25:

- (1) Certificate of registration or renewal as a barber \$50.00
- (2) Certificate of registration or renewal as an apprentice barber \$50.00
- (3) Barbershop permit or renewal \$50.00
- (4) Examination to become a registered barber \$85.00
- (5) Examination to become a registered apprentice barber \$85.00
- (6) Late fee for restoration of an expired barber certificate within first year after expiration \$35.00
- (7) Late fee for restoration of an expired barber certificate after first year after expiration but within five years after expiration \$70.00
- (8) Late fee for restoration of an expired apprentice certificate within the first year after expiration \$35.00
- (9) Late fee for restoration of an expired apprentice certificate after first year after expiration but within three years of first issuance of the certificate \$45.00
- (10) Late fee for restoration of an expired barber shop certificate \$45.00
- (11) Examination to become a barber school instructor \$165.00
- (12) Student permit \$25.00
- (13) Issuance of any duplicate copy of a license, certificate, or permit \$10.00
- (14) Barber school permit or renewal \$130.00
- (15) Late fee for restoration of an expired barber school certificate \$85.00
- (16) Barber school instructor certificate or renewal \$85.00
- (17) Late fee for restoration of an expired barber school instructor certificate within first year after expiration \$45.00
- (18) Late fee for restoration of an expired barber school instructor certificate after first year after expiration but within three years after expiration \$85.00
- (19) Inspection of newly established barbershop \$120.00
- (20) Inspection of newly established barber school \$220.00
- (21) Issuance of a registered barber or apprentice certificate by certification \$120.00
- (22) Charge for certified copies of public documents \$10.00 for first page, \$0.25 per page thereafter
- (23) Charge for duplication services and material shall be as set forth in 26 NCAC 01 .0103(a), including any subsequent amendments and editions of the Rule

- (24) Certificate of registration or renewal as a barber for barbers over 70 years of age \$0.00
- (25) Administrative fee under G.S. 86A-27(d) for paying any required fee for renewal or restoration, or a civil penalty and attorney fee, where the apprentice barber or registered barber is subject to a pick-up order issued to an inspector. \$70.00

(b) In the event the Board's authority to expend funds is suspended pursuant to G.S. 93B-2, the Board shall continue to issue and renew licenses and all fees tendered shall be placed in the escrow account maintained by the Board for this purpose.

History Note: Authority G.S. 86A-25; 86A-27(d); 93B-2; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. April 1, 2010; September 1, 2009; June 1, 2008; April 1, 2005; May 1, 1989; March 1, 1983; Readopted Eff. July 1, 2016.

21 NCAC 06N .0102 FORM BAR-1

(a) The Form BAR-1 shall be filed when one applies to open or manage a new barber shop. It requests the following:

- (1) the name and address of the shop;
- (2) the name, address, and certificate number of the manager;
- (3) the name and address of the shop owner;
- (4) the physical dimensions of the shop;
- (5) for a new or renovated shop, a copy of the certificate of occupancy;
- (6) the shop business hours;
- (7) the type of fixtures installed; and
- (8) the date the shop will be ready for inspection.

(b) The fee required by Rule .0101(a)(19) of this Section shall accompany this form.

(c) The Form BAR-1 shall be notarized.

History Note: Authority G.S. 86A-1; 86A-13; 86A-15; 86A-25; 150B-11; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. March 1, 1983; Legislative Objection Lodged Eff. March 7, 1983; Curative Amended Eff. April 6, 1983; Amended Eff. May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06N .0105 FORM BAR-4

(a) The Form BAR-4 shall be filed by one applying to take the examination to receive a registered apprentice certificate. It requires the following:

- (1) the name, address, social security number, and birthdate of the applicant;
- (2) the name of any barber school attended and the date of enrollment and graduation;
- (3) the place of proposed employment as an apprentice barber; and
- (4) a certified copy of his or her Federal Bureau of Investigation criminal record report.

- (b) The course training certification shall be filled in by the manager of the barber school the applicant last attended.
- (c) The fee in Rule .0101(a)(5) shall be submitted with the application.
- (d) The Form BAR-4 shall be notarized.

History Note: Authority G.S. 86A-1; 86A-10; 86A-24; 86A-25; 93B-14; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. March 1, 1983; Legislative Objection Lodged Eff. March 7, 1983; Curative Amended Eff. April 6, 1983; Amended Eff. September 1, 2013; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06N .0107 FORM BAR-6

- (a) The Form BAR-6 shall be filed by one applying to take an examination as a barber school instructor. It requires the following:
 - (1) the name, address, social security number, and birthdate of the applicant;
 - (2) the current registered certificate number;
 - (3) the name of barber school attended; and
 - (4) the proposed place of employment, if any.
- (b) The fee in Rule .0101(a)(11) of this Section shall accompany this form.

History Note: Authority G.S. 86A-23; 86A-25; 93B-14; Eff. February 1, 1976; Readopted Eff. February 8, 1978; Amended Eff. March 1, 1983; Legislative Objection Lodged Eff. March 7, 1983; Curative Amended Eff. April 6, 1983; Amended Eff. May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06N .0109 FORM BAR-8

- (a) The Form BAR-8 shall be filed by one who has practiced as a barber in a state other than North Carolina for three years or more and is applying to obtain a certificate as a registered barber in North Carolina. It requires the following:
 - (1) the name, address, social security number, and birthdate of the applicant;
 - (2) the name and address of any barber school attended in another state;
 - (3) barbering experience and the status of each barber license in another state; and
 - (4) a certified copy of his or her Federal Bureau of Investigation criminal record report.
- (b) The fee in Rule .0101(a)(21) of this Section shall accompany this form.
- (c) The Form BAR-8 shall be notarized.
- (d) The Form BAR-8 shall be accompanied by verification from the applicant's out-of-state Board of the applicant's licensure in that state.

History Note: Authority G.S. 86A-1; 86A-12; 86A-25; Eff. March 1, 1983;

Legislative Objection Lodged Eff. March 7, 1983; Curative Eff. April 6, 1983; Amended Eff. September 1, 2013; May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06N .0111 FORM BAR-10

- (a) The Form BAR-10 is a report that shall be filed monthly by the manager of the school for each student enrolled in barber school. It requires the following:
 - (1) the name of the school submitting the report;
 - (2) the name and date of enrollment of the student;
 - (3) the month and year for which the report is filed;
 - (4) the dates and hours of the student's absences;
 - (5) the dates and hours of the student's attendance;
 - (6) the number of patrons served for clinical services; and
 - (7) the subject matter covered in practical and theory courses.
- (b) The Form BAR-10 shall be submitted to the Board over the signature of the manager of the school and co-signed by the student.
- (c) The Form BAR-10 shall be returned to the Board within five business days of the date on which a student completes his or her course of study, drops out of school, or transfers to another school.

History Note: Authority G.S. 86A-22; Eff. May 1, 1989; Readopted Eff. July 1, 2016.

21 NCAC 06N .0112 ACCESS TO FORMS

The forms set forth in this Subchapter may be accessed on the Board's website, www.ncbarbers.com, or may be obtained at the Board's address listed in 21 NCAC 06A .0102.

History Note: Authority G.S. 86A-5; 150B-19.1; Eff. May 1, 1989; Amended Eff. September 1, 2013; Readopted Eff. July 1, 2016.

21 NCAC 06O .0101 SCHEDULE OF PENALTIES

The rules in this Subchapter establish the schedule of civil penalties required by G.S. 86A-27(c). The amounts stated are the presumptive amounts that may be modified in accordance with G.S. 86A-27(b).

History Note: Authority G.S. 86A-5(a)(6); 86A-27; Eff. April 1, 2005; Readopted Eff. July 1, 2016.

21 NCAC 06O .0102 LICENSING OF BARBER SHOPS

- (a) The presumptive civil penalty for operating a barber shop without first filing an application for a barber shop license, obtaining an inspection, and obtaining a shop permit:

(1)	1st offense	\$200.00
(2)	2nd offense	\$300.00
(3)	3rd offense	\$500.00
- (b) The presumptive civil penalty for operating a barber shop with an expired permit:

(1)	1st offense	\$150.00
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- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0103 LICENSING OF BARBER SCHOOLS

(a) The presumptive civil penalty for operating a barber school without first filing an application for a barber school license, obtaining an inspection, and obtaining a school permit:

- (1) 1st offense \$200.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for operating a barber school with an expired permit:

- (1) 1st offense \$150.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0104 UNSUPERVISED APPRENTICE

(a) The presumptive civil penalty for a registered barber allowing an apprentice or student barber with a temporary permit to engage in barbering without supervision as required by G.S. 86A-24(b):

- (1) 1st offense \$300.00
- (2) 2nd offense \$400.00

(b) The presumptive civil penalty for an apprentice or student barber with a temporary permit engaging in barbering without supervision as required by G.S. 86A-24(b):

- (1) 1st offense \$200.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-5(a)(6); 86A-24; 86A-27;
 Eff. April 1, 2005;
 Amended Eff. September 1, 2009;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0105 UNLICENSED BARBER

(a) The presumptive civil penalty for a barber shop manager allowing a barber to practice without a license:

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

(b) The presumptive civil penalty for an individual engaging in barbering without a license:

- (1) 1st offense \$250.00
- (2) 2nd offense \$450.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0106 DISPLAY OF CURRENT LICENSE

(a) The presumptive civil penalty for the failure of a barber shop or barber school to display a current shop or school license:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

(b) The presumptive civil penalty for a barber shop or barber school to allow an individual to perform barbering without displaying a current license or permit:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

(c) The presumptive civil penalty for an individual to practice barbering without displaying a current license or permit:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-16; 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0107 FRAUDULENT MISREPRESENTATIONS OR SUBMISSION OF FRAUDULENT DOCUMENT

The presumptive civil penalty for barbering or attempting to barber by fraudulent misrepresentations or the submission of fraudulent or false documents in connection with licensing or an application for license as prohibited by G.S. 86A-20: 1st offense \$500.00.

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-20(2); 86A-20(3); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0108 INSPECTIONS OF SHOPS AND SCHOOLS

The presumptive civil penalty for refusing to permit or preventing the inspection of a barber shop or barber school:

- (1) 1st offense \$150.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-15(b); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0109 EXPIRED LICENSE

(a) The presumptive civil penalty for engaging in the practice of barbering with a registered barber certificate that has expired for more than a six month duration:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$200.00

(b) The presumptive civil penalty for a barber shop manager allowing an individual to engage in the practice of barbering with a registered barber certificate that has expired for more than a six month duration:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$200.00

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-17(b); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0110 ADEQUATE PREMISES

(a) The presumptive civil penalty for a school to fail to maintain facilities as required by G.S. 86A-15 and 21 NCAC 06F .0101, after two written warnings:

- (1) 1st offense \$250.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for a shop to fail to maintain facilities as required by G.S. 86A-15 and the applicable rules in 21 NCAC 06L .0102 through .0109, after two written warnings:

- (1) 1st offense \$250.00
- (2) 2nd offense \$450.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-5(a)(6); 86A-15; 86A-18(6); 86A-18(7); 86A-22(6); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0111 SCHOOL INSTRUCTORS

The presumptive civil penalty for a school failing to provide sufficient instructors to meet the student-teacher ratios set forth in G.S. 86A-22(2):

- (1) 1st offense \$150.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-5(a)(6); 86A-22(2); 86A-27;
 Eff. April 1, 2005;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0112 IDENTIFICATION

(a) The presumptive civil penalty for a barber shop owner or manager failing to positively identify a registered barber, apprentice, or holder of a temporary permit:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

(b) The presumptive civil penalty for a registered barber, apprentice, or holder of a temporary permit failing to maintain and produce a license or permit as defined in 21 NCAC 06P .0103(7):

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

(c) The presumptive civil penalty for a barber student failing to wear identification as set forth in 21 NCAC 06F .0122:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

History Note: Authority G.S. 86A-1; 86A-10; 86A-11; 86A-27;
 Eff. June 1, 2008;
 Amended Eff. September 1, 2009;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0113 BARBER SHOPS IN RESIDENCES AND MOBILE HOMES

(a) The presumptive civil penalty for operating a barber shop in a residence in violation of 21 NCAC 06L .0106(c):

- (1) 1st offense \$150.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for operating a barber shop in a mobile home in violation of 21 NCAC 06L .0106(e):

- (1) 1st offense \$200.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-15; 86A-27;
 Eff. June 1, 2008;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0114 ANIMALS IN BARBER SHOPS

The presumptive civil penalty for a barber manager allowing an animal in a barber shop in violation of 21 NCAC 06L .0114:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

History Note: Authority G.S. 86A-15; 85A-27;
 Eff. June 1, 2008;
 Readopted Eff. July 1, 2016.

21 NCAC 060 .0115 SCHOOL FAILING TO MAINTAIN, FALSIFYING, OR FAILING TO SUBMIT RECORDS

(a) The presumptive civil penalty for a barber school failing to maintain records:

- (1) 1st offense \$200.00
- (2) 2nd offense \$250.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for a barber school falsifying records:

- (1) 1st offense \$250.00
- (2) 2nd offense \$400.00
- (3) 3rd offense \$500.00

(c) The presumptive civil penalty for a barber school failing to submit required records:

- (1) 1st offense \$200.00
- (2) 2nd offense \$350.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-22; 86A-27;
 Eff. June 1, 2008;
 Amended Eff. September 1, 2009;
 Readopted Eff. July 1, 2016.

21 NCAC 06O .0116 UNLICENSED SCHOOL INSTRUCTORS

(a) The presumptive civil penalty for a barber school allowing an individual to instruct without an instructor's certificate:

- (1) 1st offense \$200.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for an individual engaging in instructing without an instructor's certificate:

- (1) 1st offense \$150.00
- (2) 2nd offense \$450.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-22; 86A-23; 86A-27;
 Eff. September 1, 2009;
 Readopted Eff. July 1, 2016.

21 NCAC 06O .0117 BARBER FAILING TO MAINTAIN OR PRODUCE EXEMPTION LOG

(a) The presumptive civil penalty for a barber failing to maintain the exemption log required by 21 NCAC 06L .0111:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

(b) The presumptive civil penalty for a barber failing to produce the exemption log required by 21 NCAC 06L .0111:

- (1) 1st offense \$100.00
- (2) 2nd offense \$150.00
- (3) 3rd offense \$250.00

History Note: Authority G.S. 86A-15(c); 86A-27;
 Eff. April, 1, 2010;
 Readopted Eff. July 1, 2016.

21 NCAC 06O .0118 UNLICENSED BARBER STUDENT

(a) The presumptive civil penalty for a barber school allowing an individual to receive barber instruction without a barber student permit:

- (1) 1st offense \$200.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

(b) The presumptive civil penalty for an individual engaging as a barber student without a barber student permit:

- (1) 1st offense \$200.00
- (2) 2nd offense \$300.00
- (3) 3rd offense \$500.00

History Note: Authority G.S. 86A-1; 86A-22; 86A-27;
 Eff. July 1, 2016.

21 NCAC 06O .0119 FAILURE TO NOTIFY BOARD OF CHANGE OF ADDRESS

(a) The presumptive civil penalty for the failure of a barber shop or barber school to fail to notify the Board of a change of address:

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

(b) The presumptive civil penalty for an individual manager for the failure to notify the Board of a change of address for a barber shop or barber school:

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

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-27;
 Eff. July 1, 2016.

21 NCAC 06O .0121 FAILURE TO DISPLAY SANITATION GRADE AND SHOP PERMIT

The presumptive civil penalty for the failure of a shop to display its sanitation grade and shop permit in a place visible to the public at the front of the shop:

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

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-16; 86A-27;
 Eff. July 1, 2016.

21 NCAC 06O .0122 FAILURE TO NOTIFY BOARD OF CHANGE OF BARBER SHOP OR SCHOOL MANAGER

(a) The presumptive civil penalty for the failure of a barber shop or barber school to fail to notify the Board as to a change of barber shop manager:

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

(b) The presumptive civil penalty for an individual manager for the failure to notify the Board of a change of manager of a barber shop or barber school:

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

History Note: Authority G.S. 86A-1; 86A-5(a)(6); 86A-22; 86A-27;
 Eff. July 1, 2016.

21 NCAC 06P .0101 BARBERING

Unless specifically exempted by G.S. 86A-14, "the practice of barbering" or "barbering services" means any one or more of the activities defined in G.S. 86A-2 when performed upon a member of the public.

History Note: Authority G.S. 86A-2;
 Eff. June 1, 2008;
 Readopted Eff. July 1, 2016.

21 NCAC 06P .0102 BARBERING EXEMPTIONS

History Note: Authority G.S. 86A-2;
Eff. June 1, 2008;
Repealed Eff. July 1, 2016.

21 NCAC 06P .0103 GENERAL DEFINITIONS

For purposes of the rules in this Chapter, the following definitions shall apply:

- (1) "Barber" means any person who engages in or attempts to engage in the practice of barbering or provide barbering services.
- (2) "Barber instructor" means any person who engages in or attempts to engage in the teaching of the practice of barbering.
- (3) "Barber pole" means an actual or representation of a cylinder or pole with alternating stripes of any combination including red and white, and red, white, and blue that run diagonally along the length of the cylinder or pole.
- (4) "Barber school" means any establishment that engages in or attempts to engage in the teaching of the practice of barbering.
- (5) "Barber student" means any person who is enrolled in barber school, including those taking classes beyond the 1528 required hours.
- (6) "Board" means the State Board of Barber Examiners.
- (7) "License" or "permit" or "certificate of registration" means the actual license or permit issued by the Board and current government issued photo identification depicting the licensee's or permittee's photograph and legal name.
- (8) "Pick-up order" means an order issued by the Board and signed by the Executive Director authorizing an inspector to physically retrieve a permit or license.
- (9) "Practice of barbering" and "barber services" means all activities set forth in G.S. 86A-2, and the sanitary requirements of Chapter 86A and the sanitary rules adopted by the Board.
- (10) "Sanitary" means free of infectious agents, diseases, or infestation by insects or vermin and free of soil, dust, or dirt.

History Note: Authority G.S. 86A-2; 86A-5; 86A-13; 86A-15; 86A-22; 86A-23;
Eff. June 1, 2008;
Readopted Eff. July 1, 2016.

21 NCAC 06Q .0102 EFFECT OF CHILD SUPPORT DEFAULT ON LICENSE OR CERTIFICATE

History Note: Authority G.S. 93B-13; 110-142.1;
Eff. June 1, 2008;
Repealed Eff. July 1, 2016.

21 NCAC 06R .0101 DISPLAY OF SIGN OR BARBER POLE

Every establishment permitted to practice barbering shall display at its entrance a sign that is visible from the street with lettering no smaller than three inches, stating "barber shop," "barber salon," "barber styling," or similar use of the designation, "shop, salon or styling." Alternatively, an establishment may display a "barber pole" as defined in 21 NCAC 06P .0103(3) that is visible from the street.

History Note: Authority G.S. 86A-1; 86A-13;
Eff. June 1, 2008;
Amended Eff. September 1, 2009;
Readopted Eff. July 1, 2016.

21 NCAC 06S .0101 GENERAL EXAMINATION INSTRUCTIONS

(a) For the purposes of this Rule, "test center" means those rooms where the Board administers written and practical examinations while the examinations are being conducted.

(b) All candidates scheduled for an examination conducted by the Board shall bring:

- (1) two forms of identification, one of which shall have a photo of the candidate;
- (2) a signed copy of the exam instructions that the Board sent to the candidate;
- (3) tools and supplies as required by the Board in its exam instructions; and
- (4) a hygienically clean model with natural hair and beard of sufficient length to demonstrate practical barbering proficiency as determined by the Board in its qualifying model policy.

(c) No briefcases, bags, books, papers, or study materials shall be allowed in the test center. The Board shall not be responsible for lost or misplaced items.

(d) No cell phones, calculators, or other electronic devices are permitted for use during the examination.

(e) No eating, drinking, smoking, or chewing gum shall be permitted during the examination.

(f) No visitors, children, pets or guests shall be allowed in the test center.

(g) No extra time for the examination shall be permitted unless mandated by State or federal law, such as the Americans with Disabilities Act.

(h) No candidate may leave the test center during the examination. Candidates may visit the restroom with the Board staff's permission, but will not receive any additional time for the examination.

(i) No candidate may give or receive assistance during the examination. If a candidate gives or receives assistance during the examination, the Board staff shall stop the candidate's examination and the candidate will be dismissed from the test center. The Board staff shall not score the examination and will report the candidate to the Board, which shall make any decisions regarding discipline.

(j) Candidates must be silent during the examination. Candidates shall not wear or carry any school identification on uniforms or equipment.

History Note: Authority G.S. 86A-5(a)(4); 86A-8; 86A-9; 86A-24; Eff. September 1, 2009; Amended Eff. September 1, 2013; Readopted Eff. July 1, 2016.

CHAPTER 25 – INTERPRETER AND TRANSLITERATOR LICENSING BOARD

21 NCAC 25 .0205 RENEWAL OF A PROVISIONAL LICENSE

- (a) An application for the renewal of a provisional license is not timely filed unless it is received by the Board on or before the expiration date of the license being renewed.
(b) If a licensee does not timely file an application for the renewal of a provisional license, the licensee shall not practice or offer to practice as an interpreter or transliterator for a fee or other consideration, represent himself or herself as a licensed interpreter or transliterator, or use the title "Licensed Interpreter for the Deaf," "Licensed Transliterator for the Deaf," or any other title or abbreviation to indicate that the person is a licensed interpreter or transliterator until he or she receives either a renewed provisional license, as described in Paragraph (c) of this Rule, or an initial full license.
(c) An application to renew an expired provisional license shall be approved by the Board if it is received by the Board within one year after the provisional license expired and if the application demonstrates that the applicant continues to qualify for a provisional license. A provisional license shall not be renewed after it has expired a second time.
(d) If the license being renewed has been suspended by the Board, any renewal license issued to the applicant shall also be suspended until the term of the suspension has expired.
(e) The Board shall renew a provisional license as many as three times upon receipt of timely applications that demonstrate that the applicant continues to qualify for a provisional license. The Board may extend a provisional license on an annual basis after the third renewal if the applicant timely files an application prior to the expiration of the third renewal, and on an annual basis thereafter if further extension is sought by the applicant, that demonstrates that the applicant's progress toward full licensure was delayed by:
(1) a life-altering event, such as the birth or adoption of a child to the applicant or the applicant's spouse or an acute or chronic illness suffered by either the applicant or a member of the applicant's immediate family;
(2) active military service;
(3) a catastrophic natural event, such as a flood, hurricane, or tornado; or
(4) the certifying organization identified in G.S. 90D-7 having imposed a moratorium on testing or certification that has prevented the applicant from sitting for the qualifying examination and obtaining the results thereof prior to the expiration of the provisional license or any annual extension thereof; provided, however, that a provisional license that has been extended

because of a moratorium may be extended one additional time following the end of the moratorium to allow sufficient time for the applicant to take the qualifying examination and to receive the results thereof, but it shall not be extended thereafter on the basis of a moratorium.

- (f) The Board shall not issue an initial provisional license to anyone who has previously held a provisional license.
(g) The Board shall extend the deadline for filing a license renewal application for any individual who currently holds a provisional license and is in good standing with the Board, if the individual is serving in the armed forces of the United States and if G.S. 105-249.2 grants the individual an extension of time to file a tax return. The extension shall be in effect for any period that is disregarded under Section 7508 of the Internal Revenue Code in determining the taxpayer's liability for a federal tax.

History Note: Authority G.S. 90D-6; 90D-8; 90D-11; 90D-12; 93B-15; Eff. March 21, 2005; Amended Eff. July 1, 2016; May 1, 2011; August 1, 2007.

CHAPTER 61 – RESPIRATORY CARE BOARD

21 NCAC 61 .0202 EXEMPTIONS

The Board shall exempt the following persons meeting the requirements of G.S. 90-664 from the requirement of obtaining a license. For the purposes of this Rule:

- (1) For purposes of interpreting G.S. 90-664(2), direct supervision shall mean that a respiratory care practitioner licensed by the Board is present in the same facility to supervise a respiratory care student at any time while the student is engaged in the practice of respiratory care. The supervising respiratory care practitioner shall be specifically assigned to the particular student, but more than one practitioner may be assigned to a particular student. A respiratory care student shall not engage in the performance of respiratory care activities without direct supervision by a respiratory care practitioner licensed by the Board.
(2) For purposes of interpreting G.S. 90-664(4), support activities shall include instructions on the use, fitting, and application of the apparatus, including demonstrating its mechanical operation for the patient or caregiver, by unlicensed individuals who deliver, set up, and calibrate prescribed respiratory care equipment; but shall not include teaching, administration, or performance of respiratory care. Instructions to the patient or caregiver regarding the clinical use of the equipment and any patient monitoring, patient assessment, or other activities or procedures that are undertaken to

assess the clinical effectiveness of an apparatus or to evaluate the effectiveness of the treatment shall be performed by a respiratory care practitioner licensed by the Board or other licensed practitioner operating within their scope of practice.

History Note: Authority G.S. 90-648(13); 90-652(2); 90-664; Temporary Adoption Eff. October 15, 2001; Eff. August 1, 2002; Readopted Eff. July 1, 2016.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission August 18, 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

August 18, 2016 September 15, 2016
October 19, 2016 November 17, 2016

AGENDA

RULES REVIEW COMMISSION
THURSDAY, AUGUST 18, 2016 10:00 A.M.
1711 New Hope Church Rd., Raleigh, NC 27609

- I. Ethics reminder by the chair as set out in G.S. 138A-15(e)
- II. Approval of the minutes from the last meeting
- III. Follow-up matters
 - A. Property Tax Commission – 17 NCAC 11 .0216, .0217 (Hammond)
 - B. Board of Barber Examiners - 21 NCAC 06B .0105, .0503, .0505; 06C .0202, .0203; 06F .0110, 0116; 06G .0106; 06I .0101, .0105; 06J .0101; 06K .0104; 06L .0118, .0119; 06N .0103, .0104, .0106, .0108; 06O .0120; 06Q .0101, .0103, .0104 (Reeder)
- IV. Review of Log of Filings (Permanent Rules) for rules filed June 21, 2016 through July 20, 2016
 - Environmental Management Commission 02H (Hammond)
 - Coastal Resources Commission (Reeder)
 - Environmental Management Commission 13B (Reeder)
 - Hearing Aid Dealers And Fitters Board (Reeder)
 - Landscape Contractors' Licensing Board (May)
 - Medical Board (Reeder)
 - Board of Examiners In Optometry (Reeder)
 - Board of Pharmacy (Reeder)
 - Board of Podiatry Examiners (Thomas)
 - Building Code Council (Reeder)
- V. Review of Log of Filings (Temporary Rules) for any rule filed within 15 business days prior to the RRC Meeting
- VI. Existing Rules Review
 - Review of Reports
 - 1. 04 NCAC 06 - Credit Union Division (Hammond)
 - 2. 10A NCAC 06 - DHHS/Social Services Commission (Thomas)

- 3. 10A NCAC 67 - DHHS/Social Services Commission (Thomas)
- 4. 10A NCAC 68 - DHHS/Social Services Commission (Thomas)
- 5. 10A NCAC 69 - DHHS/Social Services Commission (Thomas)
- 6. 10A NCAC 72 - DHHS/Social Services Commission (Thomas)
- 7. 21 NCAC 22 - Hearing Aid Dealers and Fitters Board (Reeder)
- Readoption
 - 8. 10A NCAC 13J - DHHS/Medical Care Commission (Hammond)
 - 9. 10A NCAC 63 - DHHS/Services for the Blind Commission (Hammond)
 - 10. 10A NCAC 70 - DHHS/Social Services Commission (Hammond)

VII. Commission Business

- Next meeting: Thursday, September 15, 2016

Commission Review
Log of Permanent Rule Filings
 June 21, 2016 through July 20, 2016

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Subchapter 2H concern procedures for permits: approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500); laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); and discharges to isolated wetlands and isolated waters (.1300).

<u>Stormwater Discharges</u>	15A NCAC 02H .0126
Readopt without Changes/*	
<u>Definitions: NPDES MS4 Stormwaters</u>	15A NCAC 02H .0150
Readopt with Changes/*	
<u>NPDES MS4 Stormwater: Designation of Petition Process</u>	15A NCAC 02H .0151
Readopt with Changes/*	
<u>Development in Urbanizing Areas</u>	15A NCAC 02H .0152
Repeal/*	
<u>NPDES MS4 Stormwater: Program Implementation</u>	15A NCAC 02H .0153
Readopt with Changes/*	
<u>Post Construction Practices</u>	15A NCAC 02H .0154
Repeal/*	
<u>Post-Construction Stormwater Management: Purpose and Scope</u>	15A NCAC 02H .1001
Readopt with Changes/*	
<u>Definitions</u>	15A NCAC 02H .1002
Readopt with Changes/*	
<u>Requirements that Apply to All Subject Projects</u>	15A NCAC 02H .1003
Readopt with Changes/*	
<u>Stormwater Requirements: Coastal Counties</u>	15A NCAC 02H .1005
Repeal/*	
<u>Stormwater Requirements: High Quality Waters</u>	15A NCAC 02H .1006
Repeal/*	
<u>Stormwater Requirements: Outstanding Resource Waters</u>	15A NCAC 02H .1007
Repeal/*	
<u>Design of Stormwater Management Measures</u>	15A NCAC 02H .1008
Repeal/*	
<u>Staff Review and Permit Preparation</u>	15A NCAC 02H .1009
Repeal/*	

<u>Final Action on Permit Applications to the Division</u> Repeal/*	15A NCAC 02H .1010
<u>Modification and Revocation of Permits</u> Repeal/*	15A NCAC 02H .1011
<u>Delegation of Authority</u> Repeal/*	15A NCAC 02H .1012
<u>General Permits</u> Repeal/*	15A NCAC 02H .1013
<u>Stormwater Management for Urbanizing Areas</u> Repeal/*	15A NCAC 02H .1014
<u>Urbanizing Area Definitions</u> Repeal/*	15A NCAC 02H .1015
<u>Development in Urbanizing Areas: Applicability and Deline...</u> Readopt with Changes/*	15A NCAC 02H .1016
<u>NPDES MS4 and Urbanizing Areas: Post-Construction Practices</u> Readopt with Changes/*	15A NCAC 02H .1017
<u>Urbanizing Areas: Delegation</u> Adopt/*	15A NCAC 02H .1018
<u>Coastal Counties</u> Adopt/*	15A NCAC 02H .1019
<u>Universal Stormwater Management Program</u> Readopt with Changes/*	15A NCAC 02H .1020
<u>Non-Coastal County High Quality Waters (HQW) and Outstand...</u> Adopt/*	15A NCAC 02H .1021
<u>Permit Administration</u> Adopt/*	15A NCAC 02H .1040
<u>General Permits</u> Adopt/*	15A NCAC 02H .1041
<u>Standard Permitting Process</u> Adopt/*	15A NCAC 02H .1042
<u>Fast Track Permitting Process: Authorization to Construct</u> Adopt/*	15A NCAC 02H .1043
<u>Fast Track Permitting Process: Final Permit</u> Adopt/*	15A NCAC 02H .1044
<u>Requirements for Permit Transfers and Permit Renewals</u> Adopt/*	15A NCAC 02H .1045
<u>MDC for All Stormwater Control Measures</u> Adopt/*	15A NCAC 02H .1050
<u>MDC for Infiltration Systems</u> Adopt/*	15A NCAC 02H .1051
<u>MDC for Bioretention Cells</u> Adopt/*	15A NCAC 02H .1052
<u>MDC for Wet Ponds</u> Adopt/*	15A NCAC 02H .1053
<u>MDC for Stormwater Wetlands</u> Adopt/*	15A NCAC 02H .1054
<u>MDC for Permeable Pavement</u> Adopt/*	15A NCAC 02H .1055
<u>MDC for Sand Filters</u> Adopt/*	15A NCAC 02H .1056
<u>MDC for Rainwater Harvesting</u> Adopt/*	15A NCAC 02H .1057

<u>MDC for Green Roofs</u> Adopt/*	15A NCAC 02H .1058
<u>MDC for Level Spreader-Filter Strips</u> Adopt/*	15A NCAC 02H .1059
<u>MDC for Disconnected Impervious Surfaces</u> Adopt/*	15A NCAC 02H .1060
<u>MDC for Treatment Swales</u> Adopt/*	15A NCAC 02H .1061
<u>MDC for Dry Ponds</u> Adopt/*	15A NCAC 02H .1062

COASTAL RESOURCES COMMISSION

The rules in Subchapter 7H are the state guidelines for areas of environmental concern (AECs) including introduction and general comments (.0100); the estuarine system (.0200); ocean hazard areas (.0300); public water supplies (.0400); natural and cultural resource areas (.0500); development standards (.0600); general permits for construction or maintenance of bulkheads and the placement of riprap for shoreline protection in estuarine and public trust waters (.1100); piers, docks and boat houses in estuarine and public trust waters (.1200); general permit to construct boat ramps along estuarine and public trust shorelines and into estuarine and public trust waters (.1300); groins in estuarine and public trust waters (.1400); excavation within or connecting to existing canals, channels, basins, or ditches in estuarine waters, public trust waters, and estuarine shoreline AECs (.1500); aerial and subaqueous utility lines with attendant structures in coastal wetlands, estuarine waters, public trust waters and estuarine shorelines (.1600); emergency work requiring a CAMA or a dredge and fill permit (.1700); beach bulldozing landward of the mean high-water mark in the ocean hazard AEC (.1800); temporary structures within the estuarine and ocean hazard AECs (.1900); authorizing minor modifications and repair to existing pier/mooring facilities in estuarine and public trust waters and ocean hazard areas (.2000); construction of sheetpile sill for shoreline protection in estuarine and public trust waters (.2100); construction of freestanding moorings in established waters and public trust areas (.2200); replacement of existing bridges and culverts in estuarine waters, estuarine shorelines, public trust areas and coastal wetlands (.2300); placement of riprap for wetland protection in estuarine and public trust waters (.2400); replacement of structures; the reconstruction of primary or frontal dune systems; and the maintenance excavation of existing canals, basins, channels, or ditches, damaged, destroyed, or filled in by hurricanes or tropical storms (.2500); construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program (.2600); and the construction of riprap sills for wetland enhancement in estuarine and public trust waters (.2700).

<u>Coastal Wetlands</u> Amend/*	15A NCAC 07H .0205
<u>Purpose</u> Amend/*	15A NCAC 07H .1801
<u>Approval Procedures</u> Amend/*	15A NCAC 07H .1802
<u>General Conditions</u> Amend/*	15A NCAC 07H .1804
<u>Specific Conditions</u> Amend/*	15A NCAC 07H .1805
<u>Specific Conditions</u> Amend/*	15A NCAC 07H .2505

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 13 concern Solid Waste Management.

The rules in Subchapter 13B concern Solid Waste Management including general provisions (.0100); permits for solid waste management facilities (.0200); treatment and processing facilities (.0300); transfer facilities (.0400); disposal

sites (.0500); monitoring requirements (.0600); administrative penalty procedures (.0700); septage management (.0800); yard waste facilities (.0900); solid waste management loan program (.1000); scrap tire management (.1100); medical waste management (.1200); disposition of remains of terminated pregnancies (.1300); municipal solid waste compost facilities (.1400); standards for special tax treatment of recycling and resource recovery equipment and facilities (.1500); requirements for municipal solid waste landfill facilities (.1600); and requirements for beneficial use of coal combustion by-products (.1700).

<u>Permit Required</u> Amend/*	15A NCAC 13B .0201
<u>Option to Apply for Issuance of 10-Year Permit for Sanita...</u> Repeal/*	15A NCAC 13B .0206
<u>Life-of-Site Permit Issued for a Sanitary Landfill or Tra...</u> Adopt/*	15A NCAC 13B .0207

HEARING AID DEALERS AND FITTERS BOARD

The rules in Subchapter 22F concern general examination and license provisions.

<u>Annual Continuing Education Requirements</u> Amend/*	21 NCAC 22F .0202
<u>Self-Study</u> Amend/*	21 NCAC 22F .0208

The rules in Chapter 22 are from the hearing aid dealers and fitters board.

The rules in Subchapter 22L concern administrative hearings and contested cases.

<u>Committee on Investigations</u> Amend/*	21 NCAC 22L .0101
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LANDSCAPE CONTRACTORS' LICENSING BOARD

The rules in Subchapter 28B are from the Landscape Contractors' Licensing Board and include board meetings and definitions (.0100); licensure, reciprocity and seal (.0200); license renewal and reinstatement (.0300); continuing education (.0400); minimum standards (.0500); fees (.0600); complaints and investigations (.0700); and hearings process and summary suspension (.0800).

<u>Name and Location of Board</u> Adopt/*	21 NCAC 28B .0101
<u>Meetings</u> Adopt/*	21 NCAC 28B .0102
<u>Practice of Landscape Contracting</u> Adopt/*	21 NCAC 28B .0103
<u>Applications for Licensure</u> Adopt/*	21 NCAC 28B .0201
<u>Reciprocity</u> Adopt/*	21 NCAC 28B .0202
<u>Military-Trained Applicant; Military Spouse</u> Adopt/*	21 NCAC 28B .0203
<u>Maintain Current Information</u> Adopt/*	21 NCAC 28B .0204
<u>License Renewal; Waiver</u> Adopt/*	21 NCAC 28B .0301

<u>Reinstatement</u> Adopt/*	21	NCAC	28B	.0302
<u>General</u> Adopt/*	21	NCAC	28B	.0401
<u>Continuing Education Units</u> Adopt/*	21	NCAC	28B	.0402
<u>Continuing Education Records; Audit</u> Adopt/*	21	NCAC	28B	.0403
<u>Extension of Time</u> Adopt/*	21	NCAC	28B	.0404
<u>Requests for Approval</u> Adopt/*	21	NCAC	28B	.0405
<u>General</u> Adopt/*	21	NCAC	28B	.0501
<u>Planting</u> Adopt/*	21	NCAC	28B	.0502
<u>Turf</u> Adopt/*	21	NCAC	28B	.0503
<u>Finish Grade</u> Adopt/*	21	NCAC	28B	.0504
<u>Design and Consultation</u> Adopt/*	21	NCAC	28B	.0505
<u>Drainage Systems and Cisterns</u> Adopt/*	21	NCAC	28B	.0506
<u>Low-Voltage Lighting; Pools</u> Adopt/*	21	NCAC	28B	.0507
<u>Walls</u> Adopt/*	21	NCAC	28B	.0508
<u>Paving</u> Adopt/*	21	NCAC	28B	.0509
<u>Pruning</u> Adopt/*	21	NCAC	28B	.0510
<u>Wildflower, Native Grass, and No-Mow Seed Establishment</u> Adopt/*	21	NCAC	28B	.0511
<u>Fee Schedule</u> Adopt/*	21	NCAC	28B	.0601
<u>Complaints; Investigations</u> Adopt/*	21	NCAC	28B	.0701
<u>Probable Cause</u> Adopt/*	21	NCAC	28B	.0801
<u>Hearings</u> Adopt/*	21	NCAC	28B	.0802
<u>Subpoenas</u> Adopt/*	21	NCAC	28B	.0803
<u>Summary Suspension</u> Adopt/*	21	NCAC	28B	.0804

MEDICAL BOARD

The rules in Subchapter 32R concern Continuing Medical Education (CME) Requirements.

Continuing Medical Education (CME) Required 21 NCAC 32R .0101
Amend/*

The rules in Subchapter 32S regulate physician assistants including physician assistant registration (.0200).

Continuing Medical Education 21 NCAC 32S .0216
Amend/*

OPTOMETRY, BOARD OF EXAMINERS IN

The rules in Subchapter 42J concern the fee schedule.

Fees 21 NCAC 42J .0101
Amend/*

PHARMACY, BOARD OF

The rules in Chapter 46 cover organization of the board (.1200); general definitions (.1300); hospitals and other health facilities (.1400); admission requirements and examinations (.1500); licenses and permits (.1600); drugs dispensed by nurse and physician assistants (.1700); prescriptions (.1800); forms (.1900); administrative provisions (.2000); elections (.2100); continuing education (.2200); prescription information and records (.2300); dispensing in health departments (.2400); miscellaneous provisions (.2500); devices (.2600); nuclear pharmacy (.2700); compounding (.2800); product selection (.2900); disposal of unwanted drugs (.3000); clinical pharmacist practitioner (.3100); impaired pharmacist peer review program (.3200); and registry of pharmacist technicians (.3300).

Medication in Health Departments 21 NCAC 46 .2401
Amend/*

Drugs and Devices to be Dispensed 21 NCAC 46 .2403
Amend/*

PODIATRY EXAMINERS, BOARD OF

The rules in Chapter 52 concern Board of Podiatry Examiners including organization of the Board (.0100); examination and licensing (.0200); professional corporations (.0300); revocation or suspension of license (.0400); certification of podiatric assistants (.0500); general provisions (.0600); petitions for rules (.0700); notice of rulemaking hearings (.0800); rulemaking hearings (.0900); declaratory rulings (.1000); administrative hearing procedures (.1100); administrative hearings decisions related rights and procedures (.1200); nominations for podiatrist members of the board of podiatry examiners; the board of podiatry examiners constituting a board of podiatry elections; and procedures for holding an election (.1300); and scope of practice (.1400).

Application 21 NCAC 52 .0201
Readopt without Changes/*

Examination 21 NCAC 52 .0202
Readopt without Changes/*

Re-Examination 21 NCAC 52 .0204
Readopt without Changes/*

Practice Orientation 21 NCAC 52 .0205
Readopt without Changes/*

Annual Renewal of License 21 NCAC 52 .0207
Readopt without Changes/*

Applicants Licensed in Other States 21 NCAC 52 .0209
Readopt without Changes/*

Fee for Validation of Licensee Lists; Computer Services 21 NCAC 52 .0210
Readopt without Changes/*

RULES REVIEW COMMISSION

<u>Military License</u>	21	NCAC	52	.0211
Readopt without Changes/*				
<u>Specialty Credentialing Privileges</u>	21	NCAC	52	.0212
Readopt without Changes/*				
<u>Registration</u>	21	NCAC	52	.0301
Readopt without Changes/*				
<u>Annual Renewal</u>	21	NCAC	52	.0302
Readopt without Changes/*				
<u>Penalties</u>	21	NCAC	52	.0303
Readopt without Changes/*				
<u>Hearings</u>	21	NCAC	52	.0402
Readopt without Changes/*				
<u>Service of Notice</u>	21	NCAC	52	.0403
Readopt without Changes/*				
<u>Place of Hearings</u>	21	NCAC	52	.0404
Readopt without Changes/*				
<u>Appeal</u>	21	NCAC	52	.0408
Readopt without Changes/*				
<u>Application for Examination</u>	21	NCAC	52	.0601
Readopt without Changes/*				
<u>Appl/Exam/Podiatrist Licensed/Other States (Reciprocity)</u>	21	NCAC	52	.0610
Readopt without Changes/*				
<u>Payment of Fees</u>	21	NCAC	52	.0612
Readopt without Changes/*				
<u>Fee Schedule</u>	21	NCAC	52	.0613
Readopt without Changes/*				
<u>Petition for Rulemaking Hearings</u>	21	NCAC	52	.0701
Readopt without Changes/*				
<u>Contents of Petition</u>	21	NCAC	52	.0702
Readopt without Changes/*				
<u>Dispositions of Petitions</u>	21	NCAC	52	.0703
Readopt without Changes/*				
<u>Notice Mailing List</u>	21	NCAC	52	.0804
Readopt without Changes/*				
<u>Subjects of Declaratory Rulings</u>	21	NCAC	52	.1001
Readopt without Changes/*				
<u>Submission of Request for Ruling</u>	21	NCAC	52	.1002
Readopt without Changes/*				
<u>Disposition of Requests</u>	21	NCAC	52	.1003
Readopt without Changes/*				
<u>Record of Decision</u>	21	NCAC	52	.1004
Readopt without Changes/*				
<u>Definition</u>	21	NCAC	52	.1005
Readopt without Changes/*				
<u>Simplification of Issues</u>	21	NCAC	52	.1202
Readopt without Changes/*				
<u>Subpoenas</u>	21	NCAC	52	.1203
Readopt without Changes/*				
<u>Final Decisions in Administrative Hearings</u>	21	NCAC	52	.1204
Readopt without Changes/*				
<u>Board of Podiatry Examiners Elections</u>	21	NCAC	52	.1301
Readopt without Changes/*				

<u>Procedures for Conducting Elections</u> Readopt without Changes/*	21	NCAC	52	.1302
<u>Soft Tissue Procedures</u> Readopt without Changes/*	21	NCAC	52	.1401

BUILDING CODE COUNCIL

<u>2012 NC Building Code/Family or Assisted -Use Toilet and ...</u> Amend/*	1109.2.1
<u>2012 NC Plumbing Code/General Definitions</u> Amend/*	202
<u>2012 NC Plumbing Code/Tempered Water for Public Hand-Wash...</u> Amend/*	416.5
<u>2012 NC Residential Code/Air Space</u> Amend/*	R703.7.4.2
<u>2014 NC Electrical Code/Branch Circuit Extensions or Modi...</u> Amend/*	210.12 (B)
<u>2014 NC Electrical Code/Installation Methods for Branch C...</u> Amend/*	338.10 (B) (4)

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	

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>			
NC Alcoholic Beverage Control Commission v. Dasab LLC T/A D and S Kwik Stop	16 ABC 01759	05/25/16	
NC Alcoholic Beverage Control Commission v. Cristina Miron Bello and Victor Giles Bello T/A La Poblanita	16 ABC 02166	05/25/16	
<u>DEPARTMENT OF PUBLIC SAFETY</u>			
Thomas Anthony Tyger v. Victim Services Janice Carmichael	15 CPS 08771	05/17/16	
George Dudley v. NC Department of Public Safety, Victim Services	16 CPS 01651	05/05/16	
<u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u>			
Agape Homes Inc. v. Department of Health and Human Services	12 DHR 11808	05/26/16	
Agape Homes Inc. v. Department of Health and Human Services	13 DHR 12398	05/26/16	
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FILED
OFFICE OF ADMINISTRATIVE HEARINGS
05/11/2016 11:50 AM

STATE OF NORTH CAROLINA
COUNTY OF ROWAN

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EDC 01828

Crystal A Kelly Petitioner, v. Department Of Public Instruction Respondent.	FINAL DECISION
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This matter came on to be heard before Administrative Law Judge Selina M. Brooks on October 27, 2015, and March 22-23, 2016 in Salisbury, North Carolina.

APPEARANCES

For the Petitioner: Juanita Boger-Allen, Esq.
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EXHIBITS

Petitioner's Exhibits ("Pet. Ex.") 1 through 19 were admitted.

Respondent's Exhibits ("Resp. Ex.") 1 through 24 were admitted.

WITNESSES

For Petitioner: Crystal A. Kelly, Petitioner
John Broadway, retired Officer, Albemarle Police Department

For Respondent: Marcia Schwartz Davis, Member, Ethics Advisory Committee, DPI
Vicki Lee Calvert, HR Director, Stanly County Schools ("SCS")
Leigh Hayes, EC Director, SCS

Markita Hamilton, Teacher Assistant, SCS
Nancy Watkins, Teacher Assistant, SCS
Katie Cornetto, Chair, Ethics Advisory Committee, DPI
Sandra Carter, Associate Superintendent, SCS
Bernard Waugh, Member, Ethics Advisory Committee, DPI
Jim Kirkpatrick, Member, Ethics Advisory Committee, DPI
Christopher Boe, Member, Ethics Advisory Committee, DPI
Nadine Ejire, Assistant Section Chief, Licensure Section, DPI

ISSUE

Whether Petitioner's North Carolina teaching license should have been revoked.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (ALJ) makes the following Findings of Fact. In making these findings of fact, the ALJ has weighed all the evidence and has assessed the credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case. A transcript of the testimony that was received on October 27, 2015 was available to the Undersigned for writing this decision and is referenced herein as "Tr." A transcript was not requested by the Parties for the testimony received on March 22-23, 2016 and, therefore, the Undersigned has relied upon her notes and that testimony is referenced herein as "Testimony".

FINDINGS OF FACT

1. Petitioner was awarded an Initial Provisional teaching license by Respondent on February 23, 2009. (Resp. Ex. 3) After completing all program requirements on July 29, 2009, Petitioner was awarded a Standard Professional 1 (initial) license with an expiration date of June 30, 2012. (Resp. Ex.(s) 4 & 6)
2. Petitioner was also advised by letter, dated July 29, 2009, of the requirements for the conversion of her Standard Professional I license ("SP I") to a Standard Professional II license ("SP II"). (Resp. Ex. 5)
3. In the fall of 2012, Petitioner made inquiries to her former employing school system, Stanly County Schools ("SCS"), and to the North Carolina Department of Public Instruction ("DPI") concerning how she could have her expired North Carolina teaching license reinstated. (Resp. Ex. 11)
4. Petitioner was notified by SCS that the school system would not provide a letter of recommendation to have her teaching license reinstated. (Resp. Ex.(s) 12, 13)

5. On April 16, 2014, SCS notified DPI Licensure staff that the school system had recently received inquiries from the Petitioner about her teaching license, but that the school system was not recommending conversion of Petitioner's SP I to a SP II because Petitioner failed to successfully complete the North Carolina Beginning Teacher Support Program ("BTSP") and evaluation process. (Resp. Ex.(s) 14, 15)

6. Petitioner failed to successfully complete the BTSP and evaluation process because she had been dismissed from her teaching position with SCS, effective April 26, 2012. (Resp. Ex. 8, p. 40)

7. On April 17, 2014, Respondent notified Petitioner that her SP I would not be converted to a SP II because she had not completed the BTSP. (Resp. Ex. 16)

8. Petitioner made a journal of her telephone conversations concerning reinstatement of her teaching license. (Pet. Ex. 13; Testimony)

9. On May 23, 2014, Petitioner challenged the decision to deny her a SP II by filing a petition for a contested case hearing (*Kelly v. DPI*, 14 EDC 03803) with the Office of Administrative Hearings. (See Resp. Ex. 17)

10. On June 13, 2014, Petitioner was notified by DPI that her SP I would not be converted to a SP II due to her not completing the BTSP. (Pet. Ex. 10)

11. During the discovery period for that contested case (14 EDC 03803), Respondent sent a letter to Petitioner, dated July 14, 2014, notifying her that Respondent had received allegations concerning Petitioner's conduct as an EC teacher while employed by SCS and that Respondent would be conducting an investigation which could lead to possible disciplinary action against Petitioner's expired North Carolina teaching license, including revocation. Petitioner was invited to attend a meeting of the State Superintendent's Ethics Advisory Committee ("Ethics Committee") on September 12, 2014 concerning the allegations. (Resp. Ex. 18)

12. The Ethics Committee is composed of professional educators appointed by the State Superintendent of Public Instruction, Dr. June St. Clair Atkinson, to review applications for a teaching license where the applicant has indicated he or she has a prior conviction and/or has had a license revoked or suspended, or where questions or issues concerning a teacher's ethical fitness to teach have been brought to the attention of the State Board of Education office. (Resp. Ex. 18; Tr. pp. 122-123)

13. On July 21, 2014, Petitioner submitted a request to the Licensure section at DPI to have her expired license validated. In response to a question on the Licensure Update form about whether the Petitioner had ever had a license revoked or suspended by any state or other governing body, Petitioner truthfully indicated "no." Petitioner, however, did not indicate that the Ethics Committee was presently considering whether disciplinary action should be taken on her teaching license and that she had been invited to appear before the Ethics Committee. (Pet. Ex. 11; Resp. Ex. 19)

14. On September 5, 2014, the contested case regarding denial of a SP II (14 EDC 03803) was dismissed for Petitioner's failure to prosecute her case. (Resp. Ex. 17) Accordingly, Petitioner's SP I, which expired on June 30, 2012, was not renewed or reinstated.

15. Petitioner was interviewed by members of the Ethics Committee on September 12, 2014. She denied all allegations that she had engaged in any misconduct while employed at SCS and stated that the criminal charges brought against her had been dismissed. (Tr. pp. 125-131) After reviewing the relevant documents and information presented by the Petitioner, the Ethics Committee deferred making a recommendation pending receipt of additional information and documentation. (Tr. pp. 138, 144-145; Pet. Ex. 19 p. 93; Resp. Ex. 20)

16. Subsequently, Petitioner submitted additional documentation to be considered by the Ethics Committee, including documentation that the charge of criminal assault against a child under the age of 12 was dismissed by the district court. (Pet. Ex.(s) 1, 5 & 8

17. Additional documentation also was obtained from SCS which had been collected by SCS prior to Petitioner's termination in 2012:

- Several statements from Leigh Hayes, EC Director at East Albemarle Elementary School, who had observed Petitioner in the classroom and contemporaneously recorded her observations and identified issues concerning Petitioner's teaching methods and conduct. (Resp. Ex. 8 pp. 12, 13, 14, 15, 17 & 24)
- Statement from Ariana King, a substitute who worked in Petitioner's classroom on multiple days, alleged observing Petitioner physically and verbally abusing students. (Resp. Ex. 8 pp. 18-19)
- Statements from four employees that they observed Petitioner verbally abuse a student. (Resp. Ex. 8 pp. 20 & 25)
- Statements from Markita Hamilton, a Teacher Assistant, who personally observed Petitioner's abusive behavior toward a student. (Resp. Ex. 8 pp. 21 & 34)
- A written statement from a parent, complaining that Petitioner was abusing children in her classroom. (Resp. Ex. 8 p. 23)
- Letter from SCS Superintendent Samuel A. DePaul, dated February 14, 2012, suspending Petitioner for February 14-20, 2012 based upon Petitioner's conduct, and Petitioner's written Response. (Resp. Ex. 8 pp. 26, 28-31)
- Professional Development Plan, dated February 22, 2012. (Resp. 8, pp. 36-38)
- Letter from Superintendent DePaul, dated April 26, 2012, confirming a discussion with Petitioner concerning a text message which was referred to the Albemarle Police Department and the Department of Social Services, and terminating her employment with SCS. (Resp. Ex. 8 p. 40)

- SCS recommendation of non-renewal of Petitioner's license. (Resp. Ex. 8 p. 41)

18. On or about September 25, 2014, a DPI staff person erroneously issued the Petitioner a new SP I license. (Pet. Ex. 12)

19. Nadine Ejire, Assistant Section Chief of Respondent's Licensure Section, testified that this SP I license was issued in error because SCS did not recommend conversion to SP II because Petitioner did not complete the evaluation process. (Resp. Ex. 15) In July of 2012, Cabarrus Charter School had requested an extension of Petitioner's SP I license and such requests are usually granted. (R. Ex. 19) She did not notify Petitioner that its issuance was improper and the Ethics Committee was not notified that a SP I license was issued. (Testimony)

20. At its regularly scheduled meeting on December 12, 2014, several of the Ethics Committee members who attended the September meeting at which Petitioner's case was considered the first time also attended. (Resp. Ex. 21)

21. After reviewing the relevant documents and information, including the documentation submitted by both Parties after the September meeting, the Ethics Committee voted unanimously to recommend to Dr. Atkinson that Petitioner's teaching license be revoked based on the Petitioner's abusive behavior towards students as outlined in the SCS Superintendent's letters to Petitioner, dated February 14, 2012 and April 26, 2012. (Pet. Ex. 19 p. 94; Resp. Ex. 21)

22. Dr. Atkinson agreed with the Ethics Committee's recommendation and initiated revocation proceedings on January 9, 2015. (Resp. Ex. 22)

23. Petitioner appealed the decision to revoke her teaching license by filing the within petition for contested case hearing with the Office of Administrative Hearings. (Resp. Ex. 23)

24. At the contested case hearing before the Undersigned, Petitioner denied all allegations that she had engaged in any misconduct, specifically:

- Petitioner denied any verbal or physical abuse towards students while she was employed by SCS. (Tr. p. 35)
- Petitioner denied allegations that she hit a student with a plastic bat, claiming that the Teacher Assistant who made this allegation wanted her job. (Testimony; see also Resp. Ex. 21)
- Petitioner testified that she received two evaluations at East Albemarle Elementary School which rated her as "Proficient" with two to three areas rated as "below". (Tr. p. 32)
- When asked if she had ever been disciplined, Petitioner testified that "[i]n all the years I've worked in education, I've never had a writeup [sic]." (Tr. p. 32)

- Petitioner denied that she “slammed” a student. (Testimony)
- Petitioner denied that she sent the text message to Nancy Watkins. (Testimony)
- Petitioner testified that while she was employed by SCS, she did not receive any complaints from parents and that parents were “ecstatic about the job that I did with their students.” (Tr. p. 47)

25. When Petitioner was observed by Principal Rhonda Gainey on November 15, 2011, she was rated “Accomplished” in 3 areas, “Proficient” in 12 areas, and “Developing” (a rating below Proficient) in 8 areas. (Pet. Ex. 14)

26. On March 29, 2012, Petitioner was observed by Dr. Carter who completed a Rubric For Evaluating Teachers based upon her observations. Dr. Carter rated Petitioner as “Proficient” in 13 areas and “Developing” in 30 areas. (Pet. Ex. 9)

27. Petitioner is employed by Aristotle Preparatory Academy and for the 2014-2015 school, she received evaluations with ratings of “Proficient”, “Accomplished” and “Distinguished”. (Pet. Ex.(s) 15, 16, 17 & 18)

28. Multiple witnesses testified at the hearing in this matter concerning Petitioner’s mistreatment of students while employed by SCS.

29. Vickie Calvert was Director of the SCS Elementary and Middle Schools during the time Petitioner was working at East Albemarle Elementary School. Among her responsibilities, she was Coordinator for Beginning Teachers and was involved with developing a “directed” professional development plan for improving Petitioner’s instructional skills. (Tr. pp. 178-179, 190, 198-200, 214-215; Resp. Ex. 8 pp. 36-40) Petitioner did not complete all of the required instructional trainings, courses or classes. (Tr. pp. 193-194, 221-224) Petitioner also failed to complete the BTSP because she did not achieve a rating of “Proficient” or better on all standards on her evaluations and she did not receive a summative evaluation. (Tr. pp. 225-226)

30. Leigh Hayes had been employed by SCS as Exceptional Children’s Director for 16 years, is familiar with Petitioner and observed her in the classroom. (Resp. Ex. 8 pp. 12, 13, 14, 15, 17, 24) She received numerous complaints about Petitioner concerning her interactions with students. (Testimony)

31. Markita Hamilton, Petitioner’s former Teacher Assistant at SCS, testified that she once observed Petitioner “slam” a child onto the floor and, on other occasions, she observed Petitioner yelling at her students, some of whom were non-verbal. She personally observed Petitioner’s verbal and physical abuse of student in her classroom and reported her observations to the school principal. (Testimony; see also Resp. Ex. 8 pp. 2-22)

32. Nancy Watkins had been employed as a Teacher Assistant. She testified that she received a text message on her cellphone from Petitioner which stated: “I took his ass n ur room hit him with the blue bat jacked him up twice then went n bathroom & shut the door. I told him

its me & him from now no. He's scared now." (Testimony; see Resp. Ex. 8 p. 40) She reported this text message to Principal Gainey. (Testimony)

33. Katie Cornetto is in-house counsel for Respondent and is Chair of the Ethics Committee. She testified concerning the documents reviewed by the Ethics Committee. She concurs with the decision to revoke Petitioner's license because teachers are held to high standards of conduct and past conduct raises concerns for recurrence, even if a teacher has received a positive evaluation since the incidents occurred. (Testimony)

34. SCS Associate Superintendent Carter supports the decision to revoke Petitioner's license and would not recommend licensing Petitioner to work with children. Dr. Carter testified concerning Petitioner's conduct during her employment with SCS in 2012. Petitioner's five-day suspension without pay in February 2012 was based on the following conduct: allowing students to walk unaccompanied to the office for medication; use of profanity; use of cell phone during instructional time; allowing visitors into the school without checking them in at the main office; derogatory remarks made to students; lack of organized and planned instruction during the school day. (Testimony; Resp. Ex. 8 pp. 26 & 40) Dr. Carter also testified about the investigation by SCS into the report that Petitioner sent a text message to a colleague indicating that she had hit a child in a school bathroom and that Petitioner had been observed by a different colleague physically hurting a child. (Testimony)

35. Bernard Waugh is a member of the Ethics Committee and participated in both meetings. He testified that the committee focuses on ethics and not on quality of teaching. The committee reviewed all documentation provided and considered Petitioner's explanations concerning the allegations. He agrees with the vote to revoke Petitioner's license. (Testimony)

36. James Kirkpatrick is a member of the Ethics Committee and attended the meeting in December. He reviewed documentation from the September meeting as well as all information provided at the December meeting. He agrees with the decision to revoke Petitioner's license. (Testimony)

37. Christopher Boe is a member of the Ethics Committee and attended the September meeting. He considered all documentation provided and oral presentations made, and concurs with the decision to revoke Petitioner's license. (Testimony)

38. Petitioner called retired Albemarle Police Officer John Broadway to testify concerning his investigation of the allegations which resulted in his issuance of a Warrant For Arrest for the offense of assault on a child under 12 years of age. (Pet. Ex. 5) He obtained the statement from Markita Hamilton. (Pet. Ex. 6) Mr. Broadway testified that Ms. Hamilton's statement that Petitioner "dragged" the child (Pet. Ex. 6) is different language from the statement that she gave to SCS on April 24, 2012 in which she states Petitioner "carried" the child (Resp. Ex. 8 p. 34). Prior to issuance of the warrant, he reviewed the statements with Ms. Hamilton. He testified that it is common for there to be differences between statements. (Testimony)

39. After investigation by SCS into the incidents set forth above, Petitioner was dismissed from her teaching position on or about April 26, 2012. (Resp. Ex.(s) 8 p. 40 & Ex. 9)

40. The Undersigned finds the testimony of Nadine Ejire, Vickie Calvert, Leigh Hayes, Markita Hamilton, Nancy Watkins, Katie Cornetto, Sandra Carter, Bernard Waugh, James Kirkpatrick, Christopher Boe and John Broadway to be credible.

41. The Undersigned finds the testimony of Petitioner to be not credible.

CONCLUSIONS OF LAW

1. The State Board of Education may revoke or deny a teaching license for any illegal, unethical or lascivious conduct if there is an adverse relationship between that conduct and the continuing ability of the person to be an effective teacher. 16 N.C.A.C. 6C.0312(a)(8)

2. Teachers are required in this State, by both Rule and by case law, to maintain the highest level of ethical and moral standards, and to serve as a positive role model for children. 16 N.C.A.C. 6C.0602(b)(2); *Faulkner v. New Bern-Craven Bd. of Educ.*, 311 N.C. 42, 59, 316 S.E.2d 281, 291 (1984)

3. As our Supreme Court observed in *Faulkner*:

Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil. It is not inappropriate or unreasonable to hold our teachers to a higher standard of personal conduct, given the youthful ideals they are supposed to foster and elevate. *Id.* (emphasis added)

4. The burden is on Petitioner to demonstrate, by a preponderance of the evidence, that the Respondent erred in revoking her teaching license. *Peace v. Employment Sec. Comm'n*, 349 N.C. 315, 507 S.E.2d 272 (1988)

5. Petitioner's conduct bears a "reasonable and adverse relationship" to the Petitioner's ability to perform her professional duties in an effective manner.

6. Petitioner's conduct is not consistent with the high standards of conduct expected of teachers in this State. *See Faulkner v. Bd. of Educ.*, 311 N.C. 42, 316 S.E.2d 281 (1984).

7. Respondent did not act arbitrarily or capriciously in revoking Petitioner's license to teach in North Carolina.

8. Respondent did not and has not unlawfully deprived Petitioner of any property to which she is entitled.

9. Respondent has not prejudiced the rights of Petitioner nor acted arbitrarily or capriciously.

BASED UPON the foregoing, the Undersigned makes the following:

DECISION

Petitioner has not met her burden of proving by the preponderance of the evidence that Respondent erred in revoking her teaching license and, therefore, the Petition for Contested Case hereby is **DENIED**.

NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 11th day of May, 2016.



Selina M Brooks
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
05/24/2016 10:39 AM

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EDC 05755

<p>Charlotte Classical School Inc Petitioner,</p> <p>v.</p> <p>NC State Board of Education Respondent.</p>	<p>FINAL DECISION</p>
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THIS MATTER came on to be heard before the undersigned Administrative Law Judge Selina M. Brooks on March 18, 2016 in the Mecklenburg County Courthouse, in Charlotte, North Carolina.

APPEARANCES

For the Petitioner: Philip S. Adkins
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For the Respondent: Tiffany Y. Lucas
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APPLICABLE STATUTES

N.C. Gen. Stat. § 115C-218 et seq.

BASED UPON careful consideration of the sworn testimony of the witnesses presented at the hearing, the documents and exhibits received and admitted into evidence, and the entire record in this proceeding, the undersigned Administrative Law Judge (ALJ) makes the following Findings of Fact. In making these findings of fact, the ALJ has weighed all the evidence and has assessed the credibility, including, but not limited to the demeanor of the witnesses, any interests, bias, or prejudice the witness may have, the opportunity of the witness to see, hear, know or remember the

facts or occurrences about which the witness testified, whether the testimony of the witness is reasonable and whether the testimony is consistent with all other believable evidence in the case.

Pursuant to an Order entered on March 21, 2016, Respondent submitted a Proposed Final Decision. Petitioner did not submit comments for consideration. A transcript was not requested by the Parties and, therefore, the Undersigned has relied upon her notes and has referenced “Testimony” herein where applicable.

FINDINGS OF FACT

1. Beginning in 1996, the General Assembly created a system of charter schools, which schools would be operated by nonprofit corporations; would be funded by federal, state, and local tax monies; and would operate independently of the traditional local school boards, but would nevertheless be deemed “public” schools. The General Assembly vested in the State Board of Education (“SBE”) the sole authority to approve such schools, to regulate such schools and, if necessary, to terminate the charters issued to such schools. N.C. Gen. Stat. §§ 115C-218, -218.1, -218.5, -218.95 & -218.105.

2. The processes and procedures governing the consideration and approval or denial of a charter school application are set forth in the General Statutes as well as in policies adopted by the State Board of Education. For example, N. C. Gen. Stat. § 115C-218 (b) establishes the North Carolina Charter School Advisory Board (hereinafter sometimes referred to as the “CSAB”), and sets forth that the CSAB is responsible for, among other things, making “recommendations to the State Board of Education on the adoption of rules regarding all aspects of charter school operation, including time lines, standards, and criteria for acceptance and approval of applications[.]” N.C. Gen. Stat. § 115C-218 (b)(10) The CSAB is required to “review applications and make recommendations to the State Board for final approval of charter applications.” *Id.* The CSAB reviews applications both for initial charters and for renewals, and reviews any requests for changes to the charter, such as enrollment increases, changes to the by-laws, or changes to the location of the school. In addition, as part of the charter application process, the CSAB requires that the governing board for the applicant group or representatives from the proposed school appear at a CSAB meeting to present and respond to questions by the CSAB. *Id.*

3. The CSAB, created by statute, reports to the SBE. Its members are appointed pursuant to statute and it functions as an advisory board to the SBE; no staff of DPI serves on the CSAB. N.C. Gen. Stat. § 115C-218 (b).

4. The CSAB is staffed by the Office of Charter Schools (“OCS”) and works closely with other divisions in the Department of Public Instruction (“DPI”) in order to stay apprised of all issues involving charter schools, both individually and collectively. The OCS reports regularly to the Leadership for Innovation Committee (“LFI”), a standing committee of the SBE for which charter schools are a primary and ongoing focus.

5. In addition to the General Statutes, other requirements concerning charter schools and the charter school application process are set forth in policies adopted by the SBE. For

example, SBE Policy TCS-U-012 entitled, Charter School Application and Review Process, provides specific directions that must be followed in the consideration and review of charter school applications. (Respondent's Ex. 4) For instance, paragraph (a) of this Policy establishes that for each application round, there will be a deadline for applicants to file their applications and, if an applicant's application and fee are not received by the deadline specified by the OCS, then the application will not be considered. Likewise, paragraph (c)(2) of this Policy states that "[t]he Charter School Advisory Board, with the assistance of the Office of Charter Schools, shall review each complete application and determine whether the application" meets certain requirements and, if so, the application shall be forwarded to the SBE for additional consideration. (Respondent's Ex. 4)

6. For the 2014-2015 charter school application cycle (for schools proposed to open in August 2016), the deadline for submitting applications was September 26, 2014. Applicants whose applications were initially approved by the SBE by September 2015, would then be permitted to participate in a year of planning (the "planning year") and training by the OCS in order to be prepared to open their schools in August 2016. (Respondent's Ex. 6, LFI 1 Attachment 1, p. 3). Forty applications were submitted in advance of the September 26, 2014 deadline, including an application from the Petitioner, Charlotte Classical School, Inc. ("Charlotte Classical"). (Respondent's Ex. 16)

7. Those applications, including the application submitted by Charlotte Classical, were then reviewed in accordance with the procedures and policies previously approved by the SBE. With respect to the application submitted by Charlotte Classical, staff from OCS conducted the initial screening process to ensure that all required portions were included within the application submission, and deemed the application complete on or about October 23, 2014. (Respondent's Ex. 9, p. 81) The application was then forwarded to the CSAB for its consideration.

8. At the November 13, 2014 CSAB meeting, both the Policy committee and the Performance committee of the CSAB met to determine whether applications submitted by the September 26, 2014 deadline were complete or incomplete. With respect to the application submitted by Charlotte Classical, a motion was made to deem the application complete, which motion was seconded and carried unanimously. (Respondent's Ex. 10)

9. Following the application completeness screening, the substantive review of applications began. In December 2014 and January 2015, three external evaluators and DPI/OCS staff members (collectively, the "evaluators") reviewed and evaluated Charlotte Classical's application using an evaluation rubric developed by OCS staff and previously approved by the SBE. The evaluators reviewed and rated the application in multiple categories, including: (1) Mission and Purposes; (2) Education Plan; and (3) Operations. Each evaluator was required to give a "pass" or "fail" rating for each category/section of the application, along with written explanation for his or her ratings. (Respondent's Ex.(s) 8 & 9)

10. In the area of Mission and Purposes, all three of the evaluators gave the Charlotte Classical application a "fail" rating. In the area of Education Plan, all three of the evaluators gave the Charlotte Classical application a "fail" rating. In the area of Operations, all three of the evaluators gave the Charlotte Classical application a "fail" rating. For the overall assessment of

the Charlotte Classical application, all three of the evaluators voted against inviting the Charlotte Classical board of directors in for an interview with the CSAB. (Respondent's Ex. 9, pp. 16, 30-31, 52, 67)

11. Notwithstanding the negative evaluations by the external evaluators and as permitted by the practices and procedures of the CSAB, on February 9, 2015, the Policy committee of the CSAB voted unanimously to move Charlotte Classical along in the application process by inviting the Charlotte Classical board for an interview. (Respondent's Ex.(s) 9, p. 81, & 11, p. 000006)

12. On or about March 10, 2015, Charlotte Classical board members presented to and were interviewed by the CSAB. Some CSAB members raised concerns about the education plan and the budget proposed by Charlotte Classical. After much discussion and deliberation, the CSAB voted 6-5 in favor of recommending to the SBE that Charlotte Classical be allowed to start the planning year. Rebecca ("Becky") Taylor was one of the members of CSAB who voted against the recommendation. (Petitioner's Ex. 2; Respondent's Ex. 12, pp. 000026-28)

13. At its regularly scheduled meeting on May 6, 2015, the SBE discussed the slate of charter schools being recommended by the CSAB to start the planning year in preparation for opening in August 2016. For each charter school that did not receive a unanimous CSAB vote in favor of starting the planning year, Dr. Joel Medley, OCS Director, presented information to the SBE concerning the issues raised by CSAB members. (Petitioner's Ex. 3; Respondent's Ex. 16, Item IV.D.1.a.LFI, and 17, pp. 12-14) With respect to the Charlotte Classical application, Dr. Medley reported that at least one CSAB member was concerned that insufficient information about the classical education model had been presented by the Charlotte Classical board during the course of the interview with the CSAB. (Respondent's Ex. 17, p. 14) Becky Taylor was a member of the SBE and present at this meeting. *Id.*

14. In addition to the presentation made by Dr. Medley to the SBE, members of the SBE were encouraged by the Chair and Vice Chair of the LFI Committee to read the minutes from the CSAB meetings, the completed evaluation rubrics and the relevant applications in order to gain a better understanding of the basis for the split votes where any application had not been unanimously recommended by the CSAB for approval. This agenda item was returned for discussion at the June meeting. (Respondent's Ex. 17, p. 14)

15. Information about each of the applications recommended by the CSAB for further consideration by the SBE is included in the materials presented to the SBE in advance of the meeting at which a prospective school is on the agenda for discussion and/or action. SBE members have access to every charter application that the SBE is considering (as they are posted online and a link to each application is included in the materials provided to each SBE member in advance of the SBE meeting), as well as any and all correspondence sent to them from or about any applicant. All proponents of applications have open and equal access to contact Board members and the SBE is free at any time to reconsider, review, or to amend any recommendation coming to it via the CSAB and DPI staff. (Testimony)

16. At its regularly scheduled meeting on June 3, 2015, the SBE considered the slate of charter schools being recommended by the CSAB to start the planning year in preparation for opening in August 2016. (Respondent's Ex. 13) Further discussion was facilitated by LFI Committee Chair and SBE member Becky Taylor. (Petitioner's Ex. 4; Respondent's Ex. 14, pp. 35-38)

17. After much discussion and upon the motion of Becky Taylor, the SBE voted unanimously in open session not to approve the charter application of Charlotte Classical. (Respondent's Ex. 14, p. 38)

18. The Board Chair for Charlotte Classical was notified in writing that the SBE voted not to grant approval of the Charlotte Classical application. (Petitioner's Ex. 5; Respondent's Ex. 15)

19. On or about October 12, 2015, a Petition for Contested Case Hearing was filed by Charlotte Classical School challenging the Respondent's denial of Petitioner's application for a public school charter.

20. At the contested case hearing, evidence was received concerning the membership and procedures of the CSAB and SBE. Petitioner's witness, Eddie Goodall, a former North Carolina State Senator and the current Executive Director of the North Carolina Charter Public Schools Association, testified concerning the membership of the CSAB and the SBE, and his opinion that Becky Taylor's membership on both the CSAB and the SBE is a conflict of interest in violation of the State Ethics Act. Mr. Goodall specifically stated that he does not question the integrity of Ms. Taylor but that he is critical of the statutory provision that allowed her to be a member of both Boards. In 2015, Mr. Goodall lobbied for the passage of House Bill 334 which addressed the statutory provisions concerning the membership composition of the CSAB and SBE, and which was later ratified. (Testimony; Petitioner's Ex. 8)

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case. The parties received proper notice of the hearing in this matter. To the extent the Findings of Fact contain conclusions of law, or that the Conclusions of Law are findings of fact, they should be so considered without regard to their given labels.

2. The Petitioner bears the burden of proof by a greater weight or preponderance of the evidence of showing that by denying the Petitioner's charter application, the Agency has deprived it of property or substantially prejudiced its rights and that the agency's decision was erroneous in one or more of the ways enumerated in N.C. Gen. Stat. § 150B-23. *Surgical Care Affiliates, LLC v. N.C. Dep't of Health and Human Servs., Div. of Health Serv. Regulation, Certificate of Need Section*, 762 S.E.2d 468, 474-475 (N.C. Ct. App. 2014), *review denied*, 768 S.E.2d 564 (N.C. 2015)

3. "[A]gency action is considered 'arbitrary and capricious' only if it indicates a lack of fair and careful consideration and fails 'to indicate any course of reasoning and the exercise of

judgment.” *Watson v. N.C. Real Estate Com’n*, 87 N.C. App. 637, 649, 362 S.E.2d 294, 301 (1987) quoting *State ex rel. Comm’r of Ins. v. North Carolina Rate Bureau*, 300 N.C. 381, 420, 269 S.E.2d 547, 573 (1980).

4. An Administrative Law Judge “shall decide the case based upon the preponderance of the evidence, giving due regard to the demonstrated knowledge and expertise of the agency with respect to facts and inferences within the specialized knowledge of the agency.” N.C. Gen. Stat. § 150B-34(a).

5. Respondent is entitled to a presumption that it acted in good faith in denying the Petitioner’s application for a charter to operate a school beginning in the 2016-2017 school year. In accordance with *Painter v. Wake County Bd of Ed.*, 217 S.E.2d 650, 288 N.C. 165 (1975), absent evidence to the contrary, it will be presumed that “public officials will discharge their duties in good faith and exercise their powers in accord with the spirit and purpose of the law. Every reasonable intendment will be made in support of the presumption.” See also *Huntley v. Potter*, 122 S.E.2d 681, 255 N.C. 619 (1961).

6. The burden is upon the party asserting the contrary to overcome the presumption by competent and substantial evidence. “Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Rusher v. Tomlinson*, 119 N.C. App. 458, 465, 459 S. E. 2d 285, 289 (1995), *aff’d*, 343 N.C. 119, 468 S.E. 2d 57 (1996); *Comm’r of Insurance v. Fire Insurance Rating Bureau*, 292 N.C. 70, 80, 231 S.E.2d 882, 888 (1977). “It is more than a scintilla or a permissible inference.” *Lackey v. Dept. of Human Resources*, 306 N.C. 231, 238, 293 S.E.2d 171, 177 (1982).

7. In weighing evidence which detracts from the agency decision, “[i]f, after all of the record has been reviewed, substantial competent evidence is found which would support the agency ruling, the ruling must stand.” *Little v. Bd. of Dental Examiners*, 64 N.C. App. 67, 69, 306 S.E.2d 534, 536 (1983)(citations omitted).

8. In North Carolina, the State Board of Education is constitutionally mandated to “supervise and administer the free public school system and the educational funds provided for its support.” N.C. Const. art. IX, § 5. In addition, N.C. Gen. Stat. § 115C-218.5 (a)(1) provides that “[t]he State Board may grant final approval of [a charter school] application if it finds...the application meets the requirements set out in this Article and such other requirements as may be adopted by the State Board of Education.”

9. N.C. Gen. Stat. § 115C-218 (b) establishes the North Carolina Charter School Advisory Board and sets forth that the CSAB is responsible for, among other things, making “recommendations to the State Board for final approval of charter applications.” The State Board of Education alone is charged with making the final decision on the approval or denial of all public charter school applications in this State and is not bound by the recommendations of the CSAB. N.C. Gen. Stat. § 115C-218.5

10. For the Charlotte Classical application at issue in this contested case, all of the external evaluators who reviewed the application gave the application a “fail” rating and voted not to move the application forward in the process.

11. Notwithstanding the evaluators’ vote, the CSAB further considered the Charlotte Classical application, including interviewing members of the board of directors for Charlotte Classical regarding the application. At the conclusion of the Charlotte Classical presentation and interview, and after discussion and deliberation, the CSAB voted 6-5 to recommend to the State Board of Education that Charlotte Classical begin the planning year.

12. At its regularly scheduled meeting in May and then again in June 2015, the SBE was presented with the CSAB’s recommendation. As with all other applications that did not receive a unanimous vote from the CSAB, the SBE was presented with information regarding the concerns about the Charlotte Classical application and interview of the applicant.

13. Petitioner argues that the membership composition of the CSAB and SBE was unethical even though the membership composition of both Boards met the statutory requirements at that time and, therefore, the decision of the SBE to accept the CSAB’s recommendation and to vote to disapprove Petitioner’s application is a failure to use proper procedure, arbitrary and capricious, in error of law, and not supported by the evidence.

14. In light of the substantial evidence presented at the hearing regarding the Respondent’s compliance with N.C. Gen. Stat. § 115C-218 *et seq.*, the Undersigned concludes as a matter of law that the Petitioner has failed to carry its burden of proving that the Respondent acted arbitrarily or capriciously, acted erroneously, exceeded its authority or jurisdiction, failed to use proper procedure, or failed to act as required by law or rule.

15. Respondent did not act arbitrarily or capriciously, erroneously, exceed its authority or jurisdiction, fail to use proper procedure, or fail to act as required by law or rule.

BASED UPON the foregoing Findings of Fact and Conclusions of Law the Undersigned makes the following:

FINAL DECISION

The State Board of Education’s decision to deny the Petitioner’s application for a charter to operate a charter school is **AFFIRMED**.

NOTICE

This is a **Final Decision** issued under the authority of N.C. Gen. Stat. § 150B-34.

Under the provisions of North Carolina General Statute § 150B-45, any party wishing to appeal the final decision of the Administrative Law Judge must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case

which resulted in the final decision was filed. **The appealing party must file the petition within 30 days after being served with a written copy of the Administrative Law Judge's Final Decision.** In conformity with the Office of Administrative Hearings' rule 26 N.C. Admin. Code 03.0102, and the Rules of Civil Procedure, N.C. General Statute 1A-1, Article 2, **this Final Decision was served on the parties the date it was placed in the mail as indicated by the date on the Certificate of Service attached to this Final Decision.** N.C. Gen. Stat. § 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30 days of receipt of the Petition for Judicial Review. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

IT IS SO ORDERED.

This the 24th day of May, 2016.



Selina M Brooks
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
05/05/2016 12:01 PM

STATE OF NORTH CAROLINA
COUNTIES OF CHATHAM & LEE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 04772

ENVIRONMENTALEE, CHATHAM)
CITIZENS AGAINST COAL ASH DUMP,)
& BLUE RIDGE ENVIRONMENTAL)
DEFENSE LEAGUE INC.)
Petitioners)
v.)
NC DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES, DIVISION)
OF WASTE MANAGEMENT, AND)
DIVISION OF ENERGY, MINERAL, AND)
LAND RESOURCES,)
Respondents,)
and)
GREEN MEADOW, LLC,)
AND CHARAH, INC.,)
Respondent-Intervenors.)

FINAL DECISION

On December 7, and 8, 2015, Administrative Law Judge Melissa Owens Lassiter conducted a contested case hearing in this case in Raleigh, North Carolina pursuant to Petitioners' appeal of Respondent Divisions' issuance of the following permits to Respondent-Intervenors on June 4, 2015:

- (1) Division of Waste Management issued Solid Waste Management Facility Structural Fill, Mine Reclamation Permit No. 5306 to Construct and Operate a Structural Fill at the Colon Road mine site in Lee County, North Carolina to Green Meadow, LLC and Charah, Inc.
- (2) Division of Waste Management issued Solid Waste Management Facility Structural Fill, Mine Reclamation Permit No. 1910 for the same purpose at the Brickhaven mine site in Chatham County, North Carolina to Green Meadow, LLC, and Charah, Inc.
- (3) Division of Energy, Mineral, and Land Resources issued Modified Mining Permit for Permit No. 53-05 for the operation of a Clay Mine at the Colon Mine in Lee County, North Carolina to Green Meadow, LLC and

- (4) Division of Energy, Mineral, and Land Resources issued Modified Mining Permit No. 19-25 for the same type of operation at the Brickhaven No. 2 Mine Tract "A" in Chatham County, North Carolina to Green Meadow, LLC.

APPEARANCES

For Petitioners: John D. Runkle, Attorney at Law, 2121 Damascus Church Road, Chapel Hill, North Carolina 27516

For Respondents: Teresa L. Townsend, Assistant Attorney General, NC Department of Justice, 9001 Mail Service Center, Raleigh, NC 27699-9001

For Respondent-Intervenors: Peter J. McGrath, Jr., Attorney at Law, 100 North Tryon Street, Floor 47, Charlotte, NC 28202-4003

ISSUES

1. Whether Respondents met the requirements of the Mining Act of 1971 and the Coal Ash Management Act of 2014 by permitting the Brickhaven and Colon Road mine sites as structural fills to be used for mine reclamation rather than as solid waste landfills (Claim A)?

2. Whether Respondents' requirement for the amount of financial assurance from the permittees met the requirements under the Mining Act of 1971 and the Coal Ash Management Act of 2014 (Claim B)?

3. Whether Respondents appropriately applied the requirements of the Coal Ash Management Act of 2014 by approving the use of an encapsulation liner system, which employed a composite liner utilizing a geosynthetic clay liner, for the containment of coal combustion products as part of the permits pursuant to N.C. Gen. Stat. § 130A-309.220(b)(1) (Claim C)?

4. Whether Petitioners have met their burden of proving that the cumulative impact of the proposed facilities would have a disproportionate adverse impact on the Chatham or Lee County communities under the Solid Waste Management Act, N.C. Gen. Stat. § 130A-294(a)(4)c.9. (Claim F)?

5. Whether Respondents appropriately applied the requirements of the Coal Ash Management Act of 2014 by approving the Toxicity Characteristic Leaching Procedure, pursuant to N.C. Gen. Stat. § 130A-309.219(b)(1)(d), to characterize the toxic constituents of the coal combustion products (Claim G)?

6. Whether Petitioners met their burden of proof to show that Respondents substantially prejudiced Petitioners' rights and either exceeded their authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or

capriciously, or failed to act as required by law or rule by issuing the structural fill and modified mining permits for the Brickhaven and Colon Road mines?

STATUTES AND REGULATIONS AT ISSUE

N.C. Gen. Stat. § 130A, Article 9, Solid Waste Management Act, including Coal Ash
Management Act of 2014,
N.C. Gen. Stat. § 74, Article 7, Mining Act of 1971
N.C. Gen. Stat. §§ 150B-22 through 150B-37
15A NCAC 13B .1700
15A NCAC 05B .0103

EXHIBITS RECEIVED INTO EVIDENCE

FOR PETITIONERS:

- | | |
|---------------|---|
| Petitioners 1 | Photographs submitted by Terica Luxton |
| Petitioners 2 | Email from Thad Valentine to Judy Wehner, Colon Mine Partial release inspection, April 16, 2014 (for illustrative purposes only) |
| Petitioners 3 | Blue Ridge Environmental Defense League, EnvironmentalLEE, Chatham Citizens Against Coal Ash Dump, and NC WARN: "Joint Comments on Proposed Coal Ash Landfills in Lee and Chatham Counties," May 15, 2015 (for illustrative purposes only – to reflect that comments were submitted only) |
| Petitioners 4 | "Comments on Proposed Disposal of Coal Combustion Ash in Subtitle D Landfill in Clay Mines," G. Fred Lee, PhD, PE, BCEES, F.ASCE and Anne Jones-Lee, PhD, May 6, 2015 (for illustrative purposes only – to reflect that comments were submitted only) |
| Petitioners 5 | "Technical and Scientific Issues with Coal Ash Structural Fills in North Carolina," A. Dennis Lemly, Ph.D., Research Associate Profession of Biology Wake Forest University, April 22, 2015. (for illustrative purposes only – to reflect that comments were submitted only) |
| Petitioners 6 | Power point presentation by Don Kovasckitz, Director, GIS Strategic Services, Lee County, given to the Lee County Board of Commissioners on December 15, 2014 |
| Petitioners 7 | Power point presentation by Don Kovasckitz, Director, GIS Strategic Services, Lee County, given to the Lee-Sanford Environmental Affairs Board in May 2015. (Except for Slide 3, which was excluded upon the sustaining of an objection based on relevancy and Slide 4, |

which was excluded upon the sustaining of an objection based on hearsay)

FOR RESPONDENTS:

- Respondents 1 Coal Ash Management Act of 2014

- Respondents A Permit Documents for Lee County Site (Colon Mine)
 - A-1 Solid Waste Management Facility Structural Fill, Mine Reclamation Permit No. 5306 to Green Meadow, LLC and Charah, Inc. to Construct and Operate the Colon Mine Site Structural Fill in conjunction with NCDENR DEMLR Mine Permit 53-05 issued on June 5, 2015

 - A-2 Colon Mine Site Structural Fill Permit Application and Addenda

 - A-3 Colon Mine Permit No. 53-05 Modification to Green Meadow, LLC to change the method for reclaiming the mine by constructing structural fill using Coal Combustion Byproducts in accordance with the provisions of the Coal Ash Management Act of 2014 and the terms and conditions of the Permit to Construct and Operate Colon Mine Site Structural Fill Permit No. 5306 issued by the Division of Waste Management, said permit No. 53-05 being issued by the Division of Energy, Mineral, and Land Resources on June 5, 2015.

- Respondents B Permit Documents for Chatham County Site (Brickhaven Mine)
 - B-1 Solid Waste Management Facility Structural Fill, Mine Reclamation Permit No. 1910 to Green Meadow, LLC and Charah, Inc. to Construct and Operate the Brickhaven Mine Site Structural Fill in conjunction with NCDENR DEMLR Mine Permit 19-25 issued on June 5, 2015

 - B-2 Brickhaven Mine Site Structural Fill Permit Application and Addenda

 - B-3 Brickhaven Mine Permit No. 19-25 Modification to Green Meadow, LLC to change the method for reclaiming the mine by constructing structural fill using Coal Combustion Byproducts in accordance with the provisions of the Coal Ash Management Act of 2014 and the terms and conditions of the Permit to Construct and Operate Brickhaven Mine Site Structural Fill Permit No. 1910 issued by the Division of Waste Management, said permit No. 19-25 being issued by the Division of Energy, Mineral, and Land Resources on June 5, 2015.

- Respondents C Financial Assurance Mechanisms for Brickhaven Mine Site

- C-1 Performance Bond for Closure, Post-closure, and Potential Assessment and Corrective Action costs in the total amount of \$10,200,560.00
- C-2 Certificate of Liability Insurance for Sudden and Non-Sudden events in the amount of \$4 million per occurrence and \$8 million annual aggregate
- C-3 Surety Bond Guaranteeing Payment for disaster response costs in the amount of \$65,000.00
- C-4 \$500,000.00 Blanket bond guaranteeing compliance with the Mining Act of 1971
- Respondents D Financial Assurance Mechanisms for Colon Mine Site
 - D-1 Performance Bond for Closure, Post-closure, and Potential Assessment and Corrective Action costs in the total amount of \$10,380,470.00
 - D-2 Certificate of Liability Insurance for Sudden and Non-Sudden events in the amount of \$4 million per occurrence and \$8 million annual aggregate
 - D-3 Surety Bond Guaranteeing Payment for disaster response costs in the amount of \$65,000.00
 - D-4 \$500,000.00 Blanket bond guaranteeing compliance with the Mining Act of 1971
- Respondents E Hearing Officer's Reports and Recommendations
- Respondents F Public Comments
 - F-1 May 16, 2015 Blue Ridge Environmental Defense League public comments
 - F-2 May 16, 2015 John Wagner's public comments
 - F-3 April 13, 2015 Public Hearing transcript
 - F-4 April 16, 2015 Public Hearing transcript
- Respondents G October 19, 2000 Environmental Equity Initiative Policy

Respondents H	Petitioners' Discovery Responses
H-1	Petitioners' Response to First Set of Interrogatories
H-2	Petitioners' Response to First Request for Admission

PRELIMINARY MATTERS

On December 7, 2015, the Undersigned conducted a pre-trial conference with the parties' attorneys. During this conference, Petitioners' counsel, Mr. Runkle, advised the Undersigned that Petitioners anticipated calling two expert witnesses on Claims C and G. Mr. Runkle explained that Petitioners were not prepared to go forward on Claims/Issues C or G, as their expert witnesses were unavailable. One expert witness was from California, while the other expert witness was from Winston-Salem. Mr. Runkle further advised the Undersigned and opposing counsel that he would need to subpoena those witnesses to testify in January of 2016, but not to testify the week of December 7, 2015. The Undersigned advised Mr. Runkle that the witnesses could testify via video conferencing, and asked Mr. Runkle to advise his experts they could testify via video conferencing, and determine if that would assist the testimonial process.

Before the contested case hearing on the merits began, the Undersigned informed all parties that it had reviewed Respondents' Motion for Summary Judgment, Respondent-Intervenors' Joinder in said Motion, and Petitioners' Response to the Motion, and was Denying Summary Judgment as to Petitioners' Claims C (liner issue), F (environmental justice issue) and G (Toxicity Characteristic Leaching Procedure issue), but would hear arguments for Summary Judgment on Petitioners' Claims A (structural fill permit v. solid waste landfill permit issue), B (financial assurance issue), D (compliance history review of the permittees and Duke Energy issue) and E (dust control measures issue). These claims are referenced by Claim A, B, C, etc. in the decision below.

Following all parties' arguments on the Summary Judgment Motion, the Undersigned Granted Summary Judgment for Petitioners as to Petitioners' Claim D, Denied Summary Judgment on all other claims. Petitioners opted to Voluntarily Dismiss with prejudice Petitioner's Claim D in lieu of an Order for Partial Summary Judgment. After the Undersigned's ruling, Petitioners and Respondent-Intervenors advised the Undersigned that they had reached a settlement as to Claim E regarding the issue of coal dust.

On the record, Respondents moved to dismiss Claims C and G, because the parties had two months' notice of the date for the hearing on the merits, and Petitioners now claimed it was not ready to proceed. Mr. Runkle responded that it did not subpoena its California expert, because it was not financially prudent to pay an expert to "sit here and maybe or maybe not be able to testify today," not knowing the ruling on the pending Motion for Summary Judgment. The Undersigned Denied Respondents' Motion to Dismiss, and called the case for a hearing on the merits on all remaining claims. (T. pp. 48-50)

The Undersigned requested the parties to address particularly, during the hearing on the merits, how the mine reclamation/structural fill could be beneficially used (Claim A), and how the amount of financial assurance/bond required was determined (Claim B).

FINDINGS OF FACT

Based upon careful consideration of the pleadings, testimony, evidence, arguments, and legal briefs received during the contested case hearing, as well as the entire record of this proceeding, including Petitioners' case-in-chief, Respondents' renewal of their Motion for Summary Judgment, and Respondents' request that Petitioners' case be dismissed at the end of Petitioners' case-in-chief, the undersigned finds as follows:

Parties

1. Petitioners EnvironmentalLee and Chatham Citizens Against Coal Ash Dump are chapters of the Petitioner Blue Ridge Environmental Defense League Inc. The Blue Ridge Environmental Defense League Inc. (BREDL) is a non-profit organization focusing on environmental issues.

2. Respondent Division of Waste Management ("DWM") is a State agency established pursuant to N.C. Gen. Stat. §§ 143B-279.1 through 143B-344.23, who is vested with the statutory authority to enforce the State's environmental pollution laws, including laws enacted to regulate solid waste. The North Carolina General Assembly mandates that Respondent DWM promote and preserve an environment that is conducive to public health and welfare by establishing a statewide solid waste management program, and mandates that such action be deemed acts of the sovereign power of the State.

3. Respondent-Intervenors Green Meadow, LLC and Charah, Inc. hold the solid waste management facility structural fill/mine reclamation permits at the Colon Road and Brickhaven sites, as noted above. Respondent-Intervenor Green Meadow, LLC holds the modified mining permits, as noted above.

Statutes at Issue

4. On September 20, 2014, the North Carolina General Assembly passed the Coal Ash Management Act ("CAMA") to provide a comprehensive management plan for the cleanup of coal ash, and the closure of coal ash ponds, and to provide permitting, construction, operation and closure of large projects using coal ash as fill material, i.e. structural fills, in open pit mines in North Carolina.

5. N.C. Gen. Stat. § 130A, Article 9 regulates the management of solid waste, which includes North Carolina's solid waste permit system and the management of coal ash.

a. N.C. Gen. Stat. § 130A-290(35) defines “solid waste.” Excluded from that definition are coal combustion products that are beneficially used, including use for structural fill. See *also*, N.C. Gen. Stat. §§ 130A-290 (2b) and 130A-309.201(4).

b. N.C. Gen. Stat. §§ 130A-309.201(14) defines “structural fill” as:

[A]n engineered fill with a projected beneficial end use constructed using coal combustion products that are properly placed and compacted. For purposes of this Part, the term includes fill used to reclaim open pit mines...

c. N. C. Gen. Stat. § 130A-309.201 (11) defines an “open pit mine” as:

[A]n excavation made at the surface of the ground for the purpose of extracting minerals, inorganic and organic, from their natural deposits, which excavation is open to the surface.

d. N.C. Gen. Stat. § 130A-309.201 (10) defines “minerals” as “soil, clay, coal, phosphate, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.”

6. N.C. Gen. Stat § 130A-309.219(a)(2) requires that projects using coal combustion products as structural fill involving the placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project receive an individual permit from DWM.

7. N.C. Gen. Stat §§ 130A-309.219(b)(1)(d) and (b)(2) require that projects using coal combustion products as structural fill involving the placement of 8,000 or more tons of coal combustion products per acre or 80,000 or more tons of coal combustion products in total per project provide:

[A] Toxicity Characteristic Leaching Procedure analysis from a representative sample of each different coal combustion product’s source to be used in the project for, at a minimum, all of the following constituents: arsenic, barium, cadmium, lead, chromium, mercury, selenium, and silver.

8. N.C. Gen. Stat § 130A-309.220 describes the design, construction, and siting requirements for projects using coal combustion products for structural fill. N.C. Gen. Stat § 130A-309.220(b) explains the specific requirements for the liners, leachate collection system, cap, and groundwater monitoring system required for large structural fills, with (b)(1) specifically requiring a base liner consist of one of two optional designs: (a) a composite liner utilizing a compacted clay liner or (b) a composite liner utilizing a geosynthetic clay liner.

9. N.C. Gen. Stat § 130A-309.221 explains the financial assurance requirements for large projects using coal combustion products for structural fill. The applicant for a permit to construct or operate a structural fill must establish:

[F]inancial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and nonsudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

N.C. Gen. Stat § 130A-309.221(a).

10. N.C. Gen. Stat § 130A-294(a)(4)c.9. requires DWM to “deny an application for a permit for a solid waste management facility” if:

The cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964.

11. Respondent Division of Energy, Mineral, and Land Resources (“DEMLR”) is a State agency established pursuant to N.C. Gen. Stat. §§ 143B-279.1 through 143B-344.23, who is vested with the statutory authority to enforce the State’s environmental pollution laws, including laws enacted to regulate mining operations. The North Carolina General Assembly mandates that Respondent DEMLR promote and preserve an environment that is conducive to public health and welfare by establishing a statewide mining program, and mandates that such action be deemed acts of the sovereign power of the State.

12. N.C. Gen. Stat. § 74, Article 7 constitutes the Mining Act of 1971 and regulates mining and reclamation of mined lands. In N.C. Gen. Stat. § 74-47, the General Assembly stated:

It is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain surface mining operations precludes complete restoration of the land to its original condition. ... (and) finds that the conduct of mining and reclamation of mined lands as provided by this Article will allow the mining of valuable minerals and will provide for the protection of the State’s environment and for the subsequent beneficial use of the mined and reclaimed land.

13. N.C. Gen. Stat. § 74-49(12) defines “reclamation” as “the reasonable rehabilitation of the affected land for useful purposes, and the protection of the natural

resources of the surrounding area.” “[B]oth the need for and the practicability of reclamation will control the type and degree of reclamation in any specific instance. ...”

14. N.C. Gen. Stat. § 74-49(6) defines “minerals” as:

[S]oil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

15. N.C. Gen. Stat. § 74-49(13) explains that the requirements of a “reclamation plan” must be submitted by the operator and approved by DEMLR before reclamation of the affected land commences. Such plan shall include, but not be limited to:

- a. Proposed practices to protect adjacent surface resources;
- b. Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;
- c. Manner and type of revegetation or other surface treatment of the affected areas;
- d. Method of prevention or elimination of conditions that will be hazardous to animal or fish life in or adjacent to the area;
- e. Method of compliance with State air and water pollution laws;
- f. Method of rehabilitation of settling ponds;
- g. Method of control of contaminants and disposal of mining refuse;
- h. Method of restoration or establishment of stream channels and stream banks to a condition minimizing erosion, siltation, and other pollution;
- i. Maps and other supporting documents as may be reasonably required by the Department; and
- j. A time schedule that meets the requirements of G.S. 74-53.

See also N.C. Gen. Stat. § 74-53.

16. N.C. Gen. Stat. § 74-52 lists the basis upon which a mining permit may be modified. N.C. Gen. Stat. § 74-54 and 15A NCAC 05B .0103 explain the requirements for a bond, and the necessary calculations to determine the amount of the bond. Specifically, 15A NCAC 05B .0103(e) requires that once a determination is made that the total amount of a blanket bond has reached the \$500,000 amount, and the applicant has a good operating record, then the amount of a \$500,000 blanket bond is considered sufficient to reclaim all sites, and “no additional reclamation bond money is needed.”

Petitioner’s Evidence

17. At hearing, Petitioners presented testimony of Debbie Hall, Terica Luxton, Judy Hogan, and Sheila Crump. Debbie Hall and Terica Luxton are from Lee County and members of EnvironmentalLEE, while Ms. Hogan and Ms. Luxton are from Chatham

County and members of Chatham Citizens Against Coal Ash Dump. All four witnesses live near the respective mine sites, and are concerned there may be environmental impacts from the disposal of coal ash at the mine sites, and that the mine sites may negatively affect their communities.

18. There are about 50 active members of EnvironmentalLee who meet once a month in the Colon community in Lee County. The Colon community is located right across the road from the Colon Road mine site. Debbie Hall estimated that approximately 30 to 35 EnvironmentalLee members live:

[On] the roads that go right around that site – the Osgood community, Colon community—those people that are most closely joined to the site. . . I would say within three and a half to five miles from the site ---the majority of the people.

(T pp. 54-55) Ms. Hall is concerned about the environmental impact [of the proposed coal ash facility at Colon Road] to the surrounding community. Many residents in Colon community use wells to irrigate their gardens they eat from, and water the animals. They eat those animals, and eat eggs. Hall is also concerned about the dust that will be in the air. She explained that the Colon community has already been affected by the brick industry that's been in that community for decades. (T. pp. 57-58)

19. Ms. Hall further explained that at the end of last summer [2015], she saw a pond had been drained on the proposed coal ash site in Lee County, and “they were digging. I saw displacement of the animals there, beavers.” (T. pp. 61-62) She has seen truck traffic, ditches dug, land moved, and grading. (T. pp. 63-64) However, Hall acknowledged that “there has been no coal ash spots at the site at this point.” (T. p. 62)

20. Ms. Hall admitted she has no training in environmental science, and no personal knowledge of any effects of coal ash that extend three to five miles from where coal ash has been placed. (T. p. 62) She also admitted that the brick factory is no longer in operation, and she cannot say how far the closed brick factory is located from the Colon proposed coal ash site. (T. p. 63)

21. Terica Luxton has been involved with EnvironmentalLee for four years fighting for the environment. She is concerned about the proposed coal ash facility at Colon Road for several reasons. First, Lee County does not have any coal ash. Second, the proposed Colon Road facility is located right on top of the Colon community's largest water shed. Ms. Luxton opined:

The water shed is our life. I mean the bottom line is water – without water you don't have life. . . . The people in Colon depend upon those wells.

(T. p. 66) Ms. Luxton has researched the history of some people who live and are buried in the Colon community. She believes in fighting to protect the environment for those people. (T. pp. 73-74)

22. Judy Hogan is a resident of Moncure, North Carolina, and Chairperson for Chatham Citizens Against the Coal Ash Dump (“Chatham Citizens”). Chatham Citizens Against the Coal Ash Dump consists of 84 members. Fifty-three of such members live in Moncure, NC, fourteen of such members live in Lee County, and ten members live in other parts of Chatham County or other counties. EnvironmentalLee and Chatham Citizens groups support one another. Ms. Hogan lives approximately five miles, by air, from the Brickhaven proposed coal ash facility in Moncure, NC. She lives on Moncure-Pittsboro Road, a major travel route in the county. (T. p. 77)

23. Beginning around October 23, 2015, Ms. Hogan began seeing trucks hauling coal ash on Moncure-Pittsboro Road toward the Brickhaven coal ash site. Residents in the area have notified the Sheriff’s Department and the North Carolina Highway Patrol about trucks speeding through Moncure, and near the site. (T. p. 79) Ms. Hogan has educated herself about what coal ash looks like. About three weeks ago, she observed coal ash coming off the top and behind an older truck. (T. pp. 80-81) Back in April [of 2015], “people in Brickhaven took photos of coal ash blowing off the old Cape Fear coal ash mines. It looks grey to black. . . the truck was going fast.” (T. p. 81) Ms. Hogan, who lives near Jordan [Lake] dam, saw coal ash when she returned from a walk along Jordan Dam Road. (T. p. 81)

24. Sheila Crump is a Moncure, NC resident who lives six or seven miles from the Brickhaven coal ash site in Chatham County. Ms. Crump is concerned about additional traffic that would be created by trucks driving to and from the coal ash facility, along Moncure-Pittsboro Road and Highway 1. There is existing heavy traffic, especially from log trucks, along Old Highway 1, and other main roads in the area. (T. pp. 84-85) Ms. Crump lives next to the railroad tracks, and has to drive across the train track to reach Old Highway 1. (T. p. 85) Ms. Crump joined the Chatham Citizens Against the Coal Ash Dump group in June of 2015.

25. Petitioners’ fifth witness was Ed Mussler. Mr. Mussler is a licensed Professional Engineer who has worked as the DWM Permitting Supervisor of the Solid Waste Section (“SWS”) for the past ten years. Mussler worked an additional twelve years as a permitting engineer for the Solid Waste Section. As Permitting Supervisor, Mussler is responsible for the supervision and training of, and consultation with, the professional staff who review SWS permit applications to determine if such applications meet the qualifications required to obtain a permit under the Coal Ash Management Act (“CAMA”).

26. In November 2014, Respondent SWS received the subject permittees’ structural fill permit applications. Mussler and his professional staff performed an extensive and thorough review of such permit applications to ensure the applications met all of the CAMA requirements.

a. Mussler visited the Colon Road site and the Brickhaven site around late November or early December 2014. Mussler observed parts of the site had been

mined. He understood the mine had been mined for a clay-like material to make brick. (T. pp. 94-96)

b. Mussler and his staff's review of the applications included, but was not limited to, a review of the type of facility to be permitted (structural fill), the type of waste (coal combustion products), the type of liners to be utilized in these structural fills, the type of testing to be employed to characterize the toxic constituents of the coal combustion products, the need for additional mandatory permits (modified mining permits and 401 water quality certification permits), environmental justice concerns, and the financial assurance mechanisms required under the law.

c. The SWS staff and Mussler attended the public comment and hearing process for each proposed facility site. They considered all comments from the hearing, and reviewed other comments submitted to SWS. Included in those comments were written comments by (1) Drs. G. Fred Lee and Anne Jones-Lee, two consultants and researchers who commented on the environment, public health issues, and water quality, and (2) Dr. Dennis Lemly, Research Associate Professor of Biology at Wake Forest University, who commented on technical and scientific issues with coal ash structural fills.

27. On June 5, 2015, Mr. Mussler issued a Structural Fill Permit to Construct and Operate, Permit No. 5306-STRUC-2015 for the Colon Mine to Charah, Inc. and Green Meadow, LLC and a Structural Fill Permit to Construct and Operate, Permit No. 1910-STRUC-2015 for the Brickhaven No. 2 Tract "A" Mine to Charah, Inc. and Green Meadow, LLC. Both permits incorporated the applicants' permit applications, which included their operating plans.

28. At the contested case hearing, Mr. Mussler explained that before the CAMA was passed, a "large scale structural fill" was undefined, and "structural fills" were handled under other environmental rules. His agency and specifically DWM is required to follow the mandates of CAMA in fulfilling his permitting duties. He may not vary from that mandate, "not if I want to keep my job." (T. pp. 125-126)

29. As to Petitioner's Claim A, Mr. Mussler explained that attempting to compare a solid waste landfill to a structural fill is like "comparing apples to oranges" as they each serve a different purpose.

a. The purpose of a landfill is for the ultimate disposal of specific types of waste, such as municipal solid waste, industrial solid waste, construction and demolition debris, or inert debris, for a specific area of the State. A landfill is an engineered structure whose purpose is to entomb the solid waste, and keep it there to protect the public health and environment. (T. p. 127) Most landfills, at least in North Carolina, operate in excess of 20 to 30 years.

b. Whereas, the purpose of a structural fill is for a projected beneficial end use of some material in replacement of another. CAMA specifically provides for structural fill permits using coal combustion products as structural fill in open pit clay mines. A structural fill project is anticipated to last "probably five to seven years." (T. p. 128)

c. Mr. Mussler opined that the proposed coal ash disposal facilities at Brickhaven and Colon Road are "structural fills" as that term is defined in the North Carolina CAMA statutes that were in effect when the facilities at issue were permitted. (T. p. 119) Since the federal rule, which defines a project as a landfill, wasn't released until December [of 2015], and wasn't effective until April [of 2016], the federal rule did not have any bearing on decisions made at the state level in terms of issuing permits. (T. p. 119)

d. Mussler explained that the structural fill permit applications for the Brickhaven and Colon sites at issue met all of the requirements under CAMA, the beneficial use of which is mine reclamation. He described how:

The project [that is a structural fill under North Carolina CAMA], is designed with six feet of soil cover on top and three on the side slopes. The thickness of soil combined with the engineering placement of coal combustion products makes it amendable to development with proper knowledge and precautions.

(T. pp. 118-119)

30. As to Claim B, Mr. Mussler expounded how the financial assurance required under CAMA for structural fill facilities was more extensive than that required for solid waste landfills. CAMA specifically requires financial assurance to cover funding for closure of a facility, post-closure maintenance and monitoring of a facility for thirty years, and any corrective action that DWM may require, which is also required for solid waste landfills. The closure and post-closure amounts are the fund amounts it would take a third party to close a structural fill site/facility in the absence of the facility owner being around to close a facility. (T. p. 132) In fact, the applicant is required to tell Respondent agencies what they think are the closure and post-closure amounts, and the Respondent agencies review those costs. (T. pp. 132-133) In addition to the requirements for financial assurance for landfills, CAMA also requires financial assurance for any potential liability for sudden and non-sudden accidental occurrences, and any subsequent disaster response costs incurred by DWM. At the same time, the CAMA financial assurance provisions do not establish specific amounts of financial assurance that must be required. (T. p. 132)

31. In this case, Mr. Mussler determined the amount of financial assurance required for the permits at issue based upon his own, and his staff's long-term experience with solid waste facilities, including those dealing with coal ash, and based on Mussler's consultation with the Hazard Waste Section. DWM determined that a (1) \$10,200,560.00

Performance Bond required for closure, post-closure, and potential assessment and corrective action costs for the Brickhaven site, (2) the \$10,380,470.00 Performance Bond for closure, post-closure, and potential assessment and corrective action costs for the Colon site, (3) the Certificate of Liability Insurance for sudden and non-sudden events for \$4 million per occurrence and \$8 million annual aggregate for each site, and (4) the Surety Bond guaranteeing payment for disaster response costs for \$65,000.00 for each site, met the requirements for financial assurance under CAMA.

a. Respondent's SWS staff, of which the CAMA is a subset, and Respondent's Mining Section staff communicated with each other and discussed the permits, and whose responsibility rested in what area. The staff from each Section, Mr. Mussler, and Mr. Tracy Davis, head of Respondent's Mining Section relied upon each other to deal with the aspect of the permits for which each Section had expertise. (T. pp. 124-125)

b. Regarding the accidental insurance terms, the SWS sought guidance from other sections in the Division of Waste Management as "that was not something we normally did." (T. p. 133) SWS looked at what were typical amounts for what they considered equal risk, for the type of activities, and decided upon the four-million and eight-million dollar numbers. (T. p. 133)

c. To determine the "other number, in terms of reimbursement," Mussler and his staff examined the SWS' activities in responding to the hazardous waste problem that occurred in Apex several years ago, and based that number on the estimate of staff time to oversee the cleanup on site. (T. p. 133)

32. Regarding Claim C, Mr. Mussler noted that CAMA specifically approved of encapsulation liner systems based on either a composite liner utilizing a compacted clay liner, or a composite liner utilizing a geosynthetic clay liner. Mussler expounded that the liner system approved by DWM under the Structural Fill permits at issue met those requirements. Based upon his own experience and expertise in the permitting of solid waste facilities, and despite Drs. Fred Lee and Dennis Lemly's public comments and opinions, Mussler believed the liner system approved under the subject permits will "efficiently contain, collect, and remove leachate generated by the coal combustion products, as well as separate the coal combustion products from any exposure to surrounding environs" as mandated by CAMA. (Mussler Affidavit, Resp. Motion for Summary Judgment)

33. Specifically, as to Claim F, Mr. Mussler reviewed Petitioners' written comments, other public comments, and the Environmental Protection Agency's demographic charts and information regarding these sites. Mussler agreed with the Hearing Officer's Report that the examination of demographics did not support the hypothesis of an unjust or disproportionate impact, especially because the design and monitoring and other environmental safeguards provided within these permits are protective of the population in close proximity to the mines. Mussler was also aware that the applicants were required to acquire an approved 404/401 water quality certification

as a condition of the structural fill permits Mussler issued. The applicants were required to provide an environmental justice analysis to the US Army Corps of Engineers for the 404/401 water quality certifications. Mussler advised that if the US Army Corps had denied the 404/401 water quality certifications to the applicants, then the structural fill permits would have been deemed void. (Mussler Affidavit, Resp. Motion for Summary Judgment)

34. Before issuing the two structural fill permits for the Brickhaven and Colon Mines, Mussler was aware that these projects constituted the only coal ash structural fill projects existing, or proposed, for either Lee or Chatham Counties, and that there were, and currently are, no active or proposed municipal waste landfills, industrial landfills, or construction and demolition landfills located in either County.

35. As to Claim G, Mr. Mussler explained that CAMA mandates the use of the toxicity characteristic leaching procedure ("TCLP") to characterize the toxic constituents in the coal ash. This mandate is carried out within the Structural Fill Permits as part of the Operation Plans. Despite Drs. Lee and Lemly's public comments and opinions, and based upon his own experiences as a Professional Engineer and in the permitting of solid waste facilities, Mussler opined that the TCLP is a method that achieves the goals of the protection of public health and the environment.

36. Based on his experience as a Professional Engineer, and with 22 years of experience dealing in the area of solid waste permits, Mussler opined that the terms of the structural fill permits for the Brickhaven and Colon Mines will be protective of human health and the environment.

37. Tracy Davis is a licensed Professional Engineer, and the Director of DEMLR for the past three years. Mr. Davis has worked as the Chief Engineer, State Mining Specialist and/or Assistant State Mining Specialist for DEMLR for twenty-five years. As Director of DEMLR, he is responsible for reviewing mining permit applications to determine if they meet the qualifications required to obtain a permit pursuant to the Mining Act of 1971. Davis has looked over approximately 250 to 300 permits during the 16 years he was directly involved with the mining program. Generally, 50 to 60 new permits of different mineral types are issued by DEMLR each year. (T. p. 140)

38. While the permits at issue are the first ones permitted for coal ash, DEMLR has permitted a handful of landfills in mines throughout the State, including several in the Winston-Salem area. (T. p. 142)

39. The mining law does not say the purpose of reclamation is to bring the mining area up to grade. (T. p. 143) Instead, Davis explained, the mining law says the purpose of reclamation is to reclaim the mined area and its adjacent areas, anything affected by the mine operation, to a suitable use so that it's stable and it protects groundwater and surface water quality. (T. p. 143) DEMLR has had other mines that have been backfilled to above the natural grade to establish a footprint for a commercial or

residential construction. (T. pp. 143-144) The Mining Act defines "reclamation" and defines "affected land which the reclamation definition cross-references." (T. p. 145)

40. In November 2014, Mr. Davis' office received the subject permittees' mining modification applications for the Colon Road and Brickhaven sites. These were not new mining permits, because the sites were already permitted by General Shale Company, who was a brick producer. General Shale's mining permits were modified quite a few times over the years. (T. pp. 150-51, 175)

41. Green Meadow requested permit transfer of those original mining permits to put those permits in Green Meadow's name with the same mining plan, and reclamation plan as originally permitted. Green Meadow also asked for permit modifications to change the reclamation to "beneficial fill with coal ash, to change the footprint slightly, and add additional erosion control measures." (T. p. 149) Green Meadow's mining plan showed a mining boundary extending across the entire site, except for a 50-foot buffer along the permit boundary. There is an erosion control plan for the mining footprint, and a reclamation plan that shows the beneficial structural fills they are reclaiming in those footprints over time. (T. p. 150)

42. Mr. Davis and his staff performed an extensive and thorough review of such permit applications to ensure that the permits met all of the requirements of the Mining Act of 1971. Davis' staff, per their usual practice, conducts their own internal review at the central office level, and at the regional office level. After the mining staff performs its internal technical review, it drafts a mining permit, and sends it to Davis for review. Davis modifies such drafts, as necessary, based on his experience. (T. pp. 150-153) Such draft permits are then addressed during the public comment and internal hearing process sessions.

43. In this case, Davis and his staff followed the above-cited practice. Davis was involved throughout that process. Judy Wehner, Assistant Mining Specialist, primarily managed the review of these mining permit applications and modifications. (T. p.152) Davis' staff had several meetings discussing different concerns or issues with the applications regarding the seven statutory denial criteria, discussed who were the experts on those topics, and which permits would cover those conditions. (T. p. 178) The Raleigh regional office looked at erosion control reclamation aspects of the applications, buffer zones, the reclamation plan, and operation plan. (T. p. 151) Davis and his professional staff's review of the applications included, but was not limited to, a review of the type of mining operation and its associated potential environmental impacts, review of the applicant's compliance history, the need for additional mandatory permits (structural fill permits and 401 water quality certification permits), and the financial assurance mechanisms required under the Mining Act. DEMLR also requested additional information from the applicant.

44. As part of that investigation into the Brickhaven and Colon Road sites, Davis' mining staff also sent such applications to other State agencies such as the Division of Air Quality, the Division of Water Resources, and the NC Wildlife Resources

Commission for review and comment based on each staff's expertise. (T. pp. 150-153, 156) Both the Division of Water Resources, the Groundwater Section and the Division of Waste Management employ hydrogeologists, while the Wildlife Resources Commission employs biologists. (T. p. 172) DEMLR did not conduct an independent investigation of those issues. Davis' office accepted those agencies' opinions as acceptable to meet the criteria for which each agency reviews these applications. (T. p. 156, 187) Mr. Davis has confidence in his counterparts at those agencies, and their professional judgments, when they say they've looked at all the issues under that agency's purview. (T. pp. 156-57, 172)

45. For air quality, surface water quality, and groundwater quality criteria under N.C. Gen. Stat. § 74-51(d)(3), Davis noted:

We look at all of the engineering design on the sediment basis, diversion ditches, channels, if they're lined or unlined, the capacity of those basins to treat the surface water that it can be released . . . according to water quality standards. . .

We look at the dust control system, such as watering roads for keeping fugitive dust down on roads, sprinkler systems on stockpiles, so, and that was also in the mining permit conditions.

(T. pp. 157-158)

46. Davis personally did not examine hydrogeology in reviewing the modification of the mining permits, because he and his staff coordinated with other divisions, primarily Waste Management, who looked at hydrogeology from the structural fill aspect. (T. pp. 154-55) However, Davis' staff examined the "erosion sedimentation control, stormwater control around the perimeters, buffer zones, final slopes on the fill, and proper stabilization at reclamation or a phased reclamation approach." (T. p. 155)

47. Regarding criteria in N.C. Gen. Stat. § 74-51(d)(4), Davis explained that they looked at the sedimentation control plan and final slopes of the reclamation, the mine itself, and if there was a pit to remain or a pond, and structural fill final slopes. They did a full review of the public health and safety on the mine site, looking at those specifics. (T. p. 159)

48. In this particular case, there's a 50-foot buffer setback from the property line or permit boundary into the site before any perimeter roads or erosion control measures. The active mining and reclamation are proposed interior of that. (T. p. 159) Since there was no blasting at the site, there was no concern of any off-site impacts if the erosion sedimentation control retained sediment on the site before it reaches those buffers. (T. pp. 159-160) Based on that, Davis opined that the 50-foot buffer around the mining is adequate protection of public health and safety. (T. p. 160)

49. Mr. Davis further explained that his Division doesn't consider the cumulative impacts with other facilities surrounding or nearby the Brickhaven and Colon Road sites,

because the mines are self-contained, and DEMLR's authority is on the mine site. They don't look at the impacts on any mine site. Instead, they try to deal with the environmental surface aspects of it on the mine through the mining permit. (T. p. 160)

50. DEMLR also requires the permittee to locate any wetlands existing within the mining permit footprint, and have a buffer to protect those wetlands. That boundary is also required since the permittee is applying for a (1) 401 Water Quality Certification, and (2) a U.S. Army Corps of Engineers 404 Wetland Permit to disturb the wetlands during the life of the mine site. (T. p. 161) Davis explained that you generally don't have mining in a flood plain or in a creek, unless there is an in-stream mining operation. (T. p. 161) As part of that process, DEMLR would only review the impacts in a flood plan if it applies within the mining permit boundary. In determining the wetland issue, DEMLR generally determines if any streams are located on the property, provide a buffer along those, and provide erosion sedimentation control outside the buffer to keep sediment from going into the streams. Those streams are protected unless the applicant applies for and obtains a 401 and 404 permit to disturb those wetlands or flood plain areas. Davis further noted that DEMLR would grant a mining permit modification to a mining site in a flood plain only if the applicant has a 401 and 404 permit from the proper authorities. (T. p. 161)

51. Mr. Davis attended both public hearings on these proposed modifications, and read public comments that were emailed to staff in the months before his decision. He also reviewed the file folder that contained all the comments that had been received by DEMLR. Before June 5, 2015, Davis reviewed the hearing officer report, and some of the hearing officer's attachments, including the comments and PowerPoint presentation by Don Kovasckitz, the GIS person from Lee County. (T. p. 161-162)

52. In this case, the applicant proposed using backfill with coal ash structural fill in these mine pits, and continuing the footprint of what was already left behind from the prior mining. From there, DEMLR and DWM conducted the dual permitting process. Davis noted that CAMA allows open pit mine reclamation as an alternative. The Mining Act is very open to types of reclamation that can be done, and doesn't specify any type of structural fill. In fact, it can be any type of beneficial land use that an applicant or mine operator wants to propose. However, DEMLR may not approve all of them. It's up to the applicant to propose something Respondent feels is reviewable and approvable. (T. pp. 163-64)

53. The expedited permit provisions of CAMA require that any permits that touch coal ash management must go through the public notice process, and a public hearing before a decision is made on the permits. (T. p. 165) The Mining Act does not supersede local zoning regulations, so a mining permit anywhere in this State does not supersede the right for applicable local zoning. (T. p. 165)

54. The timeliness of the permit process depends on whether the application is complete when Respondent receives it. If an application is complete when it comes in under the Mining act, DEMLR has 60 days by statute to make a decision to grant or deny

the permit. The clock resets if DEMLR asks for additional information from the permit applicant. The applicant has 180 days to respond back to the Department. If the applicant doesn't respond timely, then DEMLR can grant or deny the mining permit based on the information it has in their hands. (T. pp. 166-167)

55. In the final stages of drafting the mining permit in this case, Mr. Davis confirmed with Mr. Mussler that DWM had all the information they needed from the applicant. Davis also put a cross-reference in the mining permit requiring the applicant to follow CAMA, the structural fill, and listed the name of the permit so if there's a violation of the solid waste management structural fill permit, then it's a direct violation of the mining permit. (T. pp. 179-180)

56. On June 5, 2015, Mr. Davis issued to Green Meadow, LLC a mining permit modification Permit No. 53-05 for the Colon Mine, and a mining permit modification, Permit No. 19-25 for the Brickhaven No. 2 Tract "A" Mine. Both permits allowed a change in the method of reclaiming the mines by constructing structural fill from coal combustion by-products in accordance with the provisions of CAMA, and with the terms and conditions of a Permit to Construct and Operate Colon Mine Structural Fill Permit, No. 5306-STRUC-2015 and a Permit to Construct and Operate Brickhaven No. 2 Tract "A" Mine Structural Fill Permit, No. 1910-STRUC-2015, both issued by DWM.

57. Mr. Davis was not directly aware that several landowners around the existing Colon Road mine site have "Do Not Drink" letters issued by the NC Department of Public Health. He was not aware that Respondent was ever given any information that water contamination occurred while General Shale held mining permits. Although, he noted, if there was an allegation of that type, they [DEMLR] would take that matter seriously, and talk with their Groundwater Division with Water Resources, and see if it was tied to the mine site itself, or if it was some other contaminant source. (T. p. 168)

58. Mr. Davis opined that reclamation of an open pit mine is the reasonable rehabilitation of an affected land for useful purposes. An applicant may request any sort of reclamation in its proposed reclamation plan. He noted that using coal combustion by-products in constructing structural fill in an open pit mine, in accordance with the provisions of CAMA, is an acceptable form of reclamation. (T. p. 169)

59. Specifically, as to Claim B, Mr. Davis explained that the financial assurance required under the Mining Act of 1971 for mining permits allows an applicant the option of filing a blanket bond covering all its mining operations within the State for which the applicant holds a permit. Pursuant to the rules regarding bonding requirements, the bond for mine reclamation is calculated at \$500 per acre up to \$5000 per acres. The Mining Commission uses its rules, a worksheet, and a schedule of costs to calculate the appropriate amount of bond an applicant must provide. Once the Mining staff determines the total amount of blanket bond has reached the \$500,000 amount, which it did with these permit applications, and if the applicant has a good operating record, then a \$500,000 blanket bond is considered a sufficient bond amount. In other words,

Respondent's rules mandate that \$500,000 is the maximum amount of blanket bond Respondent could require a permittee to post. (T. p. 186)

60. In this case, Respondent accepted Green Meadow, LLC's required blanket bond of \$500,000 since Green Meadow, LLC did not have any civil penalties assessed against it within the past consecutive two years. (T. pp. 170-171)

61. Davis opined that the Brickhaven and Colon Road mine sites are suitable mine reclamation sites. (T. p. 175-76) In Davis' opinion as a Professional Engineer with 28 years of experience in the area of mining permits, the terms of the modified mining permits for the Brickhaven and Colon Road Mines will be protective of human health and the environment based on several factors. These factors are the design of the facilities, the erosion sedimentation control around the sites, and the permit conditions in DEMLR's issued permits, the Waste Management permits, and the 401 Water Resources permits for each site. (T. pp. 175-176)

62. Davis explained that the fact that the Colon mine is only 38% excavated is not a problem for Green Meadow's mining permit modification. Once Green Shale's mining permit was transferred to Green Meadow, LLC, Green Meadow could mine the majority of the site beyond just the pits existing at the time of the permit transfer. The mining permit modification proposed the same mining footprint as in the Green Shale permit. In fact, Green Meadow is already "excavating the same depth basically as the existing pits and ponds that were out there." (T. pp. 176-77) In other words, Green Meadow is expanding the mine's footprint, and creating the lined cells that are proposed for the structural fill. (T. pp. 176-77) Additionally, the height of each site is shown in the applications, and on mine and reclamation maps with cross-sections in the footprint, and on slope angles. Davis opined a height of the site at 50 feet higher than the ground level is not unusual. (T. p. 177)

63. On cross-examination, Mr. Davis confirmed that a mining permit is valid from the day the permit is issued until the day the permit expires. A mining permit is good for up to ten years, and pursuant to the Mining Law, may be renewed within the last two years of that permit's life. (T. p. 181) A mining permit remains valid even if a mine becomes inactive for several months or several years. The permittee could reactivate or resume its mining operations of an inactive mine up until the date the mining permit expires. If a permittee renews its mining permit, then it could continue mining for another ten years. (T. p. 181) Similarly, Respondent can still enforce the conditions of a mining permit on the mine operator if a mine is inactive but still permitted. (T. p. 181)

64. Davis confirmed that before November 2014, Respondent granted General Shale's request to release two areas from its mining permit at the Colon Road mine site. As a result, those two areas were excluded from the Colon Road mining permit boundaries, and no coal ash could be placed on the areas that were released from such permit. (T. p. 183)

65. Davis opined that Respondent doesn't see any difference between excavating and mining. (T. p. 184) He verified that as of today, Green Meadow is expanding the footprint of the previous mining to provide an excavation or open pit to place the cells for beneficial fill. They are also stockpiling material on the site to use for liners, and possibly cover. Per their mining permit, Green Meadow is permitted to haul material off site at any time during the life of that permit. (T. p. 185) In Davis' opinion, Green Meadow's operation is a mining operation, not a structural fill operation. (T. p. 185)

66. Therese Vick is the Blue Ridge Environmental League ("BREDL") North Carolina Communities Campaign Coordinator. EnvironmentalLEE and Chatham Citizens Against Coal Ash are members of BREDL, and have representatives on the BREDL Board of Directors. Ms. Vick has worked with EnvironmentalLEE since 2012 and with Chatham Citizens since December 2014. (T. pp. 190-92)

67. Ms. Vick acknowledged that her role at BREDL is that of a community organizer. In this case, she reviewed permit applications, quite a bit of EPA guidelines that were released in December 2015, and studies done by experts on environmental justice, leachate treatment, and coal ash and air quality issues. Vick prepared public comments, and participated at the public hearings regarding the subject permits. She submitted many public comments, including but not limited to, those written by Dr. Fred Lee and Dr. Dennis Lemly, to Respondent Agencies about the permits at issue.

68. At hearing, Ms. Vick voiced concern over the expediency with which Respondent acted in reviewing and issuing the subject permit decisions. However, she conceded that her understanding of how the permit decisions were made in this case was "certainly not clear." (T. 212) Ms. Vick has an Associate's degree in Human Services and Psychology, but no expertise in environmental effects on landfills or landfill liners. She solicited comments in a report from Dr. Lee and Dr. Jones-Lee, and from Dr. Lemly, because she knew those doctors possessed the expertise to look at the issues about which she and the other Petitioners were concerned. (T. pp. 213-216)

69. Petitioners' eighth and final witness was Don Kovasckitz. Mr. Kovasckitz is the Director for the Lee County Strategic Services Division. At the contested case hearing, Mr. Kovasckitz gave a slide presentation, similar to one that he submitted to the Lee County Commissioners. Kovasckitz used digital GIS mapping to (1) determine if Green Meadow's actions on the subject site constituted actual mine reclamation, (2) show where the reclamation was going to occur, and (3) demonstrate what the site would look like after all reclamation was complete. (T. pp. 228, 232)

70. Mr. Kovasckitz' presentation illustrated the history of the mined areas of the Colon Road site since 1950, and demonstrated Kovasckitz' opinion regarding the definition of reclamation.

a. Mr. Kovasckitz determined that of the total 118-plus acres that will be filled with coal ash at the Colon Road site, 29% has been excavated, and 71% was unexcavated. (T. p. 234)

b. Kovasckitz created a topological map based on the permittee's reclamation plan and accepted GIS practices to show the Colon Road site's appearance after reclamation is completed. The site's topology starts at 330 feet above mean sea level, grades down to 320, and then, grades down 4-to-1 to 270 feet above mean sea level on the east side of the site. (T. pp. 235-36)

c. Mr. Kovasckitz also pointed out that the hydro-geological study drawn for the permittee's reclamation plan failed to show a "finger of the flood plain that extends into a retention pond" in the southwest corner of cell 1. Whereas, the FEMA maps, Kovasckitz' drawing, and the Buxton Engineering hydro-geological study all showed a retention pond in the southwest corner of cell 1. (T. pp. 242-44; Pet. Exh. 7)

71. During cross-examination, Mr. Kovasckitz admitted that he is neither a professional engineer nor a mining specialist. He did not submit his comments and presentation to the Respondent agencies during the public comment period. (T. p. 244) Kovasckitz also conceded on cross-examination that the maps/drawing from FEMA, Buxton Engineering, and Kovasckitz came from the same source. He conceded that he did not know the source of the permittee's drawings or maps. (T. pp. 252-53)

72. On the morning of Tuesday, December 8, 2015, after approximately one and one half days of testimony, Petitioners rested their case with respect to Claims A (structural fill permit v. solid waste landfill permit issue), B (financial assurance issue) and F (environmental justice issue). (T. p. 254)

73. Following the close of Petitioners' case-in-chief, Respondents and Respondent-Intervenors renewed their Motions for Summary Judgment, requesting that the Undersigned dismiss Petitioners' case based on the fact that Petitioners had failed to meet their burden of proof, and had not presented any evidence to show that they had a right to relief. (T. pp. 258-269) Petitioners responded by oral argument. (T. pp. 269-273)

74. The OAH official record showed that on October 16, 2015, the Undersigned mailed an Amended Scheduling Order to the parties establishing deadlines for filing summary judgment motions, and responses. Such Order also advised the parties a hearing on any summary judgment motions would be before November 30, 2015 if the Court deemed it necessary.

75. Before the hearing began on December 7, 2015, Petitioners' counsel advised the Undersigned and opposing counsel that its two expert witnesses were unavailable to testify. Before the hearing began on December 7, 2015, the Undersigned offered Petitioner use of the videoconferencing system in the courtroom to allow

Petitioner's two expert witnesses, Drs. Lee and Lemly, to testify the week of December 7-11, 2015.

76. After Petitioner rested its case in part, and in response to the Undersigned's questions, Petitioners' counsel confirmed that the petition for this contested case was filed on July 6, 2015, and the Notice of Hearing, scheduling the hearing in this case for December 7-11, 2015, was mailed to the parties on October 27, 2015. (T. p. 273) The OAH's official record for this case showed Petitioners' counsel received the Notice of Hearing setting the hearing on the merits of the case on October 30, 2015.

77. In court, the Undersigned summarized the Prehearing Conference with the parties' counsels, and asked Petitioners' counsel why his two experts were unavailable to testify that week using the court's video/audio conferencing system. Petitioners' counsel replied:

[W]e haven't contacted them about being available later on this week. We don't know what the cost would be for Dr. Lee. And I mean the reason that they're not here this week is Dr. Lee, was, you know, as an expert traveling across the country, was fairly costly. And before the decisions were made on the motions for summary judgment, we couldn't afford to have him sit around and maybe speak – maybe not testify this week. And Dr. Lemly would need an affidavit and try to work out a time frame.

(T. p. 274) Petitioners' counsel was unprepared to go forward with the remainder of its case during the current hearing period established by the Undersigned five weeks before hearing.

78. The Undersigned denied Petitioners' request to continue the case until January 2016 to present expert testimony. Petitioner had 39 days' notice that the hearing on the merits of the case would be conducted the week of December 7-11, 2015, and did not file a Motion to Continue the hearing. Neither did Petitioner provide "good cause" why its case should be continued until January 2016.

79. The Undersigned advised the parties that she would take the case under advisement. In considering Respondents' renewed Motion for Summary Judgment, the Undersigned instructed the parties that she would review the renewed Summary Judgment Motion, Responses, and the exhibits and affidavits attached to such Motion and Responses. In deciding the case on the merits, the Undersigned advised that she would base that decision on the evidence presented and admitted into evidence at hearing.

80. On January 11, 2016, thirty-four days after the contested case hearing in this case was concluded, Petitioners filed their Second Motion to Amend Petition, attempting to add a claim based on a January 6, 2016 newspaper article that described discussions between Governor Pat McCrory, a Duke Energy official and the Secretary of the Department of Environmental Quality that allegedly occurred on June 1, 2015. On

January 11, 2016, the Undersigned issued a Request for Response to Petitioners' Motion to Amend Petition on or before January 22, 2016.

81. On January 19, 2016, the Undersigned issued an Order Staying this case and tolling all statutory time-frames, including the Undersigned's issuance of the Final Decision in this case, pending OAH's receipt of Respondent's Responses to Petitioners' Motion, and the Undersigned ruled on said Motion.

82. On February 10, 2016, the Undersigned issued an Order denying Petitioner's Second Motion to Amend Petition for being untimely filed, and denied Respondents' Motion to Summary Judgment. The Undersigned ruled that pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure, Petitioner's contested case was DISMISSED for failing to meet its burden of proof in its case-in-chief by (1) failing to show it had a right to relief, and (2) failing to show Respondent violated the criteria in N.C. Gen. Stat. § 150B-23. The Undersigned also ordered the Respondent to file a proposed Final Decision.

83. While Petitioners voiced many concerns about the placement and use of coal ash at the Brickhaven and Colon Road sites, they failed to present any physical, photographic, or scientific evidence, at hearing, supporting their claims that Respondent erred in approving and issuing the subject permits to Respondent-Intervenors.

CONCLUSIONS OF LAW

1. All parties are properly before the Office of Administrative Hearings, and the Office has jurisdiction over the parties and the subject matter. To the extent the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

2. All parties have been correctly designated, and there is no question as to misjoinder or non-joinder.

3. Petitioners EnvironmentalLee and Chatham Citizens Against Coal Ash Dump are chapters of the Petitioner Blue Ridge Environmental Defense League Inc. The Blue Ridge Environmental Defense League Inc. (BREDL) is a non-profit organization focusing on environmental issues.

4. Petitioners have the burden of presenting evidence and proving that the Respondent agencies substantially prejudiced Petitioners' rights and that Respondents either exceeded their authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily and capriciously, or failed to act as required by law or rule, in violation of N.C. Gen. Stat. § 150B-23, in issuing the permits at issue.

5. Petitioners and Respondent-Intervenors are "persons" as defined by N.C. Gen. Stat. § 130A-2(7).

6. Respondent DWM is a State agency established pursuant to N.C. Gen. Stat. §§ 143B-279.1 through 143B-344.23, and vested with the statutory authority to enforce the State's environmental pollution laws, including laws enacted to regulate solid waste. The North Carolina General Assembly mandates that Respondent DWM promote and preserve an environment that is conducive to public health and welfare by establishing a statewide solid waste management program.

7. On June 5, 2015, DWM issued Respondent-Intervenors individual permits, pursuant to N.C. Gen. Stat § 130A-309.219(a)(2), to construct and operate a structural fill at the Brickhaven mine site in Chatham County, and at the Colon Road mine site in Lee County. Both the Brickhaven and Colon mine sites consist of projects using coal combustion products as structural fill involving the placement of 8,000 or more tons of coal combustion products per acre, or 80,000 or more tons of coal combustion products in total per project.

8. The issue in this contested case was whether Respondents acted properly in approving the subject permit applications, not if violations have occurred at the Colon Road site and Brickhaven site since the applicable permits were issued.

9. At the contested case hearing, Respondents presented evidence that before DWM issued structural fill permits to each permittee, DWM conducted a thorough and extensive review of the subject permit applications to ensure that the permits would meet all of the requirements of CAMA, as well as being vetted by the public comment and hearing process.

10. N.C. Gen. Stat §§ 130A-309.219(b)(1)(d) and (b)(2) require that persons proposing projects using coal combustion products as structural fill involving the placement of 8,000 or more tons of coal combustion products per acre, or 80,000 or more tons of coal combustion products in total per project shall provide to SWM:

A Toxicity Characteristic Leaching Procedure analysis from a representative sample of each different coal combustion product's source to be used in the project for, at a minimum, all of the following constituents: arsenic, barium, cadmium, lead, chromium, mercury, selenium, and silver.

In this case, DWM mandated Respondent-Intervenors provide a Toxicity Characteristic Leaching Procedure analysis consistent with these statutory requirements in both the Brickhaven and Colon mine structural fill permits. A preponderance of the evidence showed that Respondent-Intervenors complied with such requirement.

11. N.C. Gen. Stat § 130A-309.220 establishes the design, construction, and siting requirements for projects using coal combustion products for structural fill. N.C. Gen. Stat § 130A-309.220(b) lists the specific requirements for the liners, leachate collection system, cap, and groundwater monitoring system required for large structural fills with (b)(1); specifically setting out the requirements for a base liner, which is to consist of one of two optional designs: (a) a composite liner utilizing a compacted clay liner or (b)

a composite liner utilizing a geosynthetic clay liner. In this case, DWM required that both the Brickhaven and Colon mine structural fill permits provide for a liner consistent with these statutory requirements.

12. N.C. Gen. Stat § 130A-309.221 sets out the financial assurance requirements for large projects using coal combustion products for structural fill. The applicant for a permit to construct or operate a structural fill must establish:

[F]inancial assurance that will ensure that sufficient funds are available for facility closure, post-closure maintenance and monitoring, any corrective action that the Department may require, and to satisfy any potential liability for sudden and non-sudden accidental occurrences, and subsequent costs incurred by the Department in response to an incident at a structural fill project, even if the applicant or permit holder becomes insolvent or ceases to reside, be incorporated, do business, or maintain assets in the State.

13. The preponderance of the evidence presented at hearing established that both the Brickhaven and Colon mine structural fill permits issued by DWM on June 5, 2015 meet these statutory requirements for financial assurance, and Respondent-Intervenors provided the requisite financial assurance mechanisms.

14. N.C. Gen. Stat § 130A-294(a)(4)c.9. requires DWM to “deny an application for a permit for a solid waste management facility” if:

[T]he cumulative impact of the proposed facility, when considered in relation to other similar impacts of facilities located or proposed in the community, would have a disproportionate adverse impact on a minority or low-income community protected by Title VI of the federal Civil Rights Act of 1964.

In this case, Petitioners failed to demonstrate by a preponderance of the evidence that the cumulative impact of the Brickhaven and Colon structural fill facilities would have a disproportionate adverse impact on the Lee or Chatham County communities.

15. Ed Mussler, a licensed Professional Engineer and the Permitting Supervisor of the Solid Waste Section of the Division of Waste Management, has been properly delegated the authority to issue structural fill permits which meet all of the requirements of CAMA under N.C. Gen. Stat. § 130A, Article 9. Mr. Mussler acted within his authority and jurisdiction when he issued the structural fill permits for the Brickhaven and the Colon mine sites.

16. Petitioners failed to establish by a preponderance of the evidence that Mr. Mussler and DWM substantially prejudiced Petitioners’ rights, exceeded their authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in following, or failing to follow, the procedural process for issuing a structural fill permit to Charah, Inc. and Green Meadow, LLC for both the Colon and Brickhaven mine sites.

17. Petitioners failed to establish that DWM substantially prejudiced Petitioners' rights, exceeded their authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in drafting and issuing a structural fill permit to Charah, Inc. and Green Meadow, LLC for both the Colon and Brickhaven mine sites.

18. Respondent DEMLR is a State agency established pursuant to N.C. Gen. Stat. §§ 143B-279.1 through 143B-344.23 and vested with the statutory authority to enforce the State's environmental pollution laws, including laws enacted to regulate mining operations. The North Carolina General Assembly mandates that Respondent DEMLR promote and preserve an environment that is conducive to public health and welfare by establishing a statewide mining program.

19. N.C. Gen. Stat. § 74-52 (the Mining Act of 1971) described the bases upon which a mining permit may be modified. At the contested case hearing, Respondents presented evidence that before DEMLR issued the mining modification permits to Green Meadow, LLC for the Brickhaven and Colon mines, DEMLR conducted an extensive and thorough review of Green Meadow, LLC's mining modification permit applications, pursuant to the Mining Act of 1971.

20. DEMLR also sent a copy of the subject permit applications to other State Agencies, such as the Division of Air Quality, the Division of Water Resources, Division of Waste Management, US Fish and Wildlife, NC Wildlife Resources Commission for comments, based upon each agency's area of expertise. DEMLR collaborated with those agencies before drafting provisions of the mining modification permits that addressed those agencies' concerns. In addition, DEMLR staff considered public comments sent to DEMLR and presented at the public hearings.

21. N.C. Gen. Stat. § 74-54 and 15A NCAC 05B .0103 establish the requirements for a mining permit bond, and the calculations to be made to determine the amount of the bond. Specifically, 15A NCAC 05B .0103 requires that once a determination is made that the total amount of a blanket bond has reached the amount of \$500,000, which it did with these permit applications, and the applicant has a good operating record, which Green Meadow, LLC had, then the amount of a \$500,000 blanket bond is considered sufficient to reclaim all sites, and no additional reclamation bond money is needed. The preponderance of the evidence established that Respondent-Intervenor Green Meadow, LLC provided the requisite bond.

22. Petitioner failed to present any evidence proving that Respondent was not bound by the statutory and administrative rules in determining the amount of the mining permit bond, and that Respondent was otherwise authorized, or had any discretion, to modify the statutory and regulatory requirements regarding the amount of financial assurance the permittee should post.

23. A preponderance of the evidence at hearing proved that Tracy Davis, a licensed Professional Engineer and the Director of the Division of Energy, Mineral and Land Resources (DEMLR), has been properly delegated the authority to issue mining permits, and modified mining permits which meet all of the requirements of the Mining Act of 1971 under N.C. Gen. Stat. § 74, Article 7. Mr. Davis acted within his authority and jurisdiction when he issued the modified mining permits for the Brickhaven and the Colon mine site.

24. Petitioners failed to prove that Mr. Davis and DEMLR substantially prejudiced Petitioners' rights, exceeded their authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, and failed to act as required by law or rule in following, or failing to follow, the procedural process for issuing modified mining permits to Green Meadow, LLC for the Colon and Brickhaven mine sites.

25. Petitioners failed to establish that Mr. Davis and DEMLR substantially prejudiced Petitioners' rights, exceeded their authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule in drafting and issuing a modified mining permit to Green Meadow, LLC for both the Colon and Brickhaven mine sites.

26. Petitioners failed to prove that Mr. Mussler and Mr. Davis (1) failed to discharge their duties in good faith, or (2) failed to exercise their powers in accord with the spirit and purpose of the law they were delegated to enforce.

27. While Petitioners voiced many concerns about the placement and use of coal ash at the Brickhaven and Colon Road sites, they failed to present any physical, photographic, or scientific evidence, at hearing, supporting their claims that Respondent erred in approving and issuing the subject permits to Respondent-Intervenors.

28. Giving due regard to each Respondent agency's demonstrated knowledge and expertise regarding the facts and inferences within the specialized knowledge of the Respondent agencies, Petitioners failed to prove by a preponderance of the evidence that Respondents substantially prejudiced Petitioners' rights, exceeded Respondents' authority or jurisdiction, acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law or rule. Instead, the preponderance of the evidence showed that Respondents fairly and carefully considered the facts surrounding issuance of the subject permits, and applied the applicable law regarding each subject permit as required by law.

29. Respondents and Respondent-Intervenors renewed their Motion for Summary Judgment at the end of Petitioners' case, wherein they requested Petitioners' claims be dismissed, because Petitioners had shown no right to relief. Respondents' and Respondent-Intervenors' renewed Motion for Summary Judgment was, in essence, a request for involuntary dismissal pursuant to N.C. Gen. Stat. §1A-1, Rule 41(b), and shall be so converted and Granted as such.

30. Dismissal on motion of respondent at close of petitioner's case in nonjury trial is left to sound discretion of trial court. Rules Civ. Proc., Rule 41(b), G.S. § 1A-1. *Matter of Isaac OGHENEKEVEBE*, 123 N.C.App. 434, 473 S.E. 2d 393(1996)

31. Motion for dismissal made at close of plaintiff's evidence in nonjury trial not only tests sufficiency of plaintiff's proof to show right to relief, but also provides procedure whereby judge may weigh evidence, determine facts, and render judgment on merits against plaintiff, even though plaintiff may have made out prima facie case. Rules Civ. Proc., Rule 41(b), G.S. § 1A-1. *Matter of Isaac OGHENEKEVEBE*, 123 N.C.App. 434, 473 S.E. 2d 393(1996)

32. Based on the foregoing Findings of Fact and Conclusions of Law, Petitioners failed to prove by a preponderance of the evidence that it had a right to relief.

FINAL DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned determines:

1. Respondents' and Respondent-Intervenors' Motion for Summary Judgment is hereby **DENIED**.

2. Respondents' and Respondent-Intervenors' converted Motion for Involuntary Dismissal pursuant to Rule 41(b) of the North Carolina Rules of Civil Procedure is hereby **GRANTED**. The decision by DWM to issue two permits on June 5, 2015 for a Structural Fill Permit to Construct and Operate, Permit No. 5306-STRUC-2015 for the Colon Mine to Charah, Inc. and Green Meadow, LLC and a Structural Fill Permit to Construct and Operate, Permit No. 1910-STRUC-2015 for the Brickhaven No. 2 Tract "A" Mine to Charah, Inc. and Green Meadow, LLC is hereby **UPHELD**. Further, DEMLR's decision to issue two permits on June 5, 2015 for a mining permit modification, Permit No. 53-05 for the Colon Mine to Green Meadow, LLC and mining permit modification, Permit No. 19-25 for the Brickhaven No. 2 Tract "A" Mine to Green Meadow, LLC is hereby **UPHELD**.

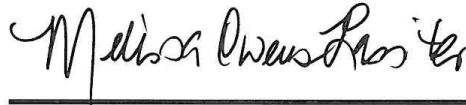
NOTICE

This is a Final Decision issued under the authority of N.C. Gen. Stat. § 150B-34. Under N.C. Gen. Stat. § 150B-45, any party wishing to appeal this Final Decision must file a Petition for Judicial Review in the Superior Court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, the county where the contested case which resulted in the Final Decision was filed. **The appealing party must file a Petition for Judicial Review within 30 days after being served with a written copy of this Final Decision.**

Under N.C. Gen. Stat. § 150B-47, the Office of Administrative Hearings is required to file the official record in the contested case with the Clerk of Superior Court within 30

days of receipt of the Petition for Judicial Review. N.C. Gen. Stat. § 150B-46 describes the contents of the Petition for Judicial Review, and requires service of the Petition for Judicial Review on all parties. Consequently, a copy of the Petition for Judicial Review must be sent to the Office of Administrative Hearings at the time the appeal is initiated in order to ensure the timely filing of the record.

This the 5th day of May, 2016.



Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
05/06/2016 9:37 AM

STATE OF NORTH CAROLINA
COUNTIES OF CHATHAM & LEE

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 04772

ENVIRONMENTALEE, CHATHAM)
CITIZENS AGAINST COAL ASH DUMP,)
& BLUE RIDGE ENVIRONMENTAL)
DEFENSE LEAGUE INC.)
Petitioners)
v.)
NC DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES, DIVISION)
OF WASTE MANAGEMENT, AND)
DIVISION OF ENERGY, MINERAL, AND)
LAND RESOURCES,)
Respondents,)
and)
GREEN MEADOW, LLC,)
AND CHARAH, INC.,)
Respondent-Intervenors.)

**ORDER AMENDING
FINAL DECISION**

Pursuant to 26 NCAC 3.0129, for the purpose of correcting a clerical error, IT IS HEREBY ORDERED that the above-captioned Decision, issued from this Office on May 5, 2016 is amended to correct the word Petitioners to Respondent in the first sentence of the third paragraph under Preliminary Matters and to include the transcript page reference as follows:

Following all parties' arguments on the Summary Judgment Motion, the Undersigned Granted Summary Judgment for **Respondent** as to Petitioners' Claim D, Denied Summary Judgment on all other claims. Petitioners opted to Voluntarily Dismiss with prejudice Petitioner's Claim D in lieu of an Order for Partial Summary Judgment. After the Undersigned's ruling, Petitioners and Respondent-Intervenors advised the Undersigned that they had reached a settlement as to Claim E regarding the issue of coal dust. (T. pp. 46-48)

Except for the above amendment, the Final Decision issued on May 5, 2016 remains in effect.

This the 6th day of May, 2016.



Melissa Owens Lassiter
Administrative Law Judge

FILED
OFFICE OF ADMINISTRATIVE HEARINGS
05/16/2016 10:34 AM

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 OSP 08687

Jacqueline Renee Crocker Petitioner, v. Transylvania County Department of Social Services Director Tracy Jones Respondent.	FINAL DECISION
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This contested case was heard before the Honorable David F. Sutton, Administrative Law Judge, on 29 February 2016, in Brevard, North Carolina.

APPEARANCES

FOR PETITIONER:

Donald H. Barton
Attorney at Law
158 East Main Street
Brevard, NC 28712

FOR RESPONDENT:

Jackson R. Price
WOMBLE, CARLYLE, SANDRIDGE & RICE
One Wells Fargo Center, Suite 3500
301 South College Street
Charlotte, N.C. 28202

EXHIBITS

Admitted for Petitioner:

EXHIBIT	DESCRIPTION
1	Tony C. Dalton Statement – October 2, 2015

Admitted for Respondent:

EXHIBIT	DESCRIPTION
1	J. Michael Edney Statement
2	Order Amending Judgment (<i>Brown v. Swarn – Transylvania County file No. 14 CVD 318</i>) – October 6, 2015
3	Notice of Placement on Investigatory Status with Pay – October 5, 2015
4	Notice to Attend Pre-Disciplinary Conference – October 5, 2015
5	Disciplinary Decision of Dismissal – October 7, 2015
6	Grievance Letter – October 19, 2015
7	Post Grievance Conference Letter – November 2, 2015
8	Carson F. Griffin Warning – May 15, 2015
9	Audio Recording – September 22, 2015 hearing (<i>Brown v. Swarn – Transylvania County file No. 14 CVD 318</i>)

WITNESSES

Called by Petitioner:

Jacqueline Renee’ Crocker
 Honorable Peter Knight
 Tony C. Dalton
 Honorable Emily Cowan
 Charles W. “Mack” McKeller

Called by Respondent:

Tracy Jones
 Cindy Anders
 Kenny McAbee

ISSUES

1. Whether Respondent had just cause to dismiss Petitioner.

ON THE BASIS of careful consideration of the sworn testimony of witnesses presented at the hearing, documents received and admitted into evidence, and the entire record in this proceeding, the undersigned makes the following findings of fact. In making these findings, the undersigned has weighed all the evidence, or the lack thereof, and has assessed the credibility of the witnesses by taking into account the appropriate factors for judging credibility, including but not limited to the demeanor of the witness; any interest, bias or prejudice the witness may have; the opportunity of the witness to see, hear, know and remember the facts or occurrences about which the witness testified; whether the testimony of the witness is reasonable; and whether such testimony is consistent with all other believable evidence in the case.

The undersigned has also reviewed the entire file, including but not limited to the proposals for final decision submitted by both the Petitioner and Respondent.

FINDINGS OF FACT

1. The Office of Administrative Hearings has personal and subject matter jurisdiction over this contested case pursuant to Chapters 126 and 150B of the North Carolina General Statutes.

2. Petitioner Jacqueline Renee' Crocker (hereinafter "Petitioner") was a career State employee subject to Chapter 126 of the North Carolina General Statutes.

3. Respondent Transylvania County Department of Social Services (hereinafter "Respondent" or "DSS") is subject to Chapter 126 and was Petitioner's employer.

4. Petitioner had been employed as a social worker with Transylvania County Department of Social Services for 16 years, and was a Children's Protective Services Supervisor since June 2013 (Tr. 127-128).

5. The Petitioner was dismissed from her employment with Respondent because of her relation to a civil custody action captioned, *Lauren Brown v. Marquis Swarn*, Transylvania County Case No. 14 CVD 318 (hereinafter "Custody Dispute"), and primarily due to an ex parte communication she had with District Court Judge Emily Cowan about the terms of a Consent Order entered by Judge Cowan in the Custody Dispute (Tr. 52-53).

6. Marquis Swarn is the fiancé (boyfriend at the time of ex parte communication) of the Petitioner's daughter (Tr. 136).

7. Judge Cowan entered a Consent Order in the Custody Dispute resolving the terms of placement and visitation of the minor child sometime prior to the ex parte communication which lead to Petitioner's dismissal (Tr. 85).

8. The Petitioner's relation to the Custody Dispute was addressed on June 4, 2015 when Respondent's interim director, Carson Griffin, and Respondent's legal counsel, Tony C. Dalton, met with Petitioner to discuss a grievance filed by Sandra Brown, Lauren Brown's mother, wherein Sandra Brown alleged an information security breach within DSS (Tr. 19- 20).

9. Respondent investigated the grievance made by Sandra Brown prior to June 4, 2015 and cleared the Petitioner of any wrongdoing (Pet. Ex. 1; Tr. 20).

10. On June 4, 2015, the Respondent verbally communicated to the Petitioner the results of its investigation, that the Petitioner was not being disciplined, and discussed with Petitioner the need to avoid the appearance of impropriety (Pet. Ex. 1, Tr. 20).

11. In August 2015, the Petitioner was planning to take a family vacation to Florida with her daughter, grandson and, with the permission of Marquis Swarn, the minor child who was the subject of the Custody Dispute. Prior to leaving for Florida the Petitioner wanted clarification

regarding the terms of the Consent Order entered in the Custody Dispute so as to insure that she was not violating the Consent Order if she took the subject minor child to Florida. In order to gain clarification regarding the terms of the Consent Order, the Petitioner initiated an ex parte communication with Judge Cowan, the District Court Judge who entered the Consent Order (Tr. 132-133).

12. The ex parte communication between the Petitioner and Judge Cowan consisted of a text message and return phone call. The content of the text message from Petitioner to Judge Cowan was the following:

“I need to ask you a personal matter. If you can text me or call me that would be fine. If you can’t, I understand.” (Tr. 133)

13. Judge Cowan responded to the text message by calling the Petitioner and telling her to call her lawyer (Tr. 88).

14. At the time of the ex parte communication, pending in the Custody Dispute was a North Carolina Rules of Civil Procedure Rule 60 Motion filed by Mack McKellar, attorney for Marquis Swarn, to correct a clerical error in the Consent Order (Tr. 114-115).

15. When the Rule 60 motion came on for hearing before Judge Cowan, Judge Cowan recused herself from hearing and ruling on the Rule 60 motion as well as any other matters arising in the Custody Dispute (Resp. Ex. 2; Tr. 24-25, 47-48).

16. On September 22, 2015, Chief District Court Judge Athena Brooks entered an Order Amending Judgment (Resp. Ex. 2) in the Custody Dispute correcting the clerical error contained in the Consent Order. The Order Amending Judgment was filed in the Office of the Clerk of Superior Court in Transylvania County on October 6, 2015. The Order Amending Judgment included the following language: “Chief District Court Judge Athena Brooks hearing the matter due to the self-recusal of District Court Judge Emily Cowan because of extra judicial communication by a non-party.” (Resp. Ex. 2)

17. On September 25, 2015, Sandra Brown attended a DSS Board of Directors’ meeting and informed Tracy Jones, the DSS Director, that Judge Cowan had recused herself from hearing a motion in the Custody Dispute because of ex parte communications she had with Petitioner (Tr. 31).

18. Following the September 25, 2015, meeting, Ms. Jones started an investigation into the veracity of the allegations made by Sandra Brown against Petitioner at said meeting. During her investigation, Ms. Jones obtained the following credible evidence confirming that Petitioner had instituted and engaged in an ex parte communication with Judge Cowan regarding the Custody Dispute:

- a. Chief District Court Judge Athena Brooks' October 6, 2015 Order Amending Judgment (Resp. Ex. 2; Tr. 47-48);
- b. Direct confirmation from Judge Cowan to DSS Attorney Tony C. Dalton that she had recused herself in the Custody Dispute because of ex parte communications with Petitioner (Tr. 24-25); and
- c. The audio recording from a September 22, 2015 hearing in the Custody Dispute, in which Mack McKeller - Marquis Swann's attorney - informed Chief District Court Judge Athena Brooks, who replaced Judge Cowan following her recusal, that Judge Cowan had recused herself because of extra-judicial communications with a non-party. (Resp. Ex. 9; Tr. 34, 41);

19. Judge Cowan did not dispute that the alleged ex parte communications occurred, or that she subsequently recused herself (Tr. 90). Petitioner did not dispute that the alleged ex parte communication occurred (Tr. 140).

20. The Respondent's social workers are trained not to contact judges directly regarding matters related to their work duties unless such communication concerns the immediate, non-secure custody of a child (Tr. 106 – 108).

21. On October 2, 2015, DSS attorney, Tony C. Dalton, at the request of Tracy Jones, wrote a statement memorializing the content of the June 4, 2015 meeting (Pet. Ex. 1; Tr. 18).

22. On October 5, 2015, Petitioner received a notice of Placement on Investigatory Status with Pay (Resp. Ex. 3) and a Notice of Pre-Disciplinary Conference was received by Petitioner on October 6, 2015 (Resp. Ex. 4).

23. Petitioner received her Notice of Dismissal on October 7, 2015, wherein Petitioner was dismissed from her employment with the Department because of the "information [Ms. Jones] learned at the September 25, 2015 Social Services Board meeting which indicated Judge Cowan had recused herself from the private custody case because of the direct contact [Petitioner] had made with her regarding the court order" (Resp. Ex. 5).

24. Petitioner had a long standing professional relationship with all of the District Court Judges holding court in Transylvania County, primarily due to the nature of her work responsibilities and the requirement that she appear before them and testify to matters relevant to the welfare of minor children. In addition, Judge Cowan served as the Attorney Advocate for the Guardian ad Litem program in Transylvania County prior to becoming a District Court Judge. The Guardian ad Litem program works closely with social workers involved in cases involving the welfare of minor children (Tr. 83 – 84).

25. During the hearing of this contested case, Judge Cowan invoked her judicial immunity and refused to answer why she had recused herself from hearing any matters arising in the Custody Dispute (Tr. 90-91).

26. Mack McKeller appeared and testified at the hearing of this contested case and provided clarification as to the reason why Judge Cowan recused herself from hearing any matter arising in the custody dispute. Mr. McKeller appeared before Judge Cowan during the session of Transylvania County District Court when Judge Cowan recused herself from the Custody Dispute. Judge Cowan's recusal was based primarily on the fact that she and the Petitioner were involved in the same community activities, that she and Petitioner knew each other both professionally and socially, and as a result it would not be proper for her to hear any matters arising in the Custody Dispute. The ex parte communication between Petitioner and Judge Cowan was an incident of their existing relationship (Tr. 116 -118).

27. District Court Judge Peter Knight recused himself from hearing any matter relative to the Custody Dispute after he made the decision that it was not appropriate for him or any of the other District Court Judges regularly holding court in Transylvania County to hear any such matters. Judge Knight's decision to recuse himself was based on the Petitioner's connection to the Custody Dispute and due to the regularity in which Petitioner appeared before him in various court proceedings, not because of any ex parte communication by the Petitioner or that Petitioner had tried to influence the outcome of the Custody Dispute (Tr. 13-14).

28. The ex parte contact did not affect the outcome of the Custody Dispute as the case had been settled by a Consent Order prior to the ex parte contact.

29. The Petitioner did not attempt to influence the outcome of the Custody Dispute and could not have affected the outcome of the case as the case had already been resolved by the entry of the Consent Order between the parties.

30. The ex parte contact did not unduly delay the Custody Dispute because the case had been resolved by the Consent Order.

31. The ex parte contact that Petitioner had with Judge Cowan did not result in any prejudice to the parties or their attorneys in the Custody Dispute.

32. Despite the fact that Petitioner's relation to the Custody Dispute was not related to her work duties, the Petitioner knew, or should have known, that an ex parte communication with Judge Cowan concerning the Custody Dispute was improper.

33. Social workers who engage in ex parte communications with judges cast a negative light on DSS.

34. Tracy Jones made the decision to dismiss the Petitioner based on the Petitioner's ex parte communication with Judge Cowan and the Respondent's connection to the unfounded allegations made against Petitioner prior to June 4, 2015.

35. In making her decision to dismiss the Petitioner from her employment, Ms. Jones did not consider all of the pertinent facts and circumstances of this particular case including the context and the content of the ex parte communication, that there was no harm caused by the ex parte communication, or that the recusals in the Custody Dispute by Judge Knight and Judge Cowan were based primarily on the fact that they had known Petitioner, professionally, for several years. In addition, Ms. Jones did not consider the performance reviews of Petitioner during her sixteen (16) years as a social worker with Transylvania County DSS.

BASED upon the foregoing FINDINGS OF FACT, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has personal jurisdiction over the issue in this contested case pursuant to Chapter 126 and Chapter 150B of the North Carolina General Statutes.

2. The parties are properly before the Office of Administrative Hearings and there is no issue of improper procedure.

3. To the extent that the Findings of Fact contain Conclusions of Law, or that the Conclusions of Law are Findings of Fact, they should be so considered without regard to the given labels.

4. Respondent Transylvania County Department of Social Services is subject to Chapter 126 of the North Carolina General Statutes and is the former employer of Petitioner.

5. A "career state employee" is defined as a state employee, or an employee of a local entity as described in N.C. Gen. Stat. 126-5(a)(2), who is in a permanent position with a permanent appointment and continuously has been employed by the State of North Carolina in a non-exempt position for the immediate 12 preceding months. N.C. Gen. Stat. § 126-1.1

6. At the time of her dismissal, Petitioner was a career State employee subject to the provisions of the State Personnel Act, N.C. Gen. Stat. § 126-1, *et seq.*

7. A career State employee may be dismissed only for just cause. N.C. Gen. Stat. § 126-35(a). The State employer has the burden of showing by a preponderance of the evidence that there was just cause for dismissal. N.C. Gen. Stat. § 126-34.02(d).

8. Pursuant to regulations promulgated by the Office of State Personnel, there are two bases for the dismissal of an employee for just cause: (1) unsatisfactory job performance; and (2) unacceptable personal conduct. 25 N.C.A.C. 01J .0604(b). However, “the categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case.” 25 N.C.A.C. 01J .0604(c). Furthermore, “[n]o disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.” *Id.*

9. Petitioner’s dismissal from her employment was based solely on the basis of unacceptable personal conduct.

10. An employee may be dismissed without any prior warning or disciplinary action when the basis for dismissal is unacceptable personal conduct. 25 N.C.A.C. 01J 0608(a). One instance of unacceptable conduct constitutes just cause for dismissal. *Hilliard v. North Carolina Dep’t of Corr.*, 173 N.C. App. 594, 597, 620 S.E.2d 14, 17 (2005).

11. Unacceptable personal conduct, as defined by the Office of State Personnel, includes “conduct for which no reasonable person should expect to receive prior warning;” “the willful violation of known or written work rules;” and “conduct unbecoming a state employee that is detrimental to state service.” 25 N.C.A.C. 01J .0614(8).

12. In the case of “conduct unbecoming a state employee that is detrimental to state service,” the State employer is not required to make a showing of actual harm, “only a potential detrimental impact (whether conduct like the employees could potentially adversely affect the mission or legitimate interests of the State employer).” *Hilliard*, 173 N.C. App at 597, 620 S.E.2d at 17.

13. In the case of “willful violation of known or written work rules,” the State employer’s “work rules may be written or ‘known’ and a willful violation occurs when the employee willfully takes action which violates the rule and does not require that the employee intend his conduct to violate the work rule.” *Id.*

14. The Petitioner engaged in unacceptable personal conduct when she initiated an ex parte communication with Judge Cowan concerning the Custody Dispute in which Petitioner had a personal interest. The ex parte communication with Judge Cowan was made in violation of the known work rules of the Respondent, and Petitioner knew, or should have known that the ex parte communication was improper. The ex parte communication made by Petitioner casts DSS in a

negative light and has the potential of adversely affecting DSS by damaging the public trust in DSS.

15. Determining whether a public employer had just cause to discipline its employee requires two separate inquiries: first, whether the employee engaged in the conduct the employer alleges; and second, whether the conduct constitutes just cause for the disciplinary action taken. N.C. Dep't of Env't & Natural Res. v. Carroll, 358 N.C. 649, 599 S.E.2d 888 (2004).

16. In Carroll, the Supreme Court explained that the fundamental question is whether “the disciplinary action taken was ‘just’”. Further, the Supreme Court held that, “Determining whether a public employee had ‘just cause’ to discipline its employee requires two separate inquiries: First, whether the employee engaged in the conduct the employer alleges, and second, whether that conduct constitutes ‘just cause’ for the disciplinary action taken.” Id. at 665, 599 S.E.2d at 898.

17. In Carroll, a personal conduct case, the Court went on to say that “not every violation of law gives rise to ‘just cause’ for employee discipline.” In other words, not every instance of unacceptable personal conduct as defined by the Administrative Code provides just cause for discipline. Id. at 670, 599 S.E.2d at 901.

18. The flexible and equitable standard described in Carroll was recently affirmed by the Supreme Court’s decision of Wetherington v. North Carolina Department of Public Safety, 780 S.E. 2d 543 (2015).

19. The two-prong test of the Carroll case was expanded in Warren v. N. Carolina Dep't of Crime Control & Pub. Safety, 726 S.E.2d 920, 924-925 (N.C. Ct. App. 2012) review denied, 735 S.E.2d 175 (2012), which sets forth what this tribunal must consider as to the degree of discipline. It states:

We conclude that the best way to accommodate the Supreme Court's flexibility and fairness requirements for just cause is to balance the equities after the unacceptable personal conduct analysis. This avoids contorting the language of the Administrative Code defining unacceptable personal conduct. The proper analytical approach is to first determine whether the employee engaged in the conduct the employer alleges. The second inquiry is whether the employee's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Unacceptable personal conduct does not necessarily establish “just cause” for all types of discipline. If the employee's act qualifies as a type of unacceptable conduct, the tribunal proceeds to the third inquiry: whether that misconduct amounted to “just cause” for the disciplinary action taken. (Internal cites omitted)

Id.

20. The necessary application of Carroll and Warren to the instant case result in an affirmative answer to the first two inquiries. The Petitioner engaged in the conduct the Respondent alleged and the Petitioner's conduct falls within one of the categories of unacceptable personal conduct provided by the Administrative Code. Since the first two inquiries have been met, the next inquiry is whether the punishment is appropriate.

21. The final inquiry in the Warren analysis is determining whether the discipline imposed for that conduct was "just". Just cause must be determined based "upon an examination of the facts and circumstances of each individual case." The Warren Court refers to this process as "balancing the equities."

22. In "balancing the equities" and trying to determine what is just, or the "right" thing to do, one must look at the totality of the facts and circumstances as opposed to just looking coldly and blindly at whether or not Petitioner violated rules or policy. Mitigating factors in the employee's conduct should be considered in this third prong. See Warren (citing Roger Abrams and Dennis Nolan, TOWARD A THEORY OF "JUST CAUSE" IN EMPLOYEE DISCIPLINE CASES, 1985 Duke L.J. 594 (September 1985)).

23. Respondent has not met its burden of proof that it had "just cause" to dismiss Petitioner. Because of the particular facts of this case, the punishment of dismissal was not appropriate.

24. Respondent did not consider the totality of all of the pertinent facts and circumstances of this individual case in making her decision to dismiss Petitioner from her employment. Director of Transylvania County DSS, Tracy Jones, made the decision to dismiss the Petitioner based on the Petitioner's ex parte communication with Judge Cowan and the Respondent's connection to the unfounded allegations made against Petitioner prior to June 4, 2015. The decision to dismiss Petitioner was an application of an arbitrary consequence of Petitioner's unacceptable personal conduct. Ms. Jones made the determination to dismiss Petitioner without giving due consideration to the analysis required by Warren.

25. In making her decision to dismiss the Petitioner from her employment, Ms. Jones did not consider the context and the content of the ex parte communication, that the ex parte communication did not result in any harm to the Respondent or those individuals involved in the Custody Dispute, or that the recusals in the Custody Dispute by Judge Knight and Judge Cowan were based primarily on the fact that they had known Petitioner, professionally, for several years. In addition, Ms. Jones did not consider the performance reviews of Petitioner during her sixteen (16) years as a social worker with Transylvania County DSS.

26. Respondent has met its burden of proof to show that the Petitioner engaged in unacceptable personal conduct, however, after considering the totality of the facts and circumstances, the Respondent did not have just cause to dismiss the Petitioner from her employment.

27. Respondent substantially prejudiced Petitioner's rights; acted erroneously; failed to act as required by law; and acted arbitrarily or capriciously when Respondent dismissed Petitioner without just cause.

BASED upon the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, the undersigned issues the following:

FINAL DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, the Undersigned determines that the Respondent substantially prejudiced Petitioner's rights, acted erroneously, failed to act as required by law; and acted arbitrarily or capriciously when Respondent dismissed Petitioner for "just cause". The Respondent's Final Decision terminating Petitioner's employment is therefore **REVERSED**;

It is **ORDERED** that Petitioner shall be reinstated to her position of Social Work Supervisor at the same pay grade she had while in that position. Petitioner shall be retroactively reinstated to this position of employment with the Respondent, with all back pay and benefits. Respondent shall pay to Petitioner and her attorney all reasonable attorney fees and costs incurred in this Contested Case.

NOTICE

This **Final Decision** is issued under the authority of N.C.G.S. § 150B-34.

Pursuant to N.C.G.S. § 126-34.02, any party wishing to appeal the Final Decision of the Administrative Law Judge may commence such appeal by filing a Notice of Appeal with the North Carolina Court of Appeals as provided in N.C.G.S. § 7A-29(a). The appeal shall be taken within 30 days of receipt of the written notice of final decision. A notice appeal shall be filed with the Office of Administrative Hearings and served on all parties to the contested case hearing.

This the 16th day of May, 2016.



David F Sutton
Administrative Law Judge